

Appendix 2

KILKENNY COUNTY COUNCIL
Enforcement Site Inspection Sheet

Enforcement Ref: ENF18051

Report date: 23/July/2018

Complaint Origin: Paul O'Meara
On behalf of Thomas & Deirdre Maher
Derrylackey,
Mullinavat,
Co. Kilkenny.

INSPECTION STATUS

Preliminary Visit	19/July/2018
Follow up visit	
Following Warning	
Following Enforcement	
Prior to Court	

SITE INFORMATION

Site Address:

Derrylackey,
Mullinavat,
Co. Kilkenny.

Property Owner:

Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.

Planning History:

None recorded on the subject site

Adjoining Sites:-

P13/408

Planning permission granted for a single storey dwelling and associated site works on the adjoining site to the east in the name of Thomas Maher.

DESCRIPTION OF UNAUTHORISED DEVELOPMENT:

Alleged unauthorised agricultural structure

REPORT

The complaint received on 27th June 2018 refers to the construction of two agricultural structures within a farm complex at Derrylackey, Mullinavat. The subject site is situated within the overall landholding of Mr. Peter Maher and is located close to the existing farm complex. When measured on the GIS system, the existing farm complex would be within 100 metres of the subject site.

I carried out a site inspection with Eddie O'Reilly, A/Senior Executive Technician on the 19th July 2018. During the inspection Mr. Peter Maher arrived on site and explained that he had constructed the pump house as he had no water down at that end of the farm. He also explained that he had received some advice regarding the smaller shed which measured 10m x 19.3m (193sq.m) with a height of 5.5m stating that it did not require planning permission. There were no cattle in the actual shed at the time as they were in a pen adjoining same.

There was a larger steel framed shed with a separation distance of 19m between both structures. This shed which measured 19m x 19m (361sq.m) with a 4m wide entrance on the western facade, was not complete and the steel frame on a concrete base was in situ. Both the field in which the two structures are located and the adjoining field to the west have been excavated, top soiled and levelled for agricultural purposes. A large area has been hard-cored adjacent to the large steel frame shed structure for the purposes of a turning area for tractors.

Part 3 Exempted Development – Rural of the Planning & Development Regulations sets out the exemptions for agricultural structures. Class 6 details the exemptions for structures for the housing of cattle and states:-

CLASS 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

The conditions and limitations associated with the development area as follows:-

- 1. No such structure shall be used for any purpose other than the purpose of agriculture.*
- 2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.*
- 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.*
- 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.*
- 5. No such structure within 100 metres of any public road shall exceed 8 metres in height.*
- 6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or*

other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

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

It is considered that the smaller shed complies with the exempted development regulations with respect to use, floor area, height, finishes etc and therefore does not require planning permission.

The larger shed falls under Class 9 as it is intended to be used as an agricultural shed/storage purposes for hay etc.

Class 9

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

The Conditions and Limitations associated with this exemption are:-

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

The larger shed when measured on site had a floor area of 361 sq.m, which exceeds the threshold of 300sq.m. The larger steel framed storage shed therefore does not comply with the conditions and limitations of Class 9 and requires planning permission.

The road serving the site is the Local Secondary Road, LS 7452-8. Mr. Maher explained that the agricultural entrance has always been in situ and Google aerial maps confirm that it is not a new entrance but rather the formalising of the existing entrance. The surface carriageway width of this road was measured during the inspection and was calculated as 3m – 3.3m.

Article 9 (ii) of the Planning & Development Regulations 2001-2018 details restrictions on exempt development and states:-

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4m in width.

The restrictions also state:-

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

The width of the road does not exceed 4m and does not create a traffic hazard. The amendments to the existing entrance therefore are considered exempted development and do not require planning permission.

Recommendation

Based on the site inspection carried out on 19th July 2018, I therefore recommend that a Warning Letter be issued stating the following:-

Alleged unauthorised steel frame structure under construction for the intended use as a dry storage and machinery shed

PLANNING OFFICER'S DETAILS

Signature: _____

Date: _____

Name: Suzanne Galvin.

Grade: Executive Planner

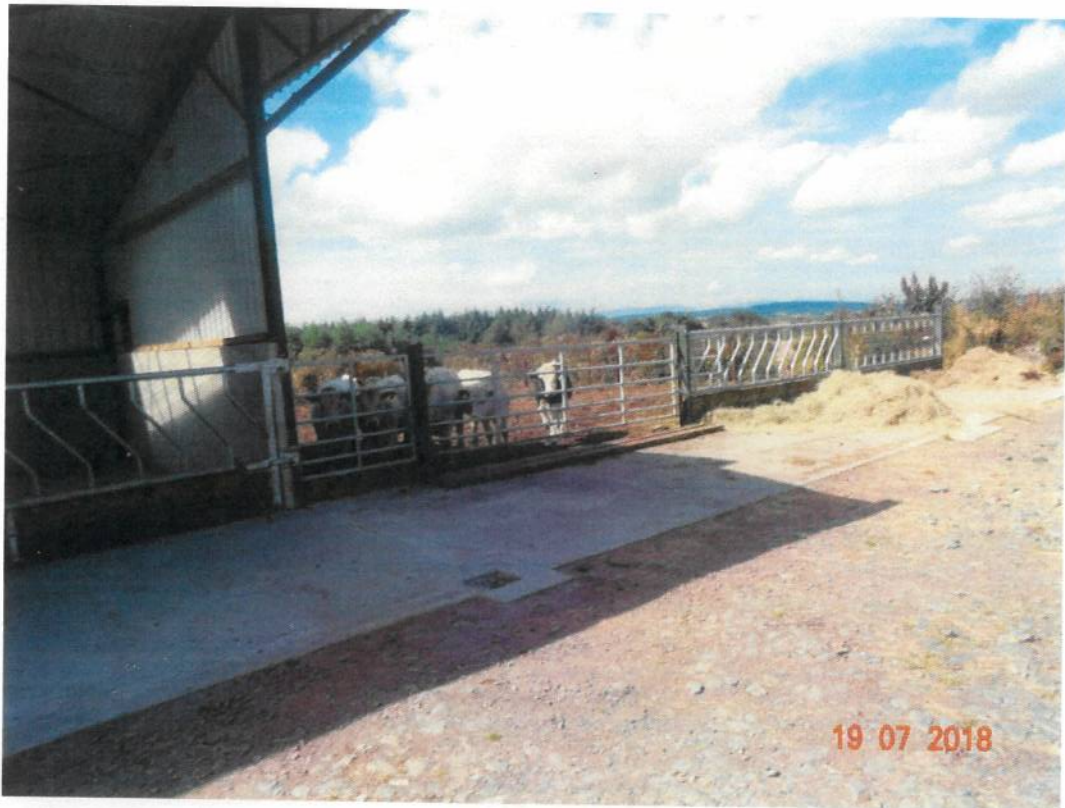
I agree with the above recommendation.

Arlene O'Connor
Senior Executive Planner

Date _____

ENF 18051 Agricultural Structures at Derrylackey, Mullinavat, Co. Kilkenny.
Site Inspection 19th July 2018.









KILKENNY COUNTY COUNCIL
Enforcement Site Inspection Sheet

Enforcement Ref: ENF18051

Report date: 7th/September/2018

Complaint Origin: Paul O'Meara
On behalf of Thomas & Deirdre Maher
Derrylackey,
Mullinavat,
Co. Kilkenny.

INSPECTION STATUS

Preliminary Visit	19/July/2018
Follow up visit	
Following Warning	
Following Enforcement	
Prior to Court	

SITE INFORMATION

Site Address:

Derrylackey,
Mullinavat,
Co. Kilkenny.

Property Owner:

Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.

Planning History:

None recorded on the subject site

Adjoining Sites:-

P13/408

Planning permission granted for a single storey dwelling and associated site works on the adjoining site to the east in the name of Thomas Maher.

DESCRIPTION OF UNAUTHORISED DEVELOPMENT:

Alleged unauthorised agricultural structure

REPORT

The complaint received on 27th June 2018 refers to the construction of two agricultural structures within a farm complex at Derrylackey, Mullinavat. The subject site is situated within the overall landholding of Mr. Peter Maher and is located close to the existing farm complex. When measured on the GIS system, the existing farm complex would be within 100 metres of the subject site.

I carried out a site inspection with Eddie O'Reilly, A/Senior Executive Technician on the 19th July 2018. During the inspection Mr. Peter Maher arrived on site and explained that he had constructed the pump house as he had no water down at that end of the farm. He also explained that he had received some advice regarding the smaller shed which measured 10m x 19.3m (193sq.m) with a height of 5.5m stating that it did not require planning permission. There were no cattle in the actual shed at the time as they were in a pen adjoining same.

There was a larger steel framed shed with a separation distance of 19m between both structures. This shed which measured 19m x 19m (361sq.m) with a 4m wide entrance on the western facade, was not complete and the steel frame on a concrete base was in situ.

Both the field in which the two structures are located and the adjoining field to the west have been excavated, top soiled and levelled for agricultural purposes. A large area has been hard-cored adjacent to the large steel frame shed structure for the purposes of a turning area for tractors.

Part 3 Exempted Development – Rural of the Planning & Development Regulations sets out the exemptions for agricultural structures. Class 6 details the exemptions for structures for the housing of cattle and states:-

CLASS 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

The conditions and limitations associated with the development area as follows:-

- 1. No such structure shall be used for any purpose other than the purpose of agriculture.*
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other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

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

It is considered that the smaller shed complies with the exempted development regulations with respect to use, floor area, height, finishes etc and therefore does not require planning permission.

The larger shed falls under Class 9 as it is intended to be used as an agricultural shed/storage purposes for hay etc.

Class 9

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The larger shed when measured on site had a floor area of 361 sq.m, which exceeds the threshold of 300sq.m. The larger steel framed storage shed therefore does not comply with the conditions and limitations of Class 9 and requires planning permission.

The road serving the site is the Local Secondary Road, LS 7452-8. Mr. Maher explained that the agricultural entrance has always been in situ and Google aerial maps confirm that it is not a new entrance but rather the formalising of the existing entrance. The surface carriageway width of this road was measured during the inspection and was calculated as 3m – 3.3m.

Article 9 (ii) of the Planning & Development Regulations 2001-2018 details restrictions on exempt development and states:-

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4m in width.

The restrictions also state:-

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

The width of the road does not exceed 4m and does not create a traffic hazard. The amendments to the existing entrance therefore are considered exempted development and do not require planning permission.

Based on the site inspection carried out on 19th July 2018, a Warning Letter was issued on 24th July 2018 stating the following:-

Alleged unauthorised steel frame structure under construction for the intended use as a dry storage and machinery shed

A response to the warning letter was submitted on 9th August 2018 by Tommy Downey on behalf of Peter Maher.

The response details the size and intended use of the structures on site. According to the submission the building under construction measures 319sq.m. The purpose of the building is to house small calves and machinery/storage. A section 6m*12m (72m²) is to be used for the calves and the remainder (247m²) for machinery/storage. There is also a recently completed loose cattle shed measuring 138m² as referenced in the above report.

The total loose roofed cattle shed area is therefore $138 + 72 = 210\text{m}^2$.

The total machinery/storage area is 247m².

The submission claims that this constitutes exempted development under Class 9 Part 3 of the Planning and Development Regulations 2001-2018. The submission also confirms that there is no dwelling house within 100 metres and the nearest dwelling house is about 250 metres away.

However, when measured by the planning authority officials during the site inspection carried out on 19th July 2018 the total floor area of the machinery/storage shed was 361m² and not 319m² as referred to in the submission received from Tommy Downey on 9th August 2018. Furthermore the floor area of the cattle shed was 193m².

The important question here is if the 72m² will be permanently used **exclusively** as an area for calves and therefore a site layout plan should be submitted identifying the exact extent of the area to be reserved for such purposes and accurate measurements submitted and identified on the aforementioned layout plan.

Confirmation should also be sought as to the exact distance between the subject site and the nearest farm complex to ensure that the cumulative floor area thresholds are also met.

Recommendation

I therefore recommend that the following letter be issued:-

Further to your submission dated 9th August 2018 you are requested to submit an accurate floor plan clearly identifying the area of the large shed which will be dedicated solely to the housing of calves and the area which will be used solely for machinery/storage purposes.

Furthermore, there is a discrepancy in the floor area measurements taken on site by Planning Authority officials and those referred to in your submission. Please submit accurate measurements of the existing loose cattle house in conjunction with the large store currently under construction.

Finally, please confirm the exact distance between the subject site and the nearest farm complex to ensure that the cumulative floor area thresholds are met as set out in Classes 6 & 9 of Part 3 Exempted Development of the Planning and Development Regulations 2001-2018.

PLANNING OFFICER'S DETAILS

Signature: _____

Date: _____

Name: Suzanne Galvin.

Grade: Executive Planner

I agree with the above recommendation.

Arlene O'Connor
Senior Executive Planner

Date _____

KILKENNY COUNTY COUNCIL
Enforcement Site Inspection Sheet

Enforcement Ref: ENF18051

Report date: 24th July 2019

Complaint Origin: Paul O'Meara
On behalf of Thomas & Deirdre Maher
Derrylackey,
Mullinavat,
Co. Kilkenny.

INSPECTION STATUS

Preliminary Visit	19/July/2018
Follow up visit	
Following Warning	23/July/2019
Following Enforcement	
Prior to Court	

SITE INFORMATION

Site Address:

Derrylackey,
Mullinavat,
Co. Kilkenny.

Property Owner:

Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.

Planning History:

None recorded on the subject site

Adjoining Sites:-

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Based on the site inspection carried out on 19th July 2018, a Warning Letter was issued on 24th July 2018 stating the following:-

Alleged unauthorised steel frame structure under construction for the intended use as a dry storage and machinery shed

A response to the warning letter was submitted on 9th August 2018 by Tommy Downey on behalf of Peter Maher.

The response details the size and intended use of the structures on site. According to the submission the building under construction measures 319sq.m. The purpose of the building is to house small calves and machinery/storage. A section 6m*12m (72m²) is to be used for the calves and the remainder (247m²) for machinery/storage. There is also a recently completed loose cattle shed measuring 138m² as referenced in the above report.

The total loose roofed cattle shed area is therefore $138 + 72 = 210\text{m}^2$.

The total machinery/storage area is 247m².

The submission claims that this constitutes exempted development under Class 9 Part 3 of the Planning and Development Regulations 2001-2018. The submission also confirms that there is no dwelling house within 100 metres and the nearest dwelling house is about 250 metres away.

However, when measured by the planning authority officials during the site inspection carried out on 19th July 2018 the total floor area of the machinery/storage shed was 361m² and not 319m² as referred to in the submission received from Tommy Downey on 9th August 2018. Furthermore the floor area of the cattle shed was 193m².

The important question here is if the 72m² will be permanently used **exclusively** as an area for calves and therefore a site layout plan should be submitted identifying the exact extent of the area to be reserved for such purposes and accurate measurements submitted and identified on the aforementioned layout plan.

Confirmation should also be sought as to the exact distance between the subject site and the nearest farm complex to ensure that the cumulative floor area thresholds are also met.

The following letter was therefore issued on 13th September 2018:-

Further to your submission dated 9th August 2018 you are requested to submit an accurate floor plan clearly identifying the area of the large shed which will be dedicated solely to the housing of calves and the area which will be used solely for machinery/storage purposes.

Furthermore, there is a discrepancy in the floor area measurements taken on site by Planning Authority officials and those referred to in your submission. Please submit accurate measurements of the existing loose cattle house in conjunction with the large store currently under construction.

Finally, please confirm the exact distance between the subject site and the nearest farm complex to ensure that the cumulative floor area thresholds are met as set out in Classes 6 & 9 of Part 3 Exempted Development of the Planning and Development Regulations 2001-2018.

A response was received on 21st September 2018 from Tom Downey acting on behalf of the landowner Peter Maher.

A floor plan of the large shed has been submitted which illustrates the extent of the area dedicated to a calf area (72sq.m) and that section of the building to be used exclusively as a machinery/storage area (247 sq.m). The total floor area of this shed when measured internally is 319sq.m.

The total roofed area of the loose cattle shed is stated as 164sq.m. The enclosed area for housing cattle is 138sq.m whilst the feeding apron is 26sq.m. Again these measurements are all calculated internally.

A site location map has been submitted on which it is indicated that the distance between the subject sheds and the existing farm complex is 460m.

It is clear from this submission that the floor area discrepancy referred to in the letter issued on 13th September 2018 was due to the fact that the measurements taken on site by Planning Officials during the site inspection were taken externally whilst those submitted by Mr. Downey were measured internally.

If it is the case that the larger shed is to be used for both a calf area and a machinery/storage area as detailed in the submission then it is below the threshold set out in Class 9 which sets a cumulative floor area of 300sq.m. Additionally if the enclosed area for housing cattle is 138sq.m and that section of the larger shed which is to be exclusively used for calves 72sq.m this again falls below the threshold of 300sq.m as set out in Class 6.

A letter was issued to Peter Maher requesting the landowner to inform the Planning Authority when the structure has been completed and informing him that the Planning Authority will carry out a subsequent site inspection at that stage to confirm that the larger shed has been constructed and is being used for the purposes detailed in the site layout plan received on 21st September 2018.

A letter was received from Tom Downey acting on behalf of Peter Maher on 15th March 2019 stating that the shed is now complete but has yet to be put into use. The submission confirms that the area allocated to cattle is 72sq.m.

A further submission was received from Paul O'Meara acting on behalf of the complainant on 11th July 2019 regarding additional works being carried out on site in particular articulated lorries delivering bagged potatoes twice a week which are then collected by numerous vans. The submission states that the site is essentially being used as a distribution centre and warehouse and not for agricultural purposes.

I carried out a site inspection on 23rd July 2019. I met with Peter Maher on site and two other workers. I observed that the machinery shed/store was indeed being used for the storage of bagged potatoes on pallets. Large amounts of onions & pallets of Fribel Beef Dripping were also observed (see attached photos). There was pallets containing cans of 7UP outside the building. When I queried the use of the premises I was told by Peter Maher that they supply the potatoes to takeaways which appears accurate given the presence of the beef dripping on site, which is used in chip shops.

There were two containers erected on site which were situated beside a concrete area. It would appear that the articulated lorries reverse up to this concrete area and unload the products some of which are then stored in the containers (see attached photos).

There was a significant amount of disused pallets being stored in the loose cattle shed to the front of the site. It may be that case that these pallets are no longer required for the storage of potatoes and are discarded in the shed.

The definition of agriculture as set out in Section 2 of the Planning & Development Act as amended includes
"horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of the food, wool, skins or fur or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds"

The current use of the premises is a warehouse/distribution centre where pallets of potatoes, together with onions, beef dripping and cans of soft drinks are delivered in articulated lorries and stored in the large shed and the two containers on site. Vans arrive to collect the produce which is then delivered to takeaways. It is my opinion that such development constitutes a change of use from agricultural use to commercial. The traffic movements associated with the development would also raise concerns given the narrow nature of this cul de sac lane and the impact of the large articulated lorries on the condition of the lane.

PLANNING OFFICER'S DETAILS

Signature: _____

Date: _____

Name: Suzanne Galvin.

Grade: Executive Planner

I agree with the above recommendation.

Arlene O'Connor
Senior Executive Planner

Date _____

ENF 18051 Peter Maher, Derrylackey, Mullinavat, Co. Kilkenny.
Site inspection 23rd July 2019.

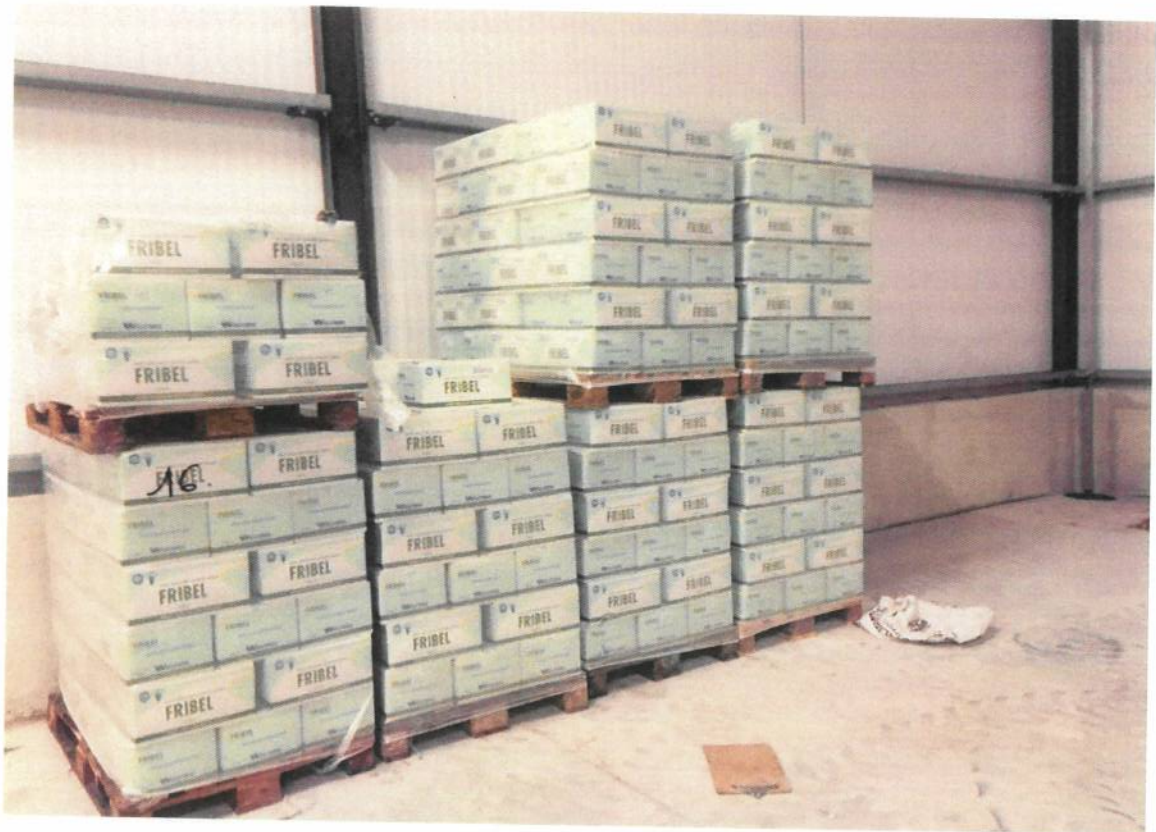












chipshopcatering.be product/fribel-beef-dripping-12.5kg/

CHIP SHOP
CATERING

HOME PRODUCTS ABOUT US CONTACT

FRIBEL BEEF DRIPPING (12.5KG)

PRODUCT INFORMATION

DRIPS AND FATS

Fribel beef dripping – 12.5kg

The golden colour and unparalleled flavour remain the great trump card of using beef dripping. Beefdripping is our historic heritage and we need to continue cherishing it.

Fribel is an extra refined beefdripping of the finest quality. Ideal for all standard frying applications and for professionals who strive to achieve the quality and aroma of real Belgian chips.

FRIBEL®
12.5kg

FRITTUURVET • GRASSE À FRIRE • FRYING FAT • FRITIERFET

12.57
23/07/2019

ENF 18051 Peter Maher, Derrylackey, Mullinavat, Co. Kilkenny.
Site inspection 23rd July 2019.













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KILKENNY COUNTY COUNCIL
Enforcement Site Inspection Sheet

Enforcement Ref: ENF18051

Report date: 29th July 2019

Complaint Origin: Paul O'Meara
On behalf of Thomas & Deirdre Maher
Derrylackey,
Mullinavat,
Co. Kilkenny.

INSPECTION STATUS

Preliminary Visit	19/July/2018
Follow up visit	
Following Warning	23/July/2019
Following Enforcement	
Prior to Court	

SITE INFORMATION

Site Address:

Derrylackey,
Mullinavat,
Co. Kilkenny.

Property Owner:

Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.

Planning History:

None recorded on the subject site

Adjoining Sites:-

P13/408

Planning permission granted for a single storey dwelling and associated site works on the adjoining site to the east in the name of Thomas Maher.

DESCRIPTION OF UNAUTHORISED DEVELOPMENT:

Alleged unauthorised agricultural structure

REPORT

The complaint received on 27th June 2018 refers to the construction of two agricultural structures within a farm complex at Derrylackey, Mullinavat. The subject site is situated within the overall landholding of Mr. Peter Maher and is located close to the existing farm complex. When measured on the GIS system, the existing farm complex would be within 100 metres of the subject site.

I carried out a site inspection with Eddie O'Reilly, A/Senior Executive Technician on the 19th July 2018. During the inspection Mr. Peter Maher arrived on site and explained that he had constructed the pump house as he had no water down at that end of the farm. He also explained that he had received some advice regarding the smaller shed which measured 10m x 19.3m (193sq.m) with a height of 5.5m stating that it did not require planning permission. There were no cattle in the actual shed at the time as they were in a pen adjoining same.

There was a larger steel framed shed with a separation distance of 19m between both structures. This shed which measured 19m x 19m (361sq.m) with a 4m wide entrance on the western facade, was not complete and the steel frame on a concrete base was in situ.

Both the field in which the two structures are located and the adjoining field to the west have been excavated, top soiled and levelled for agricultural purposes. A large area has been hard-cored adjacent to the large steel frame shed structure for the purposes of a turning area for tractors.

Part 3 Exempted Development – Rural of the Planning & Development Regulations sets out the exemptions for agricultural structures. Class 6 details the exemptions for structures for the housing of cattle and states:-

CLASS 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

The conditions and limitations associated with the development area as follows:-

- 1. No such structure shall be used for any purpose other than the purpose of agriculture.*
- 2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.*
- 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.*
- 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.*
- 5. No such structure within 100 metres of any public road shall exceed 8 metres in height.*

6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

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

It is considered that the smaller shed complies with the exempted development regulations with respect to use, floor area, height, finishes etc and therefore does not require planning permission.

The larger shed falls under Class 9 as it is intended to be used as an agricultural shed/storage purposes for hay etc.

Class 9

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

The Conditions and Limitations associated with this exemption are:-

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

The larger shed when measured on site had a floor area of 361 sq.m, which exceeds the threshold of 300sq.m. The larger steel framed storage shed therefore does not comply with the conditions and limitations of Class 9 and requires planning permission.

The road serving the site is the Local Secondary Road, LS 7452-8. Mr. Maher explained that the agricultural entrance has always been in situ and Google aerial maps confirm that it is not a new entrance but rather the formalising of the existing entrance. The surface carriageway width of this road was measured during the inspection and was calculated as 3m – 3.3m.

Article 9 (ii) of the Planning & Development Regulations 2001-2018 details restrictions on exempt development and states:-

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4m in width.

The restrictions also state:-

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

The width of the road does not exceed 4m and does not create a traffic hazard. The amendments to the existing entrance therefore are considered exempted development and do not require planning permission.

Based on the site inspection carried out on 19th July 2018, a Warning Letter was issued on 24th July 2018 stating the following:-

Alleged unauthorised steel frame structure under construction for the intended use as a dry storage and machinery shed

A response to the warning letter was submitted on 9th August 2018 by Tommy Downey on behalf of Peter Maher.

The response details the size and intended use of the structures on site. According to the submission the building under construction measures 319sq.m. The purpose of the building is to house small calves and machinery/storage. A section 6m*12m (72m²) is to be used for the calves and the remainder (247m²) for machinery/storage. There is also a recently completed loose cattle shed measuring 138m² as referenced in the above report.

The total loose roofed cattle shed area is therefore $138 + 72 = 210\text{m}^2$.

The total machinery/storage area is 247m².

The submission claims that this constitutes exempted development under Class 9 Part 3 of the Planning and Development Regulations 2001-2018. The submission also confirms that there is no dwelling house within 100 metres and the nearest dwelling house is about 250 metres away.

However, when measured by the planning authority officials during the site inspection carried out on 19th July 2018 the total floor area of the machinery/storage shed was 361m² and not 319m² as referred to in the submission received from Tommy Downey on 9th August 2018. Furthermore the floor area of the cattle shed was 193m².

The important question here is if the 72m² will be permanently used **exclusively** as an area for calves and therefore a site layout plan should be submitted identifying the exact extent of the area to be reserved for such purposes and accurate measurements submitted and identified on the aforementioned layout plan.

Confirmation should also be sought as to the exact distance between the subject site and the nearest farm complex to ensure that the cumulative floor area thresholds are also met.

The following letter was therefore issued on 13th September 2018:-

Further to your submission dated 9th August 2018 you are requested to submit an accurate floor plan clearly identifying the area of the large shed which will be dedicated solely to the housing of calves and the area which will be used solely for machinery/storage purposes.

Furthermore, there is a discrepancy in the floor area measurements taken on site by Planning Authority officials and those referred to in your submission. Please submit accurate measurements of the existing loose cattle house in conjunction with the large store currently under construction.

Finally, please confirm the exact distance between the subject site and the nearest farm complex to ensure that the cumulative floor area thresholds are met as set out in Classes 6 & 9 of Part 3 Exempted Development of the Planning and Development Regulations 2001-2018.

A response was received on 21st September 2018 from Tom Downey acting on behalf of the landowner Peter Maher.

A floor plan of the large shed has been submitted which illustrates the extent of the area dedicated to a calf area (72sq.m) and that section of the building to be used exclusively as a machinery/storage area (247 sq.m). The total floor area of this shed when measured internally is 319sq.m.

The total roofed area of the loose cattle shed is stated as 164sq.m. The enclosed area for housing cattle is 138sq.m whilst the feeding apron is 26sq.m. Again these measurements are all calculated internally.

A site location map has been submitted on which it is indicated that the distance between the subject sheds and the existing farm complex is 460m.

It is clear from this submission that the floor area discrepancy referred to in the letter issued on 13th September 2018 was due to the fact that the measurements taken on site by Planning Officials during the site inspection were taken externally whilst those submitted by Mr. Downey were measured internally.

If it is the case that the larger shed is to be used for both a calf area and a machinery/storage area as detailed in the submission then it is below the threshold set out in Class 9 which sets a cumulative floor area of 300sq.m. Additionally if the enclosed area for housing cattle is 138sq.m and that section of the larger shed which is to be exclusively used for calves 72sq.m this again falls below the threshold of 300sq.m as set out in Class 6.

A letter was issued to Peter Maher requesting the landowner to inform the Planning Authority when the structure has been completed and informing him that the Planning Authority will carry out a subsequent site inspection at that stage to confirm that the larger shed has been constructed and is being used for the purposes detailed in the site layout plan received on 21st September 2018.

A letter was received from Tom Downey acting on behalf of Peter Maher on 15th March 2019 stating that the shed is now complete but has yet to be put into use. The submission confirms that the area allocated to cattle is 72sq.m.

A further submission was received from Paul O'Meara acting on behalf of the complainant on 11th July 2019 regarding additional works being carried out on site in particular articulated lorries delivering bagged potatoes twice a week which are then collected by numerous vans. The submission states that the site is essentially being used as a distribution centre and warehouse and not for agricultural purposes.

