



An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01V902.

LDG-DG-	ABP-ABP-	Date	11 th July 2022
Fee: €	270	Type:	cost
By:	Registered		

Dear Sir/Madam,

On behalf of our Client, Julian & Claire Hastings, we wish to appeal the decision of Wexford CoCo to declare that the applicant's development as Not Exempt under a Section 5 application for declaration of exempted development.

We have included the following in support of the appeal.

1. Aerial photo showing extent of area of pond and area outlined in red along with some photos showing area.
2. Cover letter explaining the development and under which sections we are of the opinion the development is exempt

The application form clearly shows the nature and extent of development seeking a declaration being 'the construction of a pond' and also explains the Section of Exempted Development Regulations under which exemption is claimed, being the following 3 sections

- a) 4(1)a Planning and Development Act 2000,
- b) Planning and Development Regulations 2001, Schedule 2, Part 1, Class 33,
- c) Planning and Development Regulations 2001, Schedule 2, Part 3, Class 3

Our opinion is that Wexford CoCo have not assessed and reported on what we have requested to make a declaration on, have made many errors and incorrect assumptions in making their decision and have copied reporting from another irrelevant application in making this decision.

Basis of errors by Wexford CoCo.

1. Pond definition
We have in our application broke down and explained what we believe is a pond and provide definitions from other parties, which have been accepted by Wexford CoCo in the past in making decisions of other applications. Simply the development is a pond and not a lake for many reasons but simple as it is manmade and all the pond/water is in the photic zone as it is quite shallow and approx. 0.5acres.

2. Within the curtilage of a dwelling definition
They have also incorrectly suggested that the pond is within the curtilage of the dwelling where it is not and in an adjoining field with the overall property of some 3.5acres. This is well in excess of Revenue's definition of the curtilage of a dwelling being maximum <1acre with remaining property non-residential property. It is also not within the natural boundaries curtilage of the dwelling with aerial photo showing the pond in adjoining field, private laneway to the dwelling surrounded by natural hedgerows which continue around the dwelling with approx area of 0.75 acres leaving 2.75 acres remaining of a field with the pond located some 70m minimum away from the dwelling.

For Cullen Design & Build Ltd.

Tom Cullen

Sincerely

don't hesitate to contact the undersigned.

Should there be any further information required to make a decision on this application please

sections the applicant has not claimed for.

assessment of the application and have made the declaration as non exempt to the applicant for development is a lake or is within the curtilage of a dwelling. There are many errors in their of a dwelling are incorrect. They have provided no explanation or evidence to why the Wexford CoCo assessment and conclusion that the development is a lake and within the curtilage

Conclusion

The statutory provisions stated is Schedule 2 Part 1 Class 1 cover a rear dwelling extension and partly corrected by the Senior Planner.

no impact on adjoining ground water in an area served mainly by mains water.

Wexford CoCo suggest no details have been submitted on many items but albeit the explanation being quite simple, does explain how the pond has been constructed. No mention of a liner but does explain the heavy water logged soils, does provide ponds depth and that excavated soil has been used in the needed shelter banks. It also explains the pond fills and overflows naturally so

development.

At the beginning of the report they suggest we have requested a declaration whether the construction of a 'pond' within the curtilage of a dwelling house is development and is exempted

Errors in report used to make declaration.

declaration on Schedule 2 Part 1 Class 6.

We had viewed other applications similar in many ways to our application, such as EXD00931 in its construction with excavated soil used to mound/bund and the pond area allowed to flood/drain naturally and to also rewild naturally with dwellings close-by. Application EXD00289 from 2009 seems very similar in all ways with a farmhouse adjoining, a constructed pond in almost unusable land, naturally flooding and allowed naturally rewilding to occur on private land. Both have been declared as Exempt by Wexford CoCo with a dwelling being granted recently within the same field/curtilage as exempt development pond under EXD00289. Our application had claimed exemption under the same 2 or 3 sections of the regulations as above applications, none of which were reported or seemed to be assessed with Wexford CoCo only reporting on and making

the development is a pond in a rural location and not within the curtilage of a dwelling.

The basis of the application was made on precedence shown in other application and the belief

Application

d. Errors in Planner's Report as noted below

application was not possible.

decision and planning customer service staff being of the opinion an appeal of a Section 5

c. No advice on the availability of an appeals process provided by Wexford CoCo with

person acting and signing off as Senior Planner amending simple errors in reporting.

b. Lack of accountability with acting Director of Services signing off after being the same

Duncormick, Co. Wexford, Y35 E025.

a. The decision has the development location noted incorrectly as Pembrokestown,

3. Errors in statutory requirements

**APPLICATION FOR DECLARATION OF EXEMPTED DEVELOPMENT
SECTION 5 – PLANNING & DEVELOPMENT ACT 2000 (as amended)**

Name and address of applicant(s) Julian & Claire Hastings

Pembrokestown, Duncormick, Co. Wexford

Eircode: Y35K2P4

If applicant is a company –

Names of Company Directors

Registered address of company

Companies office registration number

Name and address of person Tom Cullen, Cullen Design & Build Ltd.

