

Rory Kelleedy

From: Peter Thomson [REDACTED]
Sent: Thursday 13 July 2023 17:07
To: Bord; Appeals2; Catherine Flynn
Subject: Response to Referral ref: ABP 317396-23
Attachments: Attachment 5 - Farmholding.pdf; 317396-23 Referral Response.pdf; Attachment 1 Planners report.pdf; Attachment 2 - Levels.pdf; Attachment 3 Crosstown Declaration.pdf; Attachment 4 - EIA screening.pdf

Please see attached

Regards,

Peter Thomson,
Peter Thomson Planning Solutions,
4 Priory Grove,
Kells,
County Kilkenny

Tel: [REDACTED]



Master of Science Urban and Regional Planning (Strathclyde) 1990
Advanced Diploma in Planning and Environmental Law (Kings Inns) 2017



Peter Thomson Planning Solutions



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

14 July 2023

Re: Whether the removal of topsoil and subsoil from one area and spreading it on land for agricultural use is or is not development or is or is not exempted development at Curraghgraique, Enniscorthy, Co Wexford.

ABP ref: ABP-317396-23

PA ref: EXD01013

Dear Sir/ Madam,

Introduction

I act on behalf of Kearns Fruit Farm, Curraghgraique, Enniscorthy, Co Wexford which owns the property that is the subject of the Referral by John and Marie Sinnott, Windy Ridge, Curraghgraique, Enniscorthy, Co Wexford. I am writing on behalf of my client in response to your letter of 22 June 2023.

Kearns Fruit Farm owns the land which is the subject of the Referral. It is part of a wider farm-holding belonging to my client which comprises land and structures used for horticultural purposes and growing crops.

My client is one of the largest strawberry growers in County Wexford which produces 500 tonnes of fruit each year and employs over 75 workers for 7 months each year and 25 full time workers. A further 5 full-time and 10 part-time jobs will be created once the glass houses are complete. Cereal crops are currently being grown on the land that is the subject of this Referral.

Your letter of 22nd June 2023 was the first my client was made aware an application for a Section 5 Declaration had been made on its property and, as the owner, it is grateful for the opportunity to rebut the terms of the Referral, which are considered to be ill-conceived.

Background

The relevant background to this Referral is that Kearns Fruit Farm was granted planning permission under application ref: 2022/1300 for glasshouses for their horticultural business on the land immediately to the south of the field which has been up-filled and is the area of ground the referrers claim to have a concern.

The planning history of the landholding dates back to 2001 and is detailed in the planner's report in respect of the Section 5 Declaration application (copy attached

Thomson Planning Consultant Limited T/A Peter Thomson Planning Solutions

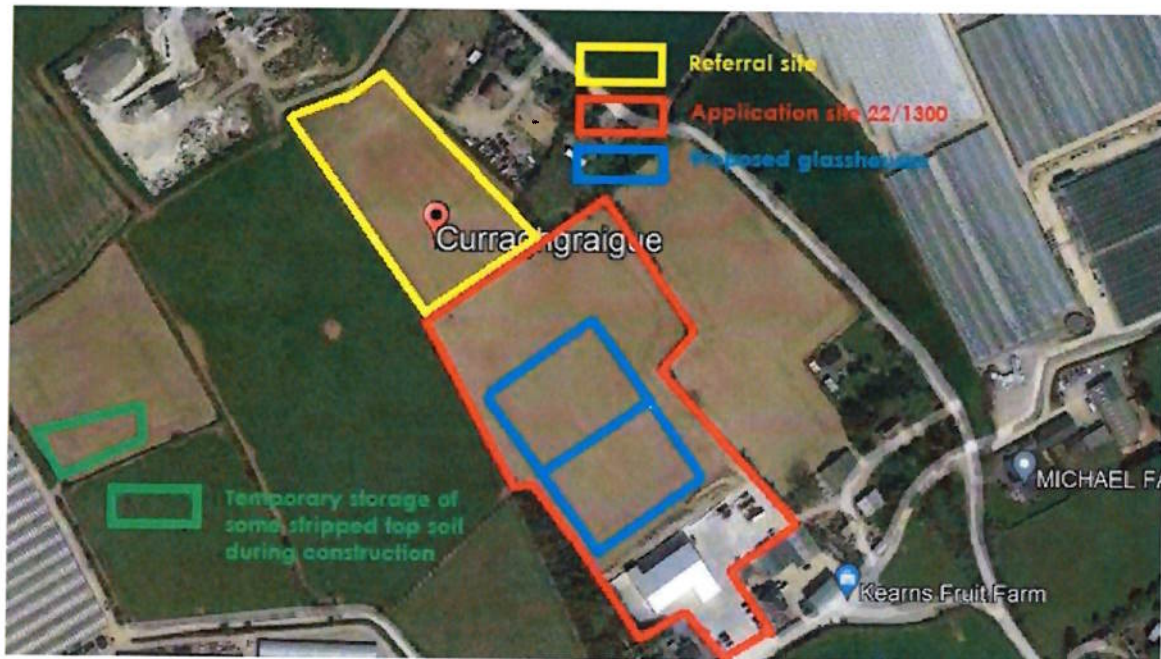
Company Registration No. 603096 VAT Registration No. IE 3469921SH

Address: 4 Priory Grove, Kells, County Kilkenny

Tel: [REDACTED] email: [REDACTED]

– Attachment 1). The planner's report confirms the Referrers did not object to the proposed development.

Planning application 2022/1300 involved cutting and filling the ground on which the permitted glasshouses are being erected. The topsoil on the adjoining 1.28 ha parcel of land immediately to the north of the glasshouse site, which is part of the same farmholding, was removed and stored in the corner of a separate field, also in the same farmholding. The surplus excavated ground from the glasshouse site was then spread on the 1.28 ha of adjoining farmland and spread. The increase in height of the adjoining parcel of land varied between 0.28m and 1.85m (see survey plan in Attachment 2). The land was then planted with cereal crops.



Section 5 Declaration

The application for a Section 5 Declaration was made by Frank Finnegan on behalf of John and Marie Sinnott. It was accompanied by an application form, two OS maps, photographs, and a supporting letter. The supporting letter estimated 16,000m³ of material had been deposited on the upfill parcel of land. It also listed several previous Board Referral cases in which it was considered demonstrated the land reclamation works in question were not exempted development. Each is discussed later in this report.

