

Martin Arthur

Lime Kiln Lodge, Market Street, Kenmare, County Kerry
087 223 7820

7th of November 2023

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

Re: Kerry County Council Planning Authority Section 5 Referral EX1125 – Lands at Reenagappul, Kenmare County Kerry

Dear Sir or Madame,

The above matter refers.

I submitted a Section 5 Referral (S5) to the Kerry County Council Planning Authority on the 1st of September 2023 wherein I raised the following question

“Is the use of lands, in the ownership of KPK Properties Limited, that was subject to an ABP ruling ref No: ABP – 307488 – 20 at Reenagappul, Kenmare, County Kerry, shaded in Yellow on the map attached, currently being used by IRISH WATER/UISCE EIREANN, as a WORKS COMPOUND in conjunction with KCC PA PL REF No: 22/55, development or is it exempted development?”

Please see EXHIBIT ONE

On the 13th of October 2023, KCC PA issued their decision.

Please see EXHIBIT TWO

On the 19th of October 2023, I emailed the enforcement unit of the KCC PA outlining the fact that I was satisfied with the outcome of my S5 referral. I asked enforcement to prevail upon Irish Water to submit a fresh planning application in order to retain the PCCC lands within revised boundaries to include a landowners consent letter from the adjacent landowner.

Please see EXHIBIT THREE

In response to my email to the Enforcement Unit of the 19th of October the KCC PA wrote to me on the 24th of October wherein the KCC PA are clearly seeking to overturn and contradict their own decision of the 13th of October.

Please see EXHIBIT FOUR

AN BORD PLEANÁLA	
LDG- <u>067988-23</u>	
ABP- _____	
08 NOV 2023	
Fee: € <u>220</u>	Type: <u>CHA</u>
Time: _____	By: <u>REG POST</u>

In response to their letter of the 24th of October, I wrote to the KCC PA outlining in no certain terms that Irish Water did not have planning permission for the subject construction compound.

Please see EXHIBIT FIVE

I have not had any further correspondence from the KCC PA.

The reason I am submitting this appeal to An Bord Pleanála is to seek clarification from the board that my Section 5 referral was justified.

I enclose the requisite fee of €220 for this appeal.

I shall look forward to hearing from you in due course.

Yours sincerely,

Martin Arthur

A handwritten signature in black ink that reads "Martin Arthur". The signature is written in a cursive style with a large, sweeping initial 'M'.

EXHIBIT ONE

Martin Arthur

Lime Kiln Lodge, Market Street, Kenmare, County Kerry
087 223 7820

Wednesday, the 30th of August 2023

The Secretary
Kerry County Council Planning Authority
County Buildings
Tralee
County Kerry

Re: Section 5 Referral on lands at Reenagappul Kenmare County Kerry

Dear Sir or Madam,

The above matter refers

Irish Water has commenced work, without first seeking, or being granted, planning permission for a works compound outlined in yellow on the attached site layout map, pursuant to Irish Water planning application 22/55 to The Kerry County Council Planning Authority.

There is a deliberate attempt by Irish Water in this instance to circumvent planning laws.

This works compound site is outside the red line site boundary of their proposed development at Reenagappul, Kenmare. These works are not exempted development and therefore, require planning permission.

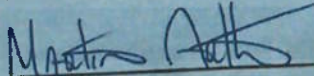
I shall therefore submit the following Section 5 referral Question:

"Is the use of lands, in the ownership of KPK Properties Limited, that was subject to ABP Ruling Ref No: ABP - 307488-20 at Reenagappul, Kenmare, County Kerry, shaded in Yellow on the map attached, currently being used by IRISH WATER/UISCE EIREANN, as a works compound in conjunction with KCC PA PL REG No: 22/55 development, or is it exempted development?"

I enclose the requisite fee of €80 for this referral.

I shall await hearing,

Yours faithfully,


Martin Arthur

Page Number: KY2382F

490980 mE, 570870 mN

Application Number: P2016L R036890H



The Property Registration Authority
An tÚdarás
Cláracháin Mheáine
Folgo: KY2382F

This map should be read in conjunction with the facts.

Registry maps are based on OSI topographic maps. Where registry maps are printed at a scale that is larger than the OSI published scale, accuracy is limited to that of the original OSI map scale.

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This map incorporates Ordnance Survey Ireland (OSI) mapping data under a license from OSI. Copyright © OSI and Government of Ireland.