acting on behalf of applicant

Cullenstown, Duncormick, Co. Wexford

Eircode: Y35 E025

Location townland and postal Pembrokestown, Duncormick, Co. Wexford

address of land or structure

concerned

(Please attach site location map)

Nature and extent of development The construction of a pond

Please find cover letter with report and location map attached
(Please attach drawings in detail to support application)

Section of Exempted Development

Regulations under which exemption

is claimed

- a) 4(1)a Planning and Development Act 2000,
- b) Planning and Development Regulations 2001,
- Schedule 2, Part 1, Class 33,
- c) Planning and Development Regulations 2001,
- Schedule 2, Part 3, Class 3

SIGNED



DATE 24th May 2022

Fee of €80.00 to accompany application

SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000 (as amended)

Additional personal information (not for public viewing):

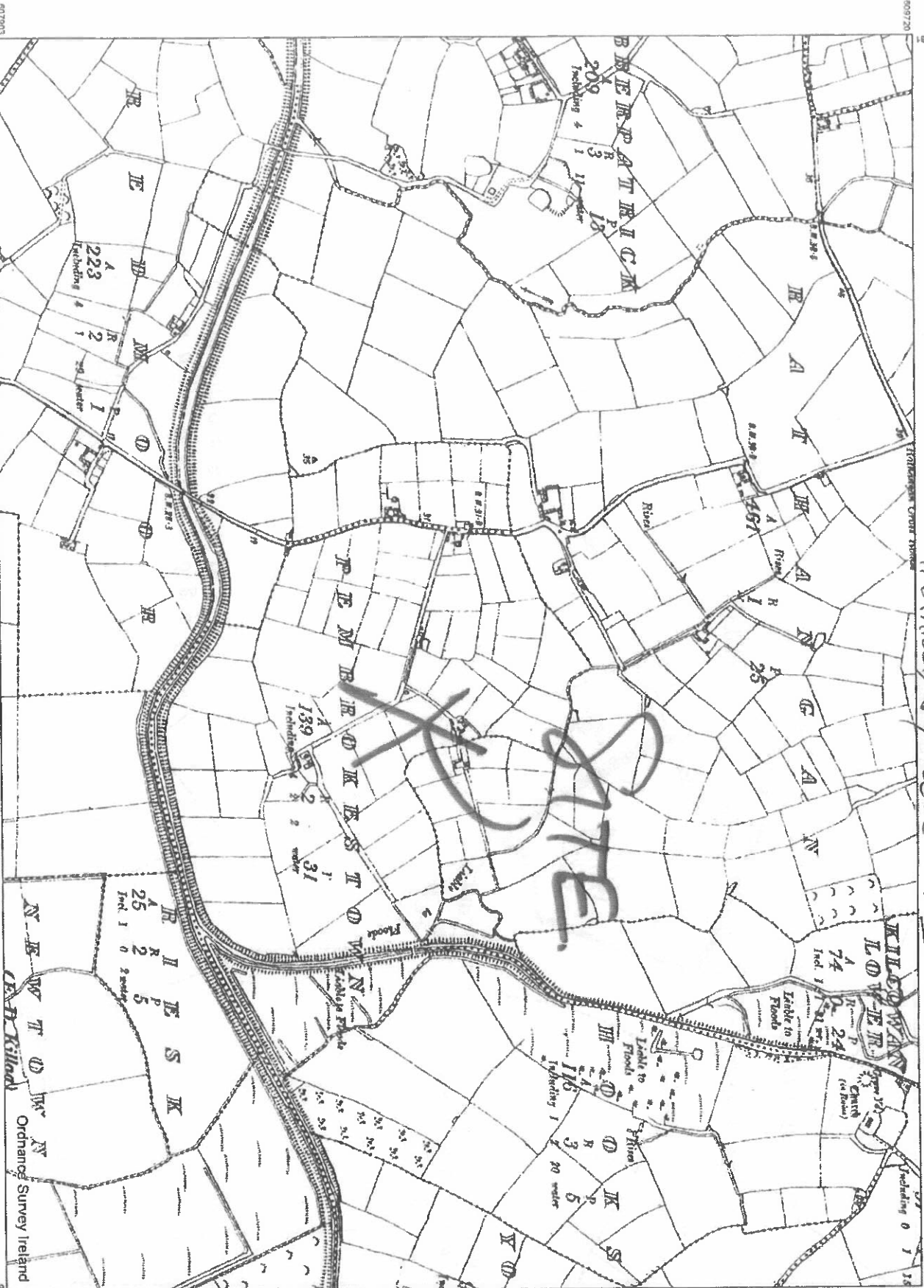
Telephone No. & E-Mail Address (if any) of Applicant:
085 1414523 magus222@icloud.com,

Telephone No. & E-Mail Address of Applicant's Agent (if any):
086 8325623 tom@cullendb.ie,



Site Location Map

Prepared by Gene Lewis
EPD00952



Ordnance Survey
 OS Ireland
 National Mapping Agency

CENTRE COORDINATES:
 ITM 694962,608812

PUBLISHED: 11/03/2022
ORDER NO.: 50255991_1

MAP SERIES: 6 Inch Raster
MAP SHEETS: WM046

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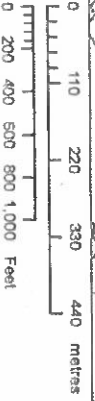
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OUTPUT SCALE: 1:10,560



