



COMHAIRLE CONTAE SHLIGIGH
ÁRAS CONTAE COIS ABHAINN SLIGEACH

SLIGO COUNTY COUNCIL
COUNTY HALL RIVERSIDE SLIGO

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info@sligococo.ie
www.sligococo.ie

File Ref: ED 489 SMcG/KK

13th October 2023

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Re: Application under Section 5 of the Planning and Development Act 2000 (as amended)

Dear Sir/Madam,

In line with Section 5(4) of the Planning and Development Act 2000 (as amended), Sligo County Council hereby refers the attached to the Board, being a request for a declaration on development and exempted development (Section 5) and which was submitted to Sligo County Council on 30 August 2023.

Please find enclose a cheque for the sum of €110.00

Yours faithfully,

R. Siobhan Gillen

Siobhan Gillen
ADMINISTRATIVE OFFICER
PLANNING SECTION

AN BORD PLEANÁLA	
LDG-	<u>067 668-23</u>
ABP-	<u></u>
17 OCT 2023	
Fee: €	<u>110</u> Type: <u>cheque</u>
Time:	<u></u> By: <u>RC post</u>

Sligo.



REMITTANCE ADVICE / FAISNÉIS ÍOCAÍOCHTA

AN BORD PLEANALA
64 MARLBOROUGH ST.,
DUBLIN 1
Ireland

Cheque No.	539590
Supp ID / Uimh. Aitheantais	102066
Date / Dáta	05/10/2023
Page / Leathanach	1/1

Your Ref/ Bhur dTagairt	Inv Date/ Dáta Sonraisc	Our Ref/ Ár dTagairt	AMOUNT/ SUIM EUR	Payable Iníoctha EUR
Exempted	03/10/2023	30427021	110.00	110.00
PAGE TOTAL / IOMLÁN AN LEATHANAIGH			EUR 110.00	110.00
GRAND TOTAL / MÓRIOMLÁN			EUR 110.00	110.00

WH = Withholding Tax CT = Subcontractors Tax RA = Non Resident Landlord
CMP = Late Payment Compensation

ADDITIONAL CONTACT INFORMATION
NOT TO BE MADE AVAILABLE WITH APPLICATION

Please note:

- The applicant's address **must** be submitted on this page.
- If the applicant/agent wishes to submit additional contact information, this may be included here.
- This page will not be published as part of the Application.

1. Applicant Name:	
Address (required)	Atlantic Caravan Park, Bartragh, Enniscrone, Co. Sligo, F26 XV58
Telephone No.	Contact Agent - 094 9010109 / 087 6191623
Email Address	Contact Agent - fintan@theplanningpartnership.ie
Fax No.	

2. Occupier if different from applicant:	
Address: (required)	As above
Telephone No.	
Email Address (if any)	
Fax No. (if any)	

3. Owner (required where applicant is not the owner):	
Address: (required)	As above
Telephone No.	
Email Address (if any)	
Fax No. (if any)	

4. Person/Agent acting on behalf of the Applicant (if any):	
Address: (required)	The Planning Partnership, McHale Retail Park, Castlebar, Co. Mayo
Telephone No.	094 9010109 / 087 6191623
Email Address (if any)	fintan@theplanningpartnership.ie
Fax No. (if any)	N/A
Should all correspondence be sent to the above address? (please tick appropriate box ✓) (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	
Yes	<input checked="" type="checkbox"/> [✓]
No	<input type="checkbox"/> []



Planning Section
Sligo County Council
Riverside
Sligo

05-09-2023 16:54:39

Receipt No. : PLANNING/0/33085

ref: Atlantic Caravan Park Ltd.
per: The Planning Partnership
McHale Retail Park
Cattlebar
Co. Mayo

S10 PL	FEE EXEMPTED DEVT CERT	80.00
GOODS		80.00
VAT		0.00

Total 80.00 EUR

Tendered:
Cheque 80.00

Issued By : Louise Davey
From: Planning Section

**Sligo County Council ~
Enforcement Section**

File Ref: ENF 2870

Date: 9th March 2023

Address of Site:

Atlantic Caravan Park,
Enniscrone,
County Sligo.