(centre-line of pavement) edge)

Freshhold

Leasehold

Subleasehold

Burdens (may not all be represented on map)

Right of Way / Wayleave

Turbary

Pipeline

Well

Pump

Septic Tank

Soak Pit

A full list of burdens and their symbology can be found at www.landireland.ie

The registry operates a non-conclusive boundary system. The Registry map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries of a plot. (see section 85 of the Registration of Title Act, 1964), as inserted by Section 62 of the Registration of Deed and Title Act 2006.

1:2500 Scale



490160 mE, 570320 mN
Date Printed: 12/05/2016

Creation Date: 12 May 2016 10:24:50

Application Number: P2016L R036890H



EXHIBIT TWO



13th October, 2023

Martin Arthur
Limekiln Lodge
Market St.
Kenmare
Co. Kerry

Re: EX 1125 - construction compound adjoining the Kenmare Wastewater Treatment Plant at Reenagappul, Kenmare, Co. Kerry

A Chara,

I refer to the above Section 5 referral received in the Planning Department on 1st September, 2023 which relates to whether or not the provision of a construction compound adjoining the Kenmare Wastewater Treatment Plant at Reenagappul, Kenmare, Co. Kerry constitutes development and if so if it constitutes exempted development.

It is considered that the Kenmare Wastewater Treatment Plant works compound forms part of the development permitted by way of planning permission ref. no. 22/55 and An Bord Pleanála Ref. No. 313364-22. Accordingly, it is considered that the compound constitutes development and is not exempted development as it is permitted by planning permission 22/55/An Bord Pleanála Ref. 313364-22.

Please note that it is further considered that a temporary works compound of the nature outlined, at this location, if it did not form part of planning permission 22/55/An Bord Pleanála Ref. 313364-22, would constitute development and be exempted development by way of Schedule 2, Part 1, Class 16 of the Planning and Development Regulations 2001, as amended.

Yours sincerely,


David O'Brien
AO Planning.



EXHIBIT THREE

EMAIL TO ENFORCEMENT 19th of October 2023

Good morning Michael,

I wish to acknowledge receipt of your planning department's Section 5 decision, as attached, regarding the above enforcement file.

Your S5 decision unequivocally confirms that Irish Water (IW) did not apply for, nor were they granted, planning permission for the Permanent Contractors Construction Compound (PCCC) they are currently constructing on privately owned adjacent lands subject to KCC PA PL REG No: 22/55, as marked in Yellow on the attached site location map that I purchased from your planning office in c. February 2022, as part of my purchase of a copy of the entire file, costing me c.€220.00.

As the KCC PA S5 decision clearly indicates that any utterance whatsoever of IW being entitled to relief under the scope of "Exempted Development" cannot be considered in the absence of IW producing, as evidence, a Letter of Exemption being granted to IW as a direct result of IW submitting a Section 5 application to KCC PA.

There seems to have been a serious breakdown in interpretation of planning law by IW and, unfortunately, an even more serious breakdown in communication between IW and KCC PA at the pre-planning stage of this project. As a direct consequence,

IW now find themselves in the invidious position where they have NO planning permission for the unauthorised PCCC NOR do they have a Letter of Exemption for the PCCC.

To resolve matters in a timely fashion, the Enforcement Unit of the Kerry County Council now has no option but to contact IW, by way of an Enforcement Letter, to compel IW to submit an entirely fresh planning application to retain the PCCC lands within revised boundaries and to include a Landowners Consent Letter from the adjacent landowner, those being the subject lands upon which the PCCC is currently being constructed.

I shall await hearing in very early course.

Yours sincerely,

Martin Arthur

EXHIBIT FOUR



Kerry County Council,
County Buildings, Tralee, Co. Kerry.
Tel: (066) 7183582 Fax: (066) 7120328
E-mail: plan@kerrycoco.ie

Comhairle Chontae Chiarraí,
Aras an Chontae, Trá Lí, Co. Chiarraí.
Gutháin: (066) 7183582 Faisc: (066) 7120328
Web: <http://www.kerrycoco.ie>

24th October 2023

Martin Arthur
Limekiln Lodge
Market Street
Kenmare
Co Kerry

Re: Construction compound adjoining the Kenmare Wastewater Treatment Plant at Reenagappul, Kenmare, Co. Kerry

Dear Sir,

I refer to your email to the Planning Department dated 19th October 2023 in relation to a construction compound at Kenmare Waste Water Treatment Plant. It is further noted that a Section 5 Declaration in relation to this compound (EX1125) was issued by the Council to you on 13th October, 2023.