607003

607003



Invoice / Receipt

Ordnance Survey Ireland
Phoenix Park, Dublin 8
D08F634
VAT No. IE 4748790P
custserv@osli.ie
+353-1-802-5300

EXPO0952

Invoice #: 50255991
Invoice Date: 11 Mar 2022, 13:18:52
Order Date: 11 Mar 2022, 13:14:19

Sold to:
Thomas Cullen
Cullinstown
Duncormick, Wexford, Y35 E025
Ireland
T: 0868325623

Payment Method
Pay by Credit or Debit Card

Product	SKU	Price	Qty	VAT %	Tax	Subtotal
Planning Pack 694962,608812, A4, 1:2,500, Landscape, PDF X/1-A, ITM	471002	€48.21	1	23.0 %	€11.09	€59.30
Planning Pack 679316,617063, A4, 1:2,500, Landscape, PDF X/1-A, ITM	471002	€48.21	1	23.0 %	€11.09	€59.30
Planning Pack 680810,633801, A4, 1:2,500, Landscape, PDF X/1-A, ITM	471002	€48.21	1	23.0 %	€11.08	€59.29

Subtotal: €144.63
Tax: €33.26
Grand Total: €177.89

View to Northwest/Private Lane Boundary Hedgerow & Trees 2022



Aerial 2020



View to South 2022



Recent Visitors 2022



Please find enclosed
five £200-00 cash.

AN BORD PLEANÁLA

LTR DATED 1 JUL 2022

FROM _____

LDG- _____

ABP- _____

Dear planning inspectorate,

Firstly, apologies if we have missed any information out, we literally had a couple of days notice to assemble this appeal package and get it to you. Tom, our architect had been away on holiday, then ill with Covid yet managed to get the news to us on 6/07/22 that our exemption application for our pond had been refused. Otherwise we would still be non the wiser as Wexford county council have not contacted us in any way regarding their decision.

Once he made us aware of the councils decision, Tom immediately contacted the acting Head of Planning Diarmuid Houston to request a face to face meeting with myself and Tom to discuss the contradictory reasons the council had for refusing our exemption (their mistaking of a pond for a lake despite Tom's clear definition and planners insisting that the pond was in the same curtilage as our home, it is not.) However Mr Houston refused to talk with us and told Tom that we could appeal the decision to refuse exemption for our pond if we disagreed with the councils decision and their insistence that we apply for planning permission for the retention of a lake. We simply cannot apply for the retention of a lake when it is clearly, by all definitions, a pond.

We are a simple family who puts nature and biodiversity first in our lives. In the U.K I was one of six in over sixty million people who was legally allowed to live in my own semi ancient woodland. Over the years I have received letters from Prince Charles commending me for my work with the environment and woodland protection. I have thirty years experience in creating large scale wildlife ponds and increasing biodiversity in those areas. My work has been published in numerous magazines and the London Independent newspaper, so I consider myself knowledgeable in this area. My wife Claire is a wildlife photographer and together we homeschool our 13 year old son Maximilian who is also a keen naturalist. Together we transformed a wet, boggy corner of our land that was choked with rushes and lacking in biodiversity into a thriving pond ecosystem. Since the ponds completion in Sept 2020 we have all been busy documenting and recording the wildlife it is attracting.

AN BORD PLE

055 209 22

12 JUL 2022

Type: _____

Fee: € _____

By: best

Time: _____

Julian and Claire Hastings
The Willows
Pembrokestown
Duncormick
Co.Wexford
Y35 K2P4
11/07/2022

Pond, not a lake.