Having considered the question posed, the Planning Authority issued a Declaration dated 2nd June 2023 stating the works which had been undertaken were development and exempted development. In coming to this conclusion, it considered the works were exempted. The Declaration stated:

- a) The removal of topsoil and subsoil from one area and spreading it on lands for agricultural use is development,
- b) The works comply with Part 2, Exempted Development (8C) of the Planning and Development Regulations 2001 and constitute exempted development.

The Declaration, therefore, covered the "works" and the "use" of the land.

For clarification, "8C" refers to "*Land reclamation works (other than reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development*", and is found under Article 8 of the Planning and Development Regulations 20001 – 2023.

Referral to An Bord Pleanála

The Referral seeks to challenge the Declaration of the Planning Authority on a number of grounds.

Firstly, it states the planning Authority failed to give its reasons and considerations on which its decision is based. Also, that the planner's report should have formed part of the decision.

Secondly, reference is made to Class 6 of Part 1 of the "Exempted Development Regulations" where it is stated that the level of the ground must not be altered any more than one metre higher or lower and, in the absence of any other height restrictions in the Regulations, the Referrers agent considers this to be a reasonable standard to apply and, if applied, the works undertaken fail the one metre test.

Finally, the same five ABP referrals listed as precedent cases in the Section 5, are listed again in the Referral, which claims the first four relate to similar work situations and the last is identical to the works referred to in the Referral.

I would address each of these as follows:

The Planning Authority's reasons and considerations for its decisions – The Referrers' agent would appear to be correct on this. Wexford County Council Declarations are normally accompanied by a list of reasons attached to the Declaration Schedule. I attach for the Board's attention a copy of the Declaration issued by the Planning Authority, which relates to the Referral listed as "Precedent Number 3" by the Referrers' agent (Attachment 3). Preparing and attaching a list of reasons appears to have been an oversight in the current case by the Planning Authority.

However, the planner's report is in the online public file, and this was available to the Referrers' agent. It gives full details of the considerations and the reasons, as follows:

WHEREAS a question has arisen as to **removal of top soil and sub soil from one area and spreading it on lands for agricultural use** constitutes exempted development.

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

- (a) Section 2, 3, and 4 of the Planning and Development Act 2000 (as amended)
- (b) Articles 6, 8C and 9 of the Planning and Development Regulations, 2001 (as amended)

AND WHEREAS Wexford County Council has concluded that -

- c) The removal of top soil and sub soil from one area and spreading it on lands for agricultural use) is development,
- d) The works comply with Part 2, Exempted Development (8C) of the Planning and Development Regulations 2001 and constitute exempted development.

NOW THEREFORE Wexford County Council, in exercise of the powers conferred on it by section 5(2)(a) of the 2000 Act, hereby decides that the removal of top soil and sub soil from one area and spreading it on lands for agricultural use is development and is exempted development.

Class 6 of Part 1 of the Regulations – This Class refers to exemption for “The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house”, where, “The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground”.

The land which is the subject of this referral is a c1.28 ha parcel of land on a farm-holding and is not within the curtilage of a house, therefore Class 6 is not applicable in this case.

There is no height restriction on land reclamation works exempted under Article 8C and the only restrictions are that the works are to recontour the land, including infilling of soil (but not waste material) and that the works are carried out within a farm holding. The works which were carried out involved recontouring, including filling hollows and only inert subsoil and topsoil material from within the landholding was used.

The only other restriction, which applies to all categories of exemption in the Regulations is that of Section 4(4) of the Planning and Development Act 2000 (as amended), which reads as follows:

*“Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.*¹

The planning authority screened out Environmental Impact Assessment for the works (copy attached – Attachment 4).

It did not appear to carry out a separate Appropriate Assessment screening exercise. However, it did for planning permission ref: 20221033 in respect of the groundworks and erection of the glasshouses on the adjoining parcel of land. It found that “*having regard to the limited extent of the proposed works and the substantial distance to the nearest Natura 2000 sites no element of the proposed project alone or in combination is likely to give rise to any impacts on the Natura 2000 sites*”.

The nearest EU habitat sites are the Blackstairs Mountains SAC, 6.7km to the west, and the River Slaney SAC, 6km to the south and 7km to the east, and there are no hydrological links between the site and these conservation sites. On this basis, I would consider that these two EU sites can be screened out for further consideration. However, the Board is now the competent authority in this regard.

ABP precedent cases – I would comment on each of the “precedent” cases referenced in the Referral as follows:

¹ My emphasis underlined as the applicable reference

Precedent Number 1 ref: ABP 311284 - This case involved importing C&D waste onto a rural site and the land use changing from agricultural to use for the depositing of C&D waste. The current proposal involved moving inert excavation material within the farmholding and improving the profile of agricultural land and for the land use to remain agricultural. The precedent case is, therefore, not comparable.

Precedent Number 2 ref: ABP 305482 – The Board found that quarrying of material on the landholding for the purposes of land reclamation on the same farm-holding was development, and was exempted development, as per Article 8C of the Regulations. This part of the determination by the Board supports the decision of the Planning Authority, that the works carried out by my client were exempted under Article 8C.

The split decision in ABP 305842 also found that quarrying of material not required for land reclamation on another part of the farmholding, was development and was not exempted development. This is not comparable to my client's situation, as all work undertaken resulted in improving the profile of agricultural land and for the land use to remain agricultural. The part of the precedent case is, therefore, not comparable.

Precedent Number 3 ref:303109 – The Board in this case concurred in its split decision that the infilling of a marl hole on a site of a proposed housing development, which was deemed to constitute a wetland, with imported waste was not exempted development. Also, the land in question was not in agricultural use and was proposed to be developed for a housing development. It was concluded, *inter alia*, that the works were not exempted under Article 8C.

