

Council Reference DEC704

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

AN BORD PLEANÁLA
LDG- 054753
ABP-
24 JUN 2022
Fee: € 40 Type: chg
Time: By: Dec Post

03rd June 2022

RE: Referral under Section 5(4) of Planning & Development Act 2000 (as amended)
'Lands at Derrylackey, Mullinavat, Co. Kilkenny.'

A Chara,

Kilkenny County Council hereby refers the following question(s) to be determined by the Board:

1. *Whether the use of a shed, containers, concrete loading area, and access laneway to facilitate potato storage and distribution at Lands at Derrylackey, Mullinavat, Co. Kilkenny is or is not development and is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).*

Background

The subject site comprises a farm complex in a rural area of Derrylackey, Mullinavat, Co. Kilkenny which is situated within the overall landholding of Mr. Peter Maher. The site comprises two no sheds, several containers, a concrete loading area, extensive pallet stacked storage, and a hardcore driveway with an access onto the public road. The subject site is located at the end of a cul-de-sac laneway, Ref: LS7452 which is connected off the main local secondary road, Ref: LS7451. This in turn connects with the regional road R704 at Ballynooney East. Documentation obtained by Kilkenny Council Planning Enforcement Section via the Companies Registration Office website shows that Mr Thomas Maguire is Director of 'Maguire Maher Enterprises Limited', with Rehard East, Mullinavat, Kilkenny as the registered company address (See Appendix 4).

The Planning Authority received a complaint in June 2018 in relation to the construction of agricultural structures within the subject farm complex at Derrylackey, Mullinavat. An enforcement investigation (Council Reference ENF18051) was subsequently opened by the Planning Authority. Several site inspections have been carried out by Kilkenny County Council Planning Enforcement Section to date regarding the matter and the current enforcement file is under investigation regarding the following alleged unauthorised development:-

1. Alleged unauthorised construction of an internal access laneway.
2. Alleged unauthorised use of agricultural building for warehousing and as a distribution centre.
3. Alleged unauthorised containers erected on site and associated concrete loading area.

Google Maps Imagery is included below showing the subject site and the approximate footprint of the subject shed (330sqm).



A total of 3 x enforcement notices and 1 x warning letter has been issued to date regarding the subject enforcement investigation. Further details regarding same is outlined in the history section below and Appendix 1. Ultimately, the Planning Authority is not satisfied with the submissions received from the developer to date and considers that that developer has failed to suitably address the Warning Letter or comply with the terms of the Enforcement Notices.

It is noted that a planning application was submitted to the Planning Authority in 2019 to retain indefinitely 2 steel containers, concrete loading base and all associated works in relation to the enforcement investigation. However, permission was refused in 2019 as detailed in the history

section below. Details of the refusal are also included in Appendix 3 (Planners delegated report) of the submission.

The on-going enforcement investigation (Council Reference ENF18051) has now been referred to the Council's Solicitor to provide legal advice as detailed in Appendix 2 (File Update dated 10th March 2022). To clarify, the current referral to the Board under Section 5(4) of Planning & Development Act 2000 (as amended) is a separate matter to the aforementioned legal proceeding.

Planning History

Reference: 19/767

Description: To retain indefinitely 2 steel containers, concrete loading base and all associated works.

Status: Refused 10/12/2019

Reason(s) for refusal:-

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.*

Enforcement History

Reference: ENF18051

Status: Under investigation

Description: Alleged unauthorised development, namely:-

1. The construction of an internal farm access laneway and all associated site works.
2. Unauthorised use of 2 no. agricultural buildings for warehousing and as a distribution centre.
3. Unauthorised containers erected on site and associated concrete loading area.

Enforcement action taken to date:

- Enforcement Notice issued to Mr Peter Maher 26th May 2020.

Mr Peter Maher and Thomas Maguire provided responses to the Enforcement notice in submissions received by the Planning Authority on 17th June 2020, 8th July 2020, and 10th August 2020 (See Appendix 6). The Terms of the Notice have not been complied to date.

- Enforcement Notice issued to Mr Thomas Maguire, Director, Maguire Maher Enterprises Limited on 17th September 2019.

Mr Thomas Maguire provided a response to the Enforcement notice in a submission received by the Planning Authority on 3rd October 2019 (See Appendix 6). The Terms of the Notice have not been complied to date.

- Enforcement Notice issued to Mr Peter Maher 01st August 2019.

Mr Peter Maher provided a response to the Enforcement notice in a submission received by the Planning Authority on 16th May 2019 (See Appendix 6). The Terms of the Notice have not been complied to date.

- Warning Letter issued to Mr. Peter Maher on 24th July 2018.

Mr Tom Downey provided a response on behalf of his client Mr Peter Maher to the Warning Letter in a submission received by the Planning Authority on 9th August 2018 (See Appendix 6). The issues detailed in the Warning Letter have not been suitable addressed to date.

Planning Authority View

The following definition of agriculture is set out in Part 1, Section 2 of the Planning & 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 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, and “agricultural” shall be construed accordingly”

Having regard to several site inspections carried out to date by the Planning Authority, it is considered that the current use of the subject shed, which measures an approximate footprint of 330sqm, is in use as a warehouse/distribution centre, where pallets of potatoes are delivered in articulated lorries and stored in the large shed and the containers on site. Vans arrive to collect the produce which is then delivered to customers. It is the view of the Planning Authority that the use of the structure on site for commercial purposes such as warehousing/distribution constitutes a material change of use from agricultural use to commercial. Based on the site inspections carried out to date, it is considered that the development does not fall within the scope of exempted development, and such a change of use has taken place on the site without the benefit of planning permission.

Further, the traffic movements associated with the development also raise concerns given the narrow cul-de-sac nature of the subject lane and the impact of the large articulated lorries on the condition of the lane.

The question subsequently now arises as to:-

Whether the use of a shed, containers, concrete loading area, and access laneway to facilitate potato storage and distribution at Lands at Derrylackey, Mullinavat, Co. Kilkenny is or is not development and is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).

To assist in the determination of the referral please find enclosed:

1. Appendix 1
 - Copy of 3 x Enforcement Notices issued 01st August 2019, 17th September 2019, 26th May 2020, in relation to Enforcement File Ref ENF18051.
 - Copy of 1 x Warning Letter issued 24th July 2018 in relation to Enforcement File Ref ENF18051.
2. Appendix 2
 - Copy of Planner's reports and site inspection photos to date in relation to Enforcement File Ref ENF18051:
 - Report dated 23rd July 2018
 - Report dated 7th September 2018
 - Report dated 24rd July 2019
 - Report dated 29th July 2019

- Report dated 8th October 2019
 - Report dated 7th February 2020
 - Report dated 11th May 2020
 - Report dated 13th May 2020
 - Report dated 6th July 2020
 - Report dated 22nd July 2021
 - Report dated 10th March 2022
3. Appendix 3
- Copy of Planner's delegated report signed 10th December 2019 for refused Planning Application Ref 19/767.
4. Appendix 4
- Copy of Company Printout for 'Maguire Maher Enterprises Limited' (Company Number 618389) obtained via Companies Registration Office website.
5. Appendix 5
- Copy of submissions received from Mr Tom Downey, Mr Peter Maher, and Mr Thomas Maguire in relation to Enforcement File Ref ENF18051:
- Submission from Mr Tom Downey received 9th August 2018.
 - Submission from Mr Tom Downey received 21st September 2018.
 - Submission from Mr Tom Downey received 15th March 2019.
 - Submission from Mr Peter Maher received 16th August 2019.
 - Submission from Mr Thomas Maguire received 03rd October 2019.
 - Submission from Mr Peter Maher received 17th June 2020.
 - Submission from Mr Thomas Maguire received 17th June 2020.
 - Submission from Mr Thomas Maguire received 8th July 2020.
 - Submission from Mr Peter Maher received 10th August 2020.
6. Appendix 6
- Copy of email correspondence containing photographic submissions from complainant in relation to Enforcement File Ref ENF18051.

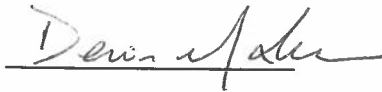
Names and addresses of people who make complaints to the Council in enforcement issues are not normally disclosed. However, the complainant has consented that Kilkenny County Council discloses their identity in this instance. Ms. Lorraine Maher can be contacted via the following email address: [REDACTED]

I attach herewith fee of €110 required for a Section 5 referral.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read 'Lisa McCann', written over a horizontal line.

Lisa McCann, Executive Planner

A handwritten signature in dark ink, appearing to read 'Denis Malone', written over a horizontal line.

Denis Malone, A/Director of Service

Appendix 1

KILKENNY COUNTY COUNCIL
CHIEF EXECUTIVE /DELEGATED OFFICERS ORDER
SECTION - PLANNING

REF: ENF18051

ORDER NO:

Name(s):

1. Peter Maher, Derrylackey, Mullinavat, Co. Kilkenny.

Subject / Reasons for serving Enforcement Notice

Unauthorised use of 2 no. agricultural buildings for warehousing
and as a distribution centre and unauthorised 2 no. containers
erected on site and associated concrete loading area at Derrylackey,
Mullinavat, Co. Kilkenny

Terms for compliance with Enforcement Notice

- (i) Cease the use of the 2 no. agricultural buildings for warehousing and as a distribution centre at Derrylackey, Mullinavat, Co. Kilkenny
- (ii) Remove the 2 no. containers and associated concrete loading area at Derrylackey, Mullinavat, Co. Kilkenny

Time period for compliance with Terms of Enforcement Notice

- (i) within two (2) weeks of the service of notice
- (ii) within one (1) month of the service of notice

Order: Service of an Enforcement Notice under the provisions of Section 154 of the Planning & Development Act 2000 (as amended) on the above named, is hereby ordered.