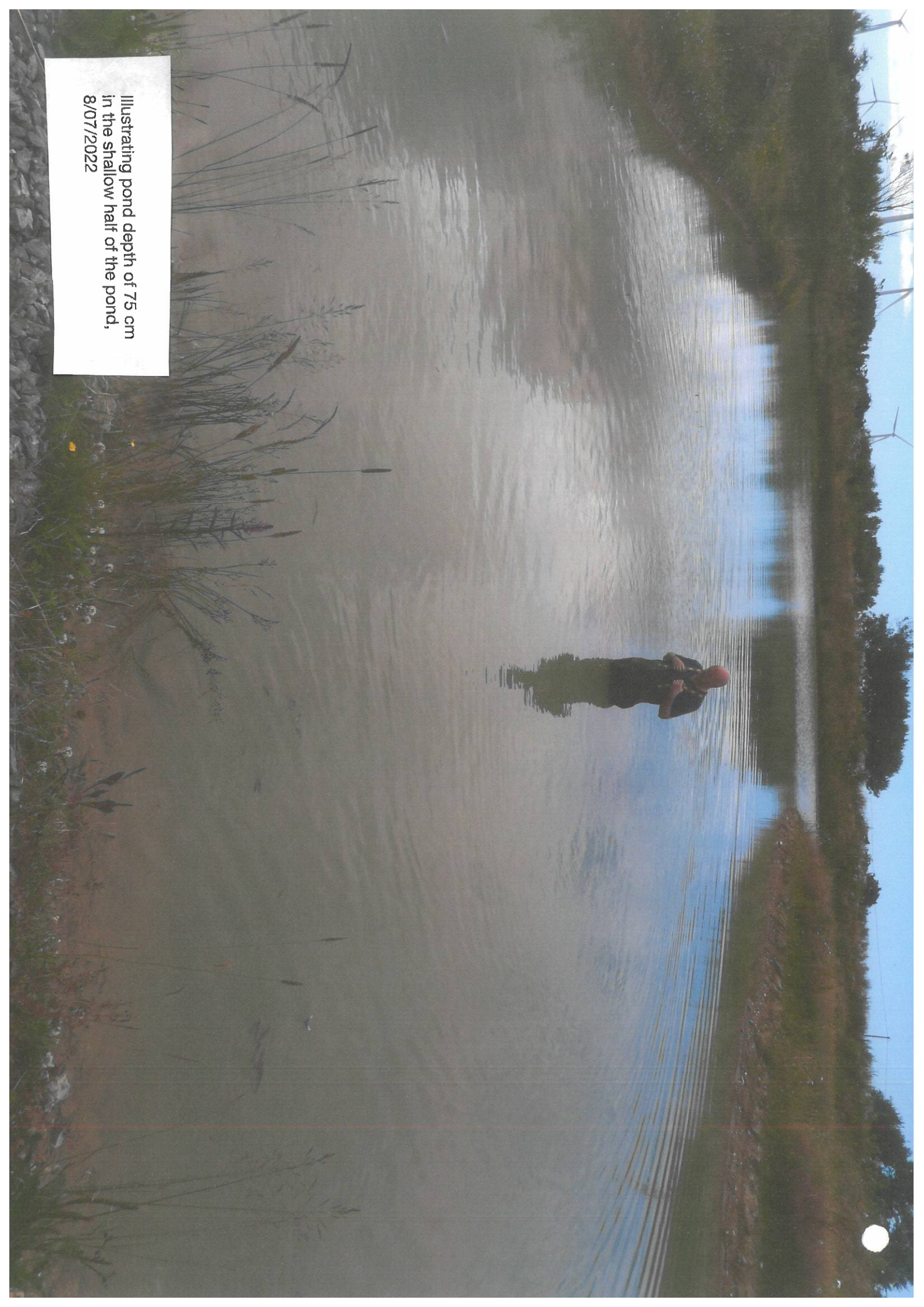


This photograph illustrates the final depth of the pond during digging in 2020. The green area in the centre is the island we decided to leave in the middle of the pond to encourage the water mechanics by creating an artificial current using the wind and also to provide a safe nesting site for water birds away from land predators. In the foreground you will see a step down, this is the final 75 cm depth at the shallow end of the pond. Further back behind the island the final depth of 1 meter was dug out, this is the deepest part of the pond. You will see that the bottom of the pond is flat, so the depth is consistent and the digger could drive up and down compacting the natural heavy clay soil to provide a better seal to the pond.

Once completed the pond filled naturally with rainwater, there are no water courses anywhere near our property, nor springs.

In the winter months the level can go up to 1.3 m due to the natural level of the surrounding field, but no further due to the overflow at the far end. From here it drains naturally across the rushes in our field and into our large drainage ditch running along the side of our field, that has always been there. Our pond overflow does not put any increased volume of water into the ditch as in winter our field was permanently flooded with rainwater and was draining into the same ditch. Nothing we have done has altered the water mechanics.