For the purposes of clarity, and as outlined under EX1125, Uisce Eireann were granted planning permission under Planning Ref. No. 22/55 and An Bord Pleanála Ref. No. 313364-22 for *upgrades to and increased capacity of the existing municipal wastewater treatment plant (WWTP) and Cromwell's Bridge pumping station(ps) in Kenmare county Kerry and comprises primarily the following elements: upgrade of the existing Kenmare WWTP: The existing inlet channel, control panels, oxidation ditch, two sludge holding tanks will be decommissioned and all redundant civil infrastructure and mechanical and electrical (m&e) assets will be removed. A new inlet works, treatment system and associated pumping and storage infrastructure will be constructed. A new motor control centre (mcc) kiosk and a new dosing kiosk will also be constructed, along with all associated ancillary works - upgrade of the existing Cromwell's Bridge ps: the existing inlet works, grit separator, wet well, control building (including dry well) and storm tank will be decommissioned and all redundant civil infrastructure and mechanical and electrical (m & e) assets will be removed. A new wet well, and associated sewer, a new storm tank and retaining wall will be constructed. An odour treatment system and vent stack will be constructed. A new motor control (mcc) kiosk and a new dosing kiosk will also be constructed, along with all associated ancillary works. As part of this grant of permission, a construction compound was permitted at this location.*

Separately but related, Schedule 2, Part 1, Class 16 of the Planning & Development Regulations 2001, as amended allows for the construction of a temporary works compound as part of a construction project subject to the limitations pertaining to Article 9 of the Planning and Development Regulations 2001, as amended.

The construction compound referred to above is therefore authorised. Kerry County Council has closed the Enforcement file in relation to this development and propose to take no further action in this regard.

I trust this clarifies the matter.

Kind regards



Damien Ginty
Senior Planner
Kerry County Council

EXHIBIT FIVE

COPY OF MY EMAIL TO THE PLANNING AUTHORITY of the 27th of OCTOBER 2023

VIA EMAIL

**Mr Damien Ginty
Senior Planner
Kerry County Council Planning Authority
County Hall
Tralee
Co. Kerry**

Re: EX1125 – Lands at Reenagappul Kenmare, Co. Kerry

Dear Mr Ginty,

Your letter of the 24th of October refers.

For clarity of purpose, I shall preface my response to you by stating that in your decision pursuant to Section 5 referral Ref No: EX 1125, you clearly state at paragraph 1 that the Construction Compound (as now constructed), is NOT exempted development but is development requiring planning permission.

However, in your 24th of October letter it now looks like you want to rescind your EX1125 decision when you state:

“For the purposes of clarity, and as outlined under EX1125, Uisce Eireann (UE) was granted planning permission under Planning ref No: 22/55 and An Bord Pleanála Ref: 31364 – 22 for upgrades to and increased capacity of the existing municipal wastewater treatment plant and Cromwell’s Bridge pumping station in Kenmare, County Kerry. ”

You then recite the entire wording, verbatim, of the UE Planning Application and Newspaper Notice wherein no mention is made of a Construction Compound.

At this juncture, for clarity, I shall invite you to agree with me that there is only one reference of the words “Construction Compound” in the ABP decision on Page 10 of the Inspectors Report at Section 6.5.14 wherein ABP state:

“A temporary additional area of land would be required for construction compounds, which would be reinstated on completion.”

However in your 24th of October letter to me you conclude your first paragraph by saying:

“As part of the grant of Permission a construction compound was permitted at this location.”

You are fully aware that UE did NOT apply for planning permission to KCC PA, in any shape of fashion, for a Construction Compound, NOR were UE granted planning permission for a Construction Compound by the KCC PA or subsequently by ABP. Unless I am very wrong?

I shall now refer to your reference to EXEMPTED DEVELOPMENT as in Schedule 2, Part 1, Class 16 of the Planning & Development Regulations 2001, as amended.

In accordance with Section 5 of the Planning and Development Act 2000 as amended UE should have requested a declaration from KCC PA as to whether the development of a construction compound was exempt. An application should have been made by UE in writing to the KCC planning authority, to determine whether or not the PROPOSAL TO CONSTRUCT A CONSTRUCTION COMPOUND REQUIRED permission or was it considered exempted development. The application should have been accompanied by all relevant site maps and include a fee of €80.

As clearly UE did not submit a S5 referral application, nor granted a letter of exemption as a result, your reliance on Schedule 2, Part 1, Class 16 of the P&D Regulations is incontrovertibly redundant.

I would suggest to you Mr. Ginty, for clarity, the closure of the Enforcement file is premature in the circumstances and that it is high time that UE were compelled by the KCC PA to submit an fresh planning application to address the plethora of planning irregularities and anomalies outlined above.

I am copying this email to Mr. Paul Neary for future reference.

I shall await hearing from you in early course.

Yours sincerely,

Martin Arthur