Scale: Not To Scale

Notes:

Site outlined in red

Map Prepared By:

P. Burke

Pearse Burke

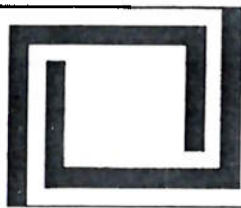
Enforcement Section



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Council.



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Planning Section
Sligo County Council
City Hall
Quay Street
Sligo, F91 PP44

Monday, 28th August 2023
[By Post]

Dear Sir/Madam,

RE: SECTION 5 DECLARATION APPLICATION IN RELATION TO WORKS AT ATLANTIC CARAVAN PARK,
BARTRAGH, ENNISCRONE, CO. SLIGO, F26 XV58

1.0 INTRODUCTION & SUMMARY

The Planning Partnership, McHale Retail Park, Castlebar, Co. Mayo have been retained by Atlantic Caravan Park Ltd., Atlantic Caravan Park, Bartragh, Enniscrone, Co. Sligo, F26 XV58 (the owner of the premises in question) to prepare this application.

The Applicant hereby seeks a Declaration from Sligo County Council under Section 5 of the *Planning and Development Acts, 2000-2023* to confirm their understanding that **no planning permission** is required in respect of the works in question. The proposal is detailed below along with our planning opinion regarding the status of same, along with relevant drawings and documentation and the statutory fee of €80.

The works are considered to be relatively minimal in the context of the overall existing development and would not in our opinion be likely to give rise to material planning issues or concerns. In summary, the works include:

1. The "stripping of topsoil, filling and stoning of lands" (already carried out); and,
2. The overlaying with soil to provide a grassed finish (not carried out to date).

The Applicant seeks the Planning Authority's determination as to whether these works **are exempted development** under Section 4 (1) (h) of the *Planning and Development Acts 2000-2023*.

We trust that the Planning Authority will concur that the proposed works are exempted development and use is not development, however should any queries arise, please do not hesitate to contact us.

We also ask that the Planning Authority determine each element of the proposed works and reconfiguration individually as well as cumulatively, i.e. should any element be of concern, we request that the determination clarify / isolate same in order to confirm the status of the remaining elements.

For the avoidance of doubt, Item no. 2 is highlighted as a potential resolution should Item no. 1 be determined to not be exempted development, or otherwise as a potential alternative to the current stoned finish. As such, the Applicant does not necessarily intend to carry out same.

In our professional planning opinion Section 4(1)(h) of the *Planning and Development Act 2000-2023* is relevant to, and can be availed of in, the subject scenario. In our opinion, the planning effect of the works would be inconsequential and immaterial.

Accordingly, we consider that all the works in question would be within the scope of Section 4(1)(h).

2.0 THE WORKS

2.1 Details of the Proposed Works

The proposed works, as summarised above, are noted below.

Works are defined in the *Planning and Development Acts 2000-2021* as: **“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...** [Our emphasis].

The ‘act’ of ‘Development’ is defined under Section 3 of the *Planning and Development Acts 2000-2021* as: **“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.** [Our emphasis].

The works in question are as follows:

1. The stripping of topsoil, filling and stoning of lands, our client confirms that some maintenance works occurred to the area in question, with a c. 30 m x 30m area affected, and presently laid with a gravel type finish, to assist with the ongoing and long established use of the Caravan Park.
2. The overlaying with soil to provide a grassed finish (not carried out to date) which would involve the placing of a layer of topsoil above the existing surface and seeding to allow grass cover to match with existing surrounding grass finish.

2.2 Relevant Exempted Development Provisions

Section 4 (1) (h) of the *Planning and Development Act 2000-2021* states:

“The following shall be exempted developments for the purposes of this Act... (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures”
[Our emphasis]

Section 4 (1) (h) of the *Planning and Development Act 2000-2023* provides a broad exemption, and one which is not restricted by Articles 6, 9 or 10 of the *Planning and Development Regulations 2001-2023*.

In effect, reliance on Section 4 of the *Planning and Development Act 2000-2021* provides immunity from restrictions or limitations as may otherwise be relevant under the *Regulations*.