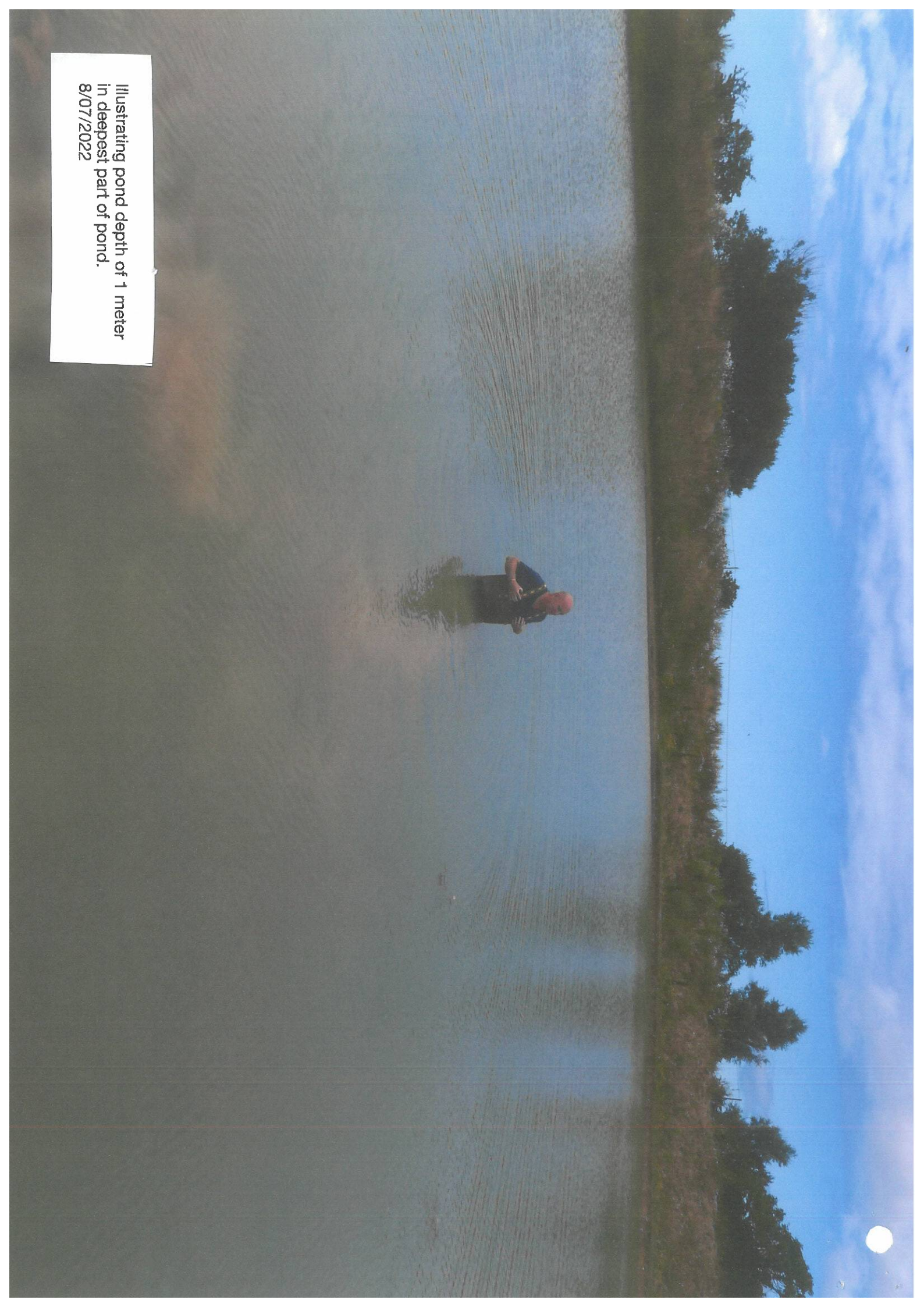
The pond was made to go a little above the 1 meter depth at the far end in winter to allow for summer evaporation where the water can go down as much as 36 cm. We have introduced the fastest growing aquatic pond cover plants to counteract the evaporation in summer and also to keep the water temperature down for the wildlife. This is proving effective.



Illustrating pond depth of 75 cm
in the shallow half of the pond,
8/07/2022



Illustrating pond depth of 1 meter
in deepest part of pond.
8/07/2022





Illustrating height of pond banks
in relation to the height of the trees
and hedgerows on the rest of our land.

Pond banks,


This wildlife pond was created in an extremely windy area, with 17 wind turbines only a couple of fields away (see photo) . For pond biodiversity to have a fair chance to establish we knew from years of experience that we needed to create as much shelter as possible from the prevailing winds.

In the previous three photographs the pond banks are visible in the background. Please note that they only come up two thirds of the height of our boundary hedgerows. On the side nearest to a neighbourhood the banks only come up one third of the height of the hedgerow and trees that span the length of our driveway. This is further separated from our neighbours property by a width of 12-14 ft width of our driveway and another further mature tree lined hedgerow boundary. The pond banks do not encroach on anybody.

On these banks we have personally planted over one thousand mixed trees that will grow to provide wind shelter for the pond and be a resource for birds and insect life. We spent hundreds of euros on kilos of native Irish pollinator wildflower seeds and to our delight this year they are really coming in to their own. The banks are alive with a huge range of butterflies, bees, hoverflies and birds. The next photo below shows the natural grasses and wild flowers that are coming back through now that the rushes are gone and the golden bark willow trees that are growing fast to merge with the mature tree line of our driveway in the background. See also the attached Record of Biodiversity that was carried out this month by members of the Wexford Naturalist Field Club identifying species purely in the pond and pond bank environment. The success of the banks in providing shelter to surface of the pond is demonstrated by the number of species of dragonflies and damselflies that are already in their second year of breeding at the pond. They require still waters to hunt and breed.

Curtilage

Our property is 3.6 acres in all, the pond is located well over an acre from our home. The pond is in a separate field that is bounded by hedgerows, it is one hundred percent in a separate curtilage.



Pond bank with mature trees of our driveway in the background. Planted with willow and silver birch, wildflowers and natural grasses regrowing.

Record of Biodiversity
 for pond at Pembrokestown, Duncormick, Co. Wexford
 9th - 10th July 2022

The following are species identified as either living in or using as a resource, the pond and it's banks. This information was collected by members of the Wexford Field Naturalist Club between 9th and 10th July 2022 and includes species recorded by Claire Butler-Hastings BA since the completion of the pond in September 2020.