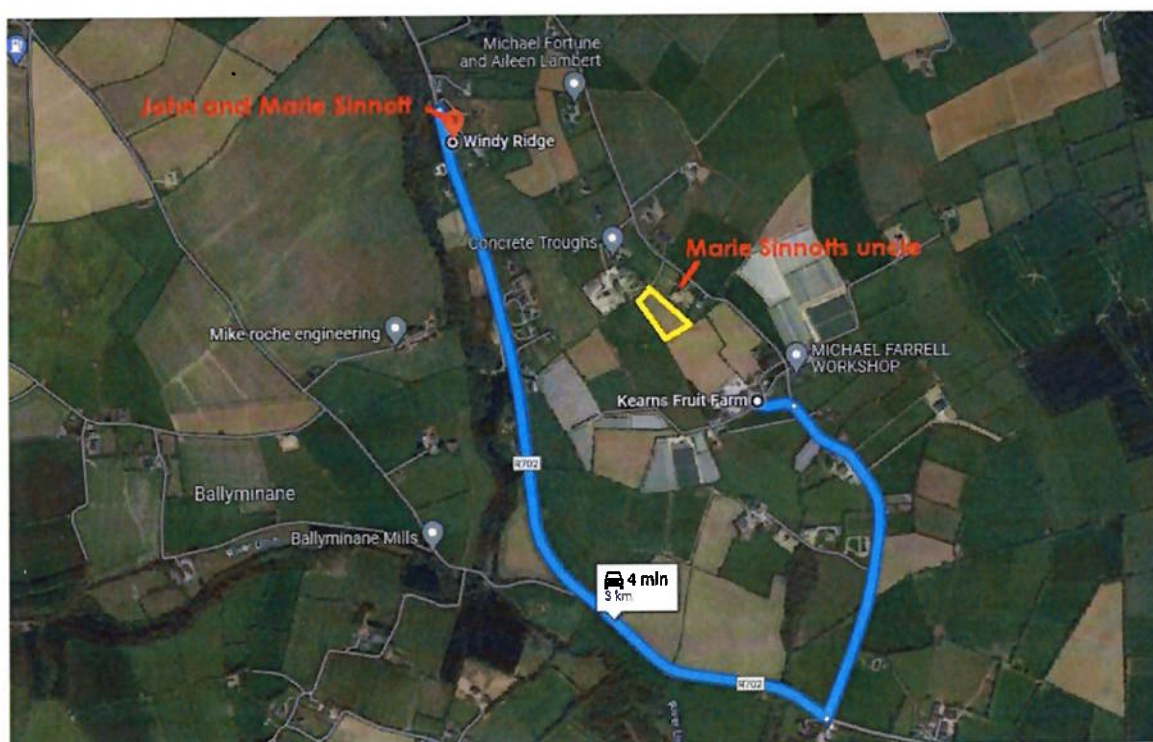
Precedent Number 4 ref: RL3540 – This case involved the importing of inert material onto a farm-holding and, therefore, did not come within the scope of Article 8C, or other classes of exemption and, therefore, was a development which was not exempted development. The current proposal involved moving inert excavation material within the same farm-holding and improving the profile of agricultural land and for the land use to remain agricultural. The precedent case is, therefore, not comparable.

Precedent Number 5 ref: 3609 – This is the case the Referrers agent considered to be identical to this Referral. The works involved importing soil and subsoil from development sites outside the farm-holding to re-contour the agricultural land. The Board considered the material to comprise waste material. It determined the works involving the importing of waste from outside the farm-holding the material was being spread, did not come within the scope Article 8C, or other classes of exemption and therefore was a development that was not exempted development.

Therefore, on examination of the Precedent cases presented in the Referral, only part of Precedent Number 2 ref: ABP 305482 is comparable. In that case, the Board found that the excavation of material on the landholding for the purposes of land reclamation on the same farmholding was development, and was exempted development, as per Article 8C of the Regulations. All other Precedent cases are not comparable.

Other Observations

The land on which the glasshouses were erected and the surplus material used for re-contouring before returning to agricultural use, were acquired by Kearns Fruit Farm in 2018 from an uncle of Marie Sinnott (one of the Referral applicants) who lives immediately to the east of the parcel of land on which the material was spread. He was aware of the proposals of Kearns Fruit Farm to develop the land to be used in conjunction with the existing horticultural business and for growing crops. The Referrers live 3km by road to the northwest of the fruit farm.



Please find attached the land ownership of Kearns Fruit Farms (Attachment 5). This confirms the land from which the surplus inert material was excavated and where it was deposited for the purposes of re-contouring before returning to agricultural use, is adjoining land within the same farm-holding. This confirms the material excavated and re-used was not waste material and that the material was moved within a single farmholding. The land is high quality agricultural land and not wetland. Same farm-holding, the use of only non-waste material from within the farm-holding and not filling wetlands are all prerequisites for exemption, which Kearns Fruit Farms satisfy on all counts.

Conclusion

The works which were carried out were exempted development, exempted under the provisions of Article 8C of the Planning and Development Regulations 20001 – 2023, being *"Land reclamation works (other than reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm-holding"*.

The Referral is ill-conceived, based on the premise that the restrictive condition of Class 6 of Part 1 of the Regulations, which restricts the carrying out of any landscaping works where the level of the ground is altered by more than 1 metre

above or below the level of the adjoining ground, applies in this case. This is incorrect. Class 6 only relates to works within the curtilage of a dwelling house, which does not apply in this case which involves an agricultural farm-holding and not the curtilage of a house.

Article 8C exemption does not restrict the height of the land reclamation works, only that the works are for the purposes of recontouring the land and for the purposes of agriculture on the farmholding. That was the purpose of the works which were carried out.

Precedent for the works being exempted can be found in the Referrers' agent's Precedent Number 1 ref: ABP 311284, which the agent misunderstood involved works that were not exempted. In fact, the works which were carried out on the same farm-holding were confirmed to be exempted under Article 8C. All of the other cases referenced, including that believed to be identical to this case, were in fact, not comparable and did not involve works within a single farm-holding.

The Board is requested to uphold the decision of the Planning Authority and confirm the works carried out to recontour the land for the purpose of agriculture on the farm-holding, were exempted development.

Yours faithfully,



Peter Thomson, MSc, MIPI

EIA Pre-Screening – No EIAR Submitted

Planning Number:		EXD01013	
Development Description:			
Removal of top soil and sub soil from one area and spreading it on lands for agricultural use			
Location:		Curraghgraique, Enniscorthy, Co. Wexford	
1. Does the proposed development constitute an EIA project? (that is involving construction work or interventions in the natural surroundings)			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. If YES, does the proposed development fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning & Development Regulations 2001 (as amended)			
Tick	Threshold	Comment	Result
No	N/A		No EIA or Screening for EIA required
Yes	Exceeds/ is equal to/ No Threshold		EIAR required
	Sub Threshold		EIA Screening required Proceed to Page 2
Conclusion			
Development is not within Part 1 or Part 2, Schedule 5. No EIA/Screening is required.			<input checked="" type="checkbox"/>
Development is within Part 1 or 2 and is greater than, equal to, or there is no threshold. EIAR is required.			
Development is within Part 1 or 2 but is less than threshold. EIA Screening is required.			

Planner SA

Date: 10/5/23

EIA Screening – Stage 1 Preliminary Examination

Planning Number: EXD01013			
Development Description: Removal of top soil and sub soil from one area and spreading it on lands for agricultural use			
Location: Curraghgraique, Enniscorthy, Co. Wexford			
Preliminary Examination Process Can likely significant effects on the environment be ruled out at a high level? Yes or No Yes - No real likelihood of significant environmental effects – EIAR not required or no notification required OR No - If such effects can not be immediately ruled out based on nature, scale and location – then continue to Screening Determination.			
Examination			
	Yes/No/Uncertain	Comment	
Is the size of development exceptional in the context of the existing development?			
Is the proposed development located on, in, adjoining or have the potential to impact on a sensitive site or location?			
Will the development result in the production of any significant waste, or result in emissions or pollutants?			
Conclusion			
Based on a preliminary examination of the nature, size or location of the development, is there a real likelihood of significant effects on the environment?			
There is no likelihood of significant effects on the environment	EIAR not required		
There is significant and realistic doubt in regard to the likelihood of significant effects on the environment	Stage 2 Screening Determination required.		
	Sch 7A Information required		Yes No
There is a real likelihood of significant effects on the environment	EIAR is required		

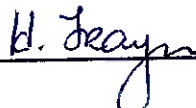
Planner _____ Date: _____

Note: A Stage 2 Screening Determination must be carried out if there is significant and **realistic doubt** in regard to the likelihood of significant effects on the environment arising from the proposed development, or Planning permission for the **retention** of development CANNOT be granted if a Screening Determination is required.

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

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 : 29 March 2017

DECLARATION OF EXEMPTED DEVELOPMENT

SCHEDULE

PLANNING REG. NO.: EXD00729

DATE OF APPLICATION: 15 October 2018

APPLICANT: MICHAEL BRENNAN
Mullan Rua
Crosstown
Wexford
Y35 KW13

TYPE OF APPLICATION: EXEMPTED DEVELOPMENT

PROPOSED DEVELOPMENT: REMOVAL OF TREES AND OTHER VEGETATION FROM THE SITE AND INFILLING OF THE EXISTING HOLE (UNDERSTOOD TO HAVE BEEN A FORMER MARL HOLE), WITH UNKNOWN INFILL MATERIAL AND TOP SOILING OF THE FILLED HOLE. ALSO CARRYING OUT WORKS TO ALLOW WATER HELD IN HOLE TO DISCHARGE TO THE EXISTING NATURAL DRAINAGE NETWORK.

LOCATION: CROSSTOWN, ARDCAVAN

DECISION: PART EXEMPT & PART NOT EXEMPT

EXEMPTED DEVELOPMENT as listed hereinafter:-

REMOVAL OF TREES AND OTHER VEGETATION FROM THE SITE

NOT EXEMPT as listed hereinafter:-

INFILLING OF THE EXISTING HOLE (UNDERSTOOD TO HAVE BEEN A FORMER MARL HOLE), WITH UNKNOWN INFILL MATERIAL AND TOP SOILING OF THE FILLED HOLE. ALSO CARRYING OUT WORKS TO ALLOW WATER HELD IN HOLE TO DISCHARGE TO THE EXISTING NATURAL DRAINAGE NETWORK.

DATE OF DECISION: 9 November 2018

REASONS

1. (a) the said infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network come within the scope of sections 2(1) and 3(1) of the Act, as amended, and constitute development,

(b) the said infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network does not come within the scope of Class 11, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,

(c) the said infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network does not come within the scope of section 4(4) Planning and Development Act, 2000, as amended.

(d) the said the infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network does not come within the scope of article 8B, 8C, 8F of the Planning and Development Regulations, 2001, as amended.

END OF SCHEDULE

11.11.18



Planning and Development Act 2000 (as amended)

Application for Declaration of Exempted Development

(Part 1, Section 5)

Register No. EXD00729

Applicant: MICHAEL BRENNAN

Proposal: REMOVAL OF TREES AND OTHER VEGETATION FROM THE SITE AND INFILLING OF THE EXISTING HOLE (UNDERSTOOD TO HAVE BEEN A FORMER MARL HOLE), WITH UNKNOWN INFILL MATERIAL AND TOP SOILING OF THE FILLED HOLE. ALSO CARRYING OUT WORKS TO ALLOW WATER HELD IN HOLE TO DISCHARGE TO THE EXISTING NATURAL DRAINAGE NETWORK.

Location: CROSSTOWN, ARDCAVAN



Site History

20150620 - H & R CHARTERED HOMES LTD - PERMISSION FOR THE CONSTRUCTION OF 10 NO. FULLY SERVICED DWELLING HOUSES INCLUDING ALL ASSOCIATED SITE WORKS - **granted**

20150633 - H & R CHARTERED HOMES LTD - PERMISSION FOR THE CONSTRUCTION OF 3 NO FULLY SERVICED DWELLING HOUSES INCLUDING ALL ASSOCIATED SITE WORKS - **granted**

20170467 - H & R CHARTERED HOMES LTD. - PERMISSION FOR A CHANGE OF HOUSE TYPE ON SITES 3, 5, 6, 7 AND 8 OF APPROVED PLANNING PERMISSION FOR 10 DWELLINGS, DEVELOPMENT SITE CURRENTLY UNDER CONSTRUCTION (PLANNING REGISTER NO. 20150620) - **granted**

20180713 H & R CHARTERED HOMES LTD. – PERMISSION FOR CONSTRUCTION OF 24 NO. FULLY SERVICED DWELLING HOUSES INCLUDING ALL ASSOCIATED AND ANCILLARY SITE DEVELOPMENT WORKS. A NATURA IMPACT STATEMENT WILL BE SUBMITTED TO THE PLANNING AUTHORITY WITH THE PLANNING APPLICATION AND THE NATURA IMPACT STATEMENT WILL BE AVAILABLE FOR INSPECTION OR PURCHASE AT A FEE NOT EXCEEDING THE REASONABLE COST OF MAKING A COPY DURING OFFICE HOURS AT THE OFFICE OF THE PLANNING AUTHORITY – **Under Appeal**

Legislative Provisions

(a) Planning and Development Act 2000, as amended.

Section 2(1)

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and.....”

Section 3(1)

“development” means, 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 structures or other land.

Section 4 (1) (i)

4.—(1) The following shall be exempted developments for the purposes of this Act—

i) development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;

Section 4(2)(a)(i)

“The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or....”

Section 4(4)

"Notwithstanding..... any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required"

(b) Planning and Development Regulations 2001 (as amended)

Article 5

"Wetlands" means natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.

Article 6(1)

"Subject to article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1".

Article 8

8B Works consisting of field drainage for agriculture, other than drainage and/or reclamation of wetlands, shall be exempted development.

8C Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

8F Development consisting of the thinning, felling or replanting of trees, forests or woodlands, or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species, shall be exempted development.

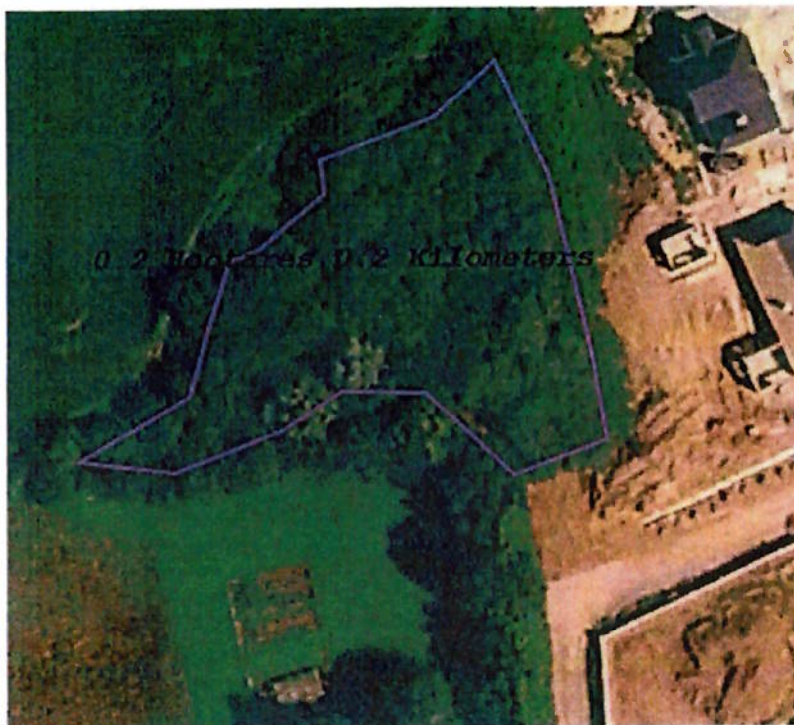
Schedule 2, Part 3

Land Reclamation

CLASS 11

Development consisting of the carrying out of drainage and/or reclamation of wetlands

1. The area to be affected shall not exceed 0.1 hectares.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

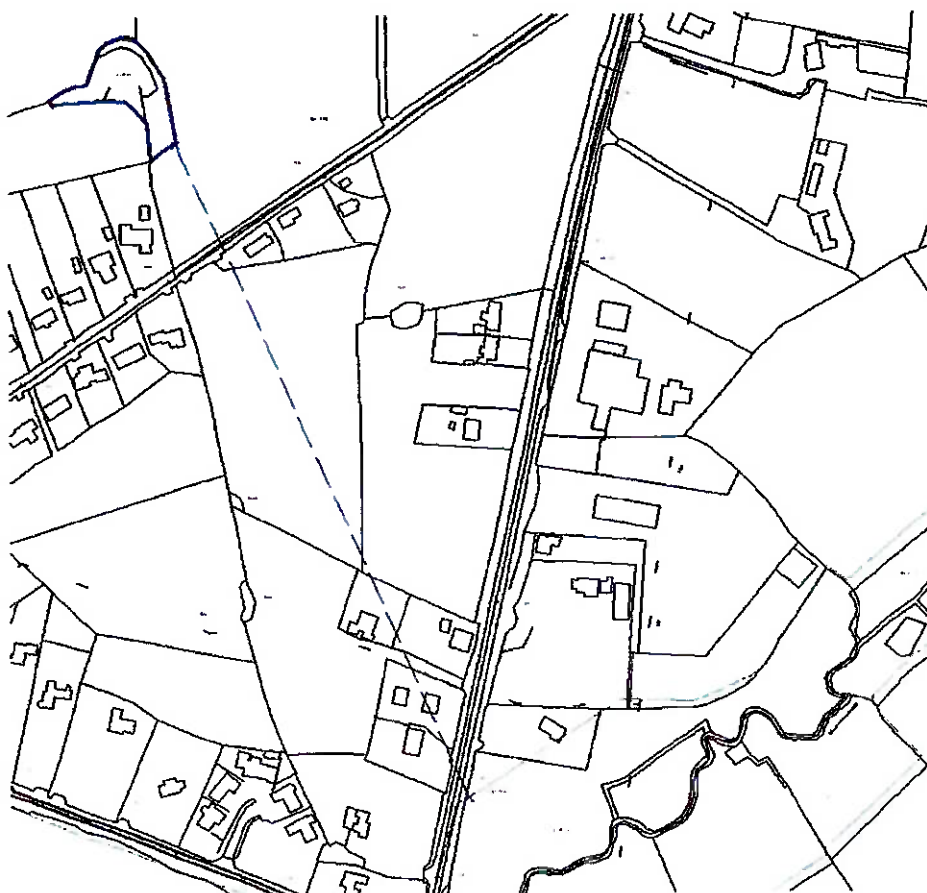


Article 9(1) "Development to which Article 6 relates shall not be exempted development for the purposes of the Act –

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

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,



500m north west of Wexford Harbour and Slobbs SPA and Slaney River Valley SAC

Development

Having regard to the nature of the proposal, namely the infilling of a former marl hole with an estimated area of 0.2ha, with unknown infill material and works to drain water held in the hole to discharge to natural drainage network, by reference to Section 2(1) and 3(1) of the Act, that it does constitute development for planning purposes. The focus, therefore, is on whether or not the proposed development constitutes exempted development.

Following on from Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of development is, as indicated,

Land Reclamation

CLASS 11

Development consisting of the carrying out of drainage and/or reclamation of wetlands

1. The area to be affected shall not exceed 0.1 hectares.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

The marl hole measure in excess of 0.1ha and therefore if fill material originated within the landholding the development is still considered not exempt.

If the fill material constituted waste material the infilling is also not exempted development as no such exempted development class exists.

Environmental Impact Assessment (EIA)

Being an infill development of unknown material the development can be assumed as including material which could constitute waste and therefore the development falls within a class of development for the purposes of EIA Screening. Being a wetland the infilling of a wetland is a threshold EIA development and therefore the proposed 0.2ha wetland being infilled and drained is a sub-threshold development and would require Screening for the requirement to carry out an EIA.

EIA Threshold in Schedule 5 Part 2

Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.

Appropriate Assessment (AA)

In relation to AA the application documentation submitted to the Planning Authority included Screening for Appropriate Assessment as part of this Section 5 application.

Potential impacts on the SAC would occur if deleterious material was to enter the Natura 2000 wetland habitat during infill construction works and drainage of the wetland. However the amount of material that could potentially be lost with the distance to the Natura 2000 sites and intervening lands capacity to absorb any surface water and trap deleterious material will be insignificant.

The application has been screened from the requirements to carry out a Stage 2 Appropriate Assessment and I determine that the proposed development would not have significant effects on the Natura 2000 sites in view of the sites conservation objectives. However, the permanent loss of this wetland habitat would have a significant impact on local biodiversity and would be contrary to Objectives WQ05 and FRM07 of the Wexford County Development Plan 2013-2019.

Conclusion: Spilt decision

Having had regard to:

a) Sections 2(1), 3(1), 4 (1) (i) and 4(4), of the Planning and Development Act, 2000, as amended,

(b) Articles 5, 6, 8B, 8C, 8F and 9 and Class 11 , Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended

It is concluded that the infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network is development, and is not exempted development.

It is concluded that the removal of trees and other vegetation from the site is development and is exempted development.

Recommendation:

Having regard to the foregoing, I recommend that it be decided that the infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network is development and is not exempted development.

AND

Having regard to the foregoing, I recommend that it be decided that the removal of trees and other vegetation from the site is development and is exempted development.

A draft order is set out below.

WHEREAS a question has arisen as to whether the infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network at the Crosstown, Ardavan is or is not development or is or is not exempted development;

AND WHEREAS Peter Thompson, Peter Thomson Planning Solutions, requested a declaration on the said question on the 15th October 2018;

AND WHEREAS Wexford County Council has concluded that –

- (a) The said the removal of trees and other vegetation from the site is development comes within the scope of Section 4(1)(i) and is exempted development of the Act, as amended, and constitute exempted development.
- (b) the said infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network come within the scope of sections 2(1) and 3(1) of the Act, as amended, and constitute development,
- (c) the said infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network does not come within the scope of Class 11, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,
- (d) the said infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network does not come within the scope of section 4(4) Planning and Development Act, 2000, as amended.
- (e) the said the infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network does not come within the scope of article 8B, 8C, 8F of the Planning and Development Regulations, 2001, as amended, and

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

- (a) the removal of trees and other vegetation from the site at Crosstown, Ardavan, Co. Wexford is development and is exempted development
- (b) (b) that the infilling of the existing marl hole with unknown infill material and top soiling of the filled hole, also carrying out works to allow water held in the hole to discharge to the existing natural drainage network at Crosstown, Ardavan, Co. Wexford is development and is not exempted development.



Niamh Lennon
Executive Planner

Date: 07th November 2018



James Lavin
Senior Executive Planner

Date: 07th November 2018

EIA Screening – Stage 1 Preliminary Examination

Planning Number: EXD00729		
Development Description: REMOVAL OF TREES AND OTHER VEGETATION FROM THE SITE AND INFILLING OF THE EXISTING HOLE (UNDERSTOOD TO HAVE BEEN A FORMER MARL HOLE), WITH UNKNOWN INFILL MATERIAL AND TOP SOILING OF THE FILLED HOLE. ALSO CARRYING OUT WORKS TO ALLOW WATER HELD IN HOLE TO DISCHARGE TO THE EXISTING NATURAL DRAINAGE NETWORK.		
Location: CROSSTOWN, ARDCAVAN		
Preliminary Examination Process Can likely significant effects on the environment be ruled out at a high level? <u>Yes</u> or No Yes - No real likelihood of significant environmental effects – EIAR not required or no notification required OR No - If such effects can not be immediately ruled out based on nature, scale and location – then continue to Screening Determination.		
Examination		
	Yes/No/Uncertain	Comment
Is the size of development exceptional in the context of the existing development?	<u>No.</u>	<u>0.2 ha only.</u>
Is the proposed development located on, in, adjoining or have the potential to impact on a sensitive site or location?	<u>No.</u>	
Will the development result in the production of any significant waste, or result in emissions or pollutants?	<u>No.</u>	
Conclusion		
Based on a preliminary examination of the nature, size or location of the development, is there a real likelihood of significant effects on the environment?		
There is no likelihood of significant effects on the environment	EIAR not required	<u>✓</u>
There is significant and realistic doubt in regard to the likelihood of significant effects on the environment	Stage 2 Screening Determination required.	
	Sch 7A Information required	Yes No
There is a real likelihood of significant effects on the environment	EIAR is required	


Planner

Date: 7/11/18

Note: A Stage 2 Screening Determination must be carried out if there is significant and realistic doubt in regard to the likelihood of significant effects on the environment arising from the proposed development, or Planning permission for the retention of development CANNOT be granted if a Screening Determination is required.

EIA Pre-Screening – No EIAR Submitted

Planning Number: EXD00729			
Development Description: REMOVAL OF TREES AND OTHER VEGETATION FROM THE SITE AND INFILLING OF THE EXISTING HOLE (UNDERSTOOD TO HAVE BEEN A FORMER MARL HOLE), WITH UNKNOWN INFILL MATERIAL AND TOP SOILING OF THE FILLED HOLE. ALSO CARRYING OUT WORKS TO ALLOW WATER HELD IN HOLE TO DISCHARGE TO THE EXISTING NATURAL DRAINAGE NETWORK.			
Location: CROSSTOWN, ARDCAVAN			
1. Does the proposed development constitute an EIA project? (that is involving construction work or interventions in the natural surroundings)			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. If YES, does the proposed development fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning & Development Regulations 2001 (as amended)			
Tick	Threshold	Comment	Result
No	N/A		No EIA or Screening for EIA required
Yes	Exceeds/ is equal to/ No Threshold		EIAR required
	Sub Threshold	✓ 0.2ha decrease of wetland infill with waste.	EIA Screening required Proceed to Page 2
Conclusion			
Development is not within Part 1 or Part 2, Schedule 5. No EIA/Screening is required.			
Development is within Part 1 or 2 and is greater than, equal to, or there is no threshold. EIAR is required.			
Development is within Part 1 or 2 but is less than threshold. EIA Screening is required.			✓

Wick Leman
Planner

Date: 7/11/18

31 MAY 2023

PLANNING SECTION

Planning and Development Act 2000 (as amended)
Application for Declaration of Exempted Development
(Part 1, Section 5)

Register No.: EXD01013

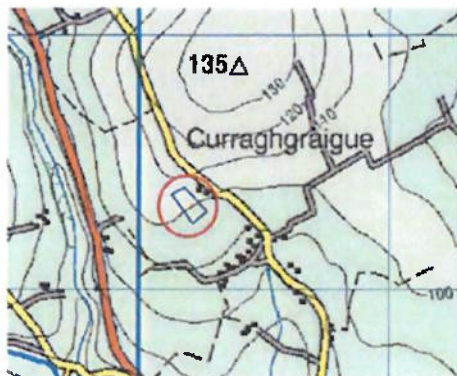
Proposal: Removal of top soil and sub soil from one area and spreading it on lands for agricultural use ✓

Location: Curraghgraique, Enniscorthy ✓

Site Location and Description:

The application site is located in the townland of Curraghgraique, circa 3km south of Ballindaggan. The site is accessed off the L-6134, a local county road. The application site comprises an agricultural field, to the rear of 2 no. rural dwellings. ✓

The application site is associated with Kearns Fruit Farm, located to the south of the application site.



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 **removal of top soil and sub soil from one area and spreading it on lands for agricultural use** constitutes exempted development. ✓

Planning History:

20221300 - Permission to erect glasshouses for horticultural purposes with all ancillary and associated site works
Granted.

20201133 - Permission to construct a shed for horticultural purposes, in lieu of sheds granted under previous planning reg. no. 20191325, to also include loading bay to rear & to demolish part of an existing shed to allow for an exit route for lorries, all with associated site works.

Granted

20200091 - Permission to construct a shed for horticultural purposes with associated site works, in lieu of sheds granted under previous planning reg. no. 20191325 – Refused

1. The scale, height, design and massing of the proposed development would break the skyline when viewed from the adjacent roads and surrounding countryside and would be unduly obtrusive in this rural area. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity contrary to the proper planning and sustainable development of the area and would set an undesirable precedent for similar type development.
2. The proposed development is located on an unsurfaced minor laneway which is inadequate in width, alignment and structural condition and would therefore endanger public safety by reason of traffic hazard and would tend to create serious traffic congestion.
3. Inadequate information has been provided in relation to the number and type of vehicles that will be accessing the proposed shed, turning and parking for the same in the surrounding yard. Further to this, the potential impact of HGV's on what is a shared lane and the potential traffic hazard occurring from the access and egress of the site onto a busy country road, caused by the increased traffic of the proposed shed, and as such it would be contrary to the proper planning and sustainable development of the area.
4. The proposed first floor window to the southerly elevation (front) would give rise to overlooking of the adjoining residential property and as such the proposed development fails to take account of the need to ensure the protection of residential amenities to properties in the vicinity. The proposed development would have a serious negative impact on the amenities of adjoining residential properties and is therefore not in accordance with the proper planning and sustainable development of the area.

20191325: Permission to construct 2 no. sheds for horticultural purposes with associated site works.

Granted.

20191324: Permission to erect 0.258 hectares of Spanish tunnels for horticultural purposes and associated site works.

Granted.

20161390: Permission to erect 2.7 hectares of Spanish tunnels for horticultural purposes with associated site works.
Granted.

20110261: Change of use of pack house granted under Reg. Ref: 20100781 to agricultural shed.
Granted.

20100781: Change of location of pack house and minor changes to pack house.
Granted.

20012922: Erection of glass house and pack house for fruit production. Granted.

Enforcement History

0043/2023: Possible unauthorised ground works.

Is it exempt under Planning and Development Act, 2000?

'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 development constitutes 'works' and 'development' within the meaning of the Act.

✓ The relevant exemption within the Planning and Development Regulations 2001 is within, Part 2, Exempted Development (8 C) *'Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) **within a farm holding, shall be exempted development.**'* ✓

Assessment

From the information available to the Planning Authority, and following discussions with the Enforcement Section, it is clear that the removal of top soil and sub soil from one area and spreading it on lands within the same farmholding (Kearns Fruit Farm) for agricultural use constitutes exempted development. ✓

Conclusion:

It is considered that the **removal of top soil and sub soil from one area and spreading it on lands for agricultural use** constitutes exempted development.

Recommendation:

Having regard to the foregoing, I recommend that it be decided that the works constitute development and is exempted development.

A draft order is set out below. ✓

WHEREAS a question has arisen as to **removal of top soil and sub soil from one area and spreading it on lands for agricultural use** constitutes exempted development.

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

- (a) Section 2, 3, and 4 of the Planning and Development Act 2000 (as amended)
- (b) Articles 6, 8C and 9 of the Planning and Development Regulations, 2001 (as amended)

AND WHEREAS Wexford County Council has concluded that –


- a) The removal of top soil and sub soil from one area and spreading it on lands for agricultural use) is development,
- b) The works comply with Part 2, Exempted Development (8C) of the Planning and Development Regulations 2001 and constitute exempted development.

NOW THEREFORE Wexford County Council, in exercise of the powers conferred on it by section 5(2)(a) of the 2000 Act, hereby decides that the removal of top soil and sub soil from one area and spreading it on lands for agricultural use is development and is exempted development. ✓



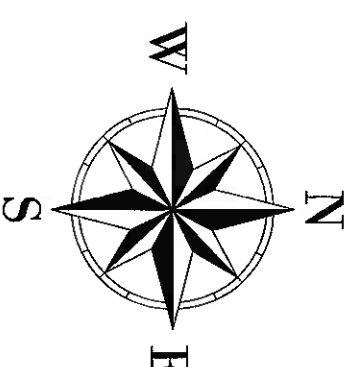
Eoin Newman
Assistant Planner

Date: 30/05/2023


SEP

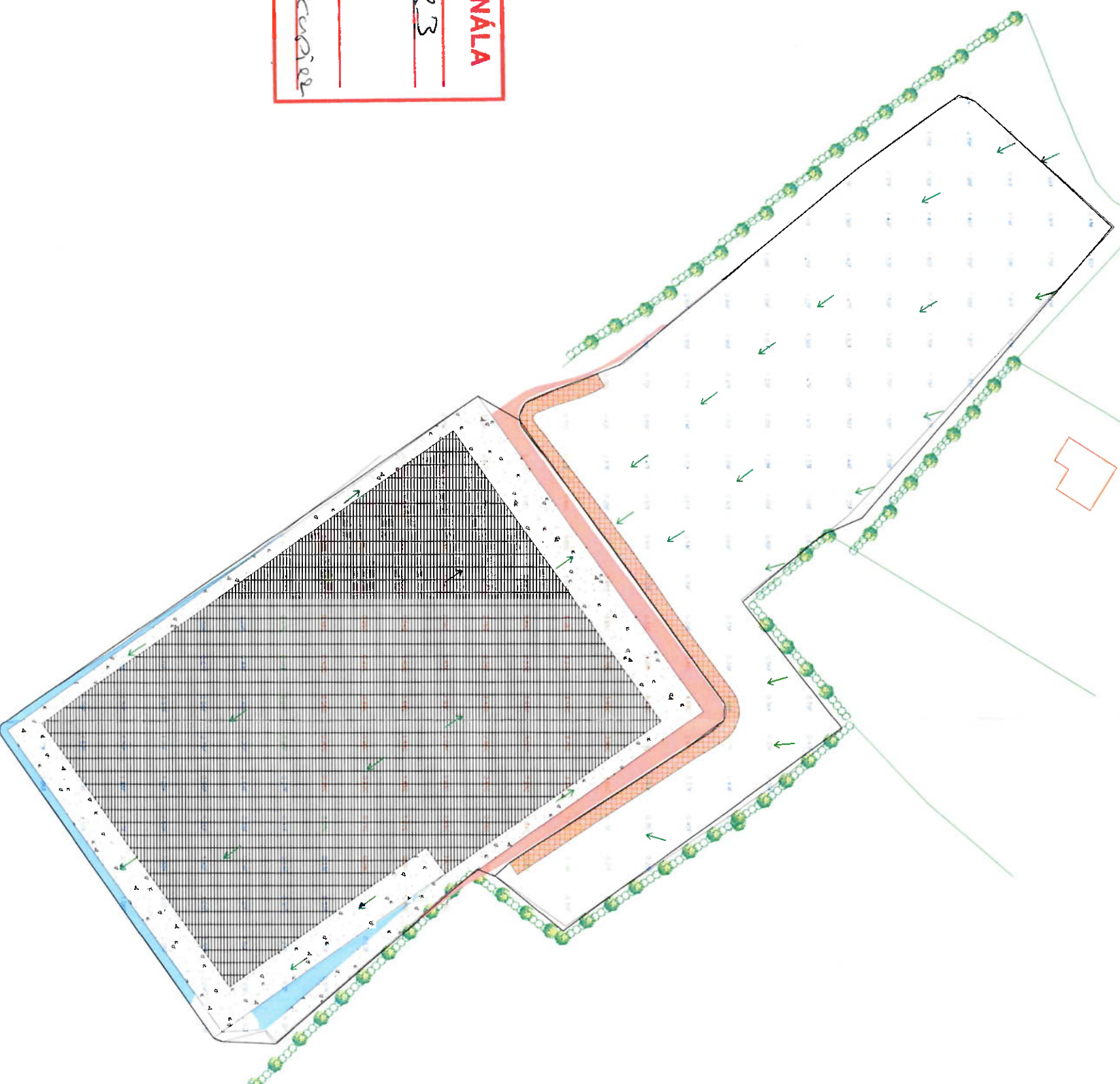
31/05/2023

Cut & Fill Heat Map



Notes:

1. Levels annotated are representative of the height difference from Original Ground Levels to Finished Ground Levels.



AN BORD PLEANÁLA

LDG-	317596.23
ABP-	

13 JUL 2023

Fee: € _____ Type: _____

Time: _____

By: Occasio

**For Information & Comment
Strictly Confidential**

Org	2010/2013	Issue for WCC Query		
Rev.	Date	Description	o/d	ap

Kearns Fruit Farm Cut & Fill

Client:



Coalinge, Tel : +353 (0)53 923033
Enniscorthy, web : www.mdc.ie
Co. Wexford, E-mail : info@mdc.ie

Date:	2003/22	Scale:	NTS
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Drawn:	Approved:
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Dwg Title:

Cut & Fill Heat Map

Draw No.

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100

100

For Basic Payment Scheme,
Areas of Natural Constraint Scheme and
other Area-Based Schemes Purposes only
Year: 2020 Scale: 1:5000

Name: Kearns Fruit Farm Ltd
Address: Curragraigue
Emischothy
Co Wexford

Townland Code: V17707
Townland Name: CURRAGRAIGUE

Parcel	Digilled	MEA*	Claimed
V17707018	1.01	1.01	1.01
V17707102	1.52	0	0.00
V17707158	1.45	1.45	1.45
V17707259	1.33	1.33	0.77
V17707260	0.33	0.33	0.33
V17707263	0.86	0	0.00
V17707267	0.38	0.38	0.36
V17707299	1.02	1.02	0.95
V17707317	1.28	1.28	1.28
V17707327	0.43	0.43	0.43
V17707328	0.27	0	0.00
V17707329a	3.44	3.44	1.40
V17707329b	3.44	3.44	1.70
V17707330	0.70	0	0.00
V17707314	1.69	1.5	1.50
V17707315	0.50	0.4	0.36
V17707317	0.44	0	0.00
V17707318	1.23	1.17	0.85
V17707388	0.12	0	0.00
V17707389	0.98	0.98	0.90
V17707390	0.96	0.76	0.90
V17707391	0.36	0	0.00

Exclusions	Parcel	Area	Red%	Elig	Type
V17707328	X01	0.08	100%	0.00	Scrub
V17707328	X02	0.01	100%	0.00	Farm Road
V17707314	X01	0.175	100%	0.00	Farm Road
V17707314	X02	0.011	100%	0.00	Farm Road
V17707315	X01	0.096	100%	0.00	Farm Road
V17707318	X01	0.121	100%	0.00	Farm Road

Deductions
Parcel V17707263
Manual Reason
100% Building

Ortho Used: Color Ortho Full Coverage

AN BORD PLEANÁLA

LDG-

ABP- 814396.23

13 JUL 2023

Fee: € Type:

Time: By: *cc*

Hedges
Draughts
Buffer Strips

All areas displayed above are in hectares
- MEA calculation available online via agfood.ie
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V1774086 1 of 4 - Wed Dec 02 12:18:30 GMT 2020