An Bord Pleanála (in Ref: PL29S.RL.2120) confirmed same, stating: *“...the restrictions on exemption contained in Article 9 of the Planning and Development Regulations, 2001 ... do not restrict any exempted development under section 4(1) of the Planning and Development Act, 2000”*.

3.0 THE SITE & CONTEXT

3.1 The Subject Site

The site in question is a (small) part of the existing and long established Caravan Park in Enniscrone, relating to a small area of grassland in the Eastern part of the Park, as illustrated below.

The overall site extents to c. 14.4 hectares, with the area of works extending to c. 900 sqm or 0.09 hectares, c. 0.6% of the overall Caravan Park.

As illustrated below the area in question is located on the edge of the Caravan Park in a Cul de Sac area forming an area of ancillary space with no particular use.

Figure 2 below illustrates the pre-existing condition of the area, being grassland in nature.

As noted above, the Applicant has subsequently stripped an area of topsoil and laid a course of stone/gravel to make the area more suitable for ancillary purposes, etc.

The stripping in question relates to only a portion of the grassland area, with the remaining area (dotted outline in Figure 2) remaining as grassland.

Figure 1: Site Extents (Outlined in Blue – Approx. Area of Works outlined in Red)



Source: Bing Maps

Figure 2: Approx. Area of Works outlined in Red



Source: Bing Maps

3.2 Planning History

We note a number of planning permissions relate to the subject premises and overall development, as set out in Table 1 below.

Table 1: Planning History of the Site

Reference	Description
98/231	the construction of 20 timber holiday chalets, connect to existing services and carry out ancillary site works
02/90	(1)retention of offices & reception area and shop to the front of existing caravan park, (2)retention of chalet to the rear of the existing caravan park (3)retention of existing connection to services for same & (4)construction of new chalet to rear
04/477	(1) to retain fill on site of circ.o.27Hectares;(2) to retain 5no. Chalets;(3) to retain 70no. mobile homes on 70no. hard standing areas; (4) to retain connections to services
10/492	(1) retention of 8 no chalets (total floor area 670.6sqm), (2) retention of existing shed (floor area 137sqm) & surrounding enclosure, (3) removal of 12 no existing mobile home bases (PL 04/477 refers), (4) construction of 10 no mobile home bases, (5) retention of 9 no mobile home bases, (6) construction of a playground area and (7) carrying out of ancillary site works

Source: Sligo County Council Planning Files



SLIGO COUNTY COUNCIL
Comhairle Chontae Shligigh

APPLICATION FORM FOR DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Planning & Development Act 2000 (as amended))
(Section 5)

33085

Address: Sligo County Council
Planning Section,
City Hall, Quay Street,
Sligo

Tel: 071 9114455 or
071 9114458
Fax: 071 9114499

E-mail: planning@sligococo.ie
Website address: www.sligococo.ie

Name of Applicant: Atlantic Caravan Park Ltd.
(Address must be supplied at end of this form)

Description of Development/ Proposed Development for which a Declaration is Sought:
Whether a) the "stripping of topsoil, filling and stoning of lands" constitutes exempted development; and/or, b) whether the overlaying with soil to provide a grassed finish constitutes exempted development.



Location, townland or postal address of Development / Proposed Development:

Atlantic Caravan Park, Bartragh, Enniscrone, Co. Sligo, F26 XV58

Interest of Applicant in Development/Proposed Development:

Owner [☒] Occupier [☐] Other [☐] (Tick Appropriate box ✓)

If Applicant is the occupier or other please state interest in Development.

N/A

Name of occupier, if different from applicant: N/A
(Address to be supplied at end of this form)

If applicant is not the legal owner please state the name of the owner:

N/A

(Address must be supplied at end of this form)

Name of person / agent acting on behalf of the applicant, if any: The Planning Partnership
(Address to be supplied at end of this form)

Reason why proposed development/development is considered exempt or not:

Section 4 (1) (h) of the Planning and Development Acts, 2000-2023

Please indicate when development was carried out (if applicable): 2023

Documents to be included with this application form (please tick ✓)

Site location map [☒] Site layout map [☐] Floor plans & elevations [☐] Fee (€80) [☒]
Scale 1:2500 See Enclosed Map Scale 1:500 See Enclosed Map

I hereby declare that the information given on this form is correct.