Amphibian
 Common frog

Mammal

Irish hare

Rabbit

Shrew

Mice

Bats

Other

Fox

Birds

Curlew

Godwit

Egret

Wimbrell

Grey heron

Mallard duck

Little Stint

Moorhen

Swallow

Swift

Sand marten

Linnets

Wood pigeon

Pied wagtail

Grey wagtail

Hooded crow

Jackdaw

Rook

Magpie

Greater black backed gull

Black headed gull

Herring gull

Kingfisher

Starling

Bullfinch

Goldfinch

Wren

Hedge sparrow

Song thrush

Yellowhammer

Barn owl

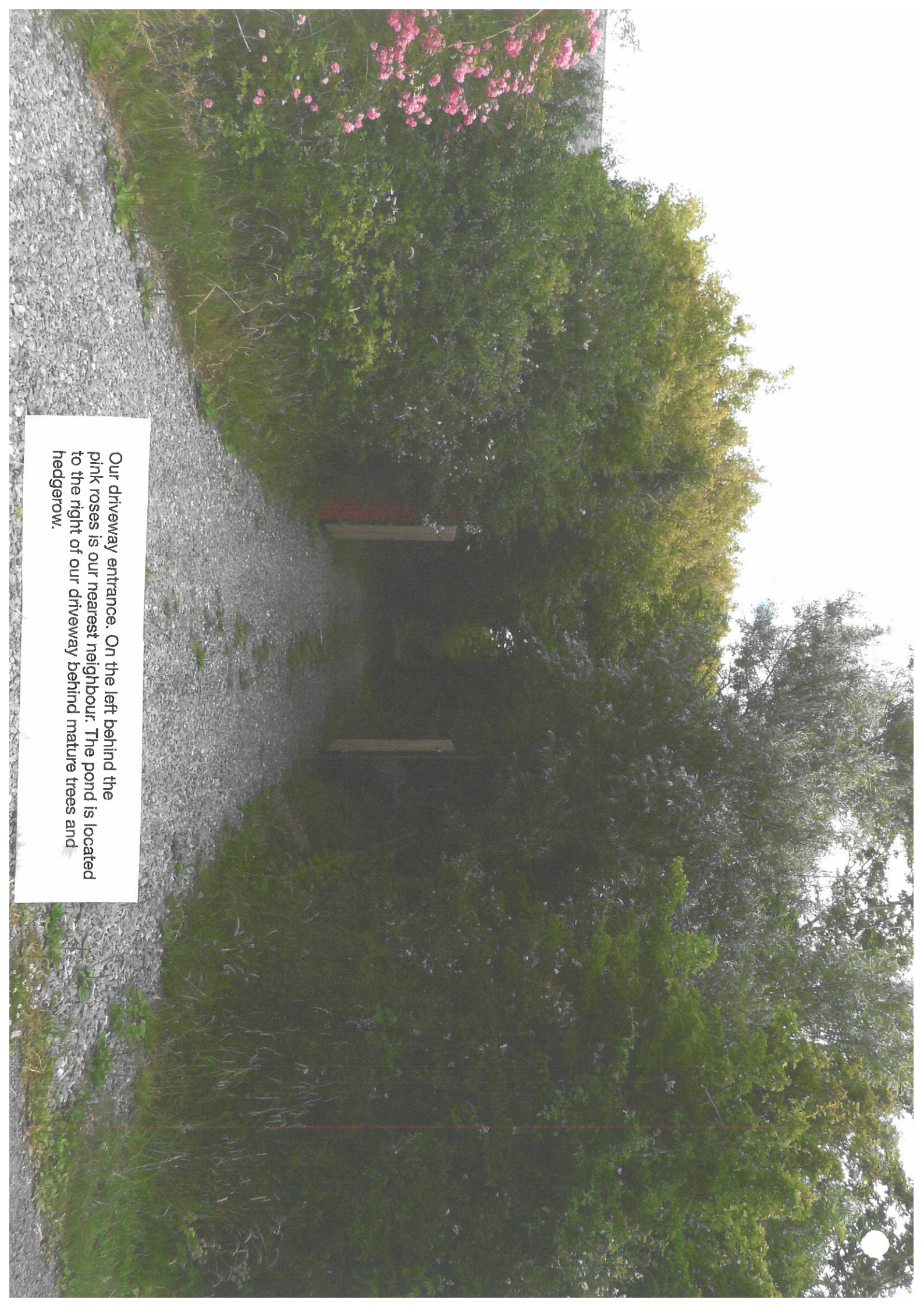
Pheasant

Willow warbler

Спсқоо һомеі
Flomœning ulær
Fole-ju-a-wis;
Gaisa
Yehow tætte
Zottei
Brooklime
Mæ;icress
Zmoorj som trisste
Puckyl som trisste
Esi neu
Eioatid cirt ulær
Coubaci ulær
Yankow
Zweet wooding
Mild canot
Zcaier bimbemei
Zweedweil
Cotton trisste
Yellow flag iis
Mæ;er trisste
Zweet trisste
Folger-we-uo
Foxglove
Bambing iunioyl
Puckie joogæitce
Tuffed leten
Bobbly
Gionidæi
Bluebbje weed
Coulolunig
Pink cambion
White cambion
Cajendole
Coccoskie
Cott unidoid
Pizitan
Badwof
Cottfomei
Common netle
Ost leaved craneebrii
Mæ;er willow netp
Milk trisste
Common dock
Birds foot netoi
Pink clover
White clover
Sæ; net
Ox eye daisy
Meadow puffecup
Creeping puffecup

Wind turbines in the fields nearby,
In the foreground are willow trees
we planted all over the banks.