I carried out a site inspection on 23rd July 2019. I met a white van on the laneway, which pulled up on the verge to allow me to pass. Upon entering the site I met two workers who rang Peter Maher upon my request. Mr. Maher arrived about 10mins later.

I observed that the machinery shed/store was indeed being used for the storage of bagged potatoes on pallets. Large amounts of onions & pallets of Fribel Beef Dripping were also observed (see attached photos). There was slabs containing cans of 7UP outside the building. When I queried the use of the premises I was told by Peter Maher that they supply the potatoes to takeways which appears accurate given the presence of the pallets of beef dripping on site, which is commonly used in chip shops.

There were two containers erected on site which were situated beside a concrete area. It would appear that the articulated lorries reverse up to this concrete area and unload the products some of which are then stored in the containers (see attached photos).

There was a significant amount of disused pallets being stored in the loose cattle shed to the front of the site. It may be that case that these pallets are no longer required for the storage of potatoes & beef dripping and are discarded in the shed.

The definition of agriculture as set out in Section 2 of the Planning & Development Act as amended includes

"horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of the food, wool, skins or fur or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds"

The current use of the premises is a warehouse/distribution centre where pallets of potatoes, together with onions, beef dripping and cans of soft drinks are delivered in articulated lorries and stored in the large shed and the two containers on site. Vans arrive to collect the produce which is then delivered to takeways.

It is my opinion that such development constitutes a change of use from agricultural use to commercial. The traffic movements associated with the development would also raise concerns given the narrow nature of this cul de sac lane and the impact of the large articulated lorries on the condition of the lane.

RECOMMENDATION

The use of the agricultural structures on site for commercial purposes such as warehousing/distribution constitutes a material change of use. Based on the site inspection carried on 23rd July 2019 it is clearly evident that such a change of use has taken place on the site without the benefit of planning permission. There was no evidence that the sheds as constructed were every used for agricultural purposes. The shed floor was very clean and the hay in the pen located in the corner was very fresh and had not been used either.

The large agricultural shed which Mr. Maher claimed was exempted development under Class 6 & Class 9 of the agricultural exemptions as set out in Part 3 Exempted Development – Rural of the Planning & Development Regulations is clearly being used as a warehouse/distribution centre for the storage of potatoes, onions and beef dripping. The 2no. containers on site are used as additional storage for cans of minerals etc all of which are then delivered to fast food takeaways. The loose cattle house to the front of the site is used for the storage of disused pallets. The site is accessed by a very narrow cul de sac laneway which is totally unsuitable to carry the types of heavy duty and articulated vehicles associated with the current use. I recommend that an Enforcement Notice be issued stating the following: -

Reasons for serving Enforcement Notice

1. Unauthorised use of 2no. agricultural buildings for warehousing and as a distribution centre
2. Unauthorised 2no. containers erected on site and associated concrete loading area

Terms for Compliance with Enforcement Notice

1. Cease the use of the 2no. agricultural buildings for warehousing and as a distribution centre
2. Remove the 2no. containers and associated concrete loading area

Time period for compliance with the terms of the Enforcement Notice

1. Compliance with 1 above within **Two Weeks** of the service of the notice
2. Compliance with 2 above within **One Month** of the service of the notice

PLANNING OFFICER'S DETAILS

Signature: _____

Date: _____

Name: Suzanne Galvin.

Grade: Executive Planner

I agree with the above recommendation.

Arlene O'Connor

Senior Executive Planner

Date _____

MEMO

To: Aoife Costello, Planning.

From: Suzanne Galvin, Executive Planner.

Date: 29th July 2019

Re: Breakdown of Expenses for Enforcement File ENF18051

Aoife,

The following is a breakdown of the expenses incurred for ENF19051:-

Mileage 86km/site inspection and 2no.inspection was carried out so 172km @
0.5907/Km= €101.60

Hours Site inspections, site research & investigations & report writing = 5 ½ hours

Land Registry Yes €5.

Administration/photocopy etc.

Regards,

Suzanne Galvin.
Executive Planner.

ENF 18051 Peter Maher, Derrylackey, Mullinavat, Co. Kilkenny.
Site inspection 23rd July 2019.



Figure 1: Trailers for articulated lorries on approach into the site



Figure 2:- Loose cattle shed used for the storage of disused pallets



Figure 3:- Articulated lorry stored on site with slabs of 7 up cans visible to left of photo



Figure 4:- 2no. containers and associated concrete loading bay



Figure 5:- 2no. containers and associated concrete loading bay



Figure 6:- Articulated lorry and container



Figure 7:- Articulated lorry



Figure 8:- Bags of potatoes, onions oil drums and pallets



Figure 9:- Pallets of potatoes and onions



Figure 10:- Pallets of Fribel Beef Dripping used in takeways

←

chipshopcatering.nl

product fribel beef dripping 12.5kg

Frifel Beef Dripping (12.5kg)

HOME

PRODUCTS

ABOUT US

CONTACT

CHIP SHOP

CATERING

HOME


PRODUCTS

ABOUT US

CONTACT

FRIBEL BEEF DRIPPING (12.5KG)

FRIBEL BEEF DRIPPING (12.5KG)



FRIBEL[®]

12.5kg €

FRITTUURVET • GRAISSE DE BOEUF • BEEF DRIPPING • RINDERFET

PRODUCT INFORMATION

CHIPS AND CATS:

Frifel beef dripping – 12.5kg

The golden colour and unparalleled flavour remain the great trump card of using beef dripping. Beefdripping is our historic heritage and we need to continue cherishing it.

Frifel is an extra refined beefdripping of the finest quality. Ideal for all standard frying applications and for professionals who strive to achieve the quality and aroma of real Belgian chips.

EN

12:57

23/07/2019

KILKENNY COUNTY COUNCIL
PLANNING ENFORCEMENT REPORT

REF:- ENF 18/051 Derrylackey, Mullinavat, Co. Kilkenny.

DATE:- 8th October 2019.

An Enforcement Notice was issued to Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny and to Thomas Maguire, Director Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny on 17th September 2019. The terms and requirements of these Notice were the same as those issued to Mr. Peter Maher on 1st August 2019.

Reasons for serving Enforcement Notice

1. *Unauthorised use of 2no. agricultural buildings for warehousing and as a distribution centre*
2. *Unauthorised 2no. containers erected on site and associated concrete loading area*

Terms for Compliance with Enforcement Notice

1. *Cease the use of the 2no. agricultural buildings for warehousing and as a distribution centre*
2. *Remove the 2no. containers and associated concrete loading area*

Time period for compliance with the terms of the Enforcement Notice

1. *Compliance with 1 above within **Two Weeks** of the service of the notice*
2. *Compliance with 2 above within **Four Weeks** of the service of the notice*

A response was received from Mr. Thomas Maguire on 3rd October 2019 in which he confirms that the building was constructed on the farm solely for agricultural purposes. The main use of this shed is for the storage and packaging of potatoes, storage of straw for livestock and storage of farm machinery. Mr. Maguire has confirmed that the building was certainly not constructed to carry out warehousing or act as a distribution centre of any type. Mr. Maguire has stated that he will provide further information on the agricultural activities being carried out i.e. Registered Potatoe Grower Number etc. The need to submit such information was

discussed during the site inspection on 13th September 2019 and should, in the Planning Authority's opinion, have been submitted with this response.

It is clear from the contents of the submission that Mr. Peter Maher intends to apply for the retention permission for the containers and the associated concrete loading area and has committed to submitting such a planning application by 21st October 2019.

A further submission was received from the agent acting on behalf of the complainant, Mr. Paul O'Meara on 2nd October 2019 wherein it is states that the warehouse operation has ceased at present during the daytime period but are commencing in the evenings with a HGV delivery arriving around 6.30 (18.30). Then multiple can distribution from then until approximately 1am.

RECOMMENDATION

I therefore recommend that the following TWO LETTERS be issued:-

- (i) **Letter to Mr. Thomas Maguire Director Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny:-**

I wish to acknowledge your submission received on 3rd October 2019 and the contents therein. Your commitment to submit a planning application for the retention of the containers and associated concrete loading area by 21st October 2019 is noted and you are advised that the Planning Authority will be adhering strictly to this timeframe. Failure to submit the aforementioned application by this date will result in the Planning Authority progressing with enforcement action.

Furthermore, it has been brought to the attention of the Planning Authority that the use of the site for warehousing purposes has ceased during daytime hours but has commenced after hours. You are advised that this is in breach of the terms of the enforcement notice served on you and all commercial activity on site should cease immediately.

- (ii) **Letter to Mr. Paul O'Meara:-**

I wish to acknowledge your email dated 2nd October 2019 and to advise of the following. The Planning Authority is continuously monitoring the situation at Derrylackey, Mullinavat, Co. Kilkenny. The Planning Authority is awaiting the expiration of the timeframe for the enforcement notice to determine compliance with same. The timeframe in this instance is four weeks which expires on 15th October 2019.

Suzanne Galvin.

Executive Planner.

KILKENNY COUNTY COUNCIL
Enforcement Site Inspection Sheet

Enforcement Ref: ENF18051

Report date: 7th February 2020

Complaint Origin: Paul O'Meara
On behalf of Thomas & Deirdre Maher
Derrylackey,
Mullinavat,
Co. Kilkenny.

INSPECTION STATUS

Preliminary Visit	19/July/2018
Follow up visit	
Following Warning	
Following Enforcement	4 th /Feb/2020
Prior to Court	

SITE INFORMATION

Site Address:

Derrylackey,
Mullinavat,
Co. Kilkenny.

Property Owner:

Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.

Operator/Company Details:-

Planning History:

None recorded on the subject site

Adjoining Sites:-

P13/408

Planning permission granted for a single storey dwelling and associated site works on the adjoining site to the east in the name of Thomas Maher.

DESCRIPTION OF UNAUTHORISED DEVELOPMENT:

Alleged unauthorised agricultural structure

REPORT

The complaint received on 27th June 2018 refers to the construction of two agricultural structures within a farm complex at Derrylackey, Mullinavat. The subject site is situated within the overall landholding of Mr. Peter Maher and is located close to the existing farm complex. When measured on the GIS system, the existing farm complex would be within 100 metres of the subject site.

I carried out a site inspection with Eddie O'Reilly, A/Senior Executive Technician on the 19th July 2018. During the inspection Mr. Peter Maher arrived on site and explained that he had constructed the pump house as he had no water down at that end of the farm. He also explained that he had received some advice regarding the smaller shed which measured 10m x 19.3m (193sq.m) with a height of 5.5m stating that it did not require planning permission. There were no cattle in the actual shed at the time as they were in a pen adjoining same.

There was a larger steel framed shed with a separation distance of 19m between both structures. This shed which measured 19m x 19m (361sq.m) with a 4m wide entrance on the western facade, was not complete and the steel frame on a concrete base was in situ. Both the field in which the two structures are located and the adjoining field to the west have been excavated, top soiled and levelled for agricultural purposes. A large area has been hard-cored adjacent to the large steel frame shed structure for the purposes of a turning area for tractors.

Part 3 Exempted Development – Rural of the Planning & Development Regulations sets out the exemptions for agricultural structures. Class 6 details the exemptions for structures for the housing of cattle and states:-

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The conditions and limitations associated with the development area as follows:-

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- 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.*

4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
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The larger shed falls under Class 9 as it is intended to be used as an agricultural shed/storage purposes for hay etc.

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The restrictions also state:-

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

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The response details the size and intended use of the structures on site. According to the submission the building under construction measures 319sq.m. The purpose of the building is to house small calves and machinery/storage. A section 6m*12m (72m²) is to be used for the calves and the remainder (247m²) for machinery/storage. There is also a recently completed loose cattle shed measuring 138m² as referenced in the above report.

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The total machinery/storage area is 247m².

The submission claims that this constitutes exempted development under Class 9 Part 3 of the Planning and Development Regulations 2001-2018. The submission also confirms that there is no dwelling house within 100 metres and the nearest dwelling house is about 250 metres away.

However, when measured by the planning authority officials during the site inspection carried out on 19th July 2018 the total floor area of the machinery/storage shed was 361m² and not 319m² as referred to in the submission received from Tommy Downey on 9th August 2018. Furthermore the floor area of the cattle shed was 193m².

The important question here is if the 72m² will be permanently used **exclusively** as an area for calves and therefore a site layout plan should be submitted identifying the exact extent of the area to be reserved for such purposes and accurate measurements submitted and identified on the aforementioned layout plan.

Confirmation should also be sought as to the exact distance between the subject site and the nearest farm complex to ensure that the cumulative floor area thresholds are also met.

The following letter was therefore issued on 13th September 2018:-

Further to your submission dated 9th August 2018 you are requested to submit an accurate floor plan clearly identifying the area of the large shed which will be dedicated solely to the housing of calves and the area which will be used solely for machinery/storage purposes.

Furthermore, there is a discrepancy in the floor area measurements taken on site by Planning Authority officials and those referred to in your submission. Please submit accurate measurements of the existing loose cattle house in conjunction with the large store currently under construction.

Finally, please confirm the exact distance between the subject site and the nearest farm complex to ensure that the cumulative floor area thresholds are met as set out in Classes 6 & 9 of Part 3 Exempted Development of the Planning and Development Regulations 2001-2018.

A response was received on 21st September 2018 from Tom Downey acting on behalf of the landowner Peter Maher.

A floor plan of the large shed has been submitted which illustrates the extent of the area dedicated to a calf area (72sq.m) and that section of the building to be used exclusively as a machinery/storage area (247 sq.m). The total floor area of this shed when measured internally is 319sq.m.

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A site location map has been submitted on which it is indicated that the distance between the subject sheds and the existing farm complex is 460m.

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If it is the case that the larger shed is to be used for both a calf area and a machinery/storage area as detailed in the submission then it is below the threshold set out in Class 9 which sets a cumulative floor area of 300sq.m. Additionally if the enclosed area for housing cattle is 138sq.m and that section of the larger shed which is to be exclusively used for calves 72sq.m this again falls below the threshold of 300sq.m. as set out in Class 6.

I therefore recommend that a letter be issued requesting the landowner to inform the Planning Authority when the structure has been completed and informing him that the Planning Authority will carry out a subsequent site inspection at that stage to confirm that the larger shed has been constructed and is being used for the purposes detailed in the site layout plan received on 21st September 2018.

An Enforcement Notice was issued to Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny and to Thomas Maguire, Director Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny on 17th September 2019. The terms and requirements of these Notice were the same as those issued to Mr. Peter Maher on 1st August 2019.

Reasons for serving Enforcement Notice

1. *Unauthorised use of 2no. agricultural buildings for warehousing and as a distribution centre*
2. *Unauthorised 2no. containers erected on site and associated concrete loading area*

Terms for Compliance with Enforcement Notice

1. *Cease the use of the 2no. agricultural buildings for warehousing and as a distribution centre*
2. *Remove the 2no. containers and associated concrete loading area*

Time period for compliance with the terms of the Enforcement Notice

1. *Compliance with 1 above within **Two Weeks** of the service of the notice*
2. *Compliance with 2 above within **Four Weeks** of the service of the notice*

A response was received from Mr. Thomas Maguire on 3rd October 2019 in which he confirms that the building was constructed on the farm solely for agricultural purposes. The main use of this shed is for the storage and packaging of potatoes, storage of straw for livestock and storage of farm machinery. Mr. Maguire has confirmed that the building was certainly not constructed to carry out warehousing or act as a distribution centre of any type. Mr. Maguire has stated that he will provide further information on the agricultural activities being carried out i.e. Registered Potatoe Grower Number etc. The need to submit such information was discussed during the site inspection on 13th September 2019 and should, in the Planning Authority's opinion, have been submitted with this response.

It is clear from the contents of the submission that Mr. Peter Maher intends to apply for the retention permission for the containers and the associated concrete loading area and has committed to submitting such a planning application by 21st October 2019.

A further submission was received from the agent acting on behalf of the complainant, Mr. Paul O'Meara on 2nd October 2019 wherein it is states that the warehouse operation has ceased at present during the daytime period but are commencing in the evenings with a HGV delivery arriving around 6.30 (18.30). Then multiple can distribution from then until approximately 1am.

Letter to Mr. Thomas Maguire Director Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny:-

I wish to acknowledge your submission received on 3rd October 2019 and the contents therein. Your commitment to submit a planning application for the retention of the containers and associated concrete loading area by 21st October 2019 is noted and you are advised that the Planning Authority will be adhering strictly to this timeframe. Failure to submit the aforementioned application by this date will result in the Planning Authority progressing with enforcement action.

Furthermore, it has been brought to the attention of the Planning Authority that the use of the site for warehousing purposes has ceased during daytime hours but has commenced after

hours. You are advised that this is in breach of the terms of the enforcement notice served on you and all commercial activity on site should cease immediately.

PLANNING OFFICER'S DETAILS

Signature: _____

Date: _____

Name: **Suzanne Galvin.**

Grade: **Executive Planner**

I agree with the above recommendation.

Arlene O'Connor
Senior Executive Planner

Date _____

KILKENNY COUNTY COUNCIL
Enforcement Site Inspection Sheet

Enforcement Ref: ENF18051
Report date: 7th February 2020.

Complaint Origin: Paul O'Meara
On behalf of Thomas & Deirdre Maher
Derrylackey,
Mullinavat,
Co. Kilkenny.

INSPECTION STATUS

Preliminary Visit	19/July/2018
Follow up visit	
Following Warning	23/July/2019
Following Enforcement	13/Sept/2019
Prior to Court	4/Feb/2020

SITE INFORMATION

Site Address:

Derrylackey,
Mullinavat,
Co. Kilkenny.

Property Owner:-

Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.

Operators:-

Maguire Maher Enterprises Limited
Rehard East,
Mullinavat,
Co. Kilkenny.

Director Thomas Maguire
Rehard East,
Mullinavat,
Co. Kilkenny.

Planning History:

None recorded on the subject site

Adjoining Sites:-

P13/408

Planning permission granted for a single storey dwelling and associated site works on the adjoining site to the east in the name of Thomas Maher.

DESCRIPTION OF UNAUTHORISED DEVELOPMENT:

Alleged unauthorised agricultural structure

REPORT

The use of the agricultural structures on site for commercial purposes such as warehousing/distribution constitutes a material change of use. Based on the site inspection carried on 23rd July 2019 it is clearly evident that such a change of use has taken place on the site without the benefit of planning permission. There was no evidence that the sheds as constructed were ever used for agricultural purposes. The shed floor was very clean and the hay in the pen located in the corner was very fresh and had not been used either.

The large agricultural shed which Mr. Maher claimed was exempted development under Class 6 & Class 9 of the agricultural exemptions as set out in Part 3 Exempted Development – Rural of the Planning & Development Regulations is clearly being used as a warehouse/distribution centre for the storage of potatoes, onions and beef dripping. The 2no. refrigerated containers on site are used as additional storage for cans of minerals etc all of which are then delivered to fast food takeaways. The loose cattle house to the front of the site is used for the storage of disused pallets. The site is accessed by a very narrow cul de sac laneway which is totally unsuitable to carry the types of heavy duty and articulated vehicles associated with the current use.

An Enforcement Notice was issued on 1st August 2018 stating the following: -

Reasons for serving Enforcement Notice

- 1. Unauthorised use of 2no. agricultural buildings for warehousing and as a distribution centre*
- 2. Unauthorised 2no. containers erected on site and associated concrete loading area*

Terms for Compliance with Enforcement Notice

- 1. Cease the use of the 2no. agricultural buildings for warehousing and as a distribution centre*
- 2. Remove the 2no. containers and associated concrete loading area*

Time period for compliance with the terms of the Enforcement Notice

- 1. Compliance with 1 above within **Two Weeks** of the service of the notice*
- 2. Compliance with 2 above within **One Month** of the service of the notice*

A submission was received on 16th August 2019 from Mr. Peter Maher.

The submission states that the buildings were constructed on the farm solely for agricultural use and that the main use of the shed is for the storage and packaging of potatoes, storage of straw for livestock and storage of farm machinery. Mr. Maher states that the buildings

were certainly not constructed to carry out warehousing or act as a distribution centre of any type.

The storage and packaging of potatoes is part of a venture between ourselves and Doyle Produce of Luffany, Mooncoin, Co. Kilkenny to produce potatoes locally for supply to Fast Food Restaurants in the south east area to displace imports from the U.K. as part of an initiative by Bord Bia and Teagasc to support Irish growers and provide an alternative to U.K. imports given the uncertainty surrounding imports from the U.K. due to Brexit. Due to limitations of working capital and other constraints we are working in conjunction with Doyle Produce for the field work along with Teagasc for the growing expertise and Bord Bia on the marketing side.

It is clear from this response that the potatoes are not grown or bagged on site but rather are delivered to the site pre-bagged and ready to be distributed together with the onions, beef dripping and slabs of minerals all as observed on site.

Mr. Maher has stated that he intends to apply for retention permission of the two refrigerated storage containers and the concrete area in order to regularise the development. A time frame for the submission of this application has not been given.

Following a review of the submission it is clear that the terms of the enforcement notice served on 1st August 2019 have not been complied with and that Mr. Maher is firmly of the opinion that a material change of use has not occurred on site.

An additional submission was received on 23rd August 2019 from Mr. Paul O'Meara on behalf of the complainants in which it is stated that the buildings and associated containers are being used by the daughter of the landowner, Mary Maher and her partner Thomas Maguire. They constructed and operate the building under their company Maguire Maher Enterprise Limited (Company reg 618389) and also under T Maguire Transport and Mr Magoos Chippers chprice. The registered company address is Rehard East, Mullinavat, Co. Kilkenny. I have confirmed the status of this company on CRO and have attached the relevant CRO print out confirming same to this report.

A further site inspection was carried out by Eddie O'Reilly, Senior Executive Technician and I on 13th September 2019. The approach road serving the site has been damaged and had subsided in parts due to the nature of the vehicles & trucks delivering goods to and from the site. In particular, the bends where the large trucks are required to go up on the verge in order to get around the corner.

There was a total of 6 trailers on wheels parked on the site. One of the trailers was to the side of the large storage shed/calf area. Two trailers were parked to the rear of the shed with a steel loading bay attached to same. This steel loading bay had not been on site during the previous inspection on 23rd July 2019. There were three trailers parked adjacent to the concrete loading area and the associated 2no. containers.

During the inspection it was observed that the large shed did not contain any beef dripping fat or onions unlike the previous site inspection. There were several pallets of potatoes scattered throughout the shed. Bales of hay were stored in the calf area. However, there was no animals in the pen.

One of the refrigerated containers was partially open and contained the slabs of minerals, including 7UP and coke, beef dripping fat, aluminium foil containers etc. The other container was locked. There was 4 large 10 ltr drums of Frylite Vegetable Oil to the rear of the three parked containers, with a pallet of smaller tubs of Frylite.

The loose cattle shed to the front of the site was still being used for the storage of disused pallets with a significant amount of pallets to the front of the larger shed and in between the two refrigerated containers also.

Shortly after our arrival on site, Mr. Peter Maher and his daughter Mary Maher arrived. We introduced ourselves and explained that we were carrying out a site inspection to determine if the terms of the Enforcement Notice served on 1st August 2019 had been complied with. I explained that the enforcement notice was two fold. Firstly, the use of agricultural buildings for warehousing and as a distribution centre and secondly, the erection of containers on site and the associated concrete loading area and the use of same for the storage of items for redistribution to takeaways. It was concluded during the inspection that neither of these components had been addressed.

We left the site and then met with Mr. Thomas McGuire along the access road. We reversed the car and got out and spoke to him. We explained again the purpose of our visit. Mr. McGuire explained that he is in the process of applying for a growing licence for potatoes but is presently not growing potatoes on the site. He is operating in association with Doyle Produce Luffany, Mooncoin where the potatoes are grown and bagged. I acknowledged this but explained that currently the importing of the products onto the site and the storage and redistribution of same in association with all the other products as outlined above is unauthorised. Mr. McGuire stated that Mr. Tommy Downey is preparing a planning application for the retention of the containers on site. However, to date no such application has been lodged.

Following the site inspection carried out on 13th September 2019 and the contents of the submissions received in conjunction with discussions with the Senior Planner, Denis Malone it is clear that Mr. Maher is in breach of the terms of the enforcement notice served on 1st August 2019.

A change of use has clearly occurred on site from agriculture use to warehouse and distribution use. This change is considered material as it gives rise to different planning considerations from the original agricultural use in particular more traffic and different types of vehicles using this narrow & substandard road network serving the site, including articulated trucks/HGVs. This material change of use requires the benefit of planning permission.

A letter was issued to Mr. Peter Maher stating the following:-

The contents of your submission dated 16th August 2019 have been noted. However, following a site inspection carried out on 13th September 2019 by Kilkenny County Council it has been confirmed that unauthorised works are continuing on site and you are therefore in breach of the terms of the Enforcement Notice served on 1st August 2019.

The change of use of the site from agriculture to the current use for warehousing and distribution constitutes a material change of use, which requires the benefit of planning permission. In addition, the concrete loading area and two associated containers constitute works which also require planning permission.

You are therefore advised that the file is being referred to the Council's solicitor in order to initiate legal proceedings.

An Enforcement Notice was issued to Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny and to Thomas Maguire, Director Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny on 17th September 2019. The terms and requirements of these Notice were the same as those issued to Mr. Peter Maher on 1st August 2019.

Reasons for serving Enforcement Notice

- 1. Unauthorised use of 2no. agricultural buildings for warehousing and as a distribution centre*
- 2. Unauthorised 2no. containers erected on site and associated concrete loading area*

Terms for Compliance with Enforcement Notice

- 1. Cease the use of the 2no. agricultural buildings for warehousing and as a distribution centre*
- 2. Remove the 2no. containers and associated concrete loading area*

Time period for compliance with the terms of the Enforcement Notice

- 1. Compliance with 1 above within **Two Weeks** of the service of the notice*
- 2. Compliance with 2 above within **Four Weeks** of the service of the notice*

A response was received from Mr. Thomas Maguire on 3rd October 2019 in which he confirms that the building was constructed on the farm solely for agricultural purposes. The main use of this shed is for the storage and packaging of potatoes, storage of straw for livestock and storage of farm machinery. Mr. Maguire has confirmed that the building was certainly not constructed to carry out warehousing or act as a distribution centre of any type. Mr. Maguire has stated that he will provide further information on the agricultural activities being carried out i.e. Registered Potatoe Grower Number etc. The need to submit such information was discussed during the site inspection on 13th September 2019 and should, in the Planning Authority's opinion, have been submitted with this response.

It is clear from the contents of the submission that Mr. Peter Maher intends to apply for the retention permission for the containers and the associated concrete loading area and has committed to submitting such a planning application by 21st October 2019.

A further submission was received from the agent acting on behalf of the complainant, Mr. Paul O'Meara on 2nd October 2019 wherein it is states that the warehouse operation has ceased at present during the daytime period but are commencing in the evenings with a HGV delivery arriving around 6.30 (18.30). Then multiple can distribution from then until approximately 1am.

A letter was issued to Mr. Thomas Maguire Director Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny on 8th October 2019:-

I wish to acknowledge your submission received on 3rd October 2019 and the contents therein. Your commitment to submit a planning application for the retention of the containers and associated concrete loading area by 21st October 2019 is noted and you are advised that the Planning Authority will be adhering strictly to this timeframe. Failure to submit the aforementioned application by this date will result in the Planning Authority progressing with enforcement action.

Furthermore, it has been brought to the attention of the Planning Authority that the use of the site for warehousing purposes has ceased during daytime hours but has commenced after hours. You are advised that this is in breach of the terms of the enforcement notice served on you and all commercial activity on site should cease immediately.

Planning application P19/767 was lodged on 17th October 2019 to retain indefinitely 2 no. steel containers, concrete loading base and all associated works on the subject site. This retention permission was refused on 10th December 2019 for the following reasons:-

1. Having regard to the:

- a) length and narrow width of the public road network access to the site,*
- b) poor surface road condition,*
- c) poor road alignment,*
- d) poor sightlines at the junction with the LS7451,*

it is considered the public road network serving the site is substandard and unsuited to the accommodation of heavy goods vehicles associated with the proposed development and would if permitted lead to further road deterioration and endanger public safety by reason of obstruction and traffic hazard arising from increased traffic generation and would be contrary to the proper planning and sustainable development of the area.

- 2. It is the policy of the Planning Authority as set out in the Kilkenny County Development Plan 2014-2020 to consolidate and strengthen existing settlements and to encourage development to locate in the designated towns and villages where infrastructural and social services exist or are planned to be provided at a scale and character which is appropriate in order to sustain and renew populations and services in these areas. These policies are considered reasonable. It is considered that the proposed development which constitutes a non-conforming commercial warehousing development use, located in a rural upland area lacking certain public services including water, sewerage, and proper road infrastructure, would militate against the preservation of the rural environment, would detract from the amenities of the area, would be visually intrusive and out of character with the area and would lead to demands for the uneconomic provision for further services. It is considered the proposed development would therefore militate against the above policy and provisions of the Kilkenny County Development Plan 2014-2020 and be contrary to proper planning and sustainable development of the area.*

The Planning Authority awaited the appeal period to see if the developer would appeal the decision. However, no such appeal was made. Following further complaints regarding intensification of use on site and the carrying out of works to widen the public road. I carried out a site inspection on 4th February 2020 with Eddie O'Reilly Senior Executive Technician. On approach to the site we observed that the road had been widened at the Glenpipe junction, where the LS 7452-8 meets with L-7452. Further down the cul de sac LS 7452-8, a passing bay had also been constructed.

Upon entering the site, we observed that the use of the site for non-agricultural related activities was still on going and in fact had intensified despite the refusal of planning permission issued under P19/767. There was now a total of 11no. containers on the site two of which were still full of food products related to the takeaway business. Mr. Thomas McGuire was on site and opened two containers for us. They contained similar products to our previous inspection including oil, ketchup, mayonnaise. The large agricultural shed still contained a significant number of bagged potatoes. A section of this shed contained bales of hay. There were pallets stacked up along the western site boundary. The pallets had been removed from the cattle shed to the front of the site and there were cattle now housed in this structure. We explained to Mr. McGuire that he was currently operating in breach of the terms of the Enforcement Notice served on 17th September 2019. Mr. McGuire contested this fact and stated that the site was being used for agricultural purposes. However, there was no evidence of potatoes being picked &/or bagged on site. He stated that the containers storing the food products for redistribution to the takeaways only constitutes 10% of his business.

ENF 18051 Derrylackey, Mullinavat, Co. Kilkenny.
Site inspection 13th September 2019.