Signed:

Chief Executive/Delegated Officer

Date:



ENFORCEMENT NOTICE

SECTION 154 PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)

LANDS AT: Derrylackey, Mullinavat, Co. Kilkenny
(as outlined in red on the attached map)

Ref: ENF18051

WHEREAS an unauthorised development is being carried out by you on the above lands which said unauthorised development consists of:

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.

Now take notice that The County Council of the County of Kilkenny, under the provisions of Section 154 of the Planning & Development Act 2000 (as amended), requires you to:

- 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.**

In the event that the steps specified herein are not taken within the above-mentioned period(s), the County Council of the County of Kilkenny may enter on the land and take such steps, including the removal, demolition or alteration of any structure and may recover from you any expenses reasonably incurred by them in that behalf.

TAKE NOTICE that the costs and expenses incurred by Kilkenny County Council in relation to the investigation, detection and the issue of this Enforcement Notice amount to **€358.68 (Three hundred and fifty eight euros & sixty eight cent)** which are hereby required to be refunded to the Planning Authority forthwith which said costs and expenses are recoverable by the Planning Authority by virtue of the provisions of the Planning & Development Act 2000 (as amended)

AND FURTHER TAKE NOTICE that in the event that the steps specified in this notice to be taken are not taken within the period specified herein that you may be guilty of an offence under the provisions of the above Act.

Dated this the 26th May, 2020

Denis Malone

Senior Planner

TO: Mr. Peter Maher
Derrylackey
Mullinavat
Co. Kilkenny



ENFORCEMENT NOTICE

SECTION 154 PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)

LANDS AT : Derrylackey, Mullinavat, Co. Kilkenny
(as outlined in red on the attached map)

Ref: ENF18051

WHEREAS an unauthorised development is being carried out by you on the above lands which said unauthorised development consists of:

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

Now take notice that The County Council of the County of Kilkenny, under the provisions of Section 154 of the Planning & Development Act 2000 (as amended), requires you to:

within two (2) weeks of the service of this notice – to carry out the following steps;

- Cease the use of the 2 no. agricultural buildings for warehousing and as a distribution centre.
-

within four (4) weeks of the service of this notice – to carry out the following steps;

- Remove the 2 no. containers and associated concrete loading area.

In the event that the steps specified herein are not taken within the above mentioned period(s), the County Council of the County of Kilkenny may enter on the land and take such steps, including the removal, demolition or alteration of any structure and may recover from you any expenses reasonably incurred by them in that behalf.

TAKE NOTICE that the costs and expenses incurred by Kilkenny County Council in relation to the investigation, detection and the issue of this Enforcement Notice amount to **€248 (Two Hundred and Forty Eight Euros)** which are hereby required to be refunded to the Planning Authority forthwith which said costs and expenses are recoverable by the Planning Authority by virtue of the provisions of the Planning & Development Act 2000 (as amended)

AND FURTHER TAKE NOTICE that in the event that the steps specified in this notice to be taken are not taken within the period specified herein that you may be guilty of an offence under the provisions of the above Act.

Dated this the 17th September, 2019

Denis Malone
Senior Planner

TO: **Maguire Maher Enterprises Limited**
Rehard East
Mullinavat
Co. Kilkenny



ENFORCEMENT NOTICE

SECTION 154 PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)

LANDS AT : Derrylackey, Mullinavat, Co. Kilkenny
(as outlined in red on the attached map)

Ref: ENF18051

WHEREAS an unauthorised development is being carried out by you on the above lands which said unauthorised development consists of:

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

Now take notice that The County Council of the County of Kilkenny, under the provisions of Section 154 of the Planning & Development Act 2000 (as amended), requires you to:

within two (2) weeks of the service of this notice - to carry out the following steps;

- Cease the use of the 2 no. agricultural buildings for warehousing and as a distribution centre.
-

within four (4) weeks of the service of this notice - to carry out the following steps;

- Remove the 2 no. containers and associated concrete loading area.

In the event that the steps specified herein are not taken within the above mentioned period(s), the County Council of the County of Kilkenny may enter on the land and take such steps, including the removal, demolition or alteration of any structure and may recover from you any expenses reasonably incurred by them in that behalf.

TAKE NOTICE that the costs and expenses incurred by Kilkenny County Council in relation to the investigation, detection and the issue of this Enforcement Notice amount to **€248 (Two Hundred and Forty Eight Euros)** which are hereby required to be refunded to the Planning Authority forthwith which said costs and expenses are recoverable by the Planning Authority by virtue of the provisions of the Planning & Development Act 2000 (as amended)

AND FURTHER TAKE NOTICE that in the event that the steps specified in this notice to be taken are not taken within the period specified herein that you may be guilty of an offence under the provisions of the above Act.

Dated this the 17th September, 2019

Denis Malone
Senior Planner

TO:

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

Our Ref: ENF180501

Date: 24th July, 2018

Peter Maher
Derrylackey
Mullinavat
Co. Kilkenny

WARNING LETTER

PLANNING AND DEVELOPMENT ACT 2000 (as amended)

SECTION 152 PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Re: Development at Derrylacken, Mullinavat, Co. Kilkenny

A Chara,

You are advised that it has come to the attention of the Planning Authority that unauthorised development may have been, is being or may be carried out at the above address.

Having had regard to the above, it appears to the Planning Authority that the unauthorised development comprises the following;

<p>Alleged Unauthorised Steel Frame Structure under Construction for the Intended use as a Dry Storage and Machinery Shed</p>
--

which is considered an offence under the Planning and Development Act 2000 (as amended).

Please note that in accordance with Section 152, subsection 4 (b) of the Planning and Development Act 2000 (as amended), you may make submissions or observations in writing to the Planning Authority regarding the above, **not later than 4 weeks from the date of service of this Warning Letter.**

This letter is a Warning Letter issued under Section 152 of the Planning and Development Act 2000 (as amended) and a decision in relation to enforcement under Section 153 will be taken in due course having due regard to any representations made by you **within the 4 week period specified above.**

Please further note that officials of the Planning Authority may at all reasonable times enter onto the lands for the purposes of inspection.

Please note that an Enforcement Notice requiring the cessation, demolition or discontinuance of the development may be issued if the Planning Authority considers that unauthorised development may have been, is being, or may be carried out.

Please also note that in the event of a decision to institute enforcement proceedings you will be liable for penalties as set out in Section 156 of the Planning and Development Act 2000 (as amended), details of the penalties involved for failure to comply with an Enforcement Notice are:

1. On conviction on indictment, to a fine not exceeding €12,700,000 or to imprisonment for a term not exceeding 2 years, or to both and to a fine not exceeding €12,700 or to imprisonment for a term not exceeding 2 years or both for each day on which the offence so continues.
2. On summary conviction to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both and to a fine not exceeding €1,500 or to imprisonment for a term not exceeding 6 months or both, for each day on which the offence so continues.
3. On conviction on indictment of the construction of an unauthorised structure, to a fine of €12,700, or the cost of construction of the structure, whichever is the lesser.
4. On summary conviction of the construction of an unauthorised structure, to a fine of €2,500 or the cost of construction of the structure, whichever is the lesser.

In addition to these penalties, any costs reasonably incurred by the Planning Authority in relation to enforcement proceedings may be recovered from a person to whom an Enforcement Notice is issued or where Court Action is taken.

Please quote the reference, ENF18051, in your response.

Mise, le meas

Maura O'Leary
for Director of Services

Appendix 3

(11)

Comhairle Chontae Chill Chainnigh

Kilkenny County Council

Planning Report



Planning & Development Act, 2000 - 2019
Planning & Development Regulations, 2001 - 2019

Planning Ref. 19767
Due date: 11/12/2019

Applicant: Peter Maher

Subject: Permission to retain indefinitely 2 steel containers, concrete loading base and all associated works, Derrylackey, Mullinavat, Co. Kilkenny

Third party submission

- Level of detail is lacking in the site layout plan
- No surface water management details
- Since Enf18051 three further containers have been placed on the site
- The landowner is not the operator of the said distribution
- No waste management plan submitted or details on how to deal with gone off food supplies in food storage
- Increased in vermin in the area since the warehousing has begun
- The two no agricultural building are being used for warehousing contrary to Enf notice and will continue to do so if planning is granted
- The road that provides access to the site is unsuited to type of traffic generated by proposed development i.e. HGV's and is causing damage to the road surface.

The submission was read and considered in the assessment of the planning application.

Site History

ENF18051 - Unauthorised use of 2 no agricultural buildings for warehousing and as a distribution centre and unauthorised 2 no containers erected on site and associated concrete loading area

East

01/956 – Permission to erect bungalow and associated works. Applicant Peter Maher

Impact on Natura 2000 Sites

The proposal is located some distance from any Natura 2000 designated site and does not require an 'Appropriate Assessment'. A Screening exercise was completed, which showed that no significant environmental impact is likely.

Referral

Fire Services – The development requires the benefit of a Regularisation Fire Safety Certificate before works commence on site

Roads Design – Request for further information with serious concerns raised on poor road infrastructure to cater for traffic generation associated with proposed development

Area Engineer: Outside the scope of Area Office

Environment: Further information request on waste management plan, surface water, welfare waste water facilities and vermin control.

Access

The development site is located at the end of a cul-de-sac laneway, Ref: LS7452 which is connected off the main local secondary road, Ref: LS7451 which in turn connects with the regional road R704 at Ballynooney East. The distance from the site to the regional road is approx. 2km.

Assessment:

The proposal is for permission to retain indefinitely 2 steel containers, concrete loading base and all associated works at Derrylackey, Mullinavat, Co. Kilkenny. The planning application is being submitted to regularise unauthorised development on site on foot of an Enforcement notice issued under ENF18/051 reference.

The subject site is situated within the overall landholding of Mr. Peter Maher. It is close to the existing farm complex located opposite the road approximately 100 metres away from the subject site. There are residential properties and sheds located further east of the site near a bend in the local road. The site comprises two no agricultural sheds, two steel containers, loading concrete area, three no truck containers adjoining the loading area, extensive pallet stacked storage and hardcore driveway with an access onto the public road.

The smaller of the agricultural sheds that adjoins the red site boundary line is being used for agricultural use as a cattle shed. The other larger agricultural shed which adjoins the loading area within the site boundary area is described in the planning documents for machinery storage and calving area. During the site inspection no machinery storage was observed and no calves identified within the shed. The shed is being used primarily for commercial bagged potato storage associated with a warehousing business under the name of Maguire Maher Enterprises Limited contrary to Enforcement notice terms. The shed does not form part of the retention development application and does not therefore adequately describe the full nature of commercial operations on site or adequately inform the public contrary to planning and development regulations 2001. The shed is related to the warehousing business and is primarily being used for storage of goods associated with the distribution centre with some hay baled storage. The shed represents a material change of use and requires retention planning permission. This is considered project splitting and does not provide the planning authority or indeed members of the public with the full details on the scale and nature of commercial operation on site and its impacts on the area.

The Roads Division indicates that the Local Road adjoining the site is of narrow cross section and is unsuitable for the safe movement of two-way traffic, particularly for heavy goods vehicles generated from this development. The local secondary road, LS 7452-8 (cul de sac) road serving the site is narrow, in poor surface condition and alignment. The road cannot safely accommodate two way traffic and there is no suitable passing bays along the road. The LS7452-8 connects with the main L-7452 at Glenpipe. Visibility at the Glenpipe junction with the main road is restricted particularly to the right due to roadside boundary ditch/hedgerow which impedes visibility. As a consequence, the Roads Design have concerns on the suitability of the road for commercial traffic use and recommend that further information be sought on traffic impact assessment, operation hours, turning movements, car parking / segregation with pedestrian movements, office/welfare facilities, sightlines assessment and passing bays.

The site in question is an un-zoned green- field site located approximately 6km north east of Mullinavat village. The applicants do not have a permitted established commercial warehousing

use on site and the proposed development is at variance with the predominant land use in this area which is agriculture and forestry. The applicant has completed appendix 3 relating to Industrial /Commercial Developments of the planning application form. Appendix 2 to be completed for all agricultural development was not submitted.

The applicant has confirmed that the purpose of the development is for the storing and loading of supplies for food take away outlets but there is a limited detail in relation to the scale of the operations, source of raw materials/goods and commercial outlet distribution locations. The raw materials used in the warehousing storage comprise potatoes, cooking oils, fats, relishes, minerals and food packaging. The operation hours are 8am to 8pm with four number part time employees. Six car parking spaces are to be provided but are not shown on the site layout plan. The access road from the regional road are generally narrow in cross section (LS7451 circa 3m wide, and LS7452 circa 3.5m wide). These road widths are not considered suitable for certain types of vehicles (HGVs) and traffic volumes generated by the proposed development site. There are significant concerns about the adequacy of the existing local road from the regional road to cater for traffic movements given the narrow local road narrow road widths.

During the site inspection the two no steel containers were mostly full and being used for storing of food products associated with take away outlets. An office to the rear of one the containers exists but is not shown on the floor plan. Three other truck containers adjoins the loading yard including one loose heavy goods vehicle to the side of the shed. These truck containers are propped up, comprise shutter doors adjoining the loading area are being used associated with commercial operations on site but have not been clearly shown on the site layout plan drawing.

While the expansion of existing non-conforming commercial premises may be assessed on its merits, it is considered that the proposal if permitted would consolidate unauthorised warehousing distribution centre on an agricultural site contrary to the enforcement notice and would result in a non-conforming use contrary to proper planning and development. The provision to retain a commercial use in proximity to existing dwelling and another farm complex opposite the road would injure the amenities of the area and interfere with the continued agricultural use of adjoining lands.

Having regard to the siting of the proposed commercial development within a rural area outside any zoned settlement boundary of the county it is considered that, proposed development would not accord with the proper planning and sustainable development of the area. There is no evidence that the applicant or person/company who leases the land from the landowner grows their own potatoes on the adjoining family farm landholding. Indeed no details on Appendix 2 to be completed for all agricultural development was submitted as part of the planning application documents. The use of the agricultural structures on site for commercial purposes such as warehousing/distribution constitutes a material change of use. The documents submitted state that 'everything comes on site packed and is placed directly in the containers. It is loaded directly from the containers to the lorries servicing the outlets'.

Conclusion

The unauthorised development the subject of this planning application is not considered a rural based enterprise which relies on natural resources i.e. agriculture, food, forestry, tourism, marine, renewable energy etc and is not a home based economic activity. The development is a warehousing distribution site more suited to locations with proper infrastructure, services and good public road network on zoned lands. Having regard to above, the serious concerns raised by Roads Design on inadequate road infrastructure, third party submission, commercial intensification contrary to enforcement notice and non-conforming commercial use in a rural agricultural area it is considered that the proposed development is contrary to the proper planning and sustainable development of the area and should be refused.

Recommendation:

It is recommended that retention permission be **REFUSED** for the following reasons

Ross O'Shea 10/12/2019

Executive Planner

Senior Executive Planner

First Schedule
2 No. Reasons & Considerations for Decision to Refuse Planning Permission Ref.
P19.767

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.

Please note that the Site Notice shall be removed by the applicant following the notification of the Planning Authority decision under Article 31.

Appendix 4

Company Printout

Company Number	618389		
Company Name	MAGUIRE MAHER ENTERPRISES LIMITED		
Company Type	LTD - Private Company Limited by Shares		
Date Incorporated	09/01/2018		
Registered Office	REHARD EAST MULLINAVAT KILKENNY IRELAND		
Designation	Normal		
Date of Designation	09/01/2018		
Last Annual Return	09/09/2021	Next Annual Return	09/09/2022

Register of Particulars of Charges Including Mortgages Pursuant to Sections 409, 411 and 413 of the Companies Act 2014 in Respect of the Above Named Company. Computerised information for charges may be truncated on this print-out, please refer to the company file or images for complete particulars on Charges. It should be noted that charge notifications that are not realised will be rejected and therefore can leave a gap in the sequential numbering of charges.

Number of Registered Charges: 0

Number of Charge Notifications: 0

Charge Details

No Charge Details available

Directors Special Note

Please note that the information displayed on this printout as to the particulars of the directors and secretary of this company may not be complete or up to date, as there may be unregistered documents which affect the position. Please refer to the list of Documents below, and if necessary, consult the company file or images for full, up-to-date particulars as to the company's officers. If this printout is blank as to officer details, please consult the images of the registered New Company documents

THOMAS MAGUIRE	Director
Moinmhor Clonassey Mullinavat KILKENNY Ireland	

Company Secretary

MARY MAHER	Secretary
------------	-----------

Moinmhor,
Clonassey
Mullinavat
KILKENNY
Ireland

Related Parties

FINANCIAL CLARITY
4 PRIORY COURT
DEAN STREET
KILKENNY
R95V521

Electronic Filing Agent

Documents				Date	Date	Date
Status	Scan	Number	Submission	Effective	Received	Registered
Registered	*	SR891600	Form B10 - Change Director or Secretary Details	05/01/2022	05/01/2022	18/01/2022
Registered	*	SR640820	Form B1C - Annual Return General	09/09/2021	04/11/2021	18/11/2021
Registered		14595007	Form B1C - Annual Return General	09/09/2020	07/10/2020	12/11/2020
Registered		14117293	Form B10 - Change Director or Secretary Details	28/01/2020	04/02/2020	04/02/2020
Registered		13850952	Form B1C - Annual Return General	09/09/2019	07/10/2019	14/11/2019
Registered		13667935	B73 - NOMINATION OF NEW ARD	09/07/2019	22/07/2019	22/07/2019
Registered		13667928	B1 ANNUAL RETURN - NO ACCOUNTS	09/07/2019	22/07/2019	23/07/2019
Registered		12841584	B1 ANNUAL RETURN - NO ACCOUNTS	09/07/2018	10/07/2018	15/08/2018
Registered		12541888	Form B77 - Authorisation/Revocation of an Electronic Filing Agent	08/02/2018	18/07/2018	18/07/2018
Registered		12422733	Form A1 - New Company Incorporation	09/01/2018	07/12/2017	09/01/2018

* Indicates documents have been scanned for the submission

Submission Status Explanations

CERTP	CERTIFICATE PRINTED
CERTS	CERTIFICATE SCANNED
DATA	DATA ENTERED
REC	RECEIVED
RECOR	RECORDED
REG	REGISTERED
RETAM	RETURNED AMENDED
SCAN	SCANNED

End of Particulars

Appendix 5

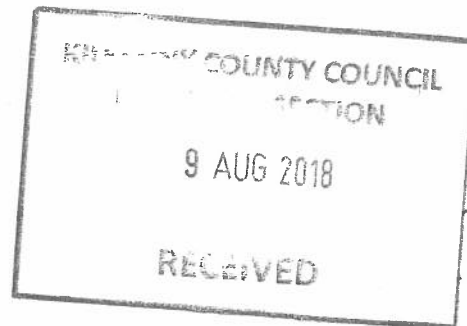
Tom Downey B.E..Ceng. M.I.E.I.

0872757305

051885320

EMAIL tommydowney47@gmail.com

VAT No. IE 2947635T



Pill Rd.,
Lr. Kilmacow,
via Waterford.
7/08/2018.

Maura O'Leary,
Planning Section,
Kilkenny Co. Co. ,
Town Hall,
John St.,
Kilkenny

Development at Derrylackey, Mullinavat

Peter Maher

Your Ref: ENF 180501.

Dear Ms. O'Leary,

Further to your letter of 24/07/2018 to Peter Maher, I have been engaged by Peter to assess the situation.

The building under construction measures 319m². The purpose of the building is to house small calves and Machinery /Storage. A section 6m x 12m (72m²) is to be used for the calves and the remainder (247m²) for machinery/storage. Peter already has a loose cattle shed measuring 138m². In summary :

Loose roofed cattle shed Total areas 138+ 72 = 210m².

This is exempted development under Class 6 Part 3 of the Planning and Development Regulations 2001- 2015.

Machinery/ Storage Area = 247m².

This is exempted development under Class 9 Part 3 of the Planning and Development Regulations 2001- 2015.

There is no dwellinghouse within 100 metres. The nearest dwellinghouse is about 250 metres away.

Yours sincerely,

A handwritten signature, likely of Peter Maher, is written below the closing.

Tom Downey B.E.Ceng. M.I.E.I.

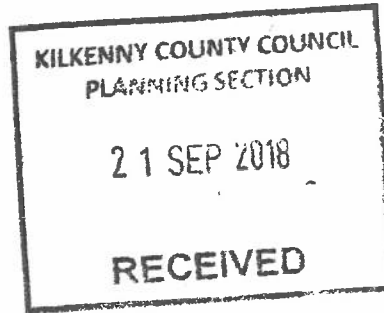
0872757305

051885320

EMAIL tommydowney47@gmail.com

VAT No. IE 2947635T

Annette Fitzpatrick,
Planning Section,
Kilkenny Co. Co.,
Town Hall,
John St.,
Kilkenny



Pill Rd.,
Lr. Kilmacow,
via Waterford.
17/09/2018.

Development at Derrylackey, Mullinavat

Peter Maher

Your Ref: ENF 18051.

Dear Ms. O'Leary,

Further to your letter of 13/09/2018 attached find plan showing the calf area and machinery/storage area.

The total roofed area of the loose cattle shed is 164m². The enclosed area for housing the cattle is 138m². The feeding apron is 26m². I consider the feeding apron comes under Class 8. Which or whether it does not have any bearing on the issue here.

Attached find map showing the location of this development and the location of Mr. Maher's farm complex. The distance between them is 460 metres.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Peter Maher", written over a horizontal line.

Site Location Map

CENTRE COORDINATES:
ITM 658973 628487

PUBLISHED: 31/07/2018
ORDER NO.: 50018173_1

MAP SERIES: 6 Inch Raster
9900-14
6 Inch Raster
KK036

COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

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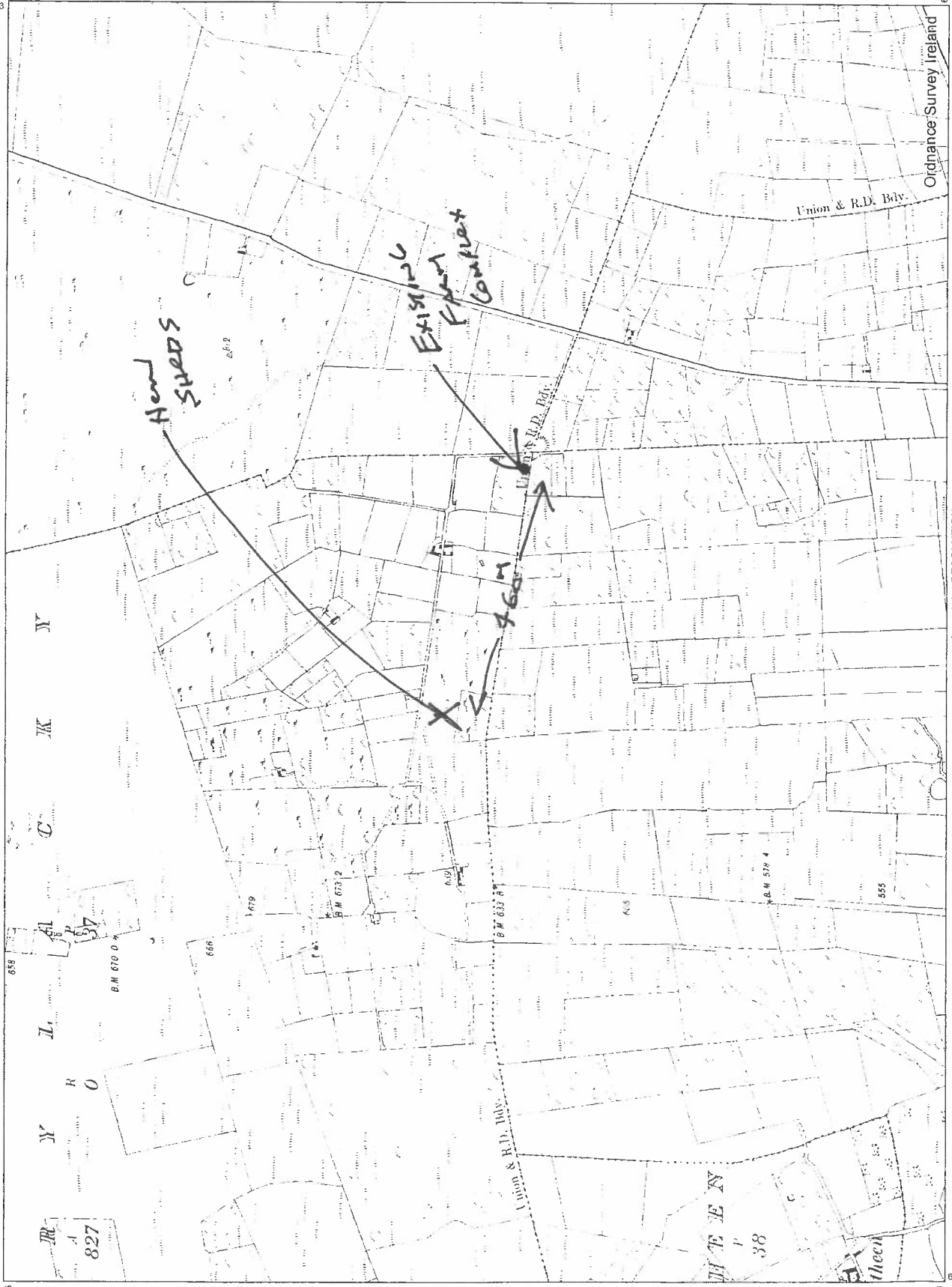
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be copied, reproduced
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the copyright owners.

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

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

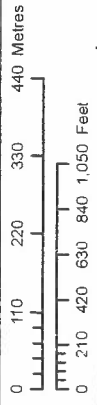
© Suirbhéireacht Ordánais Éireann,
2018
© Ordnance Survey Ireland, 2018
www.osi.ie/copyright

LEGEND:
<http://www.osi.ie>
search 'Large Scale Legend'



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

OUTPUT SCALE: 1:10,560



Tom Downey B.E.Ceng. M.I.E.I.

0872757305

051885320

EMAIL tommydowney47@gmail.com

VAT No. IE 2947635T

Pill Rd.,
Lr. Kilmacow,
via Waterford.
11/03/2019.

Maura O'Leary,
Staff Officer
Planning Section,
Kilkenny Co. Co. ,
Town Hall,
John St.,
Kilkenny

Development at Derrylackey, Mullinavat

Peter Maher

Your Ref: ENF 18051.

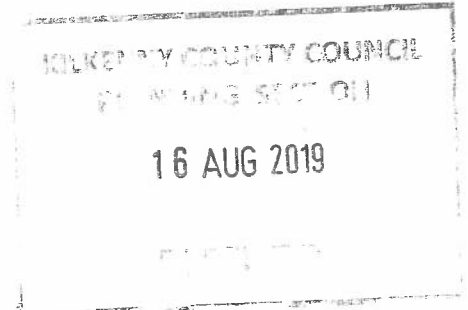
Dear Ms. O'Leary,

Further to your letter of 28/02/2019 to Peter the shed is now completed. It has not yet being put into use. The area allocated to cattle is 72m2.

Yours sincerely,



**Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.**



Denis Malone,
Planning Department,
Kilkenny County Council,
County Hall,
John Street,
Kilkenny.

Tuesday 13th August 2019

Re: Ref: Enforcement Notice Ref No: ENF18051

Dear Denis,

Further to the enforcement notice issued by yourself on the 1st August 2019 in relation to the use of agricultural buildings at Derrylackey, Mullinavat, Co. Kilkenny, I wish to respond to the two points raised on the enforcement notice as follows;

(i) Unauthorised use of agricultural buildings for warehousing and as a distribution centre

In relation to the above point I wish to inform you that the above building was constructed on the farm solely for agricultural purposes. The main uses of this shed is for the storage and packaging of potatoes, storage of straw for our livestock and storage of farm machinery. This building was 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.

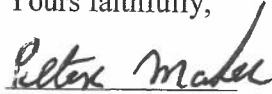
(ii) Unauthorised containers erected on the site and associated concrete loading area

In relation to the two storage containers and concrete area I wish to apply to Kilkenny County Council for planning for the retention of both the containers and concrete area. I will make this application in due course.

I am available to meet with yourself or any member of your planning team to discuss the above further.

I trust you find the above in order, but should you require any further information please don't hesitate to contact me.

Yours faithfully,

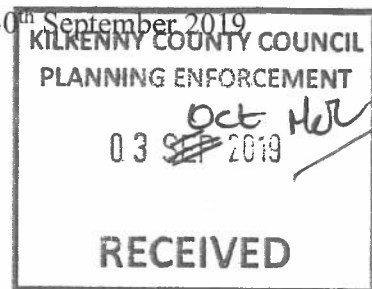
A handwritten signature in dark ink, appearing to read 'Peter Maher', written over a horizontal line.

Peter Maher

**Thomas Maguire,
Rahard East,
Mullinavat,
Co. Kilkenny.**

Denis Malone,
Planning Department,
Kilkenny County Council,
County Hall,
John Street,
Kilkenny.

Monday 30th September 2019



Re: Ref: Enforcement Notice Ref No: ENF18051

Dear Denis,

Further to the enforcement notice issued by yourself on the 17th September 2019 in relation to the use of agricultural buildings at Derrylackey, Mullinavat, Co. Kilkenny, I wish to reiterate the response made to yourself by Peter Maher in his letter on the 13th August 2019 in response to the original enforcement notice issued.

(i) Unauthorised use of agricultural buildings for warehousing and as a distribution centre

In relation to the above point I wish to inform you that the above building was constructed on the farm solely for agricultural purposes. The main uses of this shed is for the storage and packaging of potatoes, storage of straw for our livestock and storage of farm machinery. This building was certainly not constructed to carry out warehousing or act as a distribution centre of any type. As discussed with Suzanne on her recent visit I will provide further information on the agricultural activities being carried out ie. Registered Potatoe Grower Number etc.

(ii) Unauthorised containers erected on the site and associated concrete loading area

In relation to the two storage containers and concrete area Peter wish's to apply to Kilkenny County Council for planning for the retention of both the containers and

concrete area. Peter has instructed his engineer to prepare the retention application which he is currently working on and will have submitted by the 21st October 2019.

Both myself and Peter are available to meet with yourself or any member of your planning team to discuss the above further.

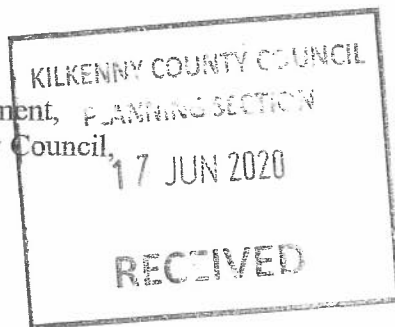
I trust you find the above in order, but should you require any further information please don't hesitate to contact me.

Yours faithfully,

Thomas Maguire

**Peter Maher,
Derrylackey,
Mullinavat,
Co. Kilkenny.**

Denis Malone,
Planning Department,
Kilkenny County Council,
County Hall,
John Street,
Kilkenny.



Monday 15th June 2020

Re: Internal farm access laneway at Derrylackey, Mullinavat, Co. Kilkenny.

Dear Denis,

I wish to acknowledge receipt of your letter dated the 26th May 2020, I would much appreciate if you could give me till the 6th July 2020 to respond to your letter as due to the Covid-19 pandemic my engineer is not back to work till Phase 3 on the 29th June, and I will be unable to meet with him till then.

I trust you find the above in order.

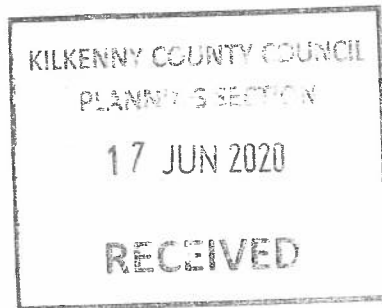
Yours faithfully,


Peter Maher



**Maguire Maher Enterprises Limited,
Rahard East,
Mullinavat,
Co. Kilkenny.**

Rita McGarvey,
Planning Department,
Kilkenny County Council,
County Hall,
John Street,
Kilkenny.



Monday 15th June 2020

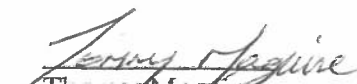
Re: Ref: Derrylackey, Mullinavat, Co. Kilkenny

Dear Rita,

Further to your letter of the 26th May 2020, I would much appreciate if you could give me till the 6th July 2020 to respond to your letter as due to the Covid-19 pandemic my engineer and advisor are not back to work till we reach Phase 3 of the restrictions on the 29th June, and I will be unable to meet with them till then to compile my response and provide the associated supporting documentation requested.

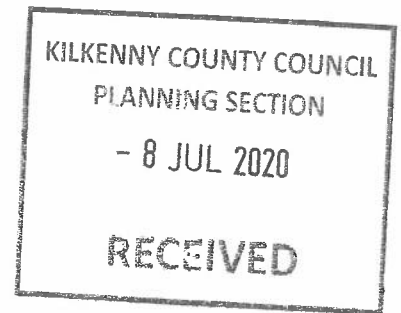
I trust you find the above in order, but should you require any further information please don't hesitate to contact me.

Yours faithfully,


Thomas Maguire



**The Potato Link,
Maguire Maher Enterprises Limited,
Rahard East,
Mullinavat,
Co. Kilkenny.**



Rita McGarvey,
Planning Department,
Kilkenny County Council,
County Hall,
John Street,
Kilkenny.

Wednesday 1st July 2020

Re: Ref: Derrylackey, Mullinavat, Co. Kilkenny

Dear Rita,

Further to your letter of the 26th May 2020, please see below my response to the points raised in your letter.

Point 1(A)

Please find attached dispatch note and invoice from Doyle Produce, Luffany, Mooncoin, Co. Kilkenny to verify the bagging of potatoes carried out by them on my behalf.

Point 1(B)

Please find attached a copy of land letting agreement for the land which we are currently growing potatoes on.

Point 1 (C)

The number of truck movements to the site would consist of potatoes being delivered from Doyle Produce twice weekly by HGV.

Point 2

With regard to the concrete loading area, I wish to erect a dry storage shed over the existing concrete loading area and over the No.2 containers. This store will be approximately 18 meters long by 12 meters wide and below 8 meters in height. Which I believe would be meet the size criteria to qualify under Class 9 Exempted Rural Developments.

Point 3

I am totally aware that sheet metal fencing is clearly excluded from Class 4 Exemptions. Therefore I want to make it clear to the planning authority that both this fence and gate is just the start of the new dry storage shed that I mentioned in Point 2 and will be incorporated as part of this structure.

This proposed new store will have a small L shaped section off the side giving a total size of approximately 3 meters in length and 3 meters width.

I believe as this new storage shed will be below 300 square meters and the aggregate total of the whole farm complex will be still under 600 square meters it should qualify as exempt.

I also wish to stress that this metal sheeted fence and gate was originally constructed for security purposes to protect both my produce and machinery, following a series of attacks being carried out during the summer of 2019. I have attached a summary of the damage carried out to one machine as an example.

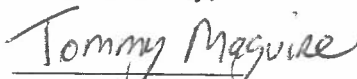
You must understand as a small rural farm I had to take steps to protect both my property and business so erecting the fence and gate was essential, as a small farm like ours cannot risk the cost associated with further damages and this is necessary for insurance purposes. I believe when I construct the proposed new storage shed this will help to secure the area further, while meeting the exemptions.

Point 4

In my opinion the introduction of the bagging/packing process into the existing storage shed which has been exempted under Class 9 would still constitute the shed being used for agricultural purposes. From reading the legislation it states in Class 9, that "*no such structure shall be used for any other purpose other than the purpose of Agriculture/Forestry*". I have been unable to see any wording that states the building must be used for agricultural storage purposes only and I believe that using this shed for both the storage and packing of potatoes being produced by myself would be deemed as agricultural purposes.

I trust you find the above in above and please don't hesitate to contact me if you wish to discuss any of the above point further.

Yours faithfully,


Thomas Maguire

- 8 JUL 2020

DISPATCH SHEET:	DOYLE PRODUCE LTD	TRACEABLE TO FIELDS (NEWBATH)
NAME	FRIDGE 3 TOM / POTATO LINKS	(3) RECEIVED

DATE	TONNES COLLECTED	HAULIER
1/8/19	11 tonnes	Lynng
9/8/19	13.5 tonnes	Lynng
16/8/19	11 tonnes	Lynng
19/8/19	11 TONNES	Lynng
24/8/19	13 1/2 ton	Lynng
1/9/19	11 tonnes	Lynng
6/9/2019	11 ton	Lynng
26/9/19	27 Ton	Lynng
28/9/19	13.5 tonnes	Lynng
10/10/19	18 TONNES	Lynng
18/10/19	24 tonnes	Lynng
28-10-19	13.5 tonnes	Lynng
1-11-19	24 tonnes	Lynng
8/11/2019	11 tonnes	Lynng
21/11/2019	13.5 tonnes	Templetown
22-11-2019	13.5 tonnes	Lynng
29/11/2019	22.5 ton	Lynng
12/12/19	27 Tonne	Templetown
18-12-19	27 ton	Templetown
24/12/19	24 ton	Lynng
9/1/20	27 TN	Templetown
20/1/20	11 tonnes	Lynng
25/1/20	27 tonnes	Templetown

[illegible]



Luffany, Mooncoin,
Co. Kilkenny

Date: 31/12/19.

13667

Invoice to: Potato head

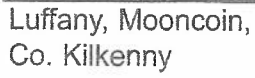
ITEM	QTY.	PRICE PER UNIT	TOTAL
<u>1/8/19 - 31/8/19.</u>			
<u>Bagging Potatoes</u>	<u>60 ton</u>	<u>30.00</u>	<u>1800.00</u>
<u>1/9/19 - 30/9/19</u>	<u>62.5 ton</u>	<u>30.00</u>	<u>1875.00</u>
<u>1/10/19 - 31/10/19.</u>	<u>55.2 ton</u>	<u>30.00</u>	<u>1665.00</u>
<u>1/11/19 - 30/11/19</u>	<u>62 ton</u>	<u>30.00</u>	<u>1860.00</u>
<u>29/11/19</u>	<u>22.5 ton</u>	<u>30.00</u>	<u>675.00</u>
<u>1/12/19 - 31/12/19</u>	<u>78 ton</u>	<u>30.00</u>	<u>2340.00</u>

Terms: Strictly 30 days credit

Total Amount: 1025.00

Signed By: _____

NOTE: DO YOU WANT CONTRA THIS
OR PAY SEPERATELY



13682

Invoice to: Potato herit

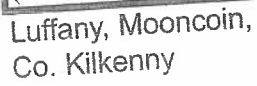
[illegible]

Terms: Strictly 30 days credit

Total Amount:

92500

Signed By: _____



13690

Invoice to: Potato bank

ITEM	QTY.	PRICE PER UNIT	TOTAL
Baggery Polishes			
1/5/20 - 31/5/20	4570m	30.00	1290.00
1/6/20 - 30/6/20	971m	30.00	2910.00
Total Amount:			4200.00

Terms: Strictly 30 days credit

Total Amount:

Signed By:

Signed By: Report would be appreciated

- 8 JUL 2020

RECEIVED

This Agreement made the 1st day *Feb* 2020. between
(*Edward Doyle* (hereinafter called "the Owner") of the One Part and
Mary Maher (hereinafter called "the Tenant").

WITNESSETH

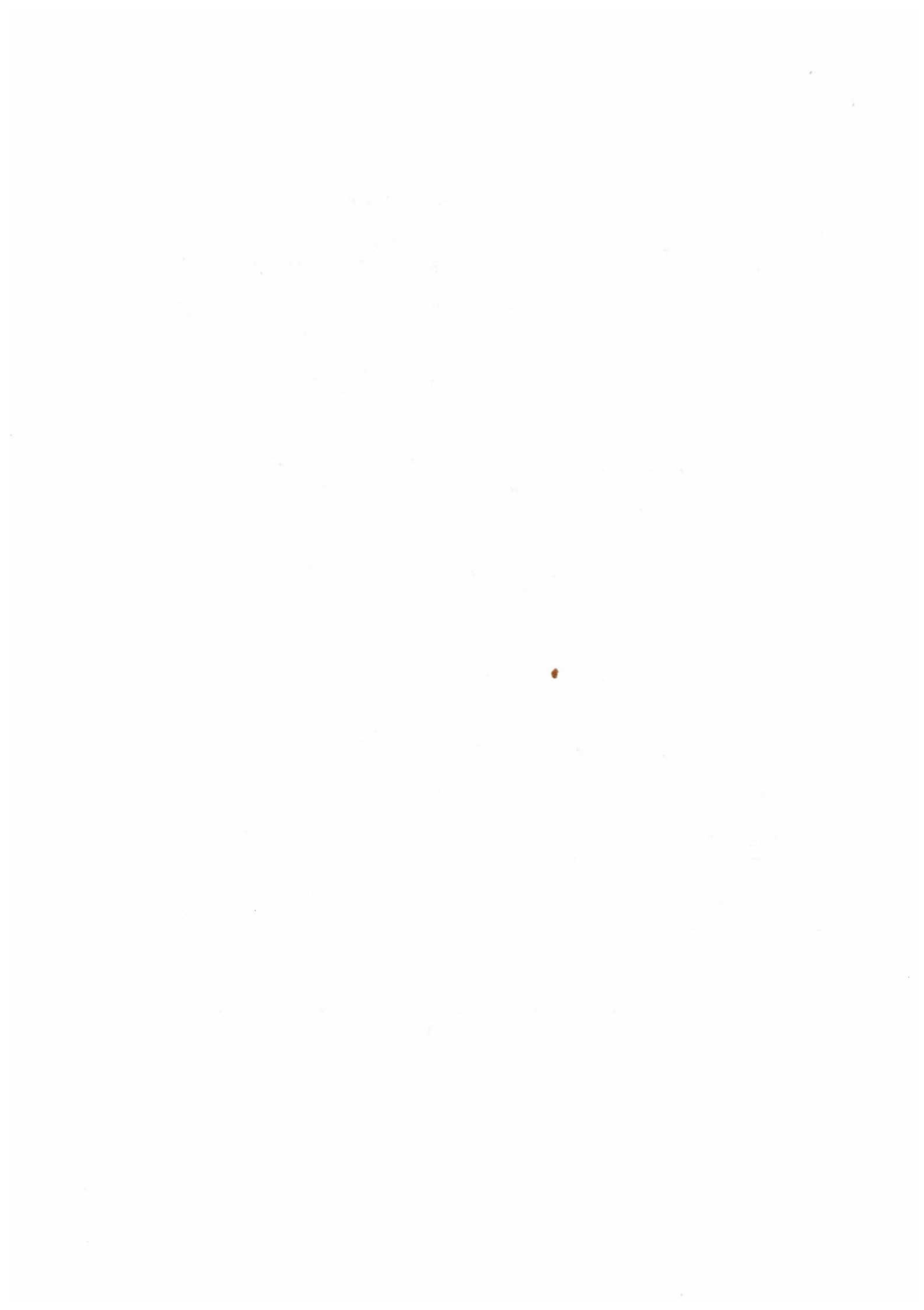
1. The Owner hereby lets and the Tenant hereby takes that part of the lands of containing *17* acres of thereabouts (as indicated on the plan hereto annexed) for (*map attached*) a period of *3* years from the 1st day of *February*
2. The lands shall be used for the purpose of agistment/conacre only and for no other purpose whatever.
3. The letting shall be subject to the relevant conditions set out in the schedules hereto.
4. The rent shall be at the rate of *200* per annum payable in advance by instalments payable on the 1st day of April & December in each year. The first instalment plus auctioneer's fees and VAT shall be secured by promissory notes signed by the Tenant in favour of the Owner or as otherwise agreed.
5. All clay, minerals, mines, sand stone and timber as are now on the lands are reserved to the owner. The Owner and any persons authorised by him shall have at all times a right of access thereto to take and carry any of them away.
6. The Owner shall be responsible for all rates and for all taxes payable by him as owner in respect of the lands.
7. In the event of the Owner exercising his rights of lien and sale over stock and crops as provided for in the special conditions all expenses of such sale shall be paid out of the proceeds of the sale. The owner has the right to determine the method of sale. The Tenant shall not be entitled to make any claim against the Owner on the grounds that the price received was inadequate or as to the manner in which the sale was conducted.
8. If the Tenant fails to pay punctually on the due date any instalments of rent referred to in Clause 4 the Owner may at any time thereafter by notice in writing to the Tenant forthwith terminate this agreement. Notwithstanding such termination the rights of lien and sale over stock and crop referred to in the conditions annexed hereto shall continue in force in favour of the Owner and may be exercised by him. Stock must be removed on request within 14 days.
9. If any dispute arises between the parties arising out of the interpretation of this Agreement or the implementation thereof such dispute shall be referred for determination by the auctioneer to Teagasc Adviser of Kilkenny if he/she is unavailable or unwilling to act it shall be referred to an auctioneer nominated by the President for the time being of The Auctioneers and Valuers Institute. The decision of the Auctioneer shall be final and binding on both parties.

GENERAL CONDITIONS APPLICABLE TO AGISTMENT AND CONACRE

10. The Tenant may use buildings on the land with the written permission of the Owner and shall keep them in good order and repair save wear and tear.
11. The Tenant may not sub-let the lands or otherwise dispose of or grant rights in respect thereof to any person without the prior written permission of the Owner.
12. The Tenant may not remove any hay or silage from the lands without the prior written permission of the Owner or his agent whose consent shall not be unreasonable withheld.
13. The Tenant shall manage the lands in a good and husbandlike manner (including fertilisation where necessary) and shall keep all fences and hedges in good order and repair.
14. The Owner shall be entitled to enter onto the lands at all reasonable times for the purpose of carrying out improvements and general maintenance and shall not be responsible for any loss or damage whatsoever to the tenant.

ADDITIONAL CONDITIONS OF AGISTMENT

15. Grazing rights shall apply to cattle and sheep only - horses being excluded unless the written permission of the owner is obtained.
16. The Tenant shall be responsible for the proper herding and foddering of stock.
17. The production of a valid certificate from the District Veterinary Office is a condition of this agreement.
18. The Tenant shall be responsible for maintaining all fences and hedges in good condition and all gates closed so that his stock may not at any time escape from the lands.
19. In the event of the Tenant not paying any instalment due by him on the due date the Owner shall have a lien on the stock on the lands and shall have full authority to sell the stock either by public auction, private treaty or tender and to retain from the proceeds of sale sufficient monies to discharge the amount due to the Owner.
20. The Tenant shall comply with the requirements of the Noxious Weeds Acts.



ADDITIONAL CONDITIONS FOR CONACRE

21. Pursuant to his obligations under Clause 13 in the general conditions the Tenant shall have particular regard to the crops sown by him, shall suitably fertilise the land, keep it free from weeds and rotate the crops to the extent necessary to keep the land in good condition.

Special Conditions

1. Single Payment (N/A) ☒ entitlements) to be paid to the Owner each year. Namely € (while Single Farm Payment lasts).
2. Review to determine rent shall take place in 2023 for remainder of the lease.

Owner Signature:

Eddie Doyle

Tenants Signature:

Mary Maher

Agents Signature:

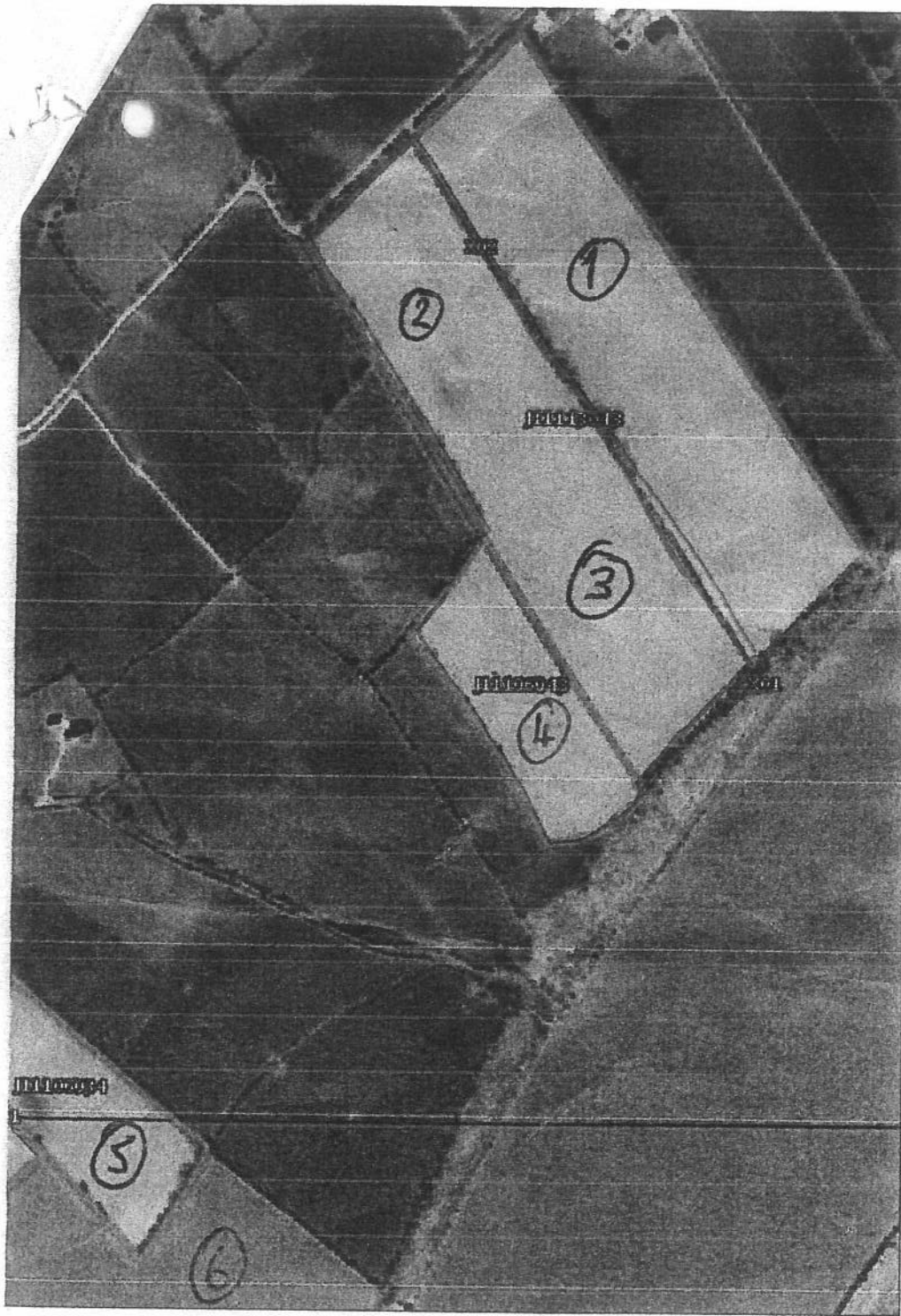
Mark Twinn TEAGASC, KILKENNY.

Date:

10 Feb 2020



Outlined in Red
With Numbers
2, 3, 4 attached



- 8 JUL 2020

RECEIVED

Keogh Commercial
Grovine,
Waterford Rd.
Kilkenny
Tel 056-7729983
Fax 056-7729130

Vat No: 3457046-C

Maguire Maher Enterprises Ltd
Rahard east
Mullinavat
Co.Kilkenny

Customer No : TOM02082
Starting Order No:
Completion Order No: n/a

Invoice No : 221299
Invoice Date : 31/07/2019

Account No : MCG0066

VAT No :

Job Setup Date : 04/07/2019

Job No : 51702

Operator :

Workshop Invoice

Reg. Number : 04-KK-3646
Make : Scania
Model : 124
Fleet No :

Chassis No : 2002361
Engine No :
Mileage : 220716
Signed Off By : Paul

Instruction List

Cooling System

Fit new Water Pump.Clean water pump housing & fit new gasket.Reassemble & top up coolant.

Clutch

Wash out clutch reservoir.Flush out clutch pipe.Fit new clutch booster & bleed clutch.

Batteries

Fit new battery box cover

Tacho Head

Fit reconditioned Tacho Head

Tacho Graph

Carry out Calibration

Labour Details

Code	Description	VAT	Time	Charge	Total
------	-------------	-----	------	--------	-------

Parts List

Part No	Price	% Disc	Charge	Total
1.11115DT				29.50
1.24215				6.46
629683AM				05.36
64389				72.15
ANF005				78.00
BFL001				4.00
CALIBRATION				175.00
RT073				365.01

(ie) substance

put in diesel tank
water tank and clutch
heater tank

details of work all on
the one occasion

Tommy Maguire

Keogh Commercials
Grovine,
Waterford Rd.
Kilkenny
Tel 056-7729983
Fax 056-7729130

Maguire Maher Enterprises Ltd
Rahard east
Mullinavat
Co.Kilkenny

Vat No: 3457046-C

Job No : 51702

Invoice No : 221299
Invoice Date : 31/07/2019

Code	Description	VAT Total
T1	VAT@13.5%	201.55

Net Total 1492.98

VAT Total 201.55

Grand Total 1694.53

All values are shown in Euro

Customer's Signature _____

- All Queries on Invoices must be made within 7 days of receipt of Invoice.
Full terms + Conditions available on request. Payment Terms are 30 days from date of Invoice.
- Please note any estimates carried out by Keogh Commercials are based on our inspection and does not cover any additional parts or labour which may be required after the work has commenced. Occasionally, worn or damaged parts are discovered which may not be evident on the first inspection. Because of this, above prices are not guaranteed. Quotations on parts and labour are current and subject to change.
- All wheels removed and refitted are torqued to the required torque. Keogh Commercials are not responsible once the vehicle has left the premises.
- All drivers must check wheels and wheel nuts on a daily basis.
WWW.KEOGHCOMMERCIALS.COM
BANK DETAILS: IBAN: IE83 AIBK 9334 2227 4020 58 BIC: AIBKIE2D

Pages : 2 - 2



Service Centre



Keogh Commercials
Grovine,
Waterford Rd,
Kilkenny
Tel 056-7729983
Fax 056-7729130

Maguire Maher Enterprises Ltd
Rahard east
Mullinavat
Co.Kilkenny

Vat No: 3457046-C

Customer No : TOM02082
Starting Order No:
Completion Order No: n/a

Invoice No : 221241
Invoice Date : 31/07/2019

Account No : MCG0066

VAT No :

Job Setup Date : 10/07/2019

Operator :

Job No : 51729

Workshop Invoice

Reg. Number : 04-KK-3646
Make : Scania
Model : 124
Fleet No :

Chassis No : 2002361
Engine No :
Mileage : 173
Signed Off By : Paul

Instruction List

Fuel System

Down on power.Fit new fuel filter.Remove fuel sender unit from diesel tank.Found diesel contaminated.Drain diesel.Remove diesel tank.Wash out diesel tank & refit.Fit new fuel filter.Fit new fuel sender unit in diesel tank.Add diesel to tank(diesel supplied by customer).

Wiring

Trace & repair broken wires for coolant temperature gauge

Wheel Studs

Fit new Wheel studs & Nuts on Rear Left Side

Mudwing

Fit new LH rear mudguard & mudguard straps

Labour Details

Code	Description	VAT	Time	Charge	Total
Total Labour Value					441.25

Parts List

Part No	Description	VAT	Qty	Price	% Disc	Charge	Total
1.12557	SCANIA DIESEL SENDER UNIT (INC ADAPTOR)	T1	1.00	215.00		215.00	215.00
1.17026DT	SCANIA WHEEL NUT 1749034	T1	10.00	2.77		2.77	27.70
1.17035DT	SCANIA WHEEL STUD REAR 1368693	T1	10.00	4.85		4.85	48.50
1.22199	scania mud wing hook steel rear 4ser	T1	2.00	5.35		5.35	10.70
1372444	fuel filter	T1	2.00	11.38		11.38	22.76
38P08030	M8 X 30MM BOLT	T1	5.00	0.65		0.65	3.25
5008	m8 nyloc nut	T1	5.00	0.09		0.09	0.45
53CEQ	M8X30X1.5 BODY WASHER	T1	5.00	0.09		0.09	0.45
54A08P	M8 FLAT WASHER	T1	5.00	0.15		0.15	0.75
64350/1	SCANIA LH MUDGUARD ARM 1732855	T1	1.00	105.00		105.00	105.00
HT207	HEAT SHRINK TERMINAL RED	T1	1.00	1.01		1.01	1.01
SPC001	speed calculation	T1	1.00	350.00		350.00	350.00

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Maguire Maher Enterprises Ltd
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Co.Kilkenny

Vat No: 3457046-C

Job No : 51729

Invoice No : 221241
Invoice Date : 31/07/2019

Total Parts Value 785.57

Code	Description	VAT Total
T1	VAT@13.5%	165.62

Net Total	1226.82
VAT Total	165.62
Grand Total	1392.44

All values are shown in Euro

Customer's Signature _____

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Full terms + Conditions available on request. Payment Terms are 30 days from date of Invoice.
- Please note any estimates carried out by Keogh Commercials are based on our inspection and does not cover any additional parts or labour which may be required after the work has commenced. Occasionally, worn or damaged parts are discovered which may not be evident on the first inspection. Because of this, above prices are not guaranteed. Quotations on parts and labour are current and subject to change.
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KILKENNY COUNTY COUNCIL

PLANNING SECTION

10 AUG 2020

RECEIVED

**Derrylackey,
Mullinavat,
Co. Kilkenny.**

Rita McGarvey,
Planning Department,
Kilkenny County Council,
County Hall,
John Street,
Kilkenny.

Wednesday 5th August 2020

Re: Ref: Farm Roadway At Derrylackey, Mullinavat, Co. Kilkenny

Dear Rita,

Further to the site inspection carried out on the 6th July 2020. I have made the decision not to comply with the terms of the enforcement notice served on the 26th May 2020, after speaking to a several professionals i.e Teagasc advisor and Engineer. I have been informed that the internal farm roadway is exempt from planning permission once there is no pollution from the roadway and also once there is no new entrance made onto the public road, my roadway meets both these conditions.

The farm roadway at Derrylackey was constructed to join our existing farm complex to another farm complex. This roadway was constructed for the following three 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 of potatoes. The narrow width was the biggest issue here given that large size of modern farm machinery. I have attached a letter regarding this situation from Doyle Produce who carried out planting and harvesting on the farm.
2. The second reason for the roadway was 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 farm roadways based on Teagasc specifications must be between 3m to 5m in 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. I have also attached a copy of the specification advised by Teagasc.

3. Also, 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. ie tyres and paint work. I have attached photos of the steel bars erected.
4. Based on all the above factors and after considering the advice given by my Engineer and Teagasc Advisor. I believe that the construction of a farm roadway when completed is a structure. A structure being something that is constructed above ground level which is the case with this roadway. This is based on part 3 of Exempted Development-Rural, Column 1, Class 9. Therefore, I believe my roadway/structure is exempt under this class (works consisting of the provision of any store, barn, shed, glass house or other structure) as the roadway would fall under 'other structure'.

In conclusion, at this point in time I feel that I am being picked upon, targeted and bullied in this situation by the planning authority but I am happy to defend this situation as there is numerous farm roadways which are no different to mine around the country which are planning exempt.

Finally, in relation to the C&D through the stone, I believe this is a point which Kilkenny County Council needs to take up with the quarry as they were granted planning for this activity and I purchased the material in good faith.

I trust you find the above and please don't hesitate to contact me if you wish to discuss any of the above points further.

Yours faithfully,


Peter Maher





both sides of the roadway shall be erected to ensure livestock cannot access the watercourse. See Figure 1.

KILKENNY COUNTY COUNCIL
PLANNING SECTION
10 AUG 2020
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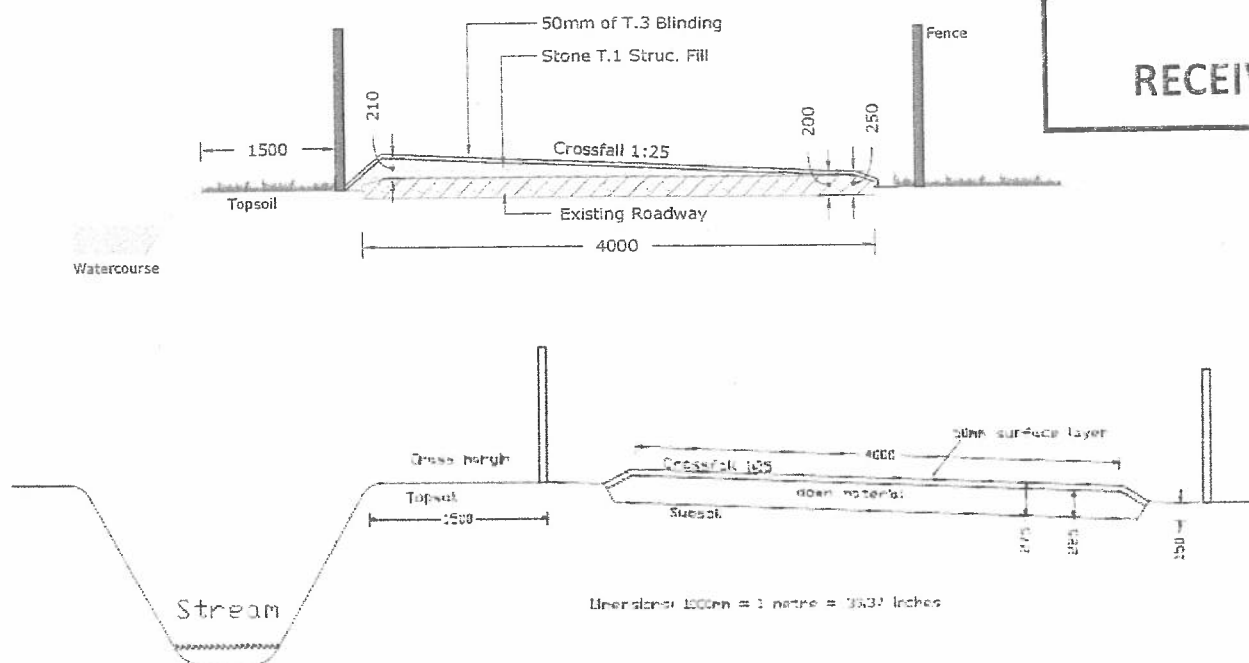


Figure 1 New Farm Roadway adjacent to a Watercourse

4.3 Crossfalls

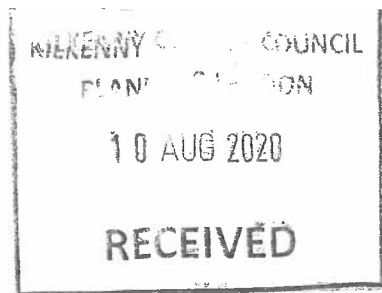
Removing water off the roadway quickly will extend the life of the surface and reduce the cost of maintenance. Potholes will also be less likely to develop. To remove water quickly from roadways they should slope to one or both sides. A roadway that slopes to one side is easier to construct. However, livestock apparently spread out better on a roadway that slopes to both sides from the centre. Roadways on steeply sloping ground can be subjected to a stream of water running the length of a section of roadway during heavy rainfall. In this situation ramps, shallow channels or cut-off drains at intervals across the roadway will divert water before it builds up volume and momentum.

4.4 Roadway Width

The width of roadways depends on the number of livestock in the herd. Guidance on standard sizes is given below.

Table 2 Farm Roadway width (hard surface) guidelines for various herd sizes

Herd Size	Roadway Width (m)
50	3.5
100	4.0
200	4.5
>250	5.0 +



**DOYLE PRODUCE (MOONCOIN) LTD.
Luffany, Mooncoin, Co. Kilkenny**

Phone: 087-2787472
Phone/Fax: 051-895914
Vat Reg No: IE 9658823U
Email: doyleproduce@gmail.com

Kilkenny Co Co
John's Green
Kilkenny.

4th August 2020

A Chara

We work in conjunction with Potato Link, and having looked at a laneway that Tommy Maguire wanted us to travel to plant and harvest potatoes, it was obviously too narrow to get through with the machinery for either planting or harvesting.

We would need at least 12 feet to take a harvester to the field without causing damage. This is our widest machine and quite valuable and needs to be minded as it would be very expensive to replace.

Thanking you,


Eddie Doyle