A gravel driveway entrance leads into a lush garden. On the left, there are pink roses and a hedgerow. The driveway is bordered by gravel and leads into a dense thicket of green trees and shrubs. A white text box is overlaid on the left side of the image, providing context for the scene.

Our driveway entrance. On the left behind the pink roses is our nearest neighbour. The pond is located to the right of our driveway behind mature trees and hedgerow.

This photo was taken from on top of the pond bank facing towards our neighbours property, which is clearly not visible.



To be honest, we really didn't expect to be going through an appeal process. There are thirty years of experience behind this personal project. We desperately need biodiversity efforts like this in county Wexford, we believed we would receive encouragement and support from our local council. Indeed, we emailed the C.E.O of Wexford County Council, Tom Enright, to tell him all about our biodiversity project. We received an email response from him saying 'well done' and that Wexford needed biodiversity projects like ours and more tree planting. He finished by wishing us 'good luck' with our work.

We are thoroughly at a loss to understand the planners reaction to our exemption application and pond project in general, appalled that they couldn't be bothered to even google the difference between a pond and a lake, let alone arrange a site visit to actually see the pond. We are extremely disappointed that a face to face conversation was refused.

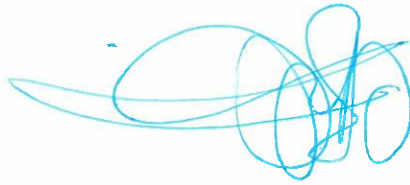
Something doesn't feel right at all, the process has caused us as a family great upset and untold stress. We have simply created something that is positive for the environment and nature and encroaches on nobody.

We saw zero point in putting in a planning application to the same group of people. We are incredibly scared that they would insist on the destruction of the banks with its hundreds of trees and countless wildflowers and insects, simply to comply with the 1m height rule, with no understanding of the importance of shelter from the wind. Also, putting in an application to retain a lake would concede to their view that it is necessary, whereas the pond is in fact exempt.

Continuing to be completely honest with you, we created this pond during the height of lockdown when nobody was going anywhere, including planners. From home we thoroughly researched on the internet before any work was begun - do we need planning permission for a wildlife pond in Ireland, in an agricultural field not close to our home?' We found nothing time and again, so went ahead.

As you can see, the pond and it's banks are flourishing with trees and wildflowers and wildlife, it would be a terrible shame to destroy this ecosystem now after nearly two years of positive growth. We firmly believe that our wildlife pond is exempt from planning for the reasons stated in this package.

Yours Sincerely,
Julian and Claire

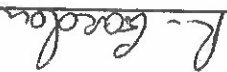


WEXFORD COUNTY COUNCIL PLANNING AUTHORITY
PLANNING AND DEVELOPMENT ACT 2000 (as amended)

NOTIFICATION OF DECISION ON PLANNING APPLICATION

The Decision of Wexford County Council on the application described in the Schedule to this Notice is as shown therein.

Signed on behalf of Wexford County Council



Date 17 June 2022

DECLARATION OF EXEMPTED DEVELOPMENT
SCHEDULE

REGISTER NUMBER:

EXD00952

DATE OF APPLICATION:

24 May 2022

APPLICANT:

Julian & Claire Hastings

PROPOSED DEVELOPMENT:

The construction of a pond

LOCATION:

Pembrokeshire, Duncormick, Co. Wexford, Y35E025

DECISION:

Not Exempt

DATE OF DECISION:

17 June 2022

END OF SCHEDULE

Note to Applicant: A retention application for the retention of a lake will be required. The application must include a full hydrological impact report carried out by a suitably qualified person.

20.06.22

RECEIVED

7 JUN 2022

Planning and Development Act 2000 (as amended) PLANNING SECTION

Application for Declaration of Exempted Development (Part 1, Section 5)

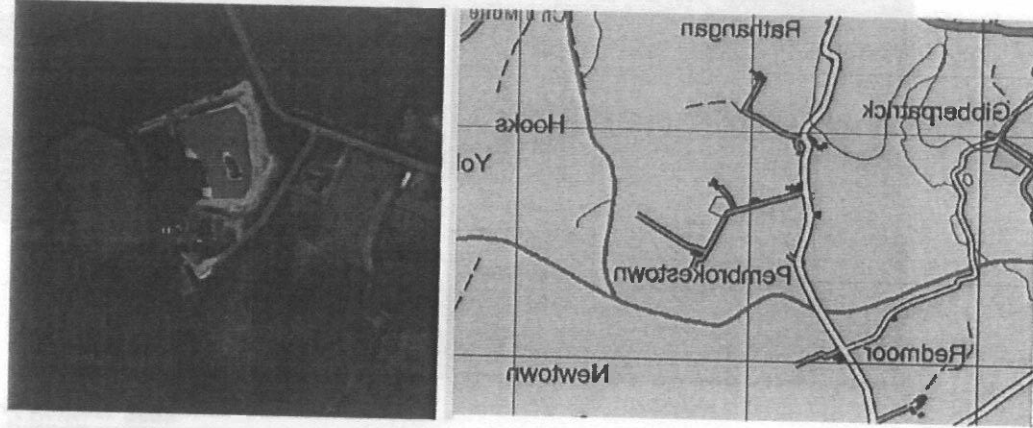
Register No.: EXD00952

Whether the construction of a 'pond' within the curtilage of a dwelling house is development and is exempted development

Location: Pembrokestown, Dungormack, Co. Wexford, Y35K2P4

Site Location and Description:

The site is located in the rural location of Pembrokestown, Dungormack.