Agent Signature: [Signature]

Date: 28th August 2023

We note the latter permission being of particular relevance / interest in terms of it being a key reference in terms of the overall planning status of the Caravan Park.

We note that in the area in question, it was conditioned (under no. 4 (a)) that the lands be "reinstated as grassland".

We note that correspondence from Sligo County Council dated 16th June 2023 stated that: *"The stripping of topsoil, filling and stoning of lands has taken place on an area of the development that is designated as open space as per the site layout plan submitted on the 11th August 2011 as part of the planning application PL10/492..."*

From our review of the Planning File in question, we note:

1. The area in question was not designated as open space as per the site layout plan submitted on the 11th August 2011;
2. The site layout plan submitted on the 11th August 2011 did not include a legend or other system of annotations / descriptions that explicitly designated the subject area as "open space";
3. The conditions of Reg. Ref: 10/492 make no reference to the provision of "open space" within the site, or at this particular location;
4. We understand that that Condition no. 4 (a), as noted above, in referring to "Caravan Parking bays ... E1-E6" refer to this area and the Condition further notes that those areas be "fully decommissioned and the lands reinstated as grassland";
5. As per Figure 2 above, we understand that the Applicant did in fact decommission and reinstate the lands as grassland;
6. As such, it would appear that Condition no. 4 (a) was fully complied with and discharged.¹

Having regard to the foregoing, it is apparent that the Applicant is not restricted in terms of their statutory entitlement to relevant planning exemptions, such as Section 4 (1) (h) of the Planning & Development Acts, 2000-2023.

We therefore respectfully submit that the works are not restricted by any provision of the existing planning permissions on the site, and the Planning Authority are free to assess the works against only the relevant planning matters arising, e.g. the materiality (or otherwise) of the works.

We also reiterate Condition no. 1 of Reg. Ref: PL98/231 which states that: *"The Applicant, his heirs and his assigns shall be responsible for the provision and maintenance of all communal site services to the satisfaction of the Planning Authority"*.

This highlights the importance and legitimacy of continued maintenance – and change – at the Park.

¹ For the avoidance of doubt, the imposition of conditions of planning permission do not prevent subsequent modifications to a development, where they would otherwise be exempt / not require permission, as confirmed by the Board on a number of occasions (including RL2830 and RL2020), where (in the former case) the Board stated as follows: *"... condition number 1 ... is a standard condition requiring the implementation of a development, in the first instance, in accordance with the application particulars. It does not remove subsequent exempted development rights or entitlements..."*

3.3 Land Use

Following on from the above review of planning history, we note that the works in question do not of themselves have any material effect in terms of land use, with the area in question capable of being used for ancillary / incidental purposes whether with a grassland or stoned finish.

In this regard, had the area in question had an explicit "open space" designation, the stoned finish would not necessarily preclude use as "open space".

4.0 QUESTION 1

4.1 The Consistency of the Works with Exempted Development Provisions

For the purposes of clarity, the 'test' (under Section 4(1)(h)) is to be satisfied that the works "...do not materially affect the external appearance of the structure² so as to render the appearance inconsistent with the character³ of the structure or of neighbouring structures."

For the avoidance of doubt, it is entirely acceptable (and exempt) to materially affect the external appearance of the structure so long as such would not render the appearance inconsistent with the character of the structure or of neighbouring structures.

In this regard it is the consistency of the works with the prevailing character that is of primary relevance.

The structure or structures in question are in our opinion as follows, i.e. a collection of individual components:

1. The area of grassland now reduced in scale as illustrated above;
2. The surrounding unmanaged dune areas;
3. The road network within the Caravan Park; and,
4. The array of Caravans and similar free standing structures in the vicinity.

The works in question altered an area of grassland to an area of hardstanding, with this unsealed area now assimilating with the existing sealed road network serving the Caravan Park. In this regard, we consider that:

1. The works do not materially affect the external appearance of the structure, as the appearance of this overall area is effectively unchanged, notwithstanding a redistribution of the proportion of each of the differing surfaces vis a vis grassland vs hardstanding; and,
2. The works do not render the appearance inconsistent with the character of the structure or of neighbouring structures. The character of the collection of structures is also unchanged as similar to the above consideration, there is no change to the broad types of materials rather a limited redistribution of the proportion of each of the differing surfaces.

Having regard to the above, we submit that whilst the works have led to a limited change in appearance, such changes can be entirely allowable within the scope of planning exemptions.

² Defined in the Planning & Development Acts, 2000-2022 as: "any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and — (a) where the context so admits, includes the land on, in or under which the structure is situate..."

³ Which, in the judgement of Finley C.J. in the case of Cairnduff v O'Connell (1986) I.R. 73, was described as: "'Character' as provided for in the subsection relates to shape, colour, design, ornamental features and layout of the structure concerned and is not dependent upon the use to which the structures are being made at any particular time."

It is not the occurrence of a change that triggers a requirement for planning permission, but rather where such occurrence triggers other thresholds such as *materiality of appearance* and *inconsistency of character*, the latter being the ultimate test.

As noted above, we consider that the Planning Authority can be satisfied that the works have not resulted in an inconsistent character to the structure(s) in question.

4.2 Relevant Precedent / Examples

To aid the determination of the subject case, we note a relevant example or precedent where similar issues have arisen, which demonstrate that there is considerable scope for the carrying out of such works under exempted development provisions.

In this regard we note a somewhat similar case in Co. Cavan where An Bord Pleanála (ABP Ref: 301484) determined that such would be exempted development.

In that case, which related to a question of: *"Whether the laying of crushed stone to a depth of 100 millimetres and the overlaying of gravel at a depth of 50 millimetres to accommodate a storage area for on-going works at a windfarm is or is not development or is or is not exempted development."*

The Board concluded that the works were development and were exempted development, specifically stating for instance that:

"... the excavation and layout of crushed stone and gravel constitute works for the maintenance, improvement or other alteration of any structure as defined in Section 4(1)(h) of the Planning and Development Act 2000, as amended, and having regard to the nature, scale, extent and location of the works, these works do not materially affect the external appearance of the existing windfarm so as to render the appearance inconsistent with the character of the windfarm and that of neighbouring structures"

Of particular note also are the following comments of the Board Inspector, whom addressed a number of salient considerations which may also inform the Planning Authority's determination in this instance. We note a number of extracts as follows:

"It is clear in my opinion that the above definition which includes the act of "excavation" falls within the definition of structure. Furthermore, the infill of gravel material on site as proposed could reasonably be construed as "or other thing constructed or made on, in or under any land" as set out in the definition of "structure". The works proposed to be undertaken could in my view be classed as a structure as defined in the Act.

Therefore, in the context of Section 4(1)(h) it could be reasonably argued that the provision of a small area of hardstanding for storage would not materially affect the external appearance of the structure i.e. the lands in question or the wind turbines nor would they render the appearance inconsistent with the character of the structure or neighbouring structure having regard to the overall size of the site, the existence of agricultural buildings, access tracks, turbines and electricity substations all of which are located in the vicinity of the site.

The owner/occupier's assertions in my view that the laying of gravel material for an outdoor storage facility associated with the wind farm would (a) fall within the definition of "structure" and (b) would constitute exempted development as it complies with the criteria for exemption as set out under the provisions of Section 4(1)(h).

The Board in determining the referral, may also wish to consider the issue of change of use. It appears that the subject works to be undertaken are specifically for the creation of a small outdoor storage facility on site presumably for the storage of materials etc. associated with the windfarm. It could be argued that the works to be undertaken constitute a change of use from agricultural use to open air storage. For the purposes of the referral a question could arise as to whether or not the change of use is material in the context of the Planning and Development Act.

I would consider it reasonable to conclude that any change of use in this instance is not material. In terms of the overall planning unit the actual change of use of 100 square metres of land for storage is negligible in the context of the overall windfarm area. Furthermore, I do not consider that the change of use could be considered material in visual terms as there are areas of hardstanding and agricultural buildings in the vicinity and therefore the area to which the change of use relates cannot be considered under any circumstances to be located in an area of pristine and undeveloped land.

Nor is it likely in my view that the change of use will give rise to any material impacts on the environment in terms of additional noise generation, traffic generation, odour nuisance or pollution of surrounding lands and water. Having regard to the scale and nature of the proposed storage areas it is not considered that the proposal will have any consequential environmental impact which could be deemed to be material under the Planning Acts." [Our Emphasis]

4.3 Summary / Conclusion

Having regard to the scale and extent of the works in question, as supported by the above example / precedent, we submit that it is evident that the works fall under the exemption provided for in Section 4(1)(h) of the *Planning & Development Acts, 2000-2023*.

The works:

- Do not appear inconsistent with the character of the structure(s) or of neighbouring structures; and,
- Do not materially affect the external appearance of the collection of structure(s) in the area.

We therefore request that the Planning Authority confirm that these works are exempted development accordingly.

5.0 QUESTION 2

As noted above, the Applicant also seeks a determination as to whether: *"The overlaying with soil to provide a grassed finish (not carried out to date) which would involve the placing of a layer of topsoil above the existing surface and seeding to allow grass cover to match with existing surrounding grass finish."*

For the avoidance of doubt, these works have not been carried out and are not necessarily intended to be carried out.

Rather, the Applicant simply seeks to comprehensively address and exhaust all potential scenarios herein.

We reiterate that Questions 1 and 2 should be considered individually and independently in the first instance, and also cumulatively, i.e. the scenarios of Question 1 only, and Question 1&2 being carried out.

Similarly to Question 1, the 'test' (under Section 4(1)(h)) is to be satisfied that the works *"...do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures."*

Whilst the completion of these works would not strictly be the reinstatement of the pre-existing grassland, it would have a relatively similar outcome in terms of returning the appearance of the area to a grassland nature.

As such, it would appear to be clear that these works would in fact also be exempted development under Section 4(1)(h) however the Planning Authority are nonetheless requested to formally confirm same.

6.0 CONCLUSION

The Applicant seeks the Planning Authority's determination as to whether the works in question are exempted development under Section 4 (1) (h) of the *Planning and Development Acts 2000-2023*.

We trust that we have provided adequate information in this regard and should further information be required we are in a position to assist. We look forward to an early and favourable determination in respect of the proposed works.

I trust the above is of interest and should you have any queries or wish to discuss further please do not hesitate to contact me.

Yours faithfully



Fintan Morrin

Associate

The Planning Partnership

Encl.



COMHAIRLE CONTAE SHLIGIGH
ÁRAS CONTAE COIS ABHAINN SLIGEACH

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File Ref: ED 489

8th September, 2023

**Athlantic Caravan Park
c/o The Planning Partnership,
McHale Retail Park,
Castlebar
Co Mayo**

Re: Application under Section 5 of the Planning and Development Act 2000 (as amended)

To Whom It Concerns,

The Planning Authority wish to acknowledge receipt of your application for Exempted Development, under Section 5 of the Planning and Development Act 2000 (as amended) which was received on 30th Aug 2023.

Yours sincerely,

**Siobhán Gillen
Administrative Officer
Planning Section**



COMHAIRLE CONTAE SHLIGIGH
ÁRAS CONTAE COIS ABHAINN SLIGEACH

SLIGO COUNTY COUNCIL
COUNTY HALL RIVERSIDE SLIGO

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www.sligococo.ie

26th September, 2023

File Ref: ED489

Atlantic Caravan Park Ltd
c/o The Planning Partnership,
McHale Retail Park,
Castlebar
Co Mayo

Re: Application for Declaration of Exempted Development in Accordance with Section 5 of the Planning and Development Act, 2000 (as amended) in Respect of; a) the "Stripping of Topsoil, Filling and Stoning of Lands" and/or b) the Overlaying with Soil to Provide a Grassed Finish at Atlantic Caravan Park, Bartragh, Enniscrone, Co Sligo, F26 XV58

Dear Sir/Madam,

I refer to the above application which was received on 30th August, 2023. I wish to advise you that this application has been referred to An Bord Pleanála pursuant to Section 5(4) of the Planning & Development Act, 2000 (as amended).

Yours faithfully,

Siobhan Gillen
ADMINISTRATIVE OFFICER
PLANNING SECTION