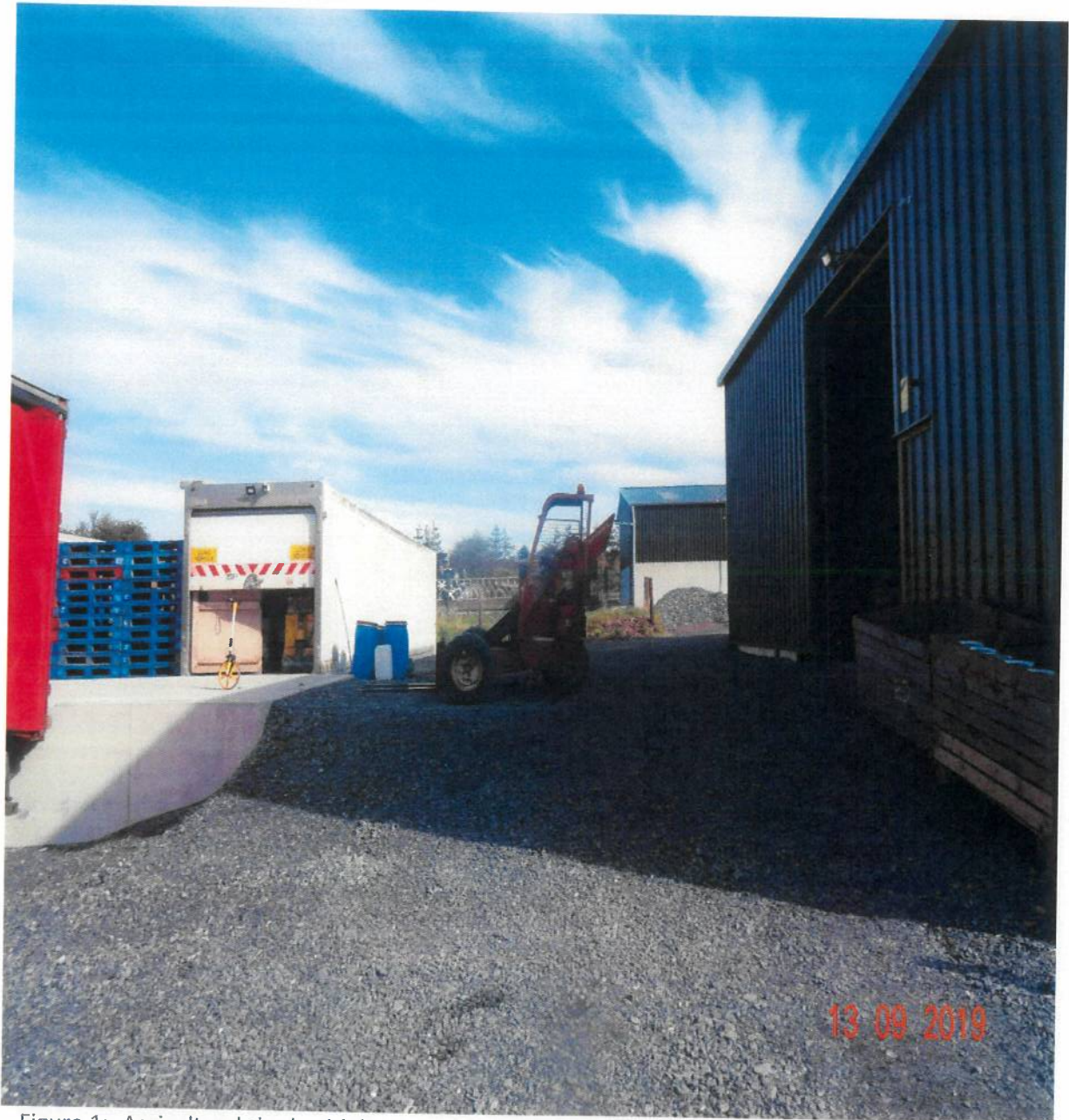


Figure 1:- Agricultural shed, with loose cattle shed to the front of the photo, concrete loading bay and 2no. containers.



Figure 2:- Container

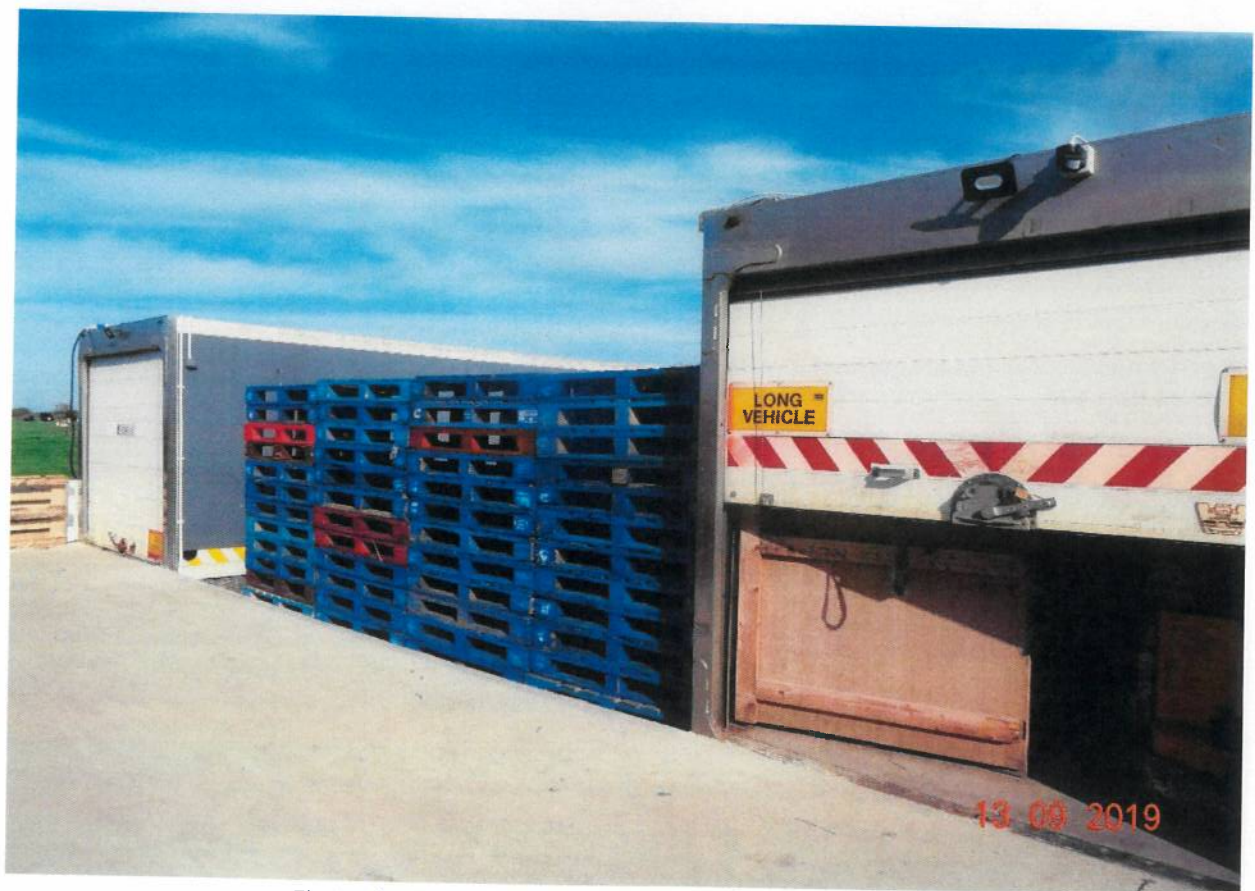


Figure 3:- 2no. containers concrete area and pallets.

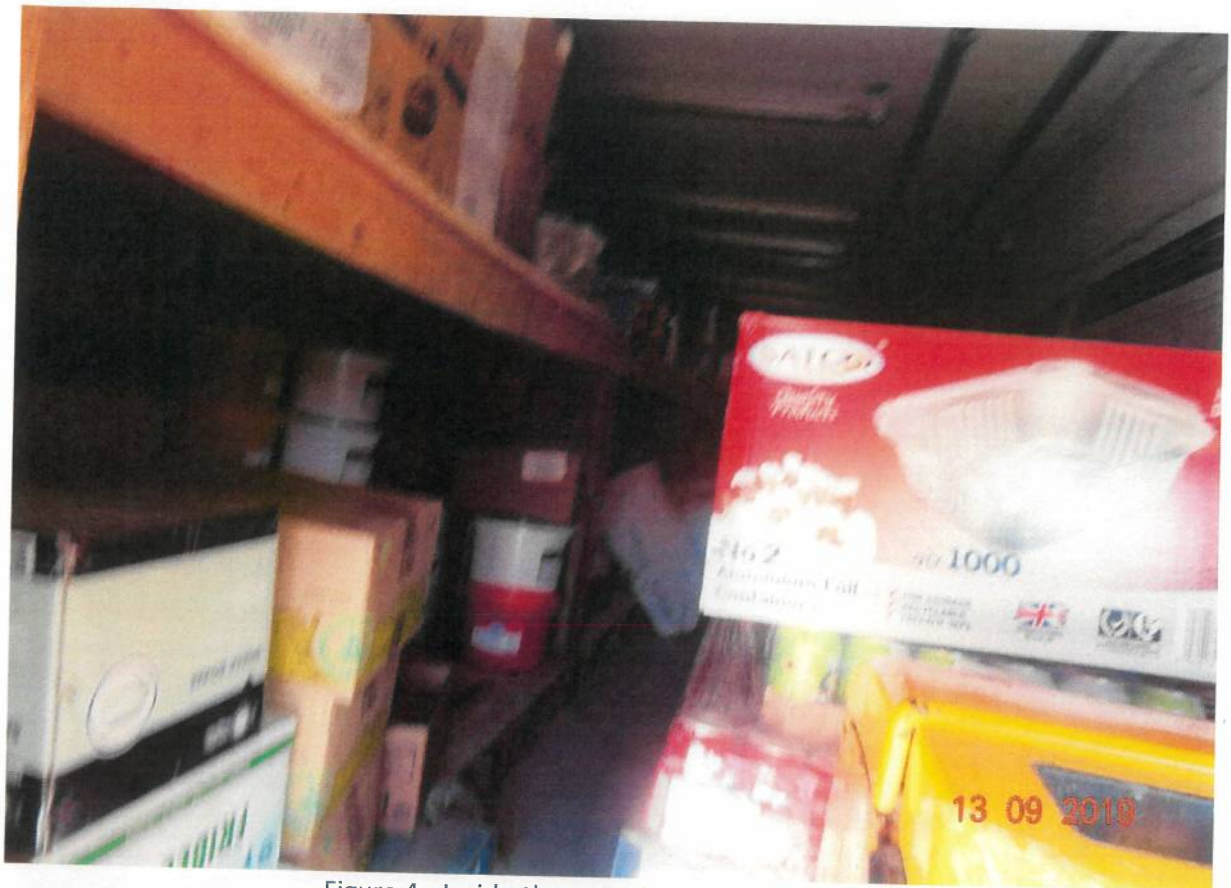


Figure 4:- Inside the container which was open



Figure 5:- Inside the container which was open



Figure 6:- Image of the rear of the 3no. trailers, disused pallets and oil drums.



Figure 7:- Image of 2no. trailers and associated steel loading bay



Figure 8:- Hay being stored in the calving area of the shed



Figure 9:- Bags of potatoes stored in agricultural shed for redistribution to takeaways.

KILKENNY COUNTY COUNCIL
Enforcement Site Inspection Sheet

Enforcement Ref: ENF18051

Report date: 11th May 2020.

Complaint Origin: Paul O'Meara
On behalf of Thomas & Deirdre Maher
Derrylackey,
Mullinavat,
Co. Kilkenny.

INSPECTION STATUS

Preliminary Visit	19/July/2018
Follow up visit	
Following Warning	23/July/2019
Following Enforcement	13/Sept/2019
Prior to Court	4/Feb/2020
	10/March/2020
	30/April/2020

SITE INFORMATION

Site Address:

Derrylackey,
Mullinavat,
Co. Kilkenny.

Property Owner:-

Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.

Operators:-

Maguire Maher Enterprises Limited
Rehard East,
Mullinavat,
Co. Kilkenny.

Director Thomas Maguire
Rehard East,
Mullinavat,
Co. Kilkenny.

Planning History:

P19/767

Planning permission refused on 10th December 2019 for the following:-
To retain indefinitely 2 no. steel containers, concrete loading base and all associated works on the subject site.

Adjoining Sites:-

P13/408

Planning permission granted for a single storey dwelling and associated site works on the adjoining site to the east in the name of Thomas Maher.

DESCRIPTION OF UNAUTHORISED DEVELOPMENT:

Alleged unauthorised use of agricultural building for warehousing and distribution centre and the erection of 2no. containers and associated concrete loading area.

REPORT

The use of the agricultural structures on site for commercial purposes such as warehousing/distribution constitutes a material change of use. Based on the site inspection carried on 23rd July 2019 it was clearly evident that such a change of use had taken place on the site without the benefit of planning permission. There was no evidence that the sheds as constructed were ever used for agricultural purposes. The shed floor was very clean and the hay in the pen located in the corner was very fresh and had not been used either.

The large agricultural shed which Mr. Maher claimed was exempted development under Class 6 & Class 9 of the agricultural exemptions as set out in Part 3 Exempted Development – Rural of the Planning & Development Regulations was clearly being used as a warehouse/distribution centre for the storage of potatoes, onions and beef dripping. The 2no. refrigerated containers on site were used as additional storage for cans of minerals etc all of which are then delivered to fast food takeaways. The loose cattle house to the front of the site was used for the storage of disused pallets. The site is accessed by a very narrow cul de sac laneway which is totally unsuitable to carry the types of heavy duty and articulated vehicles associated with the current use.

An Enforcement Notice was issued on 1st August 2018 stating the following: -

Reasons for serving Enforcement Notice

- 1. Unauthorised use of 2no. agricultural buildings for warehousing and as a distribution centre*
- 2. Unauthorised 2no. containers erected on site and associated concrete loading area*

Terms for Compliance with Enforcement Notice

- 1. Cease the use of the 2no. agricultural buildings for warehousing and as a distribution centre*
- 2. Remove the 2no. containers and associated concrete loading area*

Time period for compliance with the terms of the Enforcement Notice

- 1. Compliance with 1 above within **Two Weeks** of the service of the notice*
- 2. Compliance with 2 above within **One Month** of the service of the notice*

A submission was received on 16th August 2019 from Mr. Peter Maher.

The submission states that the buildings were constructed on the farm solely for agricultural use and that the main use of the shed is for the storage and packaging of potatoes, storage of straw for livestock and storage of farm machinery. Mr. Maher states that the buildings were certainly not constructed to carry out warehousing or act as a distribution centre of any type.

The storage and packaging of potatoes is part of a venture between ourselves and Doyle Produce of Luffany, Mooncoin, Co. Kilkenny to produce potatoes locally for supply to Fast Food Restaurants in the south east area to displace imports from the U.K. as part of an initiative by Bord Bia and Teagasc to support Irish growers and provide an alternative to U.K. imports given the uncertainty surrounding imports from the U.K. due to Brexit.

Due to limitations of working capital and other constraints we are working in conjunction with Doyle Produce for the field work along with Teagasc for the growing expertise and Bord Bia on the marketing side.

It is clear from this response that the potatoes are not grown or bagged on site but rather are delivered to the site pre-bagged and ready to be distributed together with the onions, beef dripping and slabs of minerals all as observed on site.

Mr. Maher stated that he intended to apply for retention permission of the two refrigerated storage containers and the concrete area in order to regularise the development. A time frame for the submission of this application was not given.

Following a review of the submission it is clear that the terms of the enforcement notice served on 1st August 2019 had not been complied with and that Mr. Maher was firmly of the opinion that a material change of use had not occurred on site.

An additional submission was received on 23rd August 2019 from Mr. Paul O'Meara on behalf of the complainants in which it is stated that the buildings and associated containers are being used by the daughter of the landowner, Mary Maher and her partner Thomas Maguire. They constructed and operate the building under their company Maguire Maher Enterprise Limited (Company reg 618389) and also under T Maguire Transport and Mr Magoos Chippers chprice. The registered company address is Rehard East, Mullinavat, Co. Kilkenny.

I have confirmed the status of this company on CRO and have attached the relevant CRO print out confirming same.

A further site inspection was carried out by Eddie O'Reilly, Senior Executive Technician and I on 13th September 2019. The approach road serving the site had been damaged and had subsided in parts due to the nature of the vehicles & trucks delivering goods to and from the site. This was particularly evident at the bends where the large trucks are required to go up on the verge in order to get around the corner.

There was a total of 6 trailers on wheels parked on the site. One of the trailers was to the side of the large storage shed/calf area. Two trailers were parked to the rear of the shed with a steel loading bay attached to same. This steel loading bay had not been on site during the previous inspection on 23rd July 2019. There were three trailers parked adjacent to the concrete loading area and the associated 2no. containers.

During the inspection it was observed that the large shed no longer contained any beef dripping fat or onions. There were several pallets of potatoes scattered throughout the shed. Bales of hay were stored in the calf area. However, there was no animals in the pen.

One of the refrigerated containers was partially open and contained the slabs of minerals, including 7UP and coke, beef dripping fat, aluminium foil containers etc. The other container was locked. There was 4 large 10 ltr drums of Frylite Vegetable Oil to the rear of the three parked containers, with a pallet of smaller tubs of Frylite.

The loose cattle shed to the front of the site was still being used for the storage of disused pallets with a significant amount of pallets to the front of the larger shed and in between the two refrigerated containers also.

Shortly after our arrival on site, Mr. Peter Maher and his daughter Mary Maher arrived. We introduced ourselves and explained that we were carrying out a site inspection to determine if the terms of the Enforcement Notice served on 1st August 2019 had been complied with. I explained that the enforcement notice was two fold. Firstly, the use of agricultural buildings for warehousing and as a distribution centre and secondly, the erection of containers on site and the associated concrete loading area and the use of same for the storage of items for redistribution to takeaways. It was concluded during the inspection that neither of these components had been addressed.

We left the site and then met with Mr. Thomas McGuire along the access road. We reversed the car and got out and spoke to him. We explained again the purpose of our visit. Mr. McGuire explained that he is in the process of applying for a growing licence for potatoes but is presently not growing potatoes on the site. He is operating in association with Doyle Produce Luffany, Mooncoin where the potatoes are grown and bagged. I acknowledged this but explained that currently the importing of the products onto the site and the storage and redistribution of same in association with all the other products as outlined above is unauthorised. Mr. McGuire stated that Mr. Tommy Downey is preparing a planning application for the retention of the containers on site.

Following the site inspection carried out on 13th September 2019 and the contents of the submissions received in conjunction with discussions with the Senior Planner, Denis Malone it was clear that Mr. Maher was in breach of the terms of the enforcement notice served on 1st August 2019.

A change of use had clearly occurred on site from agriculture use to warehouse and distribution use. This change is considered material as it gives rise to different planning considerations from the original agricultural use in particular more traffic and different types of vehicles using this narrow & substandard road network serving the site, including articulated trucks/HGVs. This material change of use requires the benefit of planning permission.

A letter was issued to Mr. Peter Maher stating the following:-

The contents of your submission dated 16th August 2019 have been noted. However, following a site inspection carried out on 13th September 2019 by Kilkenny County Council it has been

confirmed that unauthorised works are continuing on site and you are therefore in breach of the terms of the Enforcement Notice served on 1st August 2019.

The change of use of the site from agriculture to the current use for warehousing and distribution constitutes a material change of use, which requires the benefit of planning permission. In addition, the concrete loading area and two associated containers constitute works which also require planning permission.

You are therefore advised that the file is being referred to the Council's solicitor in order to initiate legal proceedings.

An Enforcement Notice was issued to Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny and to Thomas Maguire, Director Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny on 17th September 2019. The terms and requirements of these Notice were the same as those issued to Mr. Peter Maher on 1st August 2019.

Reasons for serving Enforcement Notice

- 1. Unauthorised use of 2no. agricultural buildings for warehousing and as a distribution centre*
- 2. Unauthorised 2no. containers erected on site and associated concrete loading area*

Terms for Compliance with Enforcement Notice

- 1. Cease the use of the 2no. agricultural buildings for warehousing and as a distribution centre*
- 2. Remove the 2no. containers and associated concrete loading area*

Time period for compliance with the terms of the Enforcement Notice

- 1. Compliance with 1 above within **Two Weeks** of the service of the notice*
- 2. Compliance with 2 above within **Four Weeks** of the service of the notice*

A response was received from Mr. Thomas Maguire on 3rd October 2019 in which he confirms that the building was constructed on the farm solely for agricultural purposes. The main use of this shed is for the storage and packaging of potatoes, storage of straw for livestock and storage of farm machinery. Mr. Maguire confirmed that the building was certainly not constructed to carry out warehousing or act as a distribution centre of any type. Mr. Maguire stated that he will provide further information on the agricultural activities being carried out i.e. Registered Potato Grower Number etc. The need to submit such information was discussed during the site inspection on 13th September 2019 and should, in the Planning Authority's opinion, have been submitted with this response.

It is clear from the contents of the submission that Mr. Peter Maher intends to apply for the retention permission for the containers and the associated concrete loading area and has committed to submitting such a planning application by 21st October 2019.

A further submission was received from the agent acting on behalf of the complainant, Mr. Paul O'Meara on 2nd October 2019 wherein it is states that the warehouse operation has ceased at present during the daytime period but are commencing in the evenings with a HGV

delivery arriving around 6.30 (18.30) with multiple van distributions from then until approximately 1am.

A letter was issued to Mr. Thomas Maguire Director Maguire Maher Enterprises Limited, Rehard East, Mullinavat, Co. Kilkenny on 8th October 2019:-

I wish to acknowledge your submission received on 3rd October 2019 and the contents therein. Your commitment to submit a planning application for the retention of the containers and associated concrete loading area by 21st October 2019 is noted and you are advised that the Planning Authority will be adhering strictly to this timeframe. Failure to submit the aforementioned application by this date will result in the Planning Authority progressing with enforcement action.

Furthermore, it has been brought to the attention of the Planning Authority that the use of the site for warehousing purposes has ceased during daytime hours but has commenced after hours. You are advised that this is in breach of the terms of the enforcement notice served on you and all commercial activity on site should cease immediately.

Planning application P19/767 was lodged on 17th October 2019 to retain indefinitely 2 no. steel containers, concrete loading base and all associated works on the subject site. This retention permission was refused on 10th December 2019 for the following reasons:-

1. Having regard to the:

- a) length and narrow width of the public road network access to the site,*
- b) poor surface road condition,*
- c) poor road alignment,*
- d) poor sightlines at the junction with the LS7451,*

it is considered the public road network serving the site is substandard and unsuited to the accommodation of heavy goods vehicles associated with the proposed development and would if permitted lead to further road deterioration and endanger public safety by reason of obstruction and traffic hazard arising from increased traffic generation and would be contrary to the proper planning and sustainable development of the area.

- 2. It is the policy of the Planning Authority as set out in the Kilkenny County Development Plan 2014-2020 to consolidate and strengthen existing settlements and to encourage development to locate in the designated towns and villages where infrastructural and social services exist or are planned to be provided at a scale and character which is appropriate in order to sustain and renew populations and services in these area. These policies are considered reasonable. It is considered that the proposed development which constitutes a non-conforming commercial warehousing development use, located in a rural upland area lacking certain public services including water, sewerage, and proper road infrastructure, would militate against the preservation of the rural environment, would detract from the amenities of the area, would be visually intrusive and out of character with the area and would lead to demands for the uneconomic provision for further services. It is considered the proposed development would therefore militate against the above policy and provisions of the Kilkenny County Development Plan 2014-2020 and be contrary to proper planning and sustainable development of the area.*

The Planning Authority awaited the appeal period to see if the developer would appeal the decision. However, no such appeal was made. Following further complaints regarding intensification of use on site and the carrying out of works to widen the public road. I carried out a site inspection on 4th February 2020 with Eddie O'Reilly Senior Executive Technician. On approach to the site we observed that the road had been widened at the Glenpipe junction, where the LS 7452-8 meets with L-7452. Further down the cul de sac LS 7452-8, a passing bay had also been constructed.

Upon entering the site, we observed that the use of the site for non-agricultural related activities was still on going and in fact had intensified despite the refusal of planning permission issued under P19/767. There was now a total of 11no. containers on the site two of which were still full of food products related to the takeaway business. Mr. Thomas McGuire was on site and opened two containers for us. They contained similar products to our previous inspection including oil, ketchup, mayonnaise and products associated with the takeaway business (see attached photos). The large agricultural shed still contained a significant number of bagged potatoes. A section of this shed contained bales of hay. There were pallets stacked up along the western site boundary. The pallets had been removed from the cattle shed to the front of the site and there were cattle now housed in this structure. We explained to Mr. McGuire that he was currently operating in breach of the terms of the Enforcement Notice served on 17th September 2019. Mr. McGuire contested this fact and stated that the site was being used for agricultural purposes. However, there was no evidence of potatoes being picked &/or bagged on site. He stated that the containers storing the food products for redistribution to the takeaways only constitutes 10% of his business.

During the inspection on 4th February 2020, it was therefore observed that the owner/developer was still operating on site and had in fact intensified operations on site despite the refusal of planning permission issued under P19/767 and the Enforcement Notices served on 1st August 2019 to Mr. Peter Maher and 17th September 2019 to Thomas McGuire, McGuire Maher Haulages Limited. The file was therefore referred to John Harte Solicitors to issue a letter to both parties advising that the Planning Authority would consider initiating Section 160 injunction proceedings should operations on site immediately not cease immediately. Such a letter was issued on 19th February 2020 (see copy on Enforcement file). A response was received from Peter Maher, landowner, on 27th February 2020 in which it is stated that the large shed was being used solely for the purpose of agriculture (storage of potatoes) and was no longer being used for the storage of goods for the commercial fast food trade. Mr. Maher also confirms that the two storage containers and concrete area for which retention permission was refused will also be solely used for storage of agricultural produce. I carried out a site inspection on 10th March 2020 with Tony Parker, Technician. However, sheet metal fencing had been erected around the perimeter of the site since our previous inspection and the gates were locked so we could not gain access to the site. It should be noted that metal sheeting is excluded from the exempted development provisions for walls/fences permitted under Class 4 of Part 3 Exempted Development – Rural.

I spoke with John Harte Solicitor on 12th March 2020 and advised that we could not access the site and he stated that he would issue a letter to Mr. Peter Maher requesting same. I spoke with Mr. Thomas McGuire on the phone on 13th March 2020. I explained that the

Planning Authority would have to carry out a site inspection to complete a detailed site survey of all the structures on site in order to establish if they constitute exempted development under the provisions of Part 3 Exempted Development – Rural, of the Planning and Development Regulations 2001 (as amended). The cumulative floor area of all the structures would have to be calculated to determine if they exceeded any of the exemptions. I advised him that a letter detailing same would be issued through John Harte Solicitors acting on behalf of the Council.

Restrictions and uncertainty regarding site inspections were in place at this stage due to COVID-19 restrictions however I rang Mr. Thomas Maguire again on 7th April 2020 to arrange access in accordance with such restrictions and social distancing measures. He advised that his family were in 14 days of social isolation as they were awaiting testing for COVID-19. I advised that I would ring again after the expiration of this period to arrange access. I rang on 27th April 2020 and arrange to inspect the site at 2.30pm on 30th April 2020.

I drove down separately and met Eddie O'Reilly Senior Executive Technician on site. Mr. Thomas Maguire and his wife Mary met us there. They waited on site for the duration of the inspection. We commenced measuring the structures on site which were as follows:-

The cattle shed to the front of the site has a floor area of 135.5sq.m with a feeding apron of 26sq.m. The adjoining concrete slab had a total area of 54sq.m.

The large storage shed had a floor area of 345.6 sq.m. when measured externally. However, a section of this has been portioned off internally and it is said to be used for calves (72sq.). It should be noted that calves were never observed in this area during any of the site inspections carried out and that hay is currently been stored and has been stored previously in this section of the shed.

The 2no. containers which are intended to be used for the storage of agricultural goods are 33 sq.m each giving a total area of 66sq.m of additional agricultural storage. The concrete loading area was on a 1.5m high raised embankment and had a total area of 48 sq.m.

The maximum floor area permitted under Class 6 of the exemptions for *the provision of a roofed structure for the housing of cattle.....* is 200sq.m. When the floor area of the cattle shed (135.5sq.m.) is added to that section of the large storage shed which is partitioned off for the purposes of calves (72sq.m.) the total floor area is 207.5 sq.m.

Condition & Limitation number 2 associated with this exemption states that

The gross floor area of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.

The total floor area of these two areas combined falls well below the threshold of 300 sq.m.

The maximum floor area permitted under Class 9 of the exemptions for *the provision of any store, barn, shed glass-house or any other structure not being of a type specified in class 6,7 or 8 of this part of this Schedule* is 300 sq.m.

The large storage shed when measured externally was 345.6 sq.m. However, when the 72sq.m calving area is deducted this gives a total floor area of 273.6sq.m. When the two

containers (66sq.m.) are added to this total the combined floor area is 339sq.m which is below the 900 sq.m. threshold as set out in the conditions and limitations associated with this exemption.

We entered the larger shed where we observed that a bagging machine has been erected in the corner. Pallets of empty bags were adjacent to it. There were approximately 25 pallets of bagged potatoes being stored in here also. The area dedicated to hay had been extended.

We examined the 2 containers and they were empty of all of the takeaway related produce previously stored there. They did contain hydraulic oil, de-icing salt and a few traffic cones which were used on the farm. One of the containers contained 5 pallets of potatoes which had the company name/address (Maguire Maher Enterprises Ltd.) and grower's number on them.

We then proceeded to follow Mr. Maguire and his wife to a field to the west of the farm complex. Mr. Maguire showed us a 3 ½ acre field which had recently been rotavated and sowed with potatoes. He informed us that he had an additional 20 acres on con-acre in various fields and that Doyle's Produce Mooncoin still bagged the produce from these fields for him. Mr. Maguire confirmed that the bagged potatoes in the storage shed were his own produce and that although he has his own transport company he has only one truck so he uses either James Lyng or Templetown Transport Ltd to transport the bagged potatoes to and from the site.

Agriculture is defined as the following in the Section 2 of the Planning and Development Act, 2000 (as amended):-

"agriculture includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or furs)"

The Bord ruled that the development at O'Sheas Farm Ltd Piltown, permitted under P13/204 (PL.10.242248), which included a carrot wash building, constituted agricultural development and should be charged agricultural rates for the purposes of development contributions. The following is an extract from the Inspectors Report:

Agriculture includes "horticulture". The term horticulture is a very broad term and the definition of "agriculture" in the Planning Act does not include the processes involved in agriculture/horticulture which are normally more labour intensive with horticulture than livestock production and dairy farming. Crops such as carrots, brussel sprouts, mushrooms, etc require labour intensive grading, sorting, in most instances cleaning, packaging and storage prior to going from the soil to the shop itself. However, the process involved to clean and sort any harvest is not industrial, it is in my opinion agricultural and usually occurs on the farm itself, be it small scale or large scale as in this instance.

Eddie Doyle of Luffany, Mooncoin was charged commercial development contributions in P04/1978 when he was granted planning permission to erect a potato/packing store and all associated site works on his site. However, he challenged this decision with Kilkenny County Council and there is correspondence on the file from the Finance Section stating that

"the development permitted under Planning Permission P04/1978 is an agricultural development. Therefore, no development contributions apply for this development. I have amended your records accordingly".

The most recent development on the Doyle Produce Mooncoin site was P07/1571 which was for a Milking Parlour, plant room, tank room and all associated site works. This was clearly an agricultural development and therefore there was no issue with respect to use class/development contributions.

Notwithstanding the very recent erection of a bagging plant, the issue with the subject site however is that the produce is primarily being brought to the site already bagged as the bagging plant has yet to be put into use. Mr. Maguire claims that the produce is his own which he has grown on con acre sites in association with Doyle Produce Mooncoin. However, to date despite numerous requests during on site inspections Mr. Maguire has not yet produced any evidence to support this claim. It is acknowledged that Maguire Maher Enterprises Ltd now has a grower's number and has very recently commenced growing potatoes. However, this is currently limited to a 3 ½ acre field on the landholding in question. In the two examples cited above the produce was grown on the farm itself and therefore fell under the definition of agriculture.

It is therefore necessary at this juncture to determine exactly where and how many acres Mr. Maguire has in con acre. Documentary evidence is required from Doyle Produce Mooncoin to support this information and to demonstrate that the bagged potatoes being transported to and from the site are in the ownership of Mr. Maguire.

Another issue which needs to be addressed is the introduction of the bagging/packing process which in the opinion of the Planning Authority constitutes a material change of use of the existing agricultural storage shed in which it is located and therefore the process or use of the shed for this purpose requires planning permission.

Mr. Maguire should also be informed that the sheet fencing erected around the perimeter of the site is development which does not constitute exempted development as per Class 4 of Part 3 Exempted Development- Rural. The fencing is therefore unauthorised development.

RECOMMENDATION

It has been concluded from the site survey carried out on 30th April 2020 that the existing structures (i.e the two sheds and the two storage containers) on site and associated works constitute exempted development under the provisions of Part 3 Exempted Development – Rural should they all be used solely for agricultural purposes and all commercial activity continues to cease on site. The perimeter sheet metal fence is not exempted development as per Class 4 of the above exemptions. There is no exemption in the Regulations pertaining to the concrete loading area.

However, in order to confirm that the use does indeed constitute agriculture rather than commercial it is imperative to determine the exact source and ownership of the bagged potatoes continuously being transported to the site and if that source falls within the definition of "the farm itself" as ruled by the Bord in P13/204 (PL.10.242248). Documentary evidence is required from Doyle Produce Mooncoin to support Mr. Maguire's statement that

the bagged potatoes being transported continuously to the site are within his ownership. Copies of lease agreements for the fields in question should also be submitted together with maps of the fields and their respective field numbers.

I therefore recommend that the following letter be issued to Mr Thomas Maguire, Maguire Maher Enterprises Ltd:

1. Following the site inspection carried out by Planning Officials on 30th April 2020 I wish to advise you that it has been determined that the structures as detailed below may constitute exempted development in accordance with the provisions of Part 3 Exempted Development - Rural of the Planning and Development Regulations 2001 (as amended).

Cattle Shed and associated apron – Exempt under Class 6

Dedicated calving area within larger shed – Exempt under Class 6

Large storage shed – Exempt under Class 9

2no. storage containers for agricultural purposes – Exempt under Class 9

The exemptions as outlined above are however based on such structures being used solely for agricultural purposes. In order to enable the Planning Authority to fully determine if this is the case you are required to submit the following information:-

- a) In your submission to the Planning Authority dated 16th August 2019 you stated:-

The storage and packaging of potatoes is part of a joint venture between ourselves and Doyle Produce of Luffany Mooncoin

You are therefore required to submit documentary evidence from Doyle Produce Mooncoin to support your statement and to verify that the bagged potatoes being transported continuously to the site at Derrylackey, the subject of the current enforcement file ENF 18051, are within your ownership as confirmed verbally by you during the site inspection on 30th April 2020.

- b) Submit copies of lease agreements for the fields where you have acres as discussed during the site inspection on 30th April 2020, together with maps of the fields and their respective field numbers.

- c) Details of the number of truck movements transporting produce to and from the site on a weekly basis.

All of the above information shall be submitted to the Planning Authority within **3 weeks** of the date of this correspondence.

2. There is no provision for the concrete loading area under Part 3 Exempted Development - Rural of the Planning and Development Regulations 2001 (as amended). The concrete loading area as identified in the Enforcement Notice served on 17th September 2019 is therefore unauthorised. You are therefore requested to remove this area **within 3 weeks** of the date of this correspondence and to inform the Planning Authority when this has been carried out.

3. The sheet metal gate and fence erected around the perimeter of the site is expressly excluded from Class 4 of the exemptions and therefore constitutes development which is not exempt. This fence is therefore unauthorised. You are therefore requested to remove this fence **within 3 weeks** of the date of this correspondence and to inform the Planning Authority when this has been carried out. If the structure as detailed above is not removed within this timeframe the Planning Authority will proceed to serve an Enforcement Notice for the unauthorised development.
4. The large storage shed is deemed to be exempt for agricultural storage purposes solely. The introduction of the bagging/packing process constitutes a material change of use in the opinion of the Planning Authority and therefore the process or use of the shed for this purpose requires planning permission. You are therefore required to remove the bagging plant **within 3 weeks** of the date of this correspondence. If the structure as detailed above is not removed within this timeframe the Planning Authority will proceed to serve an Enforcement Notice for the unauthorised development.

Suzanne Galvin.
Executive Planner.

Date_____

Denis Malone.
Senior Planner.

Date_____

ENF 18051 DERRYLACKEY, MULLINAVAT.
SITE INSPECTION 30th APRIL 2020.



Figure 1:- Pallets of bagged potatoes in large storage shed



Figure 2:- Bagging machine in the background



Figure 3:- Hay storage area extended outside designated calving area



Figure 4:- Contents of first container



Figure 5:- Contents of first container



Figure 6:- Second container

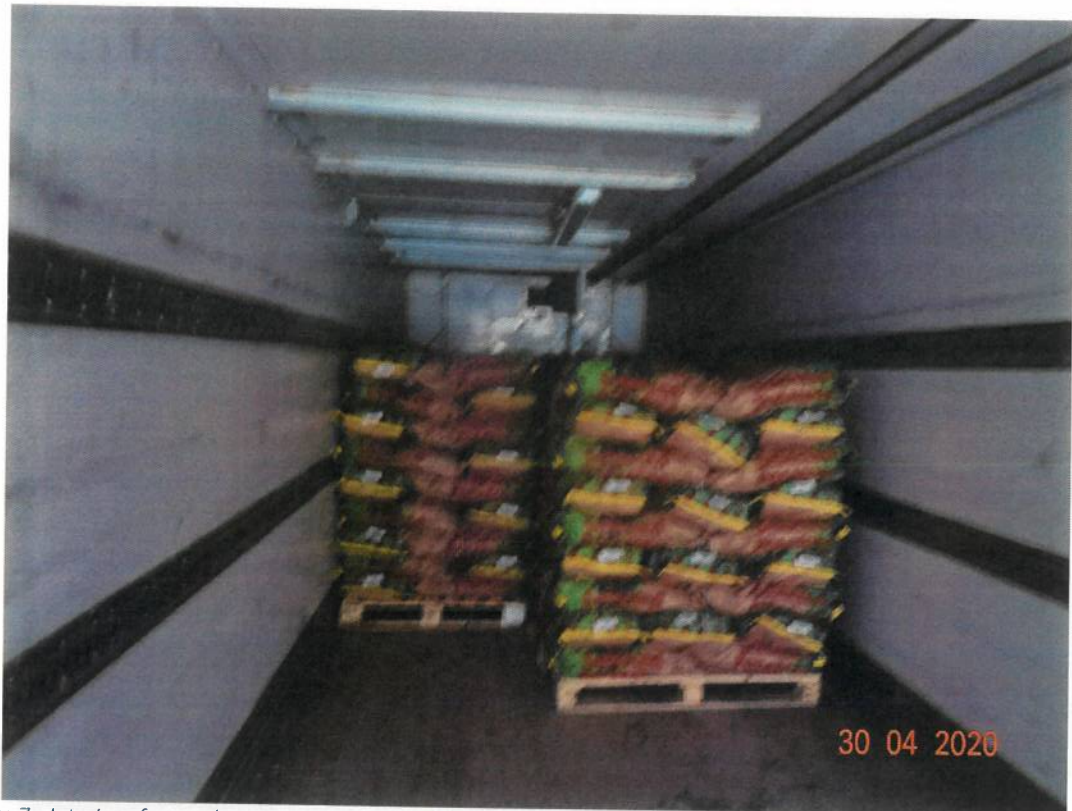


Figure 7:- Interior of second container, pallets of bagged potatoes with Magurie Maher Enterprises and Grower number written on package



Figure 8:- Field to west of main farm complex where potatoes have been recently sowed

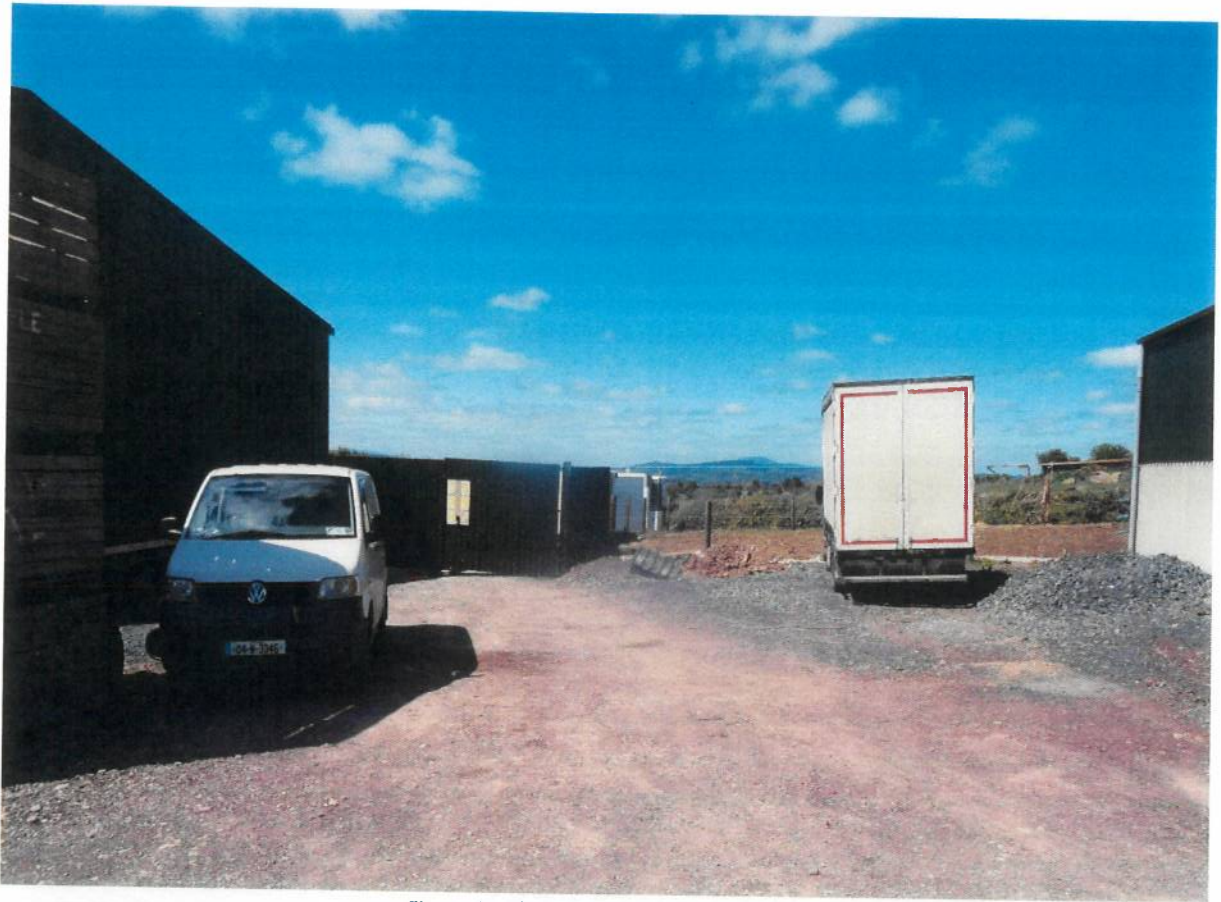


Figure 9:- Sheet metal fencing and gate

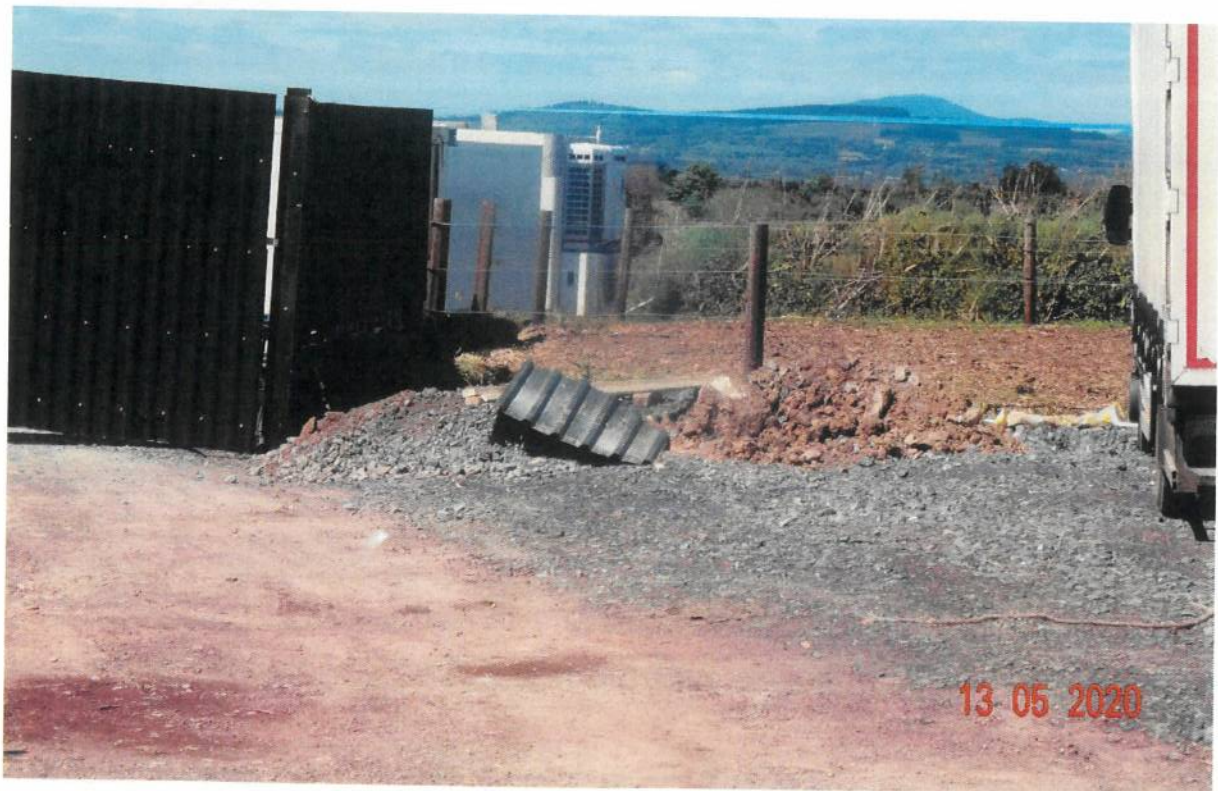


Figure 10:- Sheet metal fencing & gate

Kilkenny County Council

Enforcement Report

ENF Ref: ENF 18051 Derrylackey, Mullinavat.

Report date: 13th May 2020.

File Update

A complaint was received on 6th May 2020 regarding on-going works on the site at Derrylackey, Mullinavat. The complaint was centred around the possible construction of an internal farm access road within the overall landholding of Mr. Peter Maher. Mr. Stan Cullen, Area Engineer, initially received the complaint and forwarded same on to the Planning Enforcement Section. Mr. Cullen advised that he would carry out a site inspection that evening and revert with his report. Mr. Cullen emailed on 11th May 2020 stating that the works may have commenced on site but that he would investigate again and revert with an update.

A further email was received from Mr. Paul O'Meara on 12th May 2020 illustrating the extent of works carried out to date. A site inspection was carried out by Eddie O'Reilly and I on 13th May 2020 at 11.50am. Upon arrival at the site, it was clearly evident that extensive works had been carried out within the landholding since our previous inspection on 30th April 2020. As can be viewed in the attached photos an internal access laneway has been excavated and dug out for the full extent of the fields between Mr. Peter Maher's farm complex to the east and the new farm complex, the subject of the current enforcement file, located to the west of the landholding.

There was an excavator operating on site at the time of the inspection with a tractor and trailer transporting the excavated overburden and top soil to various locations throughout the landholding. An embankment was being created with some of the topsoil along the northern edge of the internal access laneway.

We commenced measuring the width of the laneway under construction to determine if it complied with the 3m limitation as set out in Class 13 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001, as amended.

Class 13

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way and the construction of any private footpath or paving.

The width of the actual laneway itself varied between 3.2m and 3.6m, although it is considered that when the hardcore/Clause 804 is applied this width will reduce to closer to 3m. However, the mouth of the laneway measured 9.5m at its maximum which clearly exceeds the 3m limitation. The new internal access road passes two streams which have to be piped. The larger of the streams was free flowing and it is proposed to pipe same with an 18" pipe. The smaller stream was stagnant during inspection and there was no evidence of water flowing at this location. It is however proposed to pipe this with a 12 " pipe. We were informed of this by Mr. Peter Maher who approached us shortly after

arriving on site. It is unclear at this stage if these two streams are tributaries of the Arrigle River, which forms part of the River Barrow River Nore SAC, Site Code 002162. However, it is considered that a Screening Assessment should be carried out in order to eliminate any potential risk to the SAC.



Mr. Thomas Maguire arrived on site after Mr. Maher. Mr. Maguire informed us that additional upgrading works to pre-existing internal lanes and some land reclamation had been carried out on the lands located to the west of the newer farm complex (the subject of the current enforcement file). We walked down to this section of the landholding to investigate same. Some of the topsoil from the excavated area had been transported to this area of the landholding and had been used to surface dress one of the existing lanes. This work is considered minor in nature and would not require the benefit of planning permission. Additional amounts of the soil were also used to reclaim one of the fields. Such works are permitted under Article 8(c) of the Planning & Development Regulations 2001 as amended

Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development).

The internal farm laneway under construction connects with the existing farm yard complex to the east of the overall landholding which abuts the Local Secondary Road, LS 7452-8. This therefore eliminates the requirement for a new entrance from the internal laneway to the public road.

An Bord Pleanála determined in RL2806 that

a) the creation of a laneway using hardcore material to access an agricultural shed constitutes development as defined under Section 3(1) of the Planning and Development Act 2000 as amended.

b) the creation of a laneway using hardcore material to access an agricultural shed on private land would generally come within the provisions for exempted development in the Planning & Development Regulations 2001 as amended, however, the said laneway, being in excess of three metres in width exceeds the Conditions and Limitations of Class 13 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001.

It is therefore concluded that the internal access road as currently constructed constitutes development as defined under Section 3 (1) of the Planning and Development Act 2000 as amended. As stated in the Boards determination in the case of RL2806, the creation of a laneway using hardcore material to access agricultural sheds on private land would generally come within the provision for exempted development. However, as the laneway as currently constructed is excess of three metres in width, it exceeds the Conditions and Limitations of Class 13 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001.

In this instance, it is therefore determined that the laneway currently under construction constitutes development which is not exempted development.

Recommendation

Having regard to the nature and extent of the works currently being carried out on site, in conjunction with the possible impact of the said works on the River Barrow River Nore SAC I therefore recommend that an Enforcement Notice be served on Mr. Peter Maher, Derrylackey, Mullinavat, CO. Kilkenny.

Reasons for serving Enforcement Notice

Unauthorised development comprising the construction of an internal farm access laneway and all associated site works including the piping of streams with potential impact on River Barrow and River Nore SAC, Site Code 002162.

Terms for Compliance with Enforcement Notice

1. Cease works on the construction of the internal farm access laneway and all associated site works
2. Restore the land to agricultural land

Time period for compliance with the terms of the Enforcement Notice

1. Compliance with 1 above within 24 hours of the service of this notice
2. Compliance with 2 above within three weeks of the service of this notice

Suzanne Galvin.

Executive Planner.

Date_____

ENF 18051

Denis Malone.

Senior Planner.

Date_____

ENF 18051 Derrylackey, Mullinavat, Co. Kilkenny.

Site Inspection 13th May 2020.



Figure 1:-View back down the internal laneway towards the farm complex the subject of the current enforcement file



Figure 2:- View from midway along the laneway back down to the complex



Figure 3:- Smaller stream to be piped



Figure 4:- Larger stream to be piped

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Figure 5:- View back up to the existing farm complex



Figure 6: Point where internal laneway terminates and joins the existing farmyard

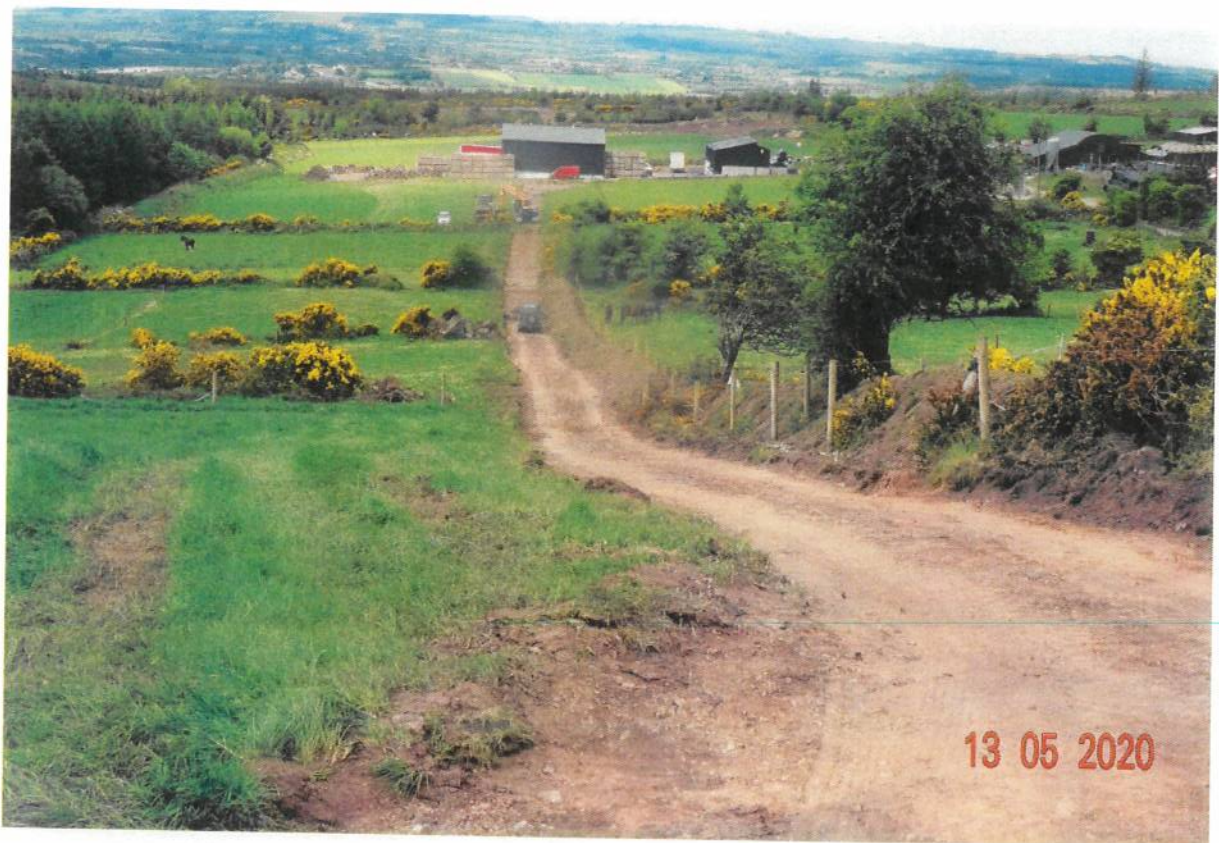


Figure 7:- View back down illustrating full extent of the internal laneway



Figure 8:- As above, illustrating full extent of internal laneway



Figure 9:- View back down to farm complex the subject of the current enforcement file with surrounding landholding.



Figure 10:- Field recently reclaimed for agricultural use circled in white



Figure 11:- Area reclaimed with excavated topsoil



Figure 12:- Pre-existing internal farm pathway upgraded



Figure 13:- Pre-existing pathway Mr. Maguire intends to upgrade.

ENF 18051 Derrylackey, Mullinavat, Co. Kilkenny.

Site Inspection dated 6th July 2020.

FILE UPDATE

I carried out a site inspection on 6th July 2020 with Tony Parker, Technician. We met Mr. Thomas Maguire and Mrs Mary Maguire on site. We proceeded to enter the farm complex accompanied by Mr & Mrs Maguire.

The galvanised perimeter fence & gate as referred to in the letter issued to Mr. Maguire on 26th May 2020 was still in situ. Mr Maguire had been afforded a three week period from the date of last correspondence to remove the structure and advised that failure to do so within that timeframe would result in the serving of an Enforcement Notice. Upon his request in a letter received by the Planning Authority on 17th June 2020 Mr. Maguire was afforded a final two week period. He was advised in a letter issued by the Planning Authority on 19th June 2020 that a site inspection would be carried out on 6th July 2020 to ensure compliance with the letter issued on 26th May 2020.

The concrete loading area as referred to in the Enforcement Notice served on 17th September 2019 and again in the letter to Mr. Maguire dated 26th May 2020 was still in situ and had not been removed. Mr. Maguire is therefore in breach of the terms of the Enforcement Notice.

The bagging plant was still in situ in the large storage shed. However, it has still not been put into use and Mr. Maguire confirmed that all the potatoes are still being bagged by Doyles Produce and transported to the site.

Mr. Maguire submitted an email to me which I received Monday morning enroute down to the subject site. The purpose of this email was to address the outstanding matters raised in the letter dated 26th May 2020. The attachments detailing their association with Doyle Produce including copies of lease agreements for the fields currently rented from Doyle Produce were not submitted.

The letter issued to Mr. Maguire on 26th May 2020 requested details of the total number of truck movements transporting produce to and from the site on a weekly basis under Item 1 (c). The response in the email from Mr. Maguire states that the *"total number of truck movements would consist of potatoes being delivered from Doyle Produce twice weekly by HGV"*. It is the opinion of the Planning Authority that this is not a realistic figure as this does not include any truck movements associated with Mr. Maguires company Maguire Maher Enterprises and the redistribution of the bagged potatoes to its customers.

Regarding the concrete loading area, Mr. Maguire states in the email that he wishes to retain same on site and to erect a dry storage shed over the existing concrete loading area and over the 2no. containers which will be 18m * 12m and below 8m in height. It is Mr. Maguire's

opinion that this structure would fall under the exemptions in Class 9 Exempted Development Rural.

Mr. Maguire states that the sheet metal fencing & gate is the point where the new storage shed commences and he therefore intends to retain same on site. The new storage shed would have an L-shaped section off to the side 3m*3m.

Mr. Maguire states that the total floor area of the new storage shed would be below 300sq.m and the aggregate total of the entire farm complex will still be below the exempted development threshold of 600 sq.m.

Article 9 of the Planning and Development Regulations 2001 as amended details the restrictions on exemptions and states

1 Development to which Article 6 relates shall not be exempted development for the purposes of the Act -

(a) If the carrying out of such development would –

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

When Article 9 1 (a) (viii) is applied to the current unauthorised structures on site, i.e. the perimeter fence & gate and the concrete loading area, it is therefore concluded that any further development on site which incorporates such structures cannot avail of the provisions of the exempted development classes as detailed in the aforementioned Regulations.

Mr. Maguire states that in his opinion the introduction of the bagging/packing process into the existing storage shed would still constitute the shed being used for agricultural purposes as he would be using the shed for the storage and packaging of potatoes produced by himself. When I asked Mr. Maguire when his own crop of potatoes on the farm holding at Derrylackey would be ready he said the end of September.

The bagged potatoes on pallets in the storage shed had Maguire Maher Enterprises stickers on them with a Grower Number 032689. However, when I entered this ID number into the Department of Agriculture, Food and the Marine's National Potato Register there was no record of the company/grower number.

During the site inspection we then proceeded to inspect the internal farm roadway constructed by Mr. Peter Maher which links the older farm complex to the east with the newer complex the subject of the current enforcement file. Tony Parker measured the width of the laneway in three different locations with each measuring 3.7m in width. The width of the laneway appeared consistent from a visual inspection with the exception of the section at the end serving the new farm complex which measured 9m at its widest. Mr. Maguire stated on site that this area forms part of the hardcore area serving the farm yard and does not constitute part of the internal farm laneway. A gate has been erected since our previous site inspection to delineate the end of the laneway prior to this point. The entire internal laneway was filled with C&D waste. Mr. Maguire stated that it had come from an authorised permit holder but did not supply any further information. The two streams over which the

laneway is constructed were stagnant and dry and had been culverted and piped. The file has been referred to Eamonn Morrissey, Environment Section regarding the C&D waste and the issues of the streams.

I emailed Mr. Maguire on 7th July 2020 and advised him that the Planning Authority awaited the hard copy of the submission emailed to me on 6th July 2020 as the full attachments are required before the Planning Authority can fully determine the next course of action. If same is not received by close of business Thursday 9th July 2020, the Planning Authority would proceed with its assessment in their absence.

A submission was received from Mr. Thomas Maguire on 8th July 2020. The submission includes the cover letter referred to above in addition to dispatch sheets and an invoice from Doyle Produce. The dispatch sheets date back to 1st August 2019 and the name on them is Tom/Potato Link with "Traceable to Fields (Newrath)" written on site. There are 44 entries in total up to 1st July 2020, comprising a total of 815.5 tonnes dispatched over circa a one year period. The 3no. invoices are dated 21st December 2019, 30th April 2020 and 30th June 2020. A copy of a lease agreement between Edward Doyle and Mary Maher dated 1st February 2020 has also been submitted. The lease agreement is for 17 acres for a period of 3 years. However, the map is very unclear and illegible and therefore it is not possible to establish the exact location of the 3 fields in question. 3no. workshop invoices from Keogh Commercials Grovine, Waterford Road, Kilkenny have also been submitted.

See photos below taken during site inspection carried out on 6th July 2020.

Note: the date of 5th July 2020 on the photos is incorrect.

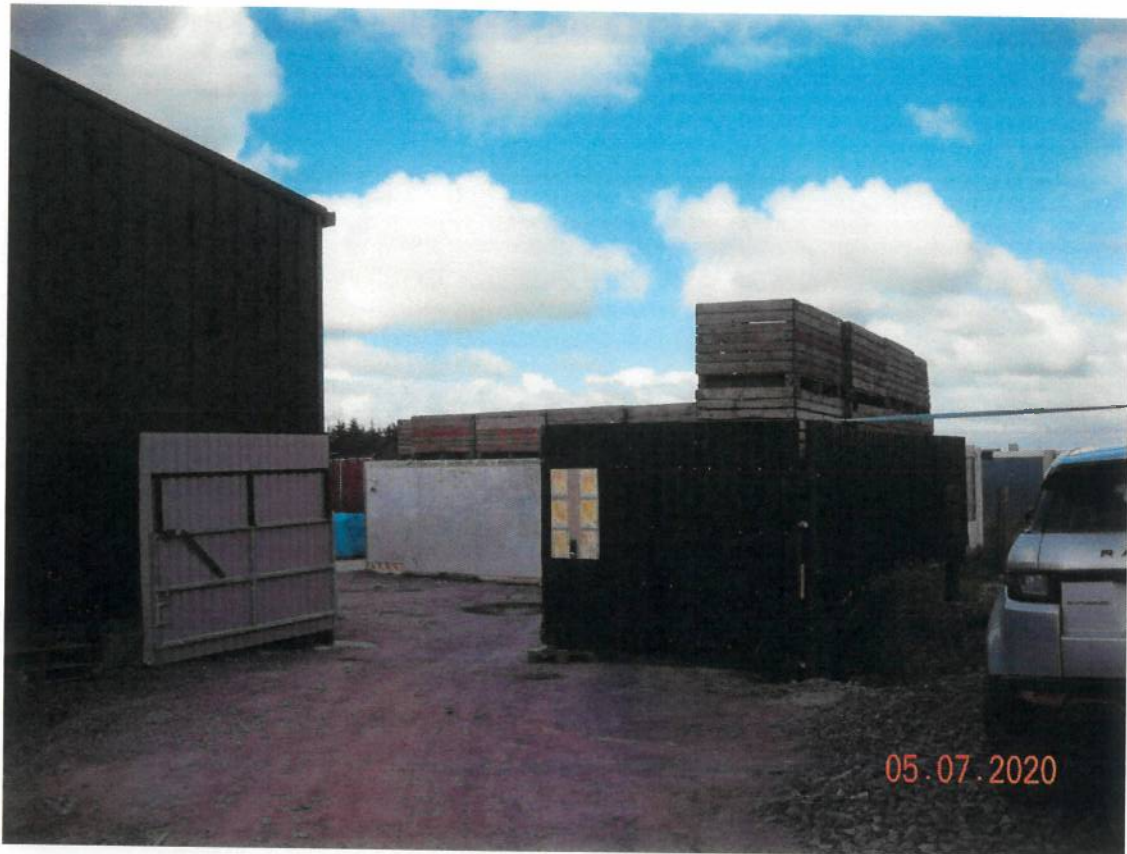
Suzanne Galvin.

Executive Planner.

Date_____

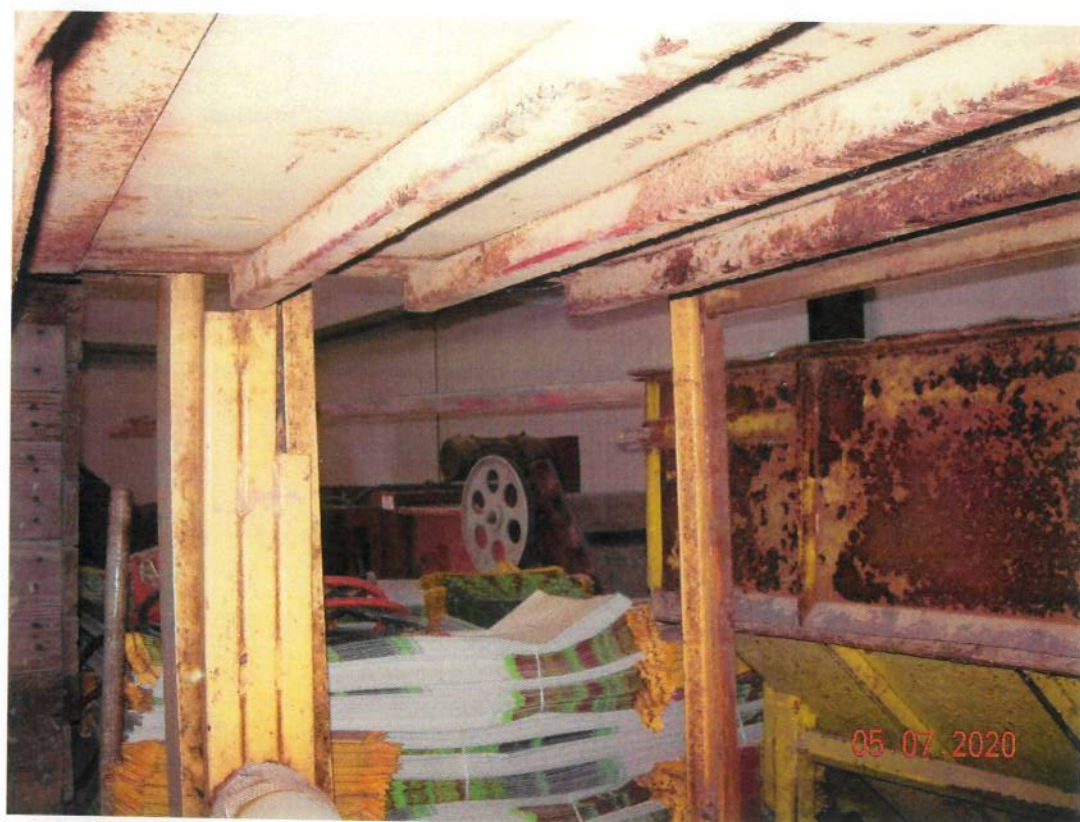
ENF 18051 Derrylackey

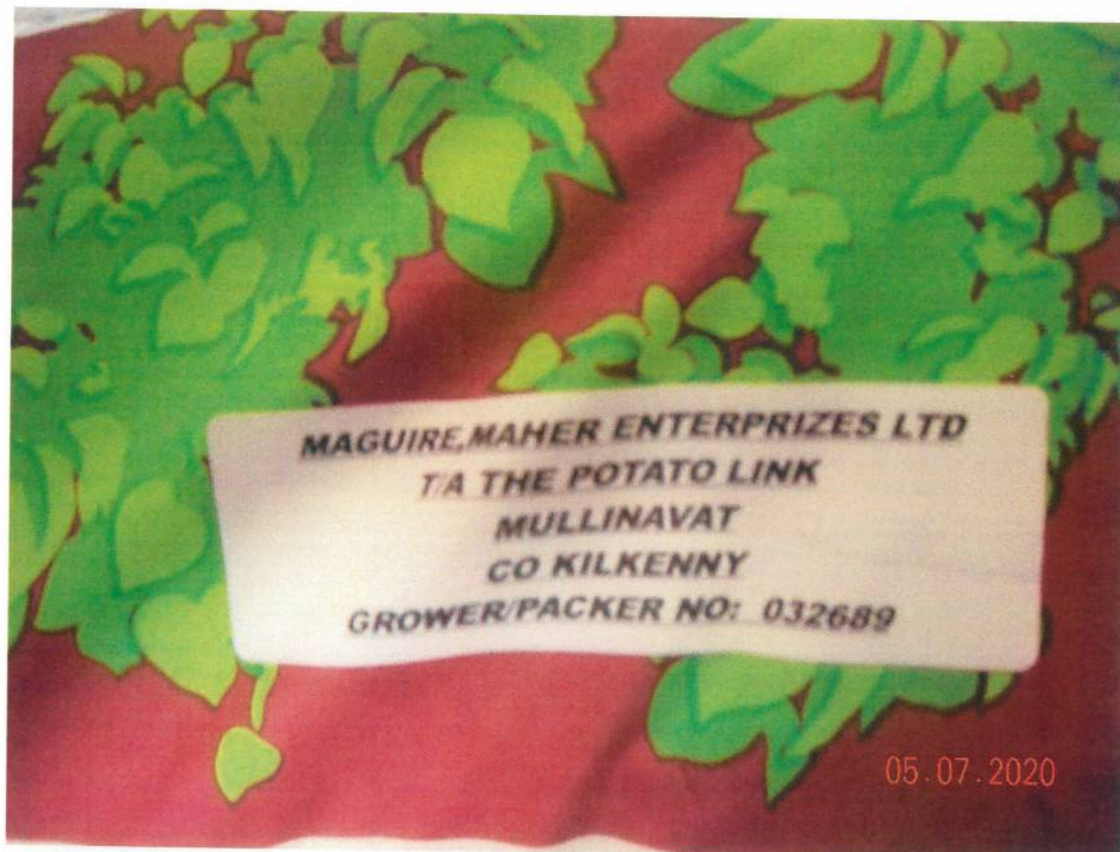
Site inspection 6th July 2020.



















KILKENNY COUNTY COUNCIL
PLANNING ENFORCEMENT REPORT

FILE **ENF 18051**
LOCATION **Derrylackey, Mullinavat.**
DATE **20th July 2020**

Rita,

Further to a review of the submission received from Mr. Thomas Maguire on 8th July 2020 can you please issue the following letter to Mr. Maguire:-

The contents of your submission received by the Planning Authority on 8th July 2020 have been reviewed. Following the site inspection carried out on 6th July 2020 the planner is currently preparing a report and pending receipt of same, the Planning Authority will then decide on the next course of action.

However, in the interim you are strongly advised **not** to carry out any further works on site in accordance with Article 9 of the Planning and Development Regulations 2001 as amended, which details the restrictions on exemptions:-

- 1 *Development to which Article 6 relates shall not be exempted development of the purposes of the Act –*
 - (a) *If the carrying out of such development would –*
 - (viii) *consist of or comprise the extension, alteration, repair or renewal of any unauthorised structure or a structure the use of which is an unauthorised use*

When Article 9 1 (a) (viii) above is applied to the current unauthorised structures on site, i.e. the perimeter fence & gate and the concrete loading area, further development on site which incorporates such structures cannot avail of the provisions of the exempted development classes as detailed in the aforementioned Regulations.

Also can you please issue the following letter to Mr. Peter Maher:-

Following a site inspection carried out on 6th July 2020 the Planning Authority has noted that you have not complied with the terms of the Enforcement Notice served upon you on 26th May 2020 with respect to the recent construction of the internal access road. You are therefore afforded one final opportunity of **TWO WEEKS** to address the unauthorised works

referred to in the enforcement notice and to carry out the necessary work to remedy the situation i.e. restore the land to agricultural land.

Furthermore, during the inspection it was observed that a significant amount of C&D waste has been used as fill material during the construction process. The matter has therefore been referred to the Environment Section for further investigation.

Date _____

Suzanne Galvin.

Executive Planner.

ENF 18051 Derrylackey, Mullinavat, Co. Kilkenny.

FILE UPDATE

Ms. Suzanne Galvin, KCC Executive Planner, carried out a site inspection on 6th July 2020 with Tony Parker, Technician. Ms. Galvin and Mr Parker met Mr. Thomas Maguire and Mrs Mary Maguire on site. They proceeded to enter the farm complex accompanied by Mr & Mrs Maguire.

Mr. Maguire submitted an email to Ms. Galvin which she received Monday morning enroute down to the subject site. The purpose of this email was to address the outstanding matters raised in the letter dated 26th May 2020. A further submission was received from Mr. Thomas Maguire on 8th July 2020. The submission includes a cover letter, attachments detailing their association with Doyle Produce including copies of lease agreements for the fields rented from Doyle Produce, dispatch sheets and invoices.

The letter issued to Mr. Maguire on 26th May 2020 requested details of documentary evidence from Mooncoin to support Mr Maguires statement that *that The storage and packaging of potatoes is part of a joint venture between ourselves and Doyle Produce of Luffany Mooncoin*, and to verify that the bagged potatoes being transported continuously to the site at Derrylackey are within Mr Maguire's ownership as confirmed verbally by Mr Maguire during the site inspection on 30th April 2020, under Item 1 (a).

The submitted dispatch sheets date back to 1st August 2019 and the name on them is Tom/Potato Link with "Traceable to Fields (Newrath)" written on site. There are 44 entries in total up to 1st July 2020, comprising a total of 815.5 tonnes dispatched over circa a one year period. 3no. invoices from Doyle Produce Mooncoin Ltd to Potato Link dated 31st December 2019, 30th April 2020, and 30th June 2020 have been submitted. 2no. workshop invoices from Keogh Commercials to Maguire Maher Enterprises Ltd dated 31st July 2019 have also been submitted.

Item 1(b) of the letter issued to Mr Maguire on 26th May 2020 requires the submission of lease agreements for the fields where Mr Maguire has con acres as discussed during the site inspection dated 30th April 2020, together with maps of the fields and their respective field numbers.

A copy of a lease agreement between Edward Doyle and Mary Maher dated 1st February 2020 has been submitted. The lease agreement is for 17 acres for a period of 3 years. However, Ms. Galvin advised that the map is very unclear and illegible and therefore it is not possible to establish the exact location of the 3 fields in question. Upon further review of the submission, I was able to identify the location of the subject fields. However, Land Direct shows that Mr. Nicholas Walsh is the registered owner of the subject land. A copy of the field location and Land Direct ownership is attached to the report.

Item 1(c) of the letter issued to Mr. Maguire on 26th May 2020 requested details of the total number of truck movements transporting produce to and from the site on a weekly basis. The response in Mr. Maguires submission received 8th July 2020 states that *"The number of truck movements to the site would consist of potatoes being delivered from Doyle Produce twice weekly by HGV"*

It is the opinion of the Planning Authority that this is not a realistic figure as this does not include any truck movements associated with Mr. Maguires company, Maguire Maher Enterprises, and the redistribution of the bagged potatoes to its customers.

Item 2 of the letter issued to Mr. Maguire on 26th May 2020 advised that the concrete loading area as identified in the Enforcement Notice on 17th September 2019 is unauthorised and the removal of this area was required. Item 3 of the letter advises that the metal gate and fence erected around the perimeter of the site is unauthorised and requests the removal of this element.

The site inspection carried out by Ms. Galvin and Mr Parker on 6th July 2020 confirmed that the galvanised perimeter fence & gate as referred to in the letter issued to Mr. Maguire on 26th May 2020 was still in situ. Mr Maguire had been afforded a three week period from the date of last correspondence to remove the structure and advised that failure to do so within that timeframe would result in the serving of an Enforcement Notice. Upon his request in a letter received by the Planning Authority on 17th June 2020 Mr. Maguire was afforded a final two week period. He was advised in a letter issued by the Planning Authority on 19th June 2020 that a site inspection would be carried out on 6th July 2020 to ensure compliance with the letter issued on 26th May 2020.

The site inspection also confirmed that the concrete loading area and 2. No containers as referred to in the Enforcement Notice served on 17th September 2019 was still in situ and had not been removed. Mr. Maguire is therefore in breach of the terms of the Enforcement Notice.

Mr. Maguire states in the submission received 8th July 2020 that he wishes to retain the concrete loading area on site and erect a dry storage shed over the existing area and also over the 2no. containers which will be 18m * 12m and below 8m in height. It is Mr. Maguire's opinion that this structure would fall under the exemptions in Class 9 Exempted Development Rural.

Mr. Maguire states that the sheet metal fencing & gate is the point where the new storage shed commences and he therefore intends to retain same on site. The new storage shed would have an L-shaped section off to the side 3m*3m.

Mr. Maguire states that the total floor area of the new storage shed would be below 300sq.m and the aggregate total of the entire farm complex will still be below the exempted development threshold of 600 sq.m.

Article 9 of the Planning and Development Regulations 2001 as amended details the restrictions on exemptions and states

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When Article 9 1 (a) (viii) is applied to the current unauthorised structures on site, i.e. the perimeter fence & gate and the concrete loading area, it is therefore concluded that any further development on site which incorporates such structures cannot avail of the provisions of the exempted development classes as detailed in the aforementioned Regulations.

Item 4 of the letter issued to Mr. Maguire on 26th May 2020 advised that the large storage shed is deemed to be exempt for agricultural storage purposes solely. The introduction of the bagging/packing process constitutes a material change of use in the opinion of the Planning Authority and therefore the process or use of the shed for this purpose requires planning permission. Mr Maguire was therefore requested to remove the bagging plant.

The site inspection carried out by Ms. Galvin and Mr Parker on 6th July 2020 confirmed that the bagging plant was still in situ in the large storage shed. It was noted that still had not been put into use and Mr. Maguire confirmed that all the potatoes are still being bagged by Doyles Produce and transported to the site.

Mr. Maguire states in his submission received 8th July 2020 that in his opinion the introduction of the bagging/packing process into the existing storage shed would still constitute the shed being used for agricultural purposes as he would be using the shed for the storage and packaging of potatoes produced by himself. When Ms. Galvin asked Mr. Maguire when his own crop of potatoes on the farm holding at Derrylackey would be ready he said the end of September.

The bagged potatoes on pallets in the storage shed had Maguire Maher Enterprises stickers on them with a Grower Number 032689. However, when Ms. Galvin entered this ID number into the Department of Agriculture, Food and the Marine's National Potato Register there was no record of the company/grower number.

During the site inspection dated 6th July 2020, Ms. Galvin and Mr Parker proceeded to inspect the internal farm roadway constructed by Mr. Peter Maher which links the older farm complex to the east with the newer complex the subject of the current enforcement file. Tony Parker measured the width of the laneway in three different locations with each measuring 3.7m in width. The width of the laneway appeared consistent from a visual inspection with the exception of the section at the end serving the new farm complex which measured 9m at its widest. Mr. Maguire stated on site that this area forms part of the hardcore area serving the farm yard and does not constitute part of the internal farm laneway. A gate had been erected since the previous site inspection to delineate the end of the laneway prior to this point. The entire internal laneway was filled with C&D waste. Mr. Maguire stated that it had come from an authorised permit holder but did not supply any further information. The two streams over which the laneway is constructed were stagnant and dry and had been culverted

and piped. The file has been referred to Eamonn Morrissey, Environment Section regarding the C&D waste and the issues of the streams.

Further to a review of the submission received from Mr. Thomas Maguire on 8th July 2020, the following letter was issued to Mr. Maguire on 20th July 2020:-

The contents of your submission received by the Planning Authority on 8th July 2020 have been reviewed. Following the site inspection carried out on 6th July 2020 the planner is currently preparing a report and pending receipt of same, the Planning Authority will then decide on the next course of action.

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The following letter was also issued to Mr. Peter Maher on 20th July 2020:-

*Following a site inspection carried out on 6th July 2020 the Planning Authority has noted that you have not complied with the terms of the Enforcement Notice served upon you on 26th May 2020 with respect to the recent construction of the internal access road. You are therefore afforded one final opportunity of **TWO WEEKS** to address the unauthorised works referred to in the enforcement notice and to carry out the necessary work to remedy the situation i.e. restore the land to agricultural land.*

Furthermore, during the inspection it was observed that a significant amount of C&D waste has been used as fill material during the construction process. The matter has therefore been referred to the Environment Section for further investigation.

A response to the aforementioned correspondence was received from Mr Peter Maher on 10th August 2020. Mr Maher advises in the letter that he has decided not to comply with the terms of the Enforcement Notice served on 26th May 2020 after speaking to several professionals including a Teagasc Advisor and Engineer. Mr Maher states that he has been informed that the internal farm roadway is exempt from planning permission once there is no pollution from the roadway and once there is no new entrance made onto the public road.

Mr Maher states that the subject farm roadway was constructed to join the existing farm complex to another farm complex for the following reasons:

1. *The original public laneway being used was substandard and unsuited to current farming activities being carried out on the farm given its narrow width and poor surface, for example planting and harvesting potatoes. The narrow width was the biggest issue here given that large size of modern farm machinery...*
2. *...we currently have a herd of over 60 sucklers on the farm and roadway is needed to rotate animals around grazing paddocks every few days to maintain good grass management. This avoids the moving of animals on the public road and hence decreases the chances of any hazards occurring. As we plan to increase our herd over the coming years and are also considering moving to dairy farming the roadway will be of great benefit. I mentioned the roadway and the current situation to my Teagasc advisor and he advised that the width of the farm roadways based on Teagasc specifications must be between 3m - 5m width depending on the size of the herd and also what other farm activities are being carried out on site, i.e. growing agricultural produce...*
3. *...as you are aware from previous correspondence, we have an ongoing family feud. Prior to constructing the roadway, we were getting a lot of hassle on the public road for example;*
 - *Cars, vans and jeeps were being parked on the roadway blocking access through the public roadway on numerous occasions.*
 - *We received extreme and vulgar verbal abuse while using the public lane on foot in the company of young children.*
 - *On the most extreme bend on the public lane there was multiple steel rebars erected which has done considerable damage to machinery. i.e. tyres and paint work.*

Mr Maher states that based on the aforementioned matters, he believes that the subject farm road is exempted development, quoting *part 3 of Exempted Development – Rural, Column 1, Class 9* in his letter.

In relation to the C&D infill material used for the subject road, Mr Maher states that this matter should be taken up with the quarry and that the material was purchased in good faith.

It is noted that a further complaint was received from Ms. Lorraine Maher on 14th June 2021. Several further submissions have been subsequently received from Ms Maher to date, including photographs of lorries travelling on the internal farm access laneway at the subject site. Ms Maher raises the following concerns in her submission:

- Alleged commercial use of the subject site and HGV lorries are creating a road hazard for both vehicles and pedestrians.
- Commercial hours of operation commences between 5am-6am and continues late into the evening and Sundays.
- Traffic activity on the internal farm access laneway is creating an impact on residential amenity in terms of noise and disturbance.
- Road is in disrepair as a result of lorry activity and alleged widening of road.

- Impact on residential amenity in terms of loss of privacy and rising dust from passing lorries.

I carried out a follow up site inspection with Eddie O'Reilly, KCC Senior Executive Technician, on 30th June 2021, in accordance with Covid-19 Restrictions. The site inspection confirmed that the internal farm access laneway subject to the Enforcement Notice served on Mr. Maher on 26th May 2020 is still in situ. Mr Maher is therefore in breach of the terms of the Enforcement Notice.

Ms Galvin stated in her report dated 7th February 2020:

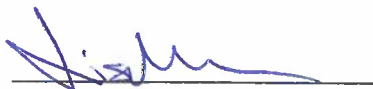
I carried out a site inspection on 4th February 2020 with Eddie O'Reilly Senior Executive Technician. On approach to the site we observed that the road had been widened at the Glenpipe junction, where the LS 7452-8 meets with L-7452. Further down the cul de sac LS 7452-8, a passing bay had also been constructed.

Upon arrival to the site during the site inspection dated 30th June 2021, I observed that the aforementioned road works is still in situ. This matter has been referred to Stan Cullen, KCC Area Engineer.

SUMMARY

To date, the outstanding matters relating to enforcement file reference ENF18051 are as follows:

- Submission received from Mr. Thomas Maguire on 8th July 2020 was partly intended to demonstrate that structures on site are being used solely for agricultural purposes. However, a number of issues have been found in the submission regarding this, as outlined in the report.
- Site inspection carried out by KCC Planning Enforcement Department on 6th July 2020 confirmed the galvanised perimeter fence & gate was still in situ and had not been removed. This constitutes development which is not exempted development and is unauthorised.
- Site inspection carried out by KCC Planning Enforcement Department on 6th July 2020 confirms the concrete loading area and 2. No containers as referred to in the Enforcement Notice served on 17th September 2019 was still in situ and had not been removed. Mr. Maguire is therefore in breach of the terms of the Enforcement Notice.
- Site inspection carried out by KCC Planning Enforcement Department on 30th June 2021 confirms the internal farm access laneway subject to the Enforcement Notice served on Mr. Peter Maher on 26th May 2020 is still in situ. Mr Maher is therefore in breach of the Enforcement Notice.
- Site inspection carried out by KCC Planning Enforcement Department on 6th July 2020 confirms the bagging plant was still in situ in the large storage shed. The introduction of the bagging/packaging process constitutes a material change of use in the opinion of the Planning Authority and therefore the process or use of the shed for this purpose requires planning permission. However, it is noted that the site inspection dated 6th July 2020 confirmed that it has still not been put into use and Mr. Maguire confirmed that all the potatoes are still being bagged by Doyles Produce and transported to the site.



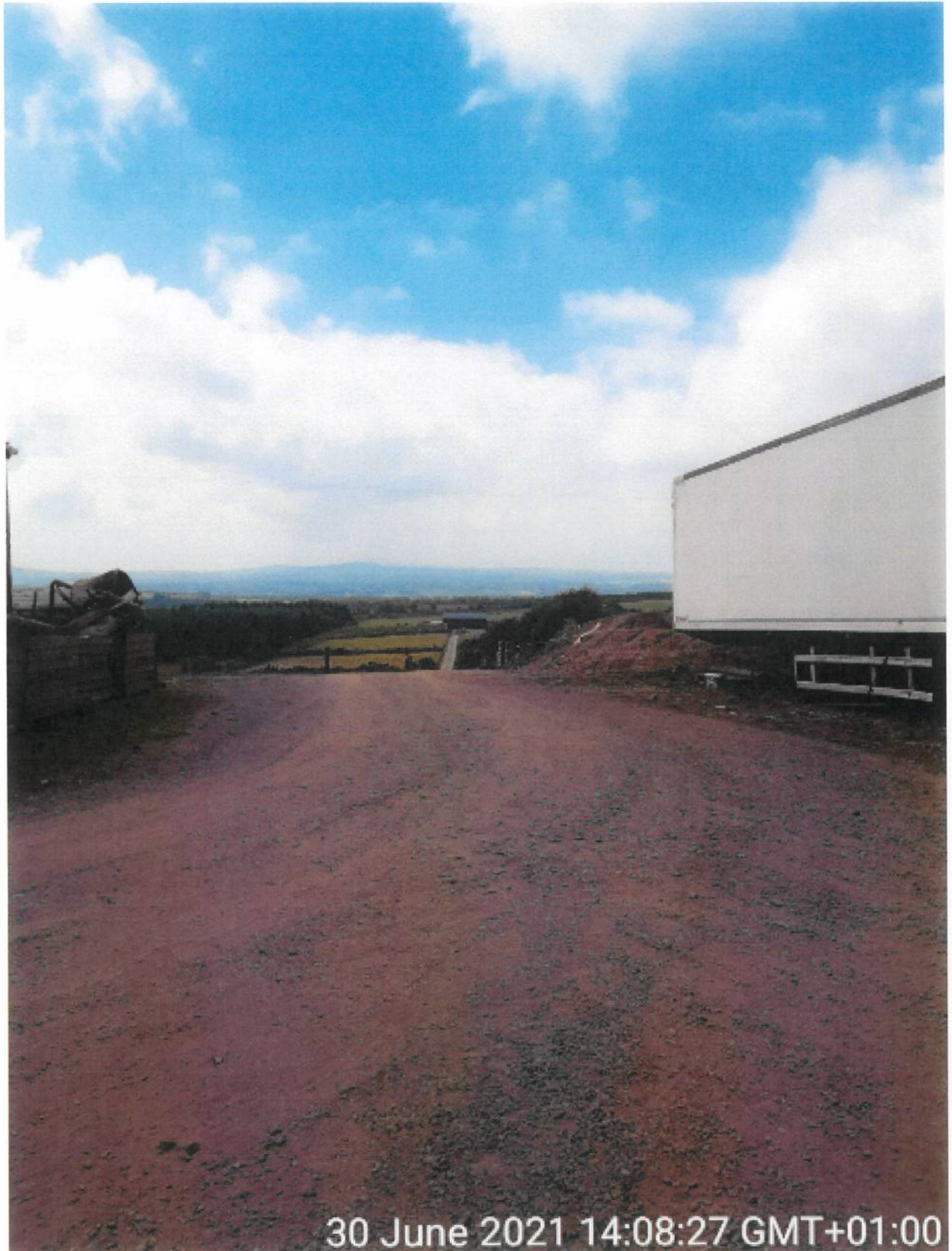
Lisa McCann.

Executive Planner.

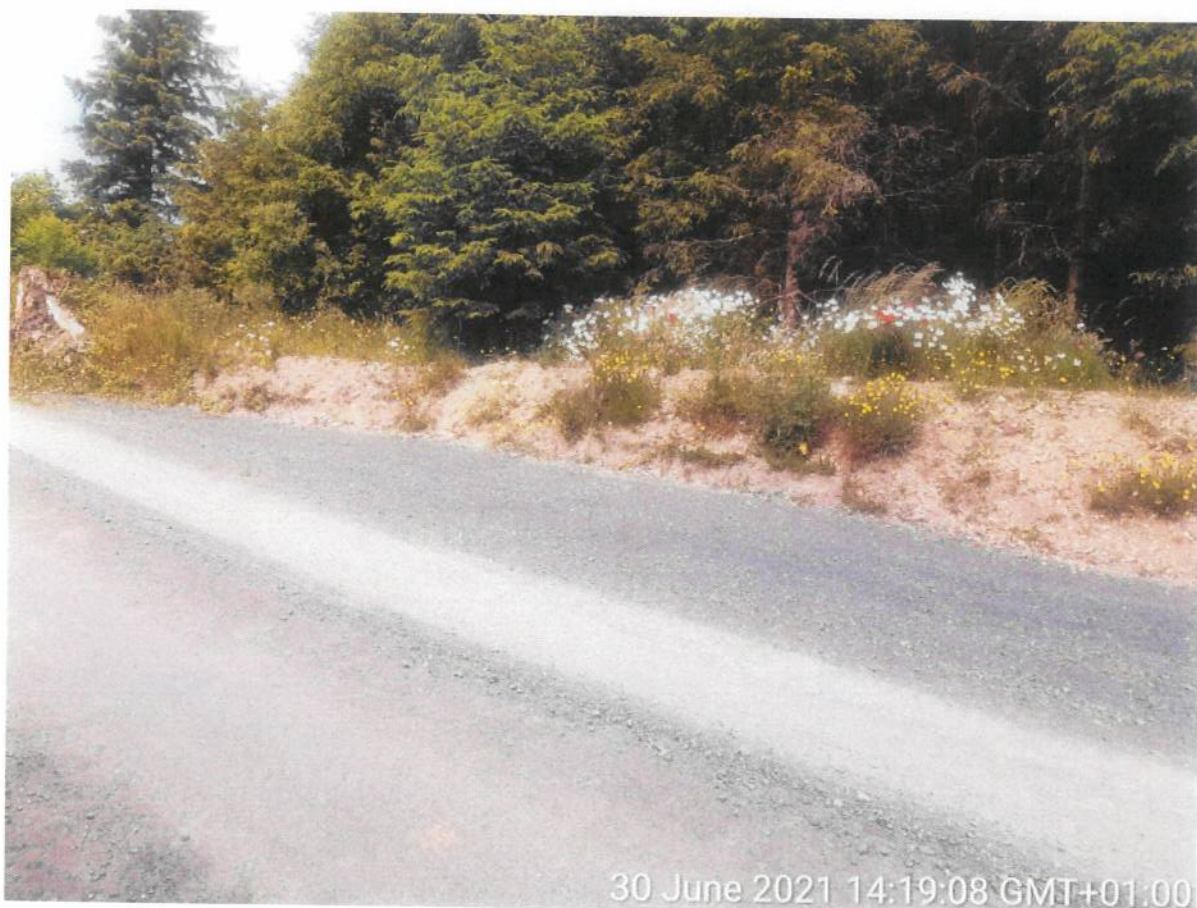
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ENF 18051 Derrylackey

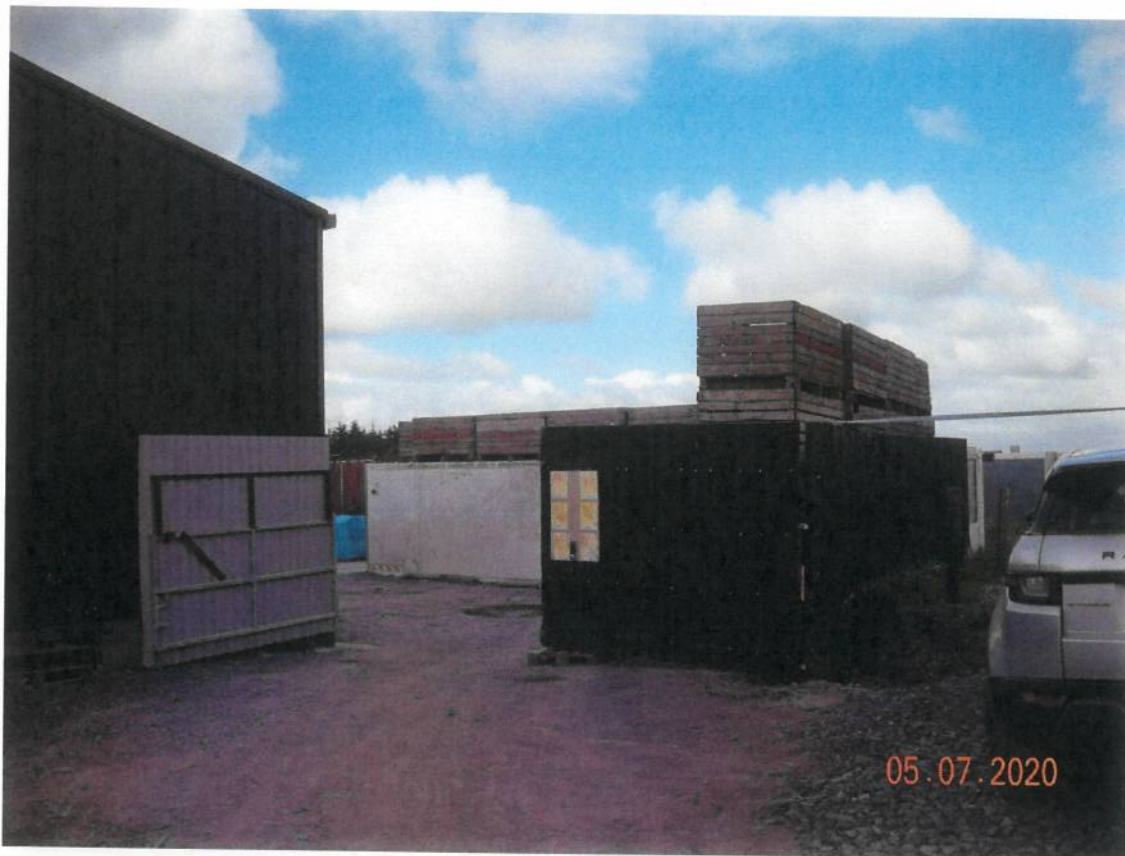
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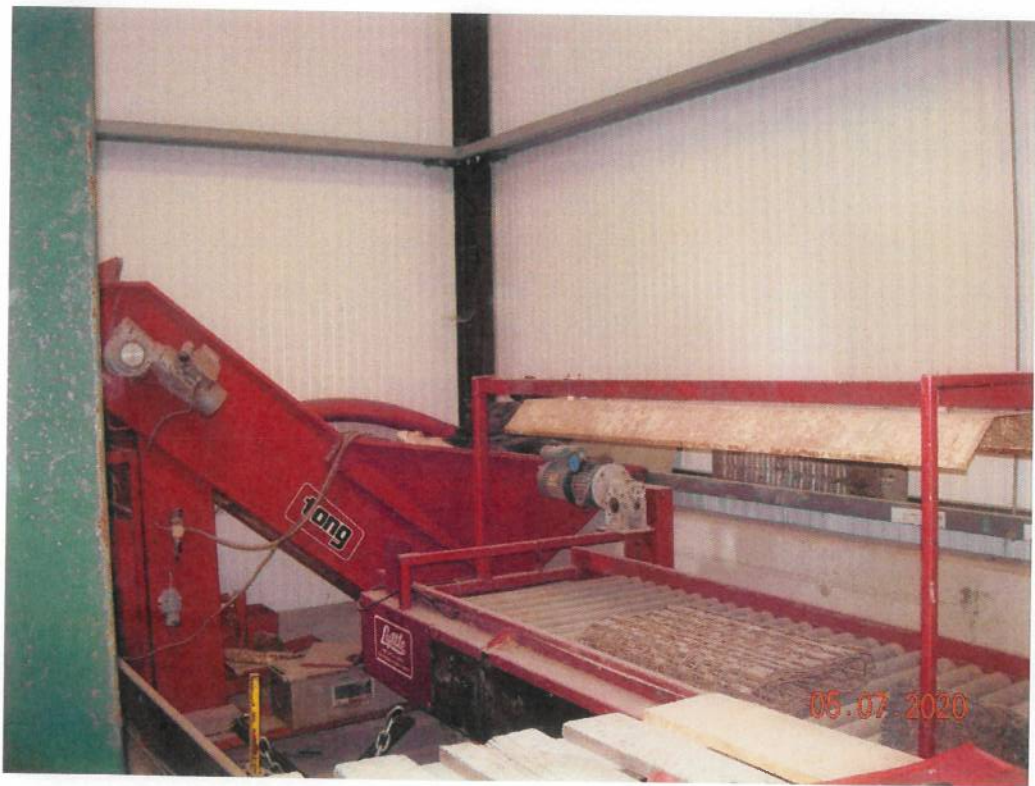
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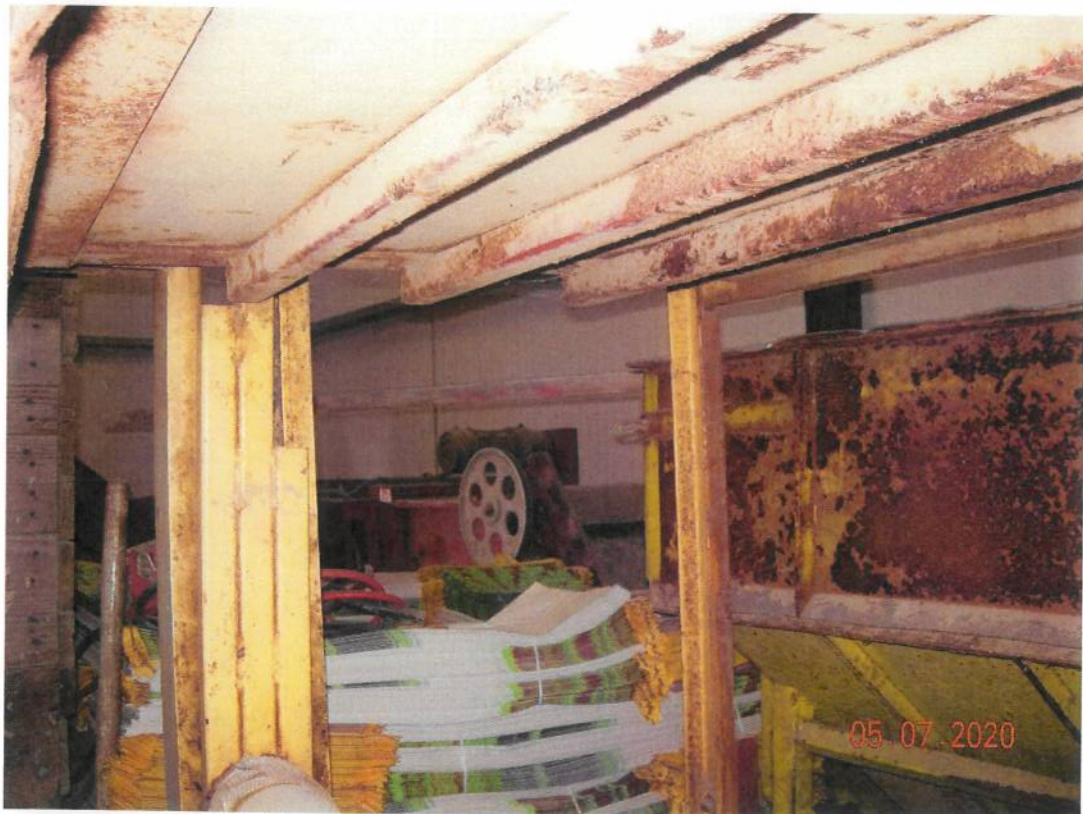


Site inspection 6th July 2020.









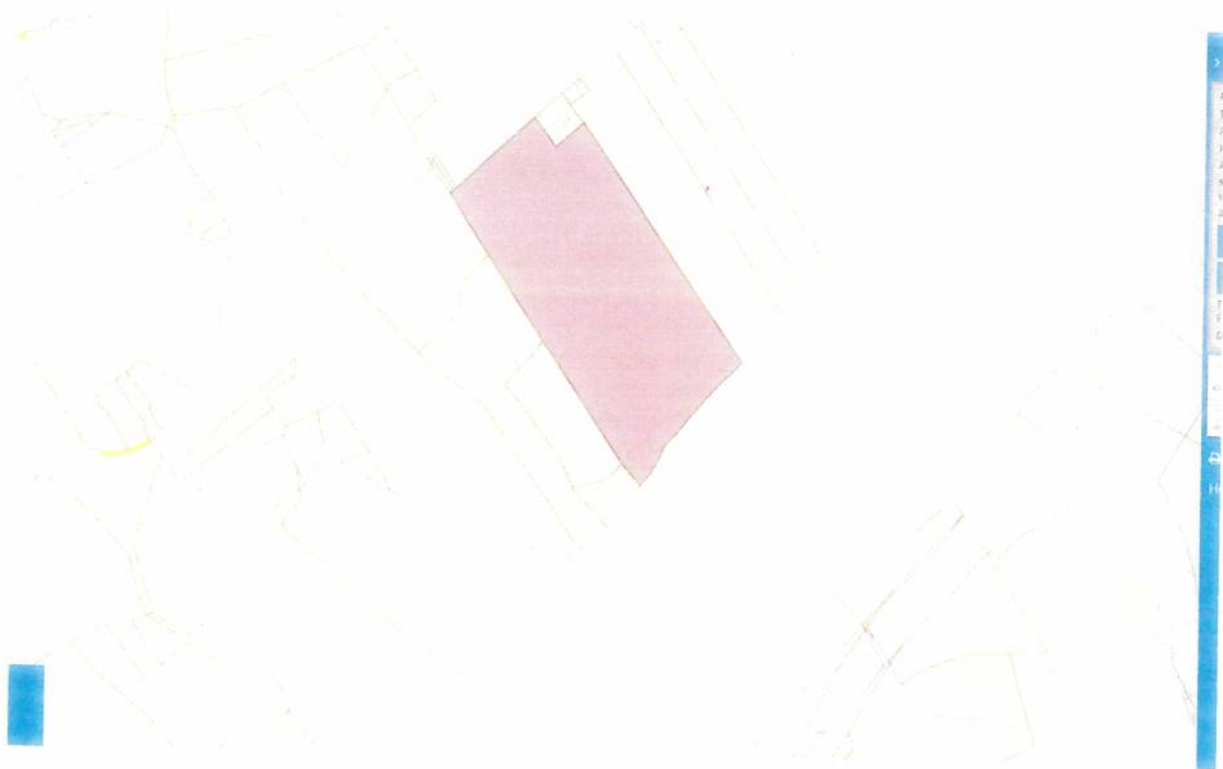












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County Kilkenny

Folio 37729F

Register of Ownership of Freehold Land

Part 1(A) - The Property

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

For parts transferred see Part 1(B)

No.	Description	Official Notes
1	The property shown coloured Red as plan(s) C8NH3 on the Registry Map, situate in the Townland of MOUNTNEILL, in the Barony of IVERK, in the Electoral Division of PORTNASCULLY. The Registration does not extend to the mines and minerals	From Folio KK12758N
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Land Registry

County Kilkenny

Folio 37729F

Part 2 - Ownership

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Land Registry

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FILE UPDATE

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Further to a review of the submission received from Mr. Thomas Maguire on 8th July 2020, the following letter was issued to Mr. Maguire on 20th July 2020:-

The contents of your submission received by the Planning Authority on 8th July 2020 have been reviewed. Following the site inspection carried out on 6th July 2020 the planner is currently preparing a report and pending receipt of same, the Planning Authority will then decide on the next course of action.

*However, in the interim you are strongly advised **not** to carry out any further works on site in accordance with Article 9 of the Planning and Development Regulations 2001 as amended, which details the restrictions on exemptions:-*

- 1 *Development to which Article 6 relates shall not be exempted development of the purposes of the Act –*
 - (a) *If the carrying out of such development would –*
 - (viii) *consist of or comprise the extension, alteration, repair or renewal of any unauthorised structure or a structure the use of which is an unauthorised use*

When Article 9 1 (a) (viii) above is applied to the current unauthorised structures on site, i.e. the perimeter fence & gate and the concrete loading area, further development on site which incorporates such structures cannot avail of the provisions of the exempted development classes as detailed in the aforementioned Regulations.

The following letter was also issued to Mr. Peter Maher on 20th July 2020:-

*Following a site inspection carried out on 6th July 2020 the Planning Authority has noted that you have not complied with the terms of the Enforcement Notice served upon you on 26th May 2020 with respect to the recent construction of the internal access road. You are therefore afforded one final opportunity of **TWO WEEKS** to address the unauthorised works referred to in the enforcement notice and to carry out the necessary work to remedy the situation i.e. restore the land to agricultural land.*

Furthermore, during the inspection it was observed that a significant amount of C&D waste has been used as fill material during the construction process. The matter has therefore been referred to the Environment Section for further investigation.

A response to the aforementioned correspondence was received from Mr Peter Maher on 10th August 2020. Mr Maher advises in the letter that he has decided not to comply with the terms of the Enforcement Notice served on 26th May 2020 after speaking to several professionals including a Teagasc Advisor and Engineer. Mr Maher states that he has been informed that the internal farm roadway is exempt from planning permission once there is no pollution from the roadway and once there is no new entrance made onto the public road.

Mr Maher states that the subject farm roadway was constructed to join the existing farm complex to another farm complex for the following reasons:

1. *The original public laneway being used was substandard and unsuited to current farming activities being carried out on the farm given its narrow width and poor surface, for example planting and harvesting potatoes. The narrow width was the biggest issue here given that large size of modern farm machinery...*
2. *...we currently have a herd of over 60 sucklers on the farm and roadway is needed to rotate animals around grazing paddocks every few days to maintain good grass management. This avoids the moving of animals on the public road and hence decreases the chances of any hazards occurring. As we plan to increase our herd over the coming years and are also considering moving to dairy farming the roadway will be of great benefit. I mentioned the roadway and the current situation to my Teagasc advisor and he advised that the width of the farm roadways based on Teagasc specifications must be between 3m - 5m width depending on the size of the herd and also what other farm activities are being carried out on site, i.e. growing agricultural produce...*
3. *...as you aware from previous correspondence, we have an ongoing family feud. Prior to constructing the roadway, we were getting a lot of hassle on the public road for example;*
 - *Cars, vans and jeeps were being parked on the roadway blocking access through the public roadway on numerous occasions.*
 - *We received extreme and vulgar verbal abuse while using the public lane on foot in the company of young children.*
 - *On the most extreme bend on the public lane there was multiple steel rebars erected which has done considerable damage to machinery. i.e tyres and paint work.*

Mr Maher states that based on the aforementioned matters, he believes that the subject farm road is exempted development, quoting *part 3 of Exempted Development – Rural, Column 1, Class 9* in his letter.

In relation to the C&D infill material used for the subject road, Mr Maher states that this matter should be taken up with the quarry and that the material was purchased in good faith.

It is noted that several further submissions have been received in the interim from the complainant, Ms Lorraine Maher, including photographs of lorries travelling on the internal farm access laneway at the subject site. Ms Maher raises the following concerns in her submissions:

- Alleged commercial use of the subject site and HGV lorries are creating a road hazard for both vehicles and pedestrians.
- Commercial hours of operation commences between 5am-6am and continues late into the evening and Sundays.
- Traffic activity on the internal farm access laneway is creating an impact on residential amenity in terms of noise and disturbance.
- Road is in disrepair as a result of lorry activity and alleged widening of road.

- Impact on residential amenity in terms of loss of privacy and rising dust from passing lorries.

Site inspection 30th June 2021

I carried out a follow up site inspection with Eddie O'Reilly, KCC Senior Executive Technician, on 30th June 2021, in accordance with Covid-19 Restrictions. The site inspection confirmed that the internal farm access laneway subject to the Enforcement Notice served on Mr. Maher on 26th May 2020 is still in situ. Mr Maher is therefore in breach of the terms of the Enforcement Notice.

Ms Galvin stated in her report dated 7th February 2020:

I carried out a site inspection on 4th February 2020 with Eddie O'Reilly Senior Executive Technician. On approach to the site we observed that the road had been widened at the Glenpipe junction, where the LS 7452-8 meets with L-7452. Further down the cul de sac LS 7452-8, a passing bay had also been constructed.

Upon arrival to the site during the site inspection dated 30th June 2021, I observed that the aforementioned road works is still in situ. This matter has been referred to Stan Cullen, KCC Area Engineer.

Site inspection 4th & 17th November 2021

I carried out a follow up site inspection on 4th November 2021 with Eddie O'Reilly, KCC Senior Executive Technician. Access was available to the main yard area within the site, however we could not gain access to the largest shed where the bagging machine was previously located due to the locked gate and fencing surrounding the building. We could hear someone in the main shed during the course of the inspection but they would not respond to us or open the gate. It was noted that a significant number of pallet boxes are on site which can be viewed in the site inspection photos and 2021 Google Pro Imagery attached to the report. New hedging has also been planted around the site perimeter.

Due to the restricted access on site from the locked gate and fencing surrounding the largest shed on site, a further site inspection was arranged with Mr Thomas Maguire to gain full access to the site. I subsequently carried out a site inspection with Eddie O'Reilly, KCC Senior Executive Technician, on 17th November 2021. Mr Thomas Maguire, Mr John Maher, and Ms Mary Maher was present throughout the course of the inspection.

Mr Maher confirmed that he is leasing fields for potato crops from Mr Eddie Boyle as stated in his previous written submission to the Planning Authority received 8th July 2020. Mr Maher also confirmed that the potatoes are being bagged by Mr Doyle before being transported to the subject site.

During the inspection, I observed that the largest shed where the bagging plant had previously been in situ contained hay bales, bagged potatoes and chips on pallets, and

machinery to include a tractor and forklift. Mr Maguire confirmed that the subject shed was in use for dry goods storage. He also confirmed that the bagging plant machinery is not used on site and is in storage.

I also observed 7 x containers on site during the inspection. Two of these containers are subject to an enforcement notice and are still in situ on site. The containers are used to store pallets of loose potatoes. I also noted that one container on site has windows and a door installed. Mr Maguire confirmed that the container is being used as an office.

The inspection confirmed that the concrete loading area subject to an enforcement notice is still in situ. It was also noted during the inspection that works appear to have extended the concrete area and it now covers a larger footprint. This was confirmed by Mr Maguire on site.

The inspection also confirmed that the metal gate and fence is still in situ surrounding the largest shed on the site. The internal road and gate is also still in situ and therefore in breach of the enforcement notice.

RECOMMENDATION

To date, the outstanding matters relating to enforcement file reference ENF18051 are as follows:

- Submission received from Mr. Thomas Maguire on 8th July 2020 was partly intended to demonstrate that structures on site are being used solely for agricultural purposes and therefore exempted development. However, a number of issues have been found in the submission regarding this, as outlined in the report.
- Site inspection carried out by KCC Planning Enforcement Department on 4th and 17th November 2021 confirmed the galvanised perimeter fence and gate is still in situ and has not been removed. This constitutes development which is not exempted development and is unauthorised.
- Site inspection carried out by KCC Planning Enforcement Department on 17th November 2021 confirms the concrete loading area and 2. No containers as referred to in the Enforcement Notice served on 17th September 2019 is still in situ and has not been removed. Mr. Maguire is therefore in breach of the terms of the Enforcement Notice. The site inspection carried out on 17th November 2021 further confirms that one of the subject containers has been converted into an office.
- Site inspection carried out by KCC Planning Enforcement Department on 30th June 2021, 4th and 17th November 2021, confirms the internal farm access laneway subject to the Enforcement Notice served on Mr. Peter Maher on 26th May 2020 is still in situ. Mr Maher is therefore in breach of the Enforcement Notice.
- Site inspection carried out by KCC Planning Enforcement Department on 6th July 2020 confirms the bagging plant was still in situ in the large storage shed. The introduction of the bagging/packaging process constitutes a material change of use in the opinion of the Planning Authority and therefore the process or use of the shed for this purpose requires planning permission. However, it is noted that the site inspection dated 6th

July 2020 and 17th November 2021 confirmed that bagging plant has still not been put into use and Mr. Maguire confirmed that all the potatoes are still being bagged by Doyles Produce and transported to the site.

Having regard to the aforementioned site inspections and submissions received to date, I recommend that the enforcement investigation is referred to the Planning Authority's Solicitor to review and advise regarding the commencement of legal proceedings.

OFFICER DETAILS

Signature: _____

Date: _____

Lisa McCann, Executive Planner.

Signature: _____

Date: _____

Denis Malone, Senior Planner.

ENF 18051 Derrylackey, Mullinavat, Co. Kilkenny

Google Pro Imagery



Fig 1: Image dated April 2021 showing internal road and containers in situ. Addition of pallet boxes and new hedging on site perimeter also shown.

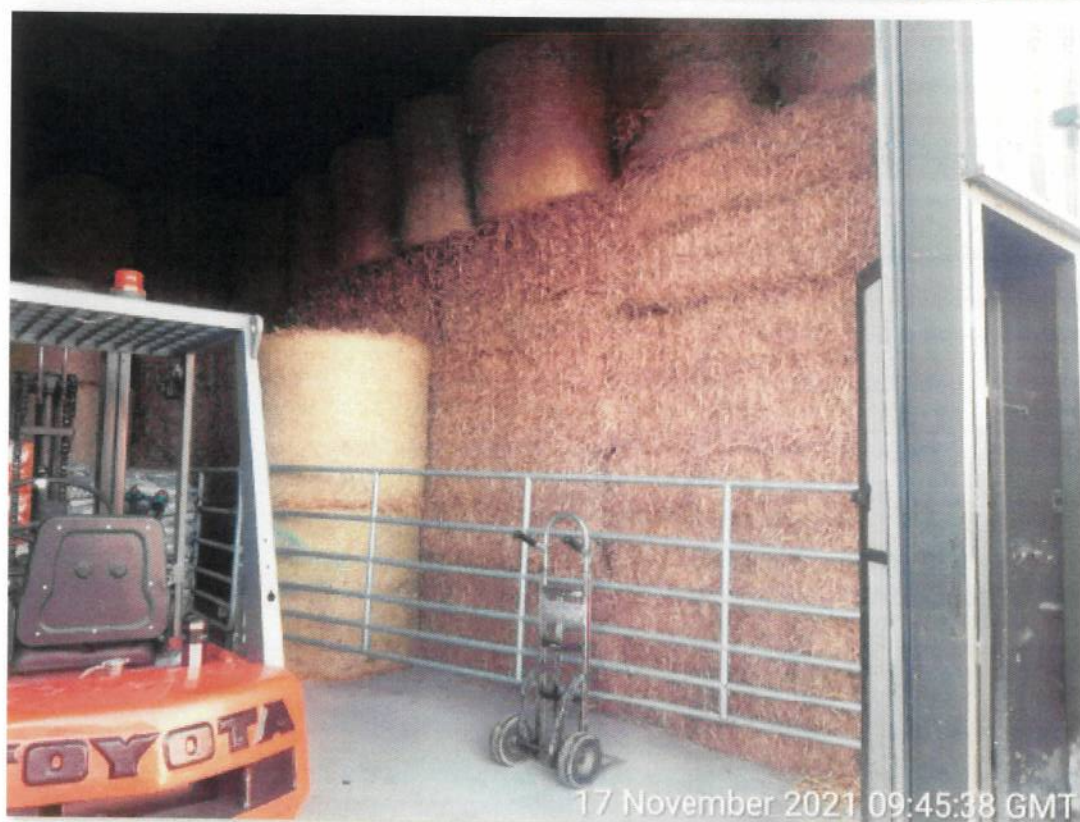


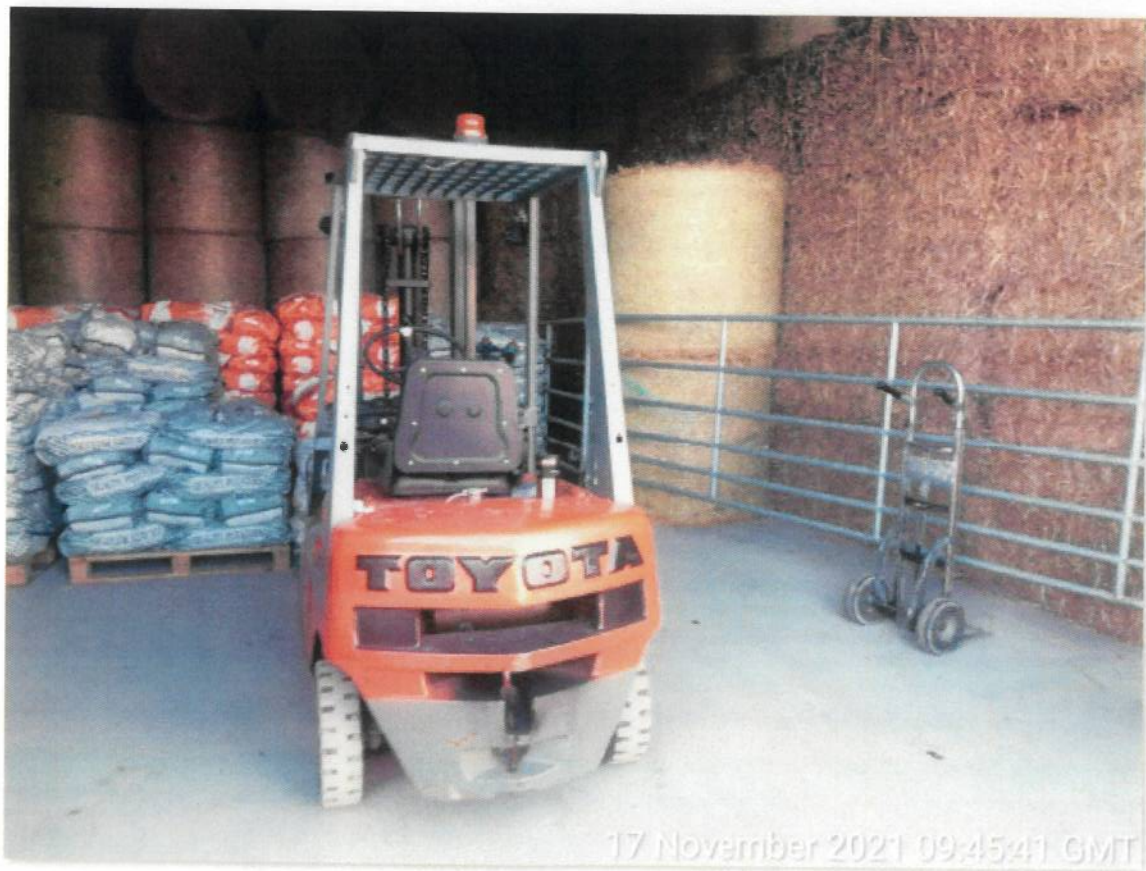
Fig 2: Image dated May 2020 showing internal road constructed and containers in situ.



Fig 3: Image dated April 2020 showing internal road not yet constructed. Containers are shown in situ.

Site Inspection 17th November 2021.



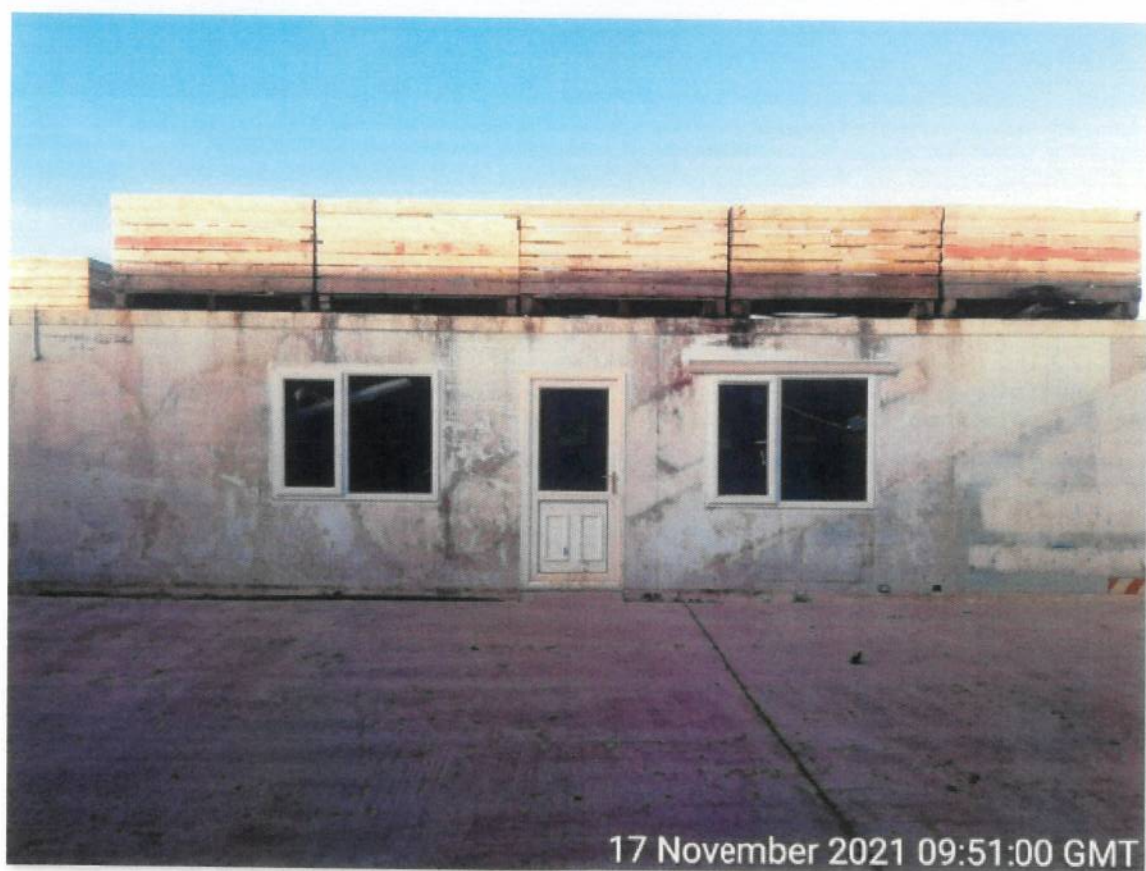
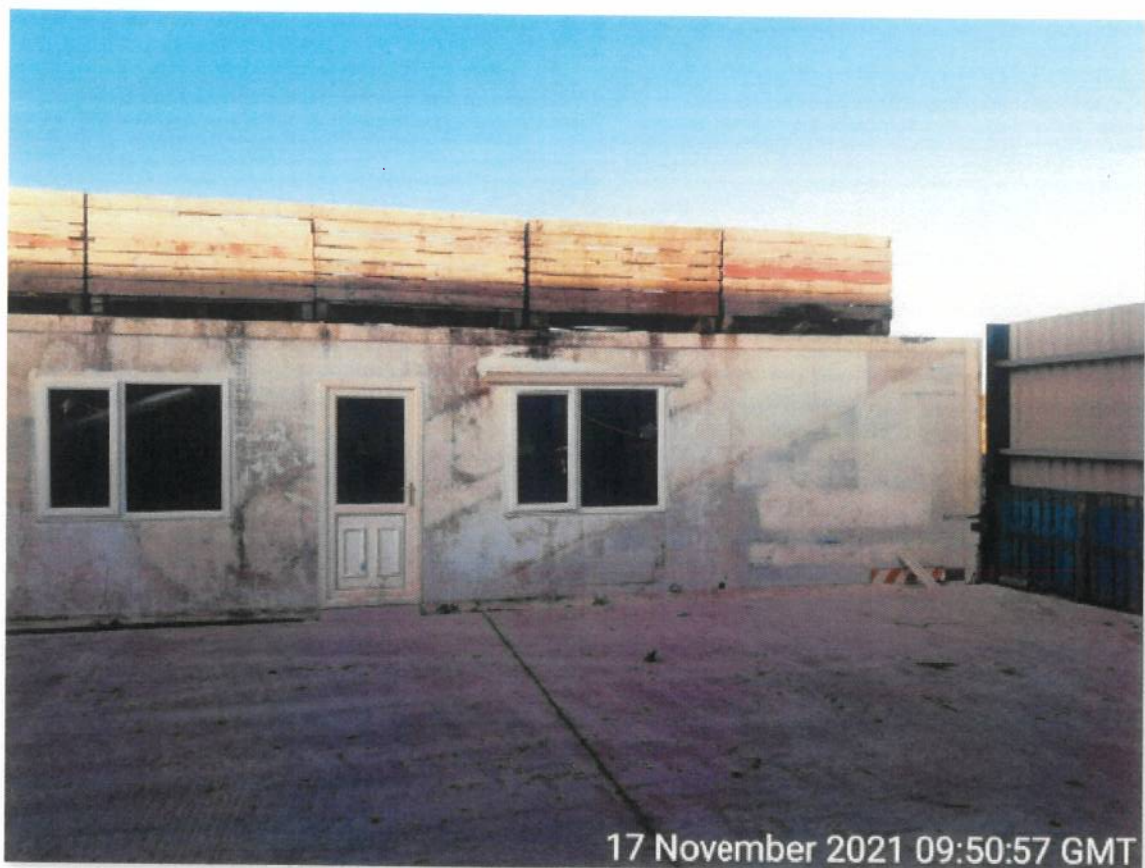










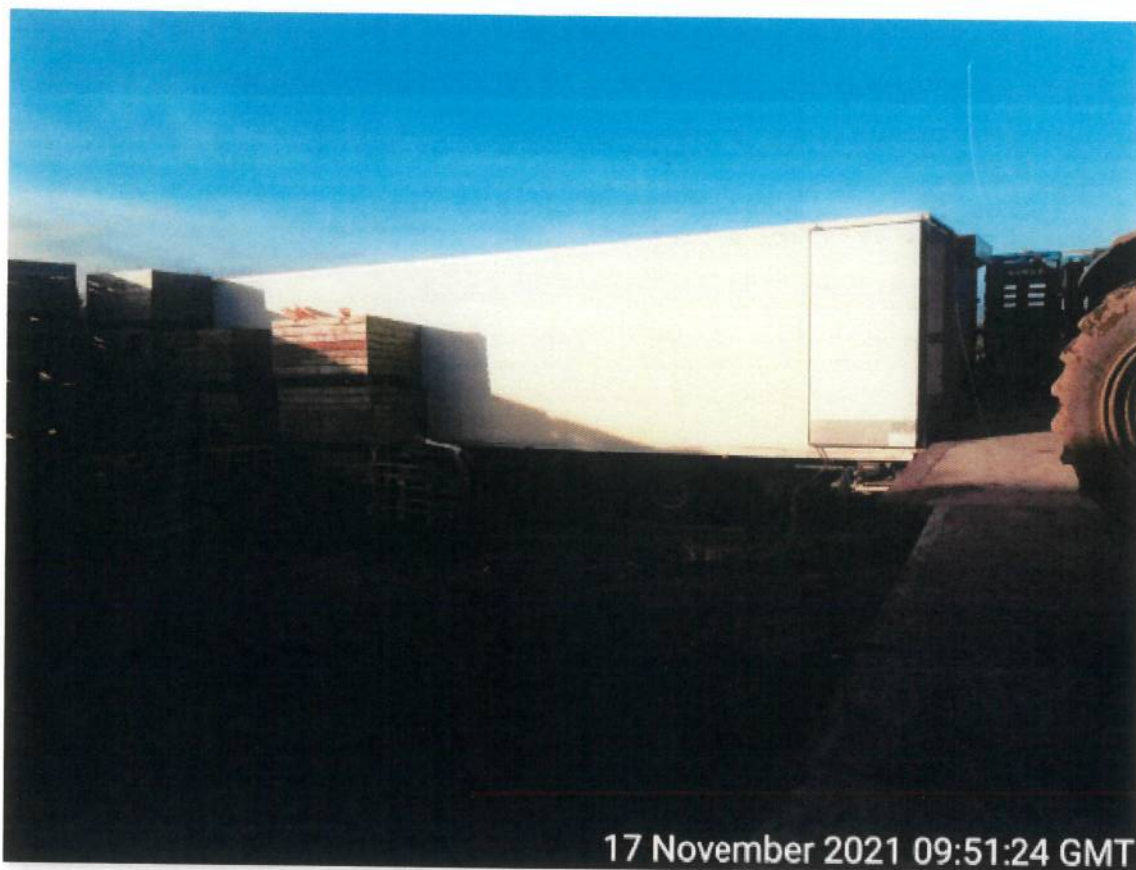




17 November 2021 09:51:02 GMT



17 November 2021 09:51:06 GMT

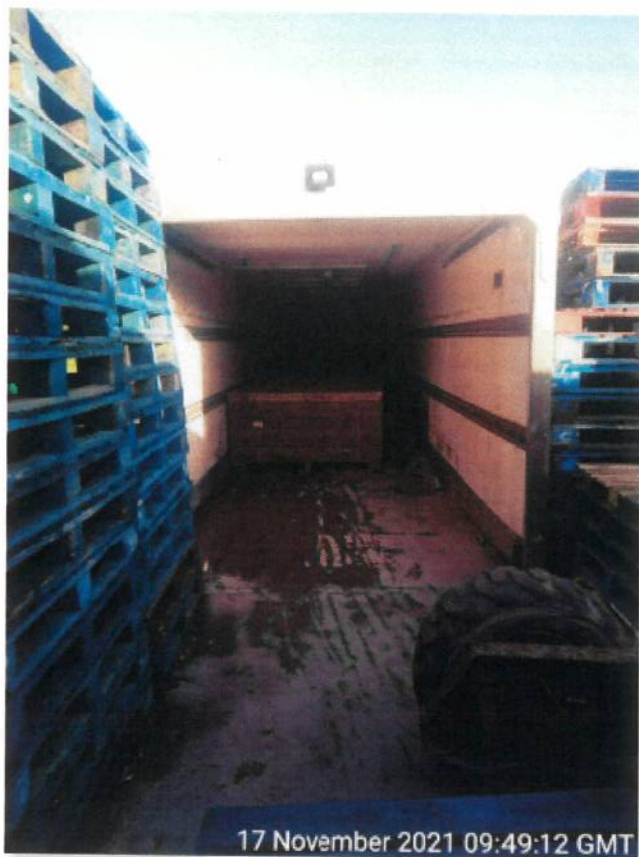


17 November 2021 09:51:24 GMT



17 November 2021 09:51:38 GMT



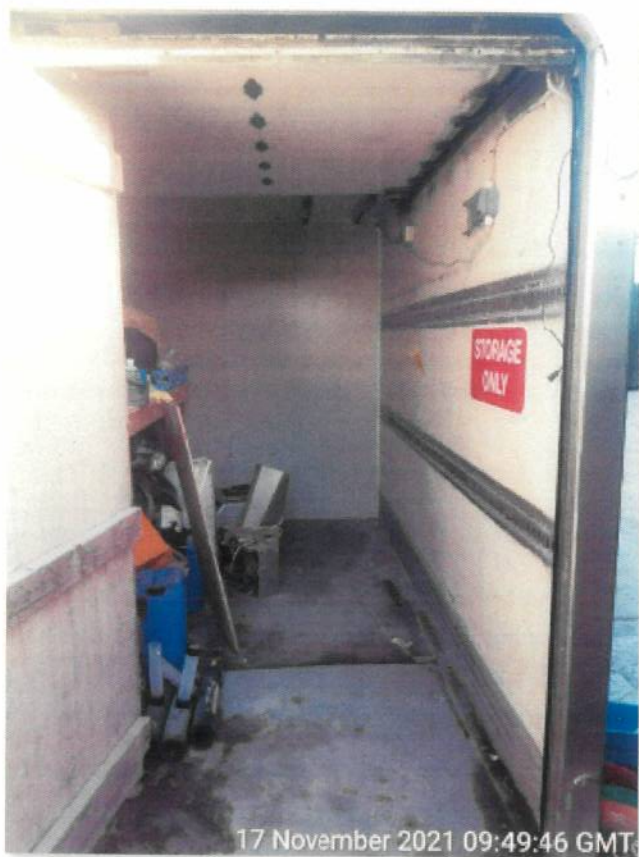


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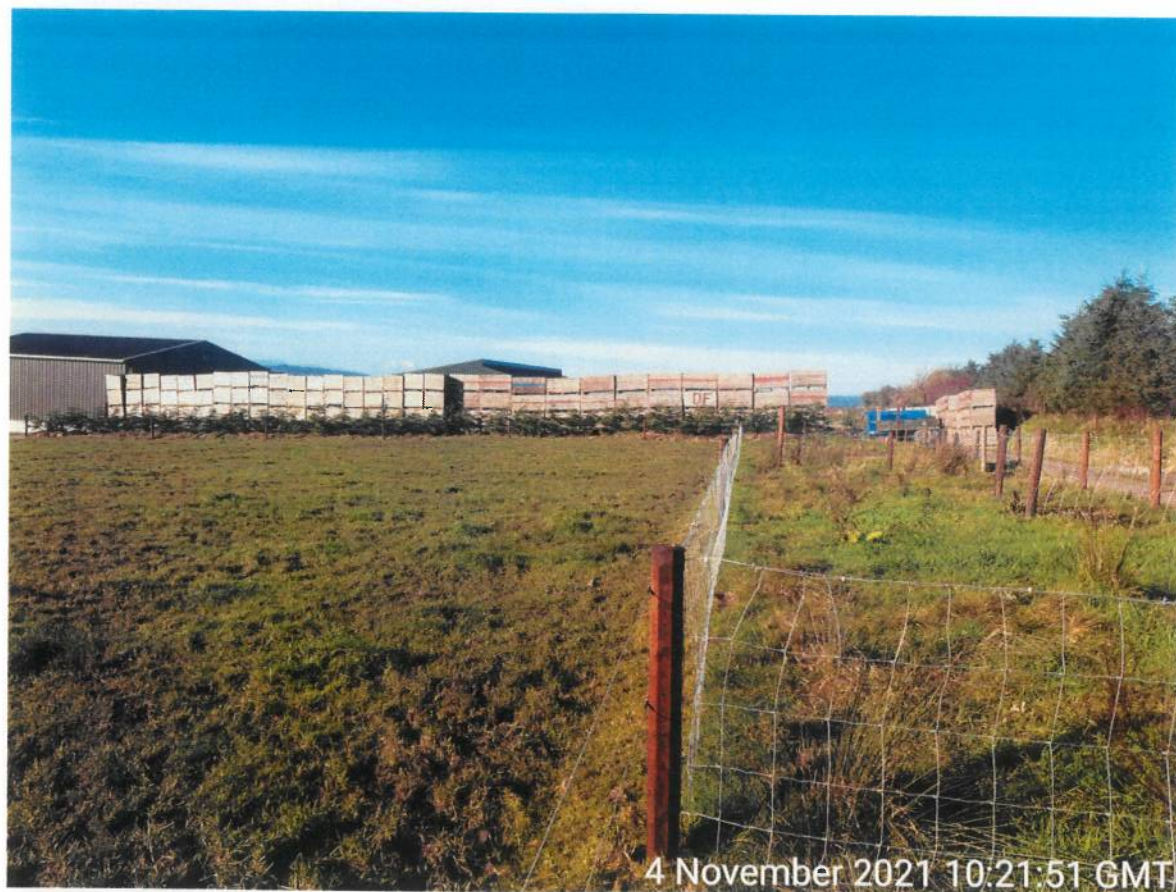


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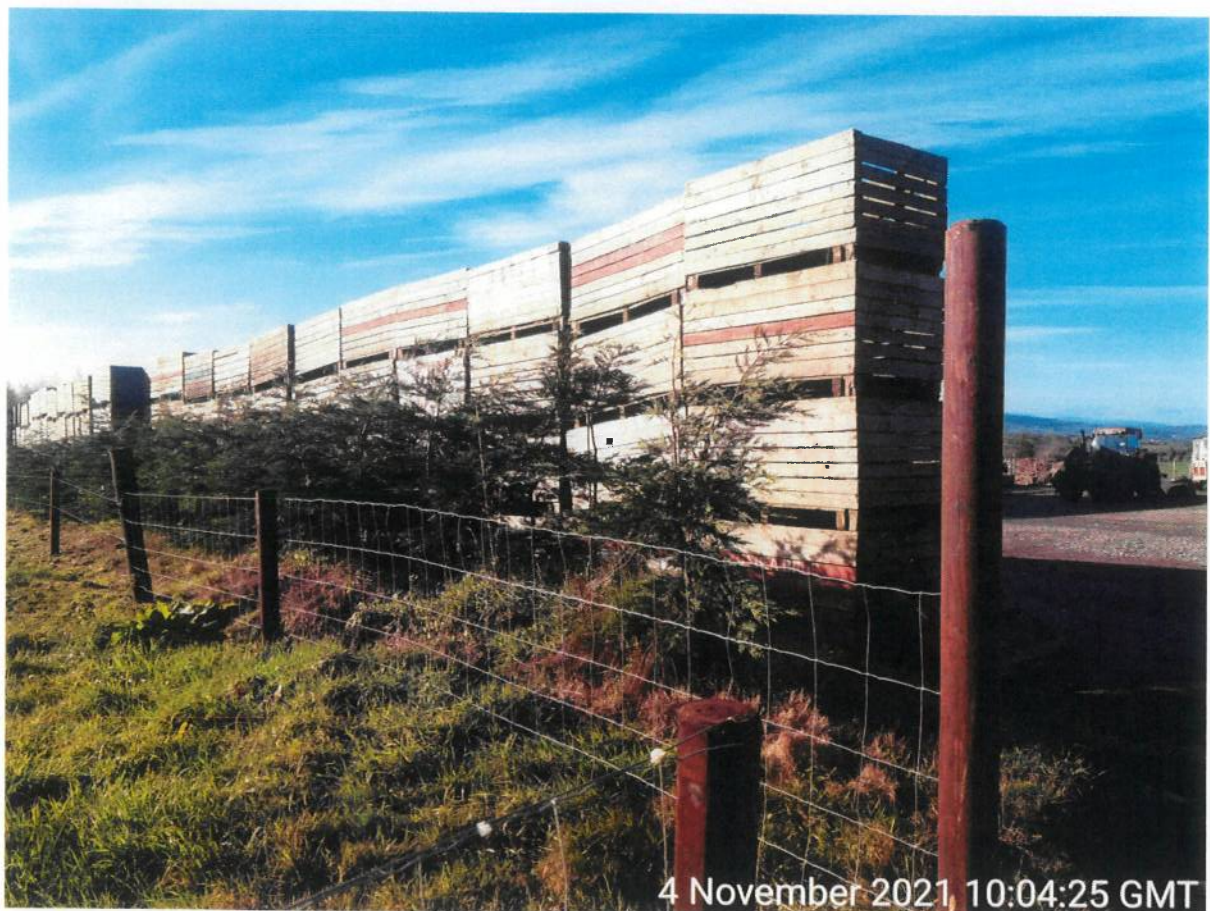


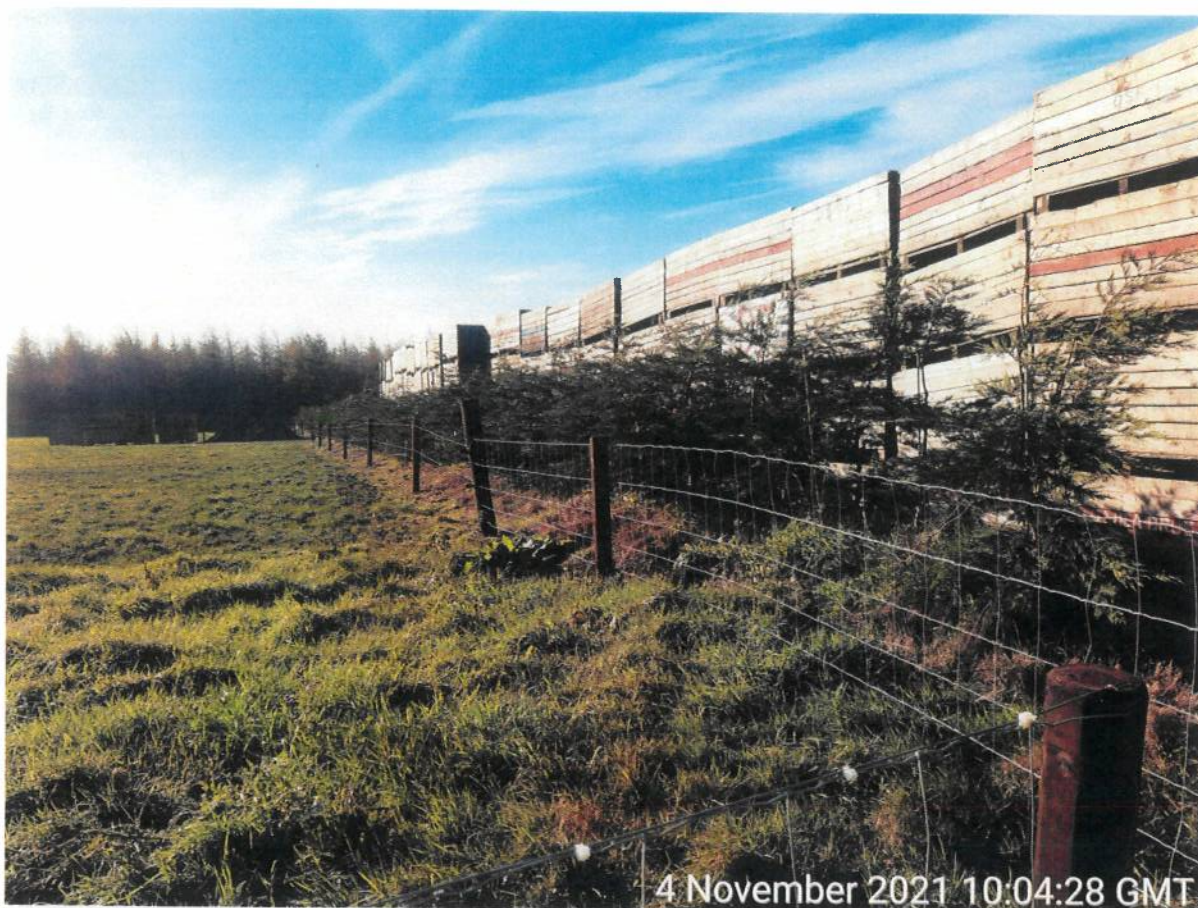


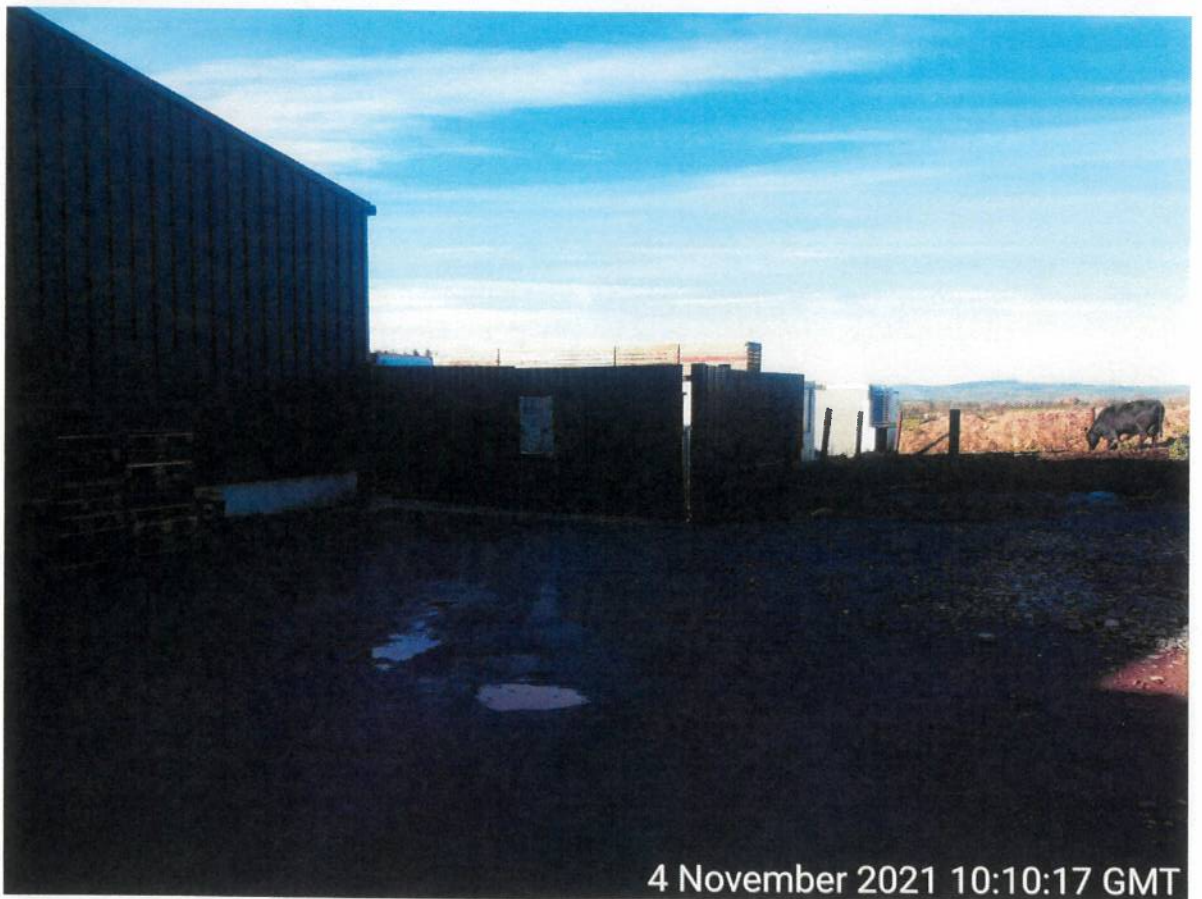
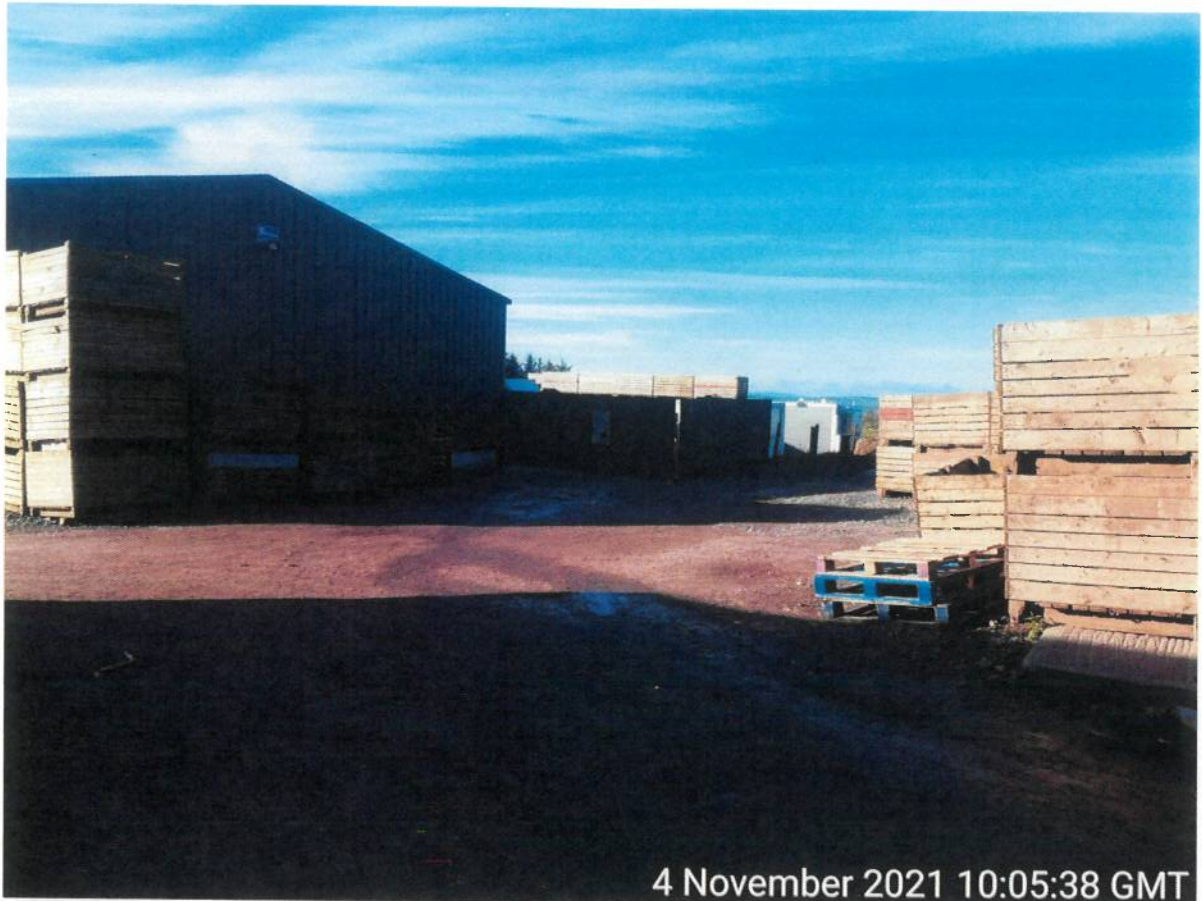
Site inspection 04th November 2021.

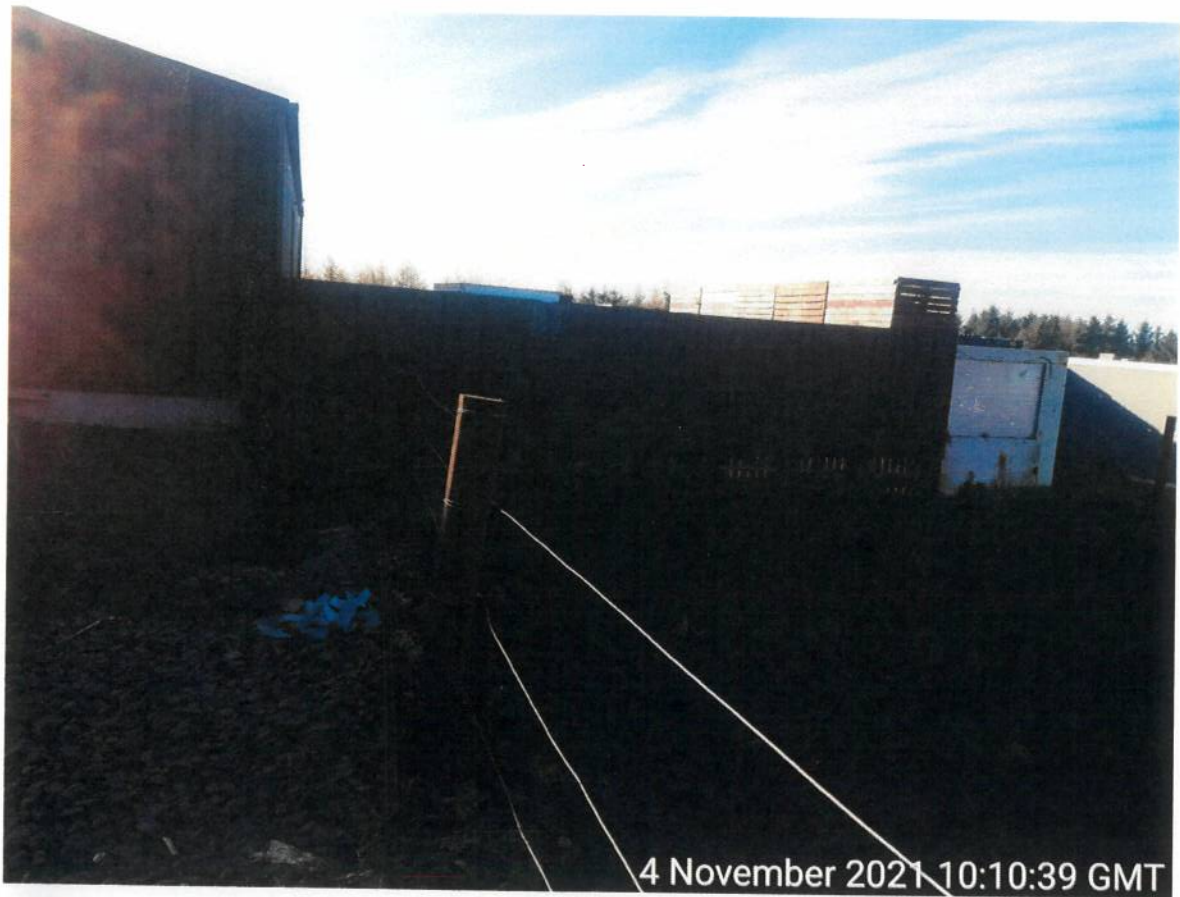










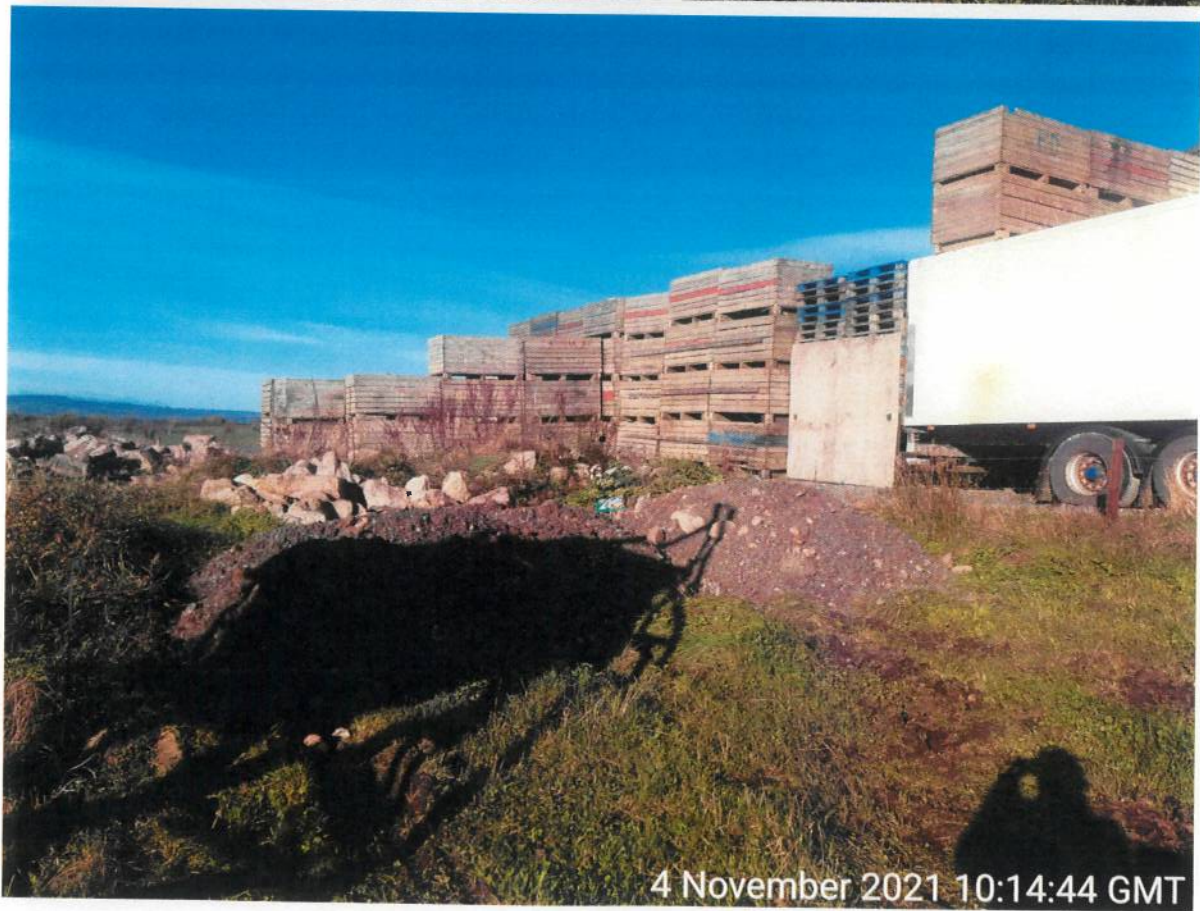
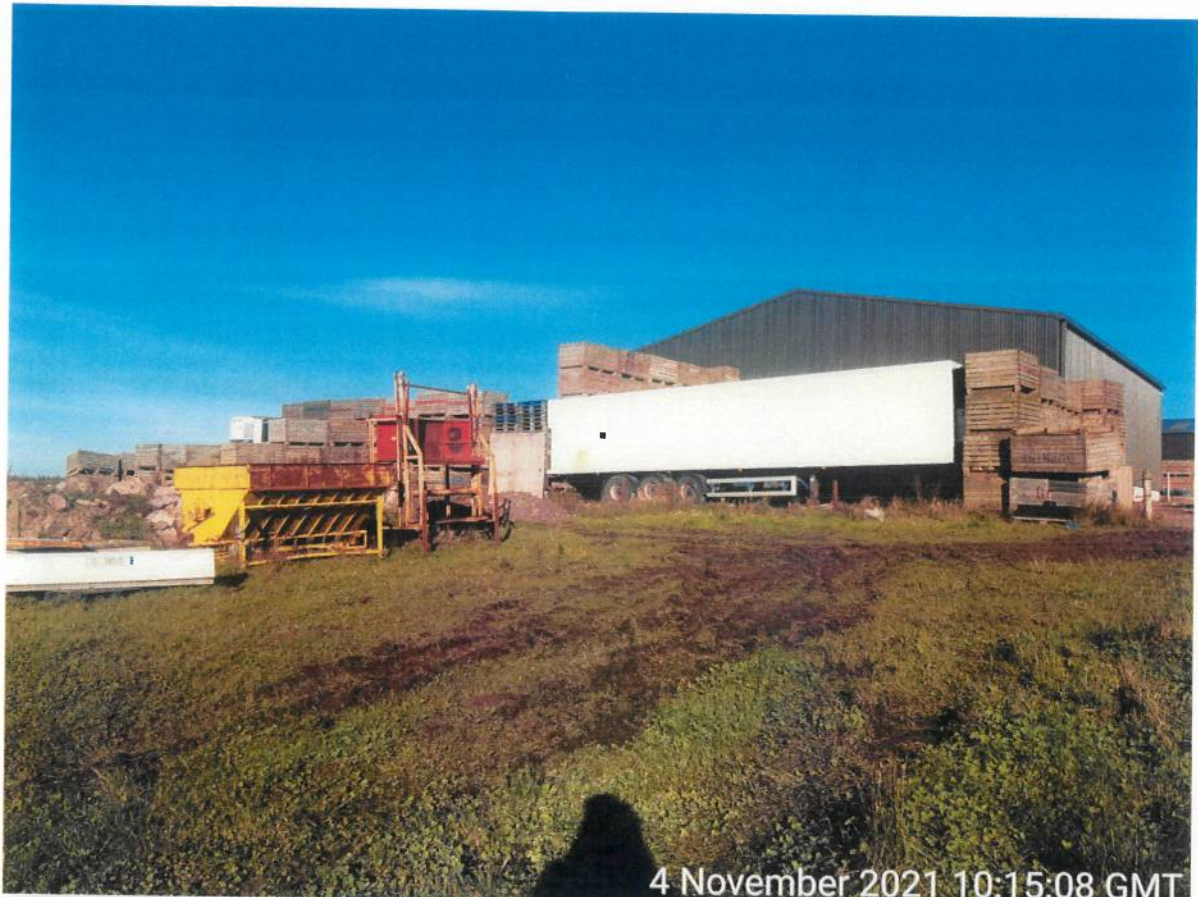


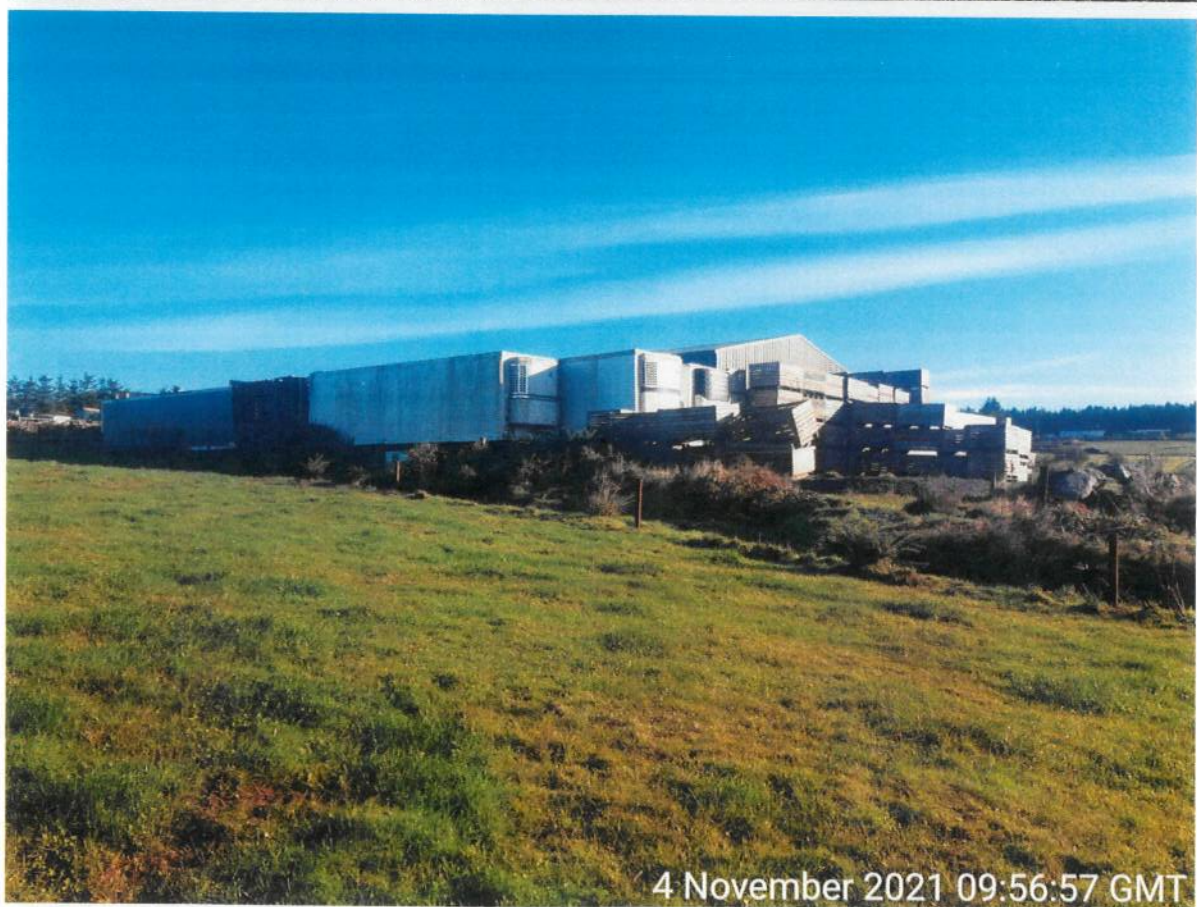
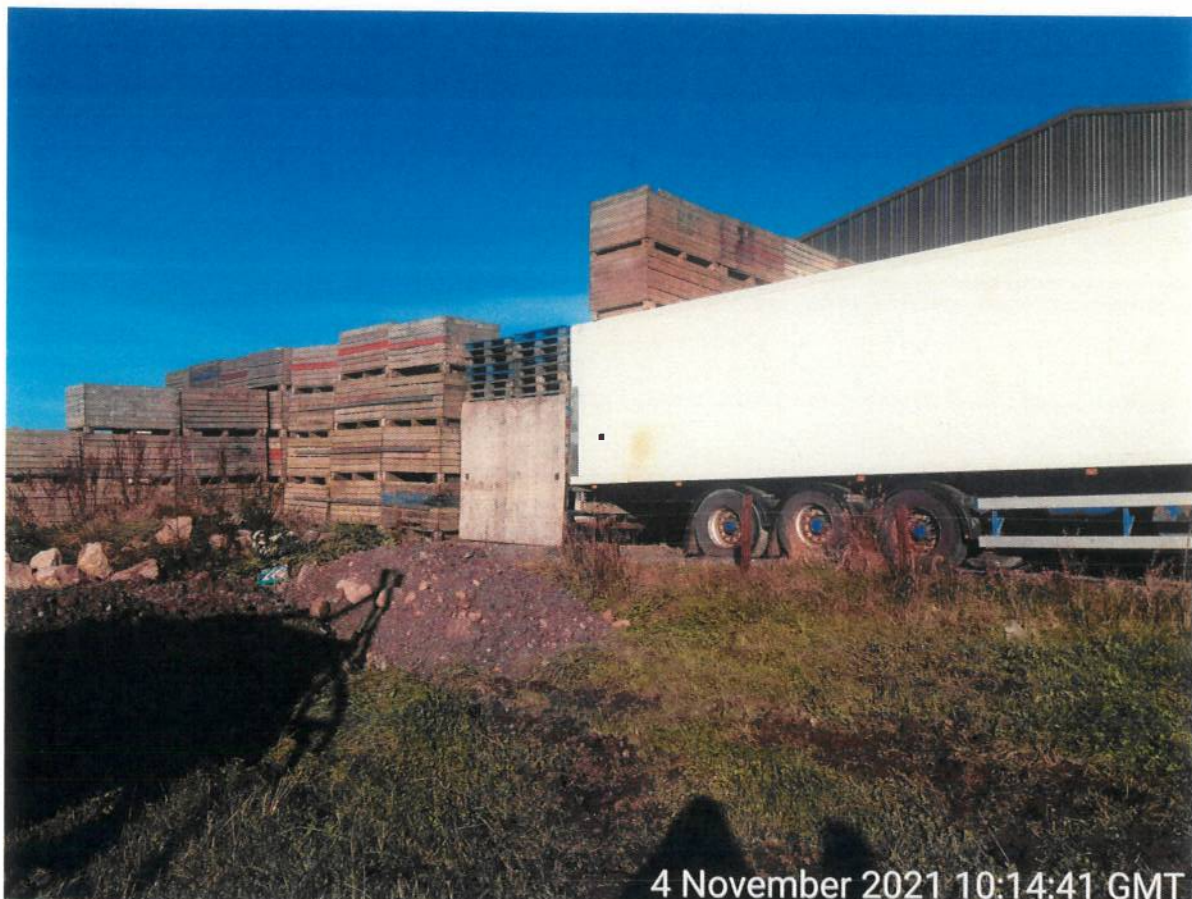
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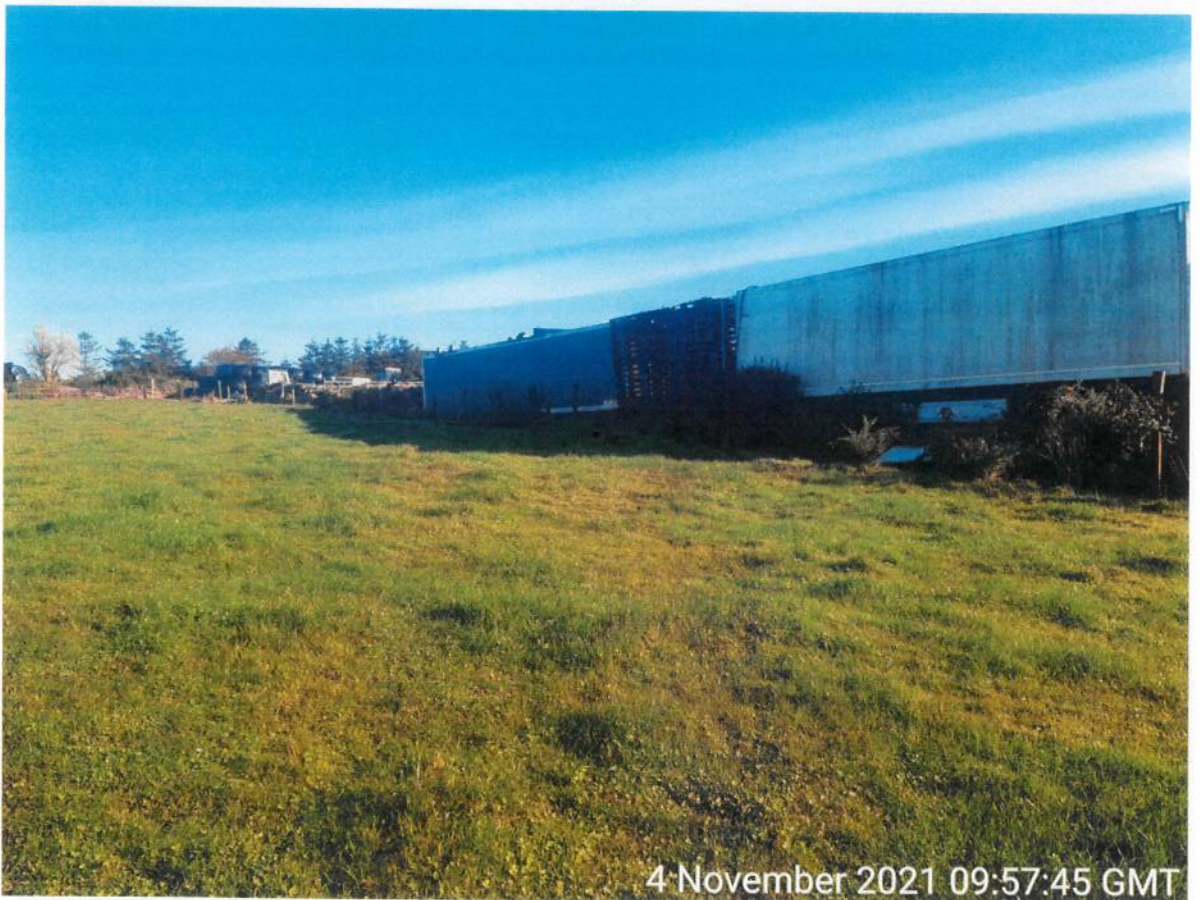


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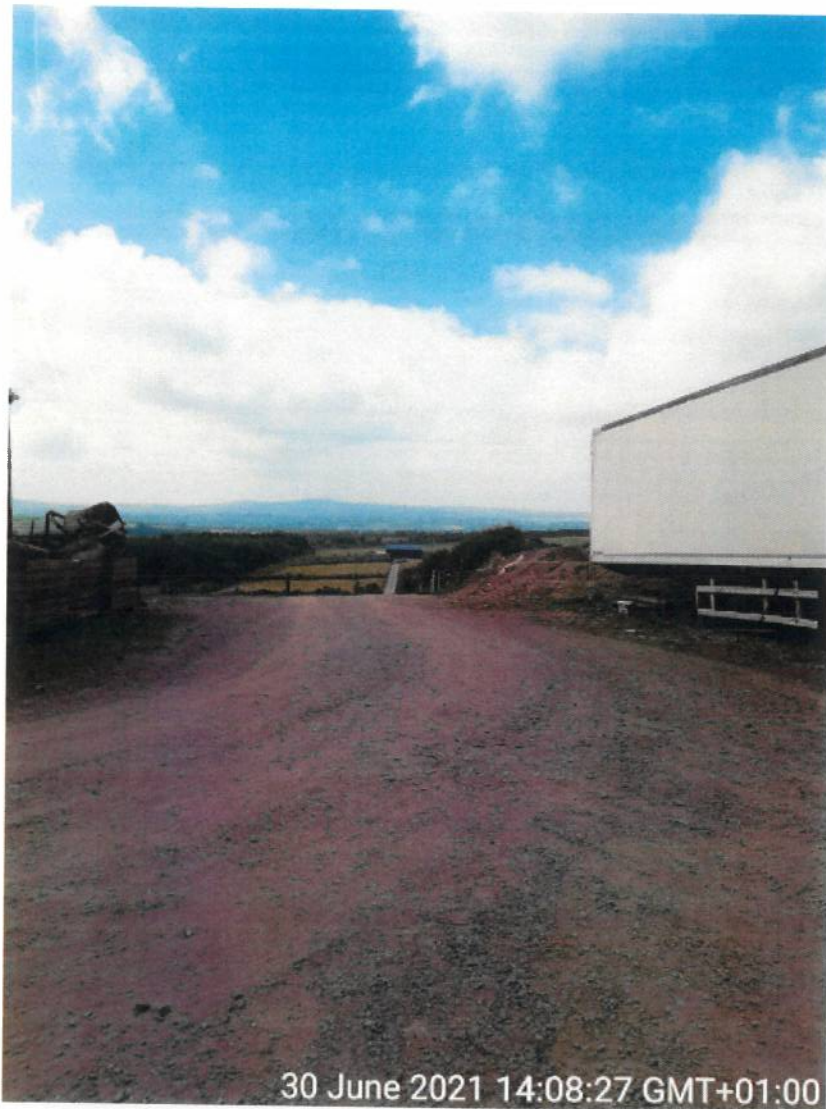








Site inspection 30th June 2021.

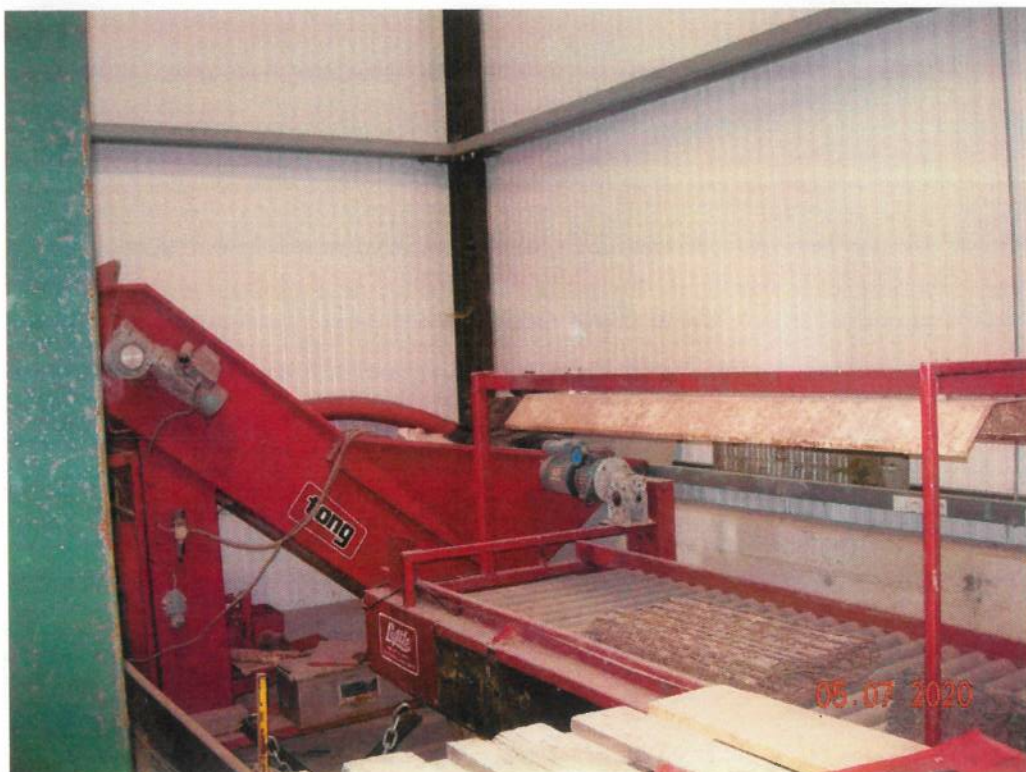
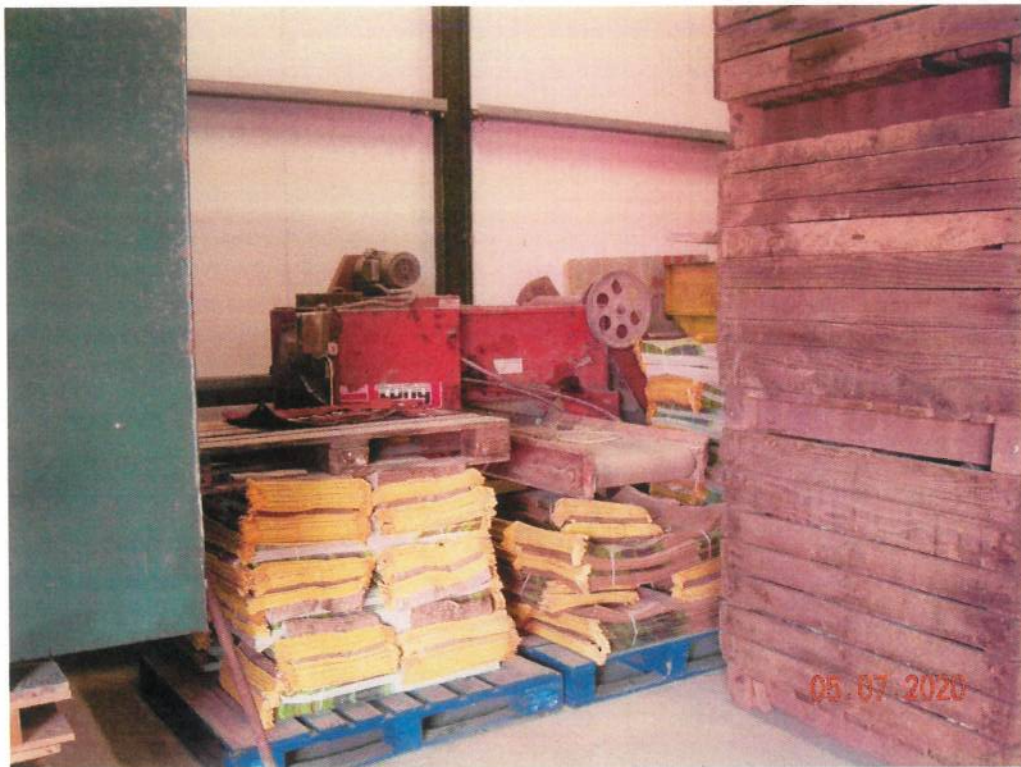


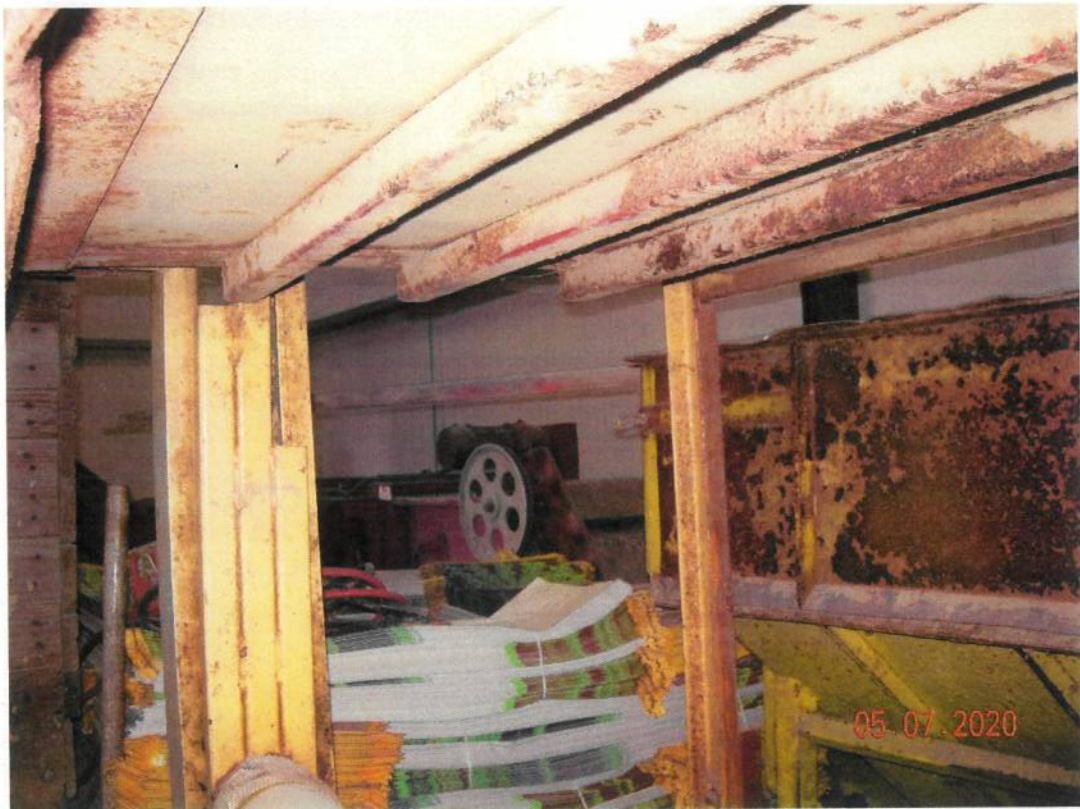


Site inspection 6th July 2020.



















Land Registry

County Kilkenny

Folio 37729F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	<div data-bbox="145 772 316 801">L.R.2/49173</div> <div data-bbox="397 734 1350 795">The property No. 2 is subject to the fishing rights, or fisheries, if any, excepted by Order of the Land Commission..</div>

Land Registry

County Kilkenny

Folio 37729F

Part 2 - Ownership

Title ABSOLUTE See Entry 1 part 2

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

1	09-MAY-2014 NICHOLAS WALSH of 25 Greenoaks, Rockshire Road, Ferrybank, D2014LR047395A County Waterford is full owner.
---	--

1	04-SEP-2014 The possessory title of the properties 1 and 2 have been D2014LR047395A converted to absolute.
---	---

Land Registry

County Kilkenny

Folio 37729F

Part 1(B) - Property

Parts Transferred

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

Land Registry

County Kilkenny

Folio 37729F

Register of Ownership of Freehold Land

Part 1(A) - The Property

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

No.	For parts transferred see Part 1(B) Description	Official Notes
1	The property shown coloured Red as plan(s) C8NH3 on the Registry Map, situate in the Townland of MOUNTNEILL, in the Barony of IVERK, in the Electoral Division of PORTNASCULLY. The Registration does not extend to the mines and minerals	From Folio KK12758N
2	The property shown coloured Red as plan(s) 1D on the Registry Map, situate in the Townland of CUSSANA, in the Barony of IVERK, in the Electoral Division of PORTNASCULLY. The Registration does not extend to the mines and minerals	From Folio KK12758N

Land Registry

County Kilkenny

Folio 37729F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	<div data-bbox="140 768 311 795">L.R.2/49173</div> <div data-bbox="395 728 1343 788">The property No. 2 is subject to the fishing rights, or fisheries, if any, excepted by Order of the Land Commission..</div>

County Kilkenny

Part 2 - Ownership

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

1 04-SEP-2014 The possessory title of the properties 1 and 2 have been
D2014LR047395A converted to absolute.

Land Registry

County Kilkenny

Folio 37729F

Part 1(B) - Property
Parts Transferred

Land Registry

County Kilkenny

Folio 37729F

Register of Ownership of Freehold Land

Part 1(A) - The Property

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

No.	Description	Official Notes
1	<p>For parts transferred see Part 1(B)</p> <p>The property shown coloured Red as plan(s) C8NH3 on the Registry Map, situate in the Townland of MOUNTNEILL, in the Barony of IVERK, in the Electoral Division of PORTNASCULLY.</p> <p>The Registration does not extend to the mines and minerals</p>	From Folio KK12758N
2	<p>The property shown coloured Red as plan(s) 1D on the Registry Map, situate in the Townland of CUSSANA, in the Barony of IVERK, in the Electoral Division of PORTNASCULLY.</p> <p>The Registration does not extend to the mines and minerals</p>	From Folio KK12758N