It should be noted that the 'pond/lake has already been constructed.

No details have been submitted in terms of;

- the pond's construction,
- whether the lake has been lined,
- appraisal of the hydrological impact of the lake on existing ground water, or adjacent water supplies.

The proposal will be assessed within the provisions of:

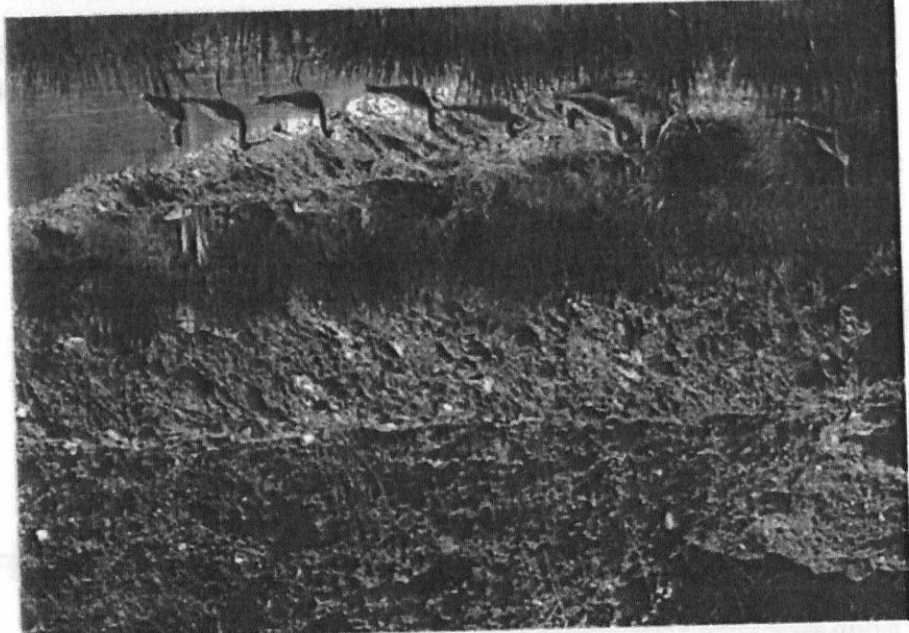
- Sections 3 and 4 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and

Development in Question:
This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) to determine whether or not a pond within the curtilage of a dwelling house constitutes exempted development.

View to South 2022



Recent Visitors 2022



EXD00952

- Schedule 2, Part 1 Class 1 of the Planning and Development Regulations 2001 (as amended)

'Section 3(1) of the Planning and Development Act, 2000 (as amended) defines 'development' as meaning, except where the context otherwise requires, 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structure or other land'.

'Works' are defined under Section 2 of the Planning and Development Act 2000 (as amended) as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...';

It is considered having regard to the above definitions that the proposal constitutes 'works' and 'development' within the meaning of the Act.

Class 6 of Part 1 (a) of Schedule 2 relates to the following development:

"The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house".

The relevant conditions and limitations attached to this exemption:

"The level of the ground shall not be altered by more than metre above or below the level of the adjoining ground.

Assessment

The proposed development is considered "works" and therefore constitutes "development" as defined above.

The proposed 'pond' is a significant feature on the landscape and would have required extensive removal of existing soil to create.

The Act Pat 1, Section 4 (1 (j)) states

The following shall be exempted development for the purposes of this Act-

Development consisting of the use of any structure or land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

Given the size and scale of the 'lake' it is the view of the Planning Authority that this development does not fall within this exemption and is not 'incidental' to the enjoyment of the house.

Conclusion:

It is considered that the lake constructed is development and is not exempted development.

Recommendation

Having regard to the foregoing, it is decided that the lake as constructed is development and is not exempted development.

A draft order is set out below.

Construction of a pond within the curtilage of an existing dwelling house, as per the submitted plans, constitutes exempted development;

AND WHEREAS Wexford County Council, in considering this referral, had regard particularly to -

- Sections 3 and 4 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- Schedule 2, Part 1 Class 1 of the Planning and Development Regulations 2001 (as amended)

Wexford County Council has concluded that the lake as constructed is development and is not exempted development.

NOW THEREFORE Wexford County Council, in exercise of the powers conferred on it by section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the creation of a pond within the curtilage of a dwelling house is development and is not exempted development.

Note to Applicant: A retention application for the retention of a lake will be required. The application must include a full hydrological impact report carried out by a suitably qualified person.0

Sonia Hunt
Executive Planner

Diarmuid Houston
Senior Planner

Date: 7/6/22

Date: