

Derek Kelly

**From:** Angela Mockler <Angela.Mockler@kilkennycoco.ie>  
**Sent:** Friday 24 November 2023 09:50  
**To:** Derek Kelly  
**Subject:** FW: Referral

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

A Chara,

Please see response to your queries as follows:

Can you please confirm the following as applicable?;

1. **The date the question/request for declaration under Section 5 was submitted to the planning authority. Received 16<sup>th</sup> October 2023**
2. **The question put to the planning authority.**  
*"Whether the laying out of the lands for aviation sports at Kilkenny Airfield between 1 October 1964 and 15 May 1994 is exempted development?"*  
*Whether the user of the lands for aviation sports at Kilkenny Airfield between 1 October 1964 and 15 May 1994 is exempted development*  
*Whether any intensification of user of the lands for aviation sports at Kilkenny Airfield between 1 October 1964 and 15 May 1994 is exempted development?"*
3. **The date the declaration was issued / due to be issued, by the planning authority. No Declaration Issued. Referred to ABP 15<sup>th</sup> November 2023.**
4. **The names and addresses of the owners of the land and occupier and their agent (if any) if different, and any other parties involved in the case . Skydive Ireland Limited, Kilkenny Airfield, Airfield Road, Holdensrath, Co. Kilkenny.**

Mise le meas,

Angela Mockler  
Assistant Staff Officer  
Planning Section  
Kilkenny County Council | County Hall | John Street | Kilkenny | R95 A39T  
T: 056-7794059  
E: [angela.mockler@kilkennycoco.ie](mailto:angela.mockler@kilkennycoco.ie)



**Kilkenny County Council**  
Comhairle Cill Chainnigh

**From:** Elaine O'Reilly <elaine.oreilly@kilkennycoco.ie> **On Behalf Of** Planning Mailbox  
**Sent:** Friday 17 November 2023 15:21  
**To:** Angela Mockler <Angela.Mockler@kilkennycoco.ie>  
**Subject:** FW: Referral

**From:** Derek Kelly <Derek.Kelly@pleanala.ie>  
**Sent:** Friday 17 November 2023 14:58  
**To:** Planning - County Council <planning@kilkennycoco.ie>  
**Subject:** Referral

A Chara,

A Referral under section 5 of the Planning and Development Act, 2000 (as amended) was received on **15<sup>th</sup> November 2023** in relation to your ref **DEC 769**

Can you please confirm the following as applicable?;

1. **The date the question/request for declaration under Section 5 was submitted to the planning authority.**
2. **The question put to the planning authority**
3. **The date the declaration was issued / due to be issued, by the planning authority**
4. **The names and addresses of the owners of the land and occupier and their agent (if any) if different, and any other parties involved in the case .**

Many thanks,

Derek

Derek Kelly  
Executive Officer  
Appeals Processing  
An Bord Pleanála  
353 (0)1 858 8100

Derek Kelly  
Executive Officer  
Processing Section  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902  
Teil: 01-873-7149  
Facs: 01-8722684

Má fhaigheann tú an ríomhphost seo lasmuigh de na gnáthuaireanta oibre, ní bheidh mé ag súil le freagra ná gníomh lasmuigh de d'uaireanta oibre féin.

If you receive this email outside of normal working hours, I do not expect a response or action outside of your own working hours

Smaoini ar an timpeallacht sula ndéanann tú an ríomhphost seo a phriontáil.

Please consider the environment before printing this mail.

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**Tabhair faoi deara led thoil:** aon tuairimí nochtaithe san ríomhphost seo is iad tuairimí an tseoltóra féin agus níl sé intuigthe gurb iad tuairimí An Bhoird Pleanála nó go gcloíonn siad le polasaithe ráite an Bhoird.

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## Comhairle Chontae Chill Chainnigh

Halla an Chontae Sraid Eoin Cill Chainnigh  
R95 A39T

Pobail agus Áiteanna Inbhuanaithe a Chruthú

## Kilkenny County Council

County Hall John Street Kilkenny  
R95 A39T

Creating Sustainable Communities and Places



An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902

15<sup>th</sup> November 2023

<b>AN BORD PLEANÁLA</b>	
LDG-	068130-23
ABP-	
16 NOV 2023	
Fee: € 110	Type: CHQ
Time:	By: Reg Post

Dear Sir/Madam,

### REFERRAL TO AN BORD PLEANALA UNDER SECTION 5(4) OF THE PLANNING AND DEVELOPMENT ACT 2001-2023

Ref: DEC 769

Applicant: Irish Skydiving Club

Subject: Declaration of exempt development.

Application Address: Airfield, Holdensrath, Co. Kilkenny

#### Purpose:

Kilkenny County Council, in accordance with Section 5(4) of the Planning and Development Act, hereby refer three questions received for the purposes of a determination of exempt development to the Board for its consideration and a determination.

#### Questions:

1. Whether the laying out of land for aviation sports at Kilkenny airfield between 1 October 1964 and 15<sup>th</sup> May 1994 is exempted Development.
2. Whether the user of the lands for aviation sports at Kilkenny Airfield between 1<sup>st</sup> October 1964 and 15<sup>th</sup> May 1994 is exempted development?
3. Whether any intensification of user of lands for aviation sports at Kilkenny Airfield between 1<sup>st</sup> October 1964 and 15<sup>th</sup> May 1994 is exempted development?

A copy of the application as received by Kilkenny County Council is enclosed  
History of declarations requested on Kilkenny Airfield along with a cheque for €110 being the prescribed fee.

Please also consider previous requests for a declaration including the Council's submissions to same.

Dec 330 – ABP RL 3331

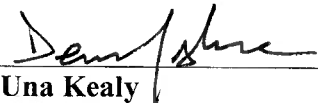
Dec 436 – ABP RL 3590

Dec 336 – Referred to ABP by KCC

Dec 341 – ABP RL 3240

Also see **Irish Skydiving Club Vs. An Bord Pleanála - Neutral Citation (2016 IEHC 448), Docket Number (2015 No. 170JR)** - Judicial review of the decision of An Bord Pleanála made on a referral by Kilkenny County Council under s. 5 of the Act by which the Board determined that the use by the applicant of Kilkenny Airfield for sponsored parachute jumping was a development and not an exempted development.

Kind Regards,

AP   
Una Kealy  
Administrative Officer  
Kilkenny County Council

Enc. 4

COMHAIRLE CHONTAE CHILL CHAINNIGH  
Kilkenny County Council  
County Hall  
John Street  
Kilkenny



Tel: 056 7794000 / Fax: 056 7794004

Email: [Planning@kilkennycoco.ie](mailto:Planning@kilkennycoco.ie) /

Website: [www.kilkennycoco.ie](http://www.kilkennycoco.ie)



**Application Form for Declaration and Referral on  
Development and Exempted Development under  
Section 5 of the Planning and Development Acts 2000 (as amended)**

*(This is a non-statutory advice application prepared by Kilkenny County Council for the purpose of advising people what information is required for a decision to be made under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Acts 2000 (as amended))*

**APPLICANT DETAILS:**

<b>Applicant Name</b>	Irish Skydiving Club GLG
<b>Address:</b>	Kilkenny Airfield, Airfield Road, Holdensrath, Co. Kilkenny
<b>Contact Telephone No:</b>	
<b>Fax No. or E-mail Address:</b>	<a href="mailto:info@skydiveclub.ie">info@skydiveclub.ie</a>

**PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A  
DECLARATION IS SOUGHT:**

Whether the laying out of the lands for aviation sports at Kilkenny Airfield between 1 October 1964 and 15 May 1994 is exempted development?
Whether the user of the lands for aviation sports at Kilkenny Airfield between 1 October 1964 and 15 May 1994 is exempted development?
Whether any intensification of user of the lands for aviation sports at Kilkenny Airfield between 1 October 1964 and 15 May 1994 is exempted development?

**ADDITIONAL INFORMATION WHICH MAY ASSIST THE PLANNING  
AUTHORITY:**

Kilkenny airfield was established in 1963, the extent of this remains unknown. It is the largest privately-owned sport aviation airfield in the State comprising 26.30 hectares (65 acres) of land.

Between the appointed day 1 October 1964 and 15 May 1994, the planning regulations exempted all laying out of the airfield lands and user of the airfield lands for aviation sport.

The laying out of the airfield lands during the said period included the construction of two runway strips comprising runway structures. One runway was decommissioned whilst the remaining and current runway structure was extended to 930m x 24m with a strip dimension of 1,050m x 80m.

The laying out of the lands include an aircraft apron and parking area, airfield hangar and operational buildings and fuel storage and dispensing facilities and car parking area.

The Department of Power and Transport issued a licence for the airfield in 1965 and the airfield has





remained continuously licenced by the State since then to now for private user. The licence issued by the relevant aviation authority does not permit commercial public transport.

The airfield was principally used and intensified for aviation sport during the said period.

All types and manner of sport aviation activity occurred at the airfield during the said period involving powered and non-powered aircraft – including light single and twin-engine fixed wing aircraft, rotorcraft, microlights, parachutes and gliders, hot air ballooning and para-motoring.

Kilkenny County Council provided significant financial and other supports which contributed towards the laying out of lands and intensification of user of the lands between 1974 and 2007.

This funding of public monies is first documented on 11 December 1975 with an allocation of £1,500 Irish Punts. From 1980 to 1990 Kilkenny County Council provided an annual payment of £4,500 Irish Punts towards the operating costs of the airfield. This annual payment increased in 1990 to £10,000 Irish Punts.

Kilkenny County Council had a member of the locally elected councillors sit on the board of directors of Kilkenny Airport Limited since 1980 – an arrangement which remained in place for over 27 years.

The access road to the field is by the northern entrance off the Tulloran Road (Local Tertiary Road LT 10073-9). This access road was widened and improved by Kilkenny County Council to facilitate traffic access to the airfield.

The Development Plan specifically supported the continued development of the airfield lands up to from 2002 to 2020. The 2008 – 2014 Development Plans stated.

“There is an aerodrome located three miles to the west of Kilkenny City. It is a privately owned public use airfield. Principally it has a leisure use but it does have potential for expansion”.  
The following policy was stated:

“IE29 Support the continued development of airport facilities at Kilkenny Aerodrome”  
“IE30 Facilitate the future development of Kilkenny Aerodrome by reserving air corridors as necessary”.

Original flight logs show daily use of the airfield for sport user during the said period. The established user of the airfield lands exceeded 10,000 aircraft movements annually during the said period. The nature of the flights in question included intensive and reoccurring take-off, landing and circling of aircraft within the vicinity of the airfield.

This is consistent with the user expected of a sport aviation facility such as Kilkenny airfield.

The airfield was home to various Kilkenny based aeroclub during the said period.

Various planning permissions were granted by the planning authority or the Board for the lands during the said period. Such development is consistent with the typical user of an airfield for sport aviation. Those permissions are a matter of record (Ref P1/1/5312, Ref 04/241, Ref 05/753, Ref 06/1286).

Original Kilkenny Airport Limited director meeting minutes and AGM records support the above



position.

In 2014, the former County Manager, Mr Joe Crockett accepted the legal opinion of Mr. Patrick Butler S.C. as supplied by David byrnes on behalf of Skydive Ireland Limited. By letter dated 6 May 2014, the planning authority stated:

*"I refer to previous correspondence in relation to the above and to documentation submitted by you, in particular the legal opinion by Patrick Butler S.C. and the Section 5 reference (RF 677) by An Bord Pleanála. Having considered the matter the Planning Authority is of the view that the user of the lands as an airfield is established and that no further enforcement will issue with regard to the user of the premises as an airfield".*

The Board decided that airfields layed out and used for sport aviation during the said period is exempted development: REF: 19-8-255 (Mount Lucas Airfield operated by Irish Parachute Club Limited) and REF: 677 (Newcastle Airfield).

The said exemptions were granted pursuant to section 4 of the 1963 Act and Articles 10(1) and 11(1) of the 1977 Regulations (S.I. 65 of 1977). Article 12 of the 1994 Regulations provides a saver.

The Applicant will seek to be furnished with all documents and records from Kilkenny County Council which is relevant to this matter.

Supporting documentation will be forwarded in due course or on request.

***The Applicant is advised to set out the matter on which the declaration is sought, as comprehensively as possible using additional pages if necessary and should use additional material including plans and drawings as appropriate to give as full account as possible on this matter.***

#### **LOCATION ADDRESS OF DEVELOPMENT:**

Site Location Map must be attached

Airfield, Holdensrath, County Kilkenny.

#### **SITE AREA:**

Area of site to which the application relates in hectares	ha 26.30
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#### **LEGAL INTEREST OF APPLICANT IN THE LAND OR STRUCTURE:**

Please tick appropriate box to show applicant's legal interest in the land or structure	<b>A. Owner</b>	<b>B. Occupier</b>
		X
	<b>C. Other</b>	

Where legal interest is 'Other', please expand further on your interest in the land or structure: The Applicant occupies the airfield lands and is the licensee of the airfield since 2014, as issued by Irish Aviation Authority.

Name & Address of Landowner ~~and/or Occupier~~ if not the Applicant: Skydive Ireland Limited, Kilkenny Airfield, Airfield Road, Holdensrath, Co. Kilkenny



## DEVELOPMENT DETAILS

Please tick appropriate box	Yes	No
Does the proposed development consist of work to a protected structure and/or its curtilage or proposed protected structure and/or its curtilage?		X
Does the proposed development involve the demolition of any habitable house or part thereof?		X

**Are you aware of any valid planning applications previously made in respect of this land/structure?** Yes [ X ] No [ ]

If Yes – Please provide Planning Register Ref. No(s) if known:

Ref P1/1/5312, Ref 04/241, Ref 05/753, Ref 06/1286

The Applicant is advised that notwithstanding the completion of the above application form, that the Planning Authority may require the Applicant to submit further information or particulars with regard to the request in order to enable the Planning Authority to issue the declaration on the question.

The Applicant is also advised that the Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.

Subject to the above, the Planning Authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request and where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

### APPLICATION FEE ATTACHED:

Fee payable **€80.00**: Payment must be made by Cash or Cheque which should be made payable to Kilkenny County Council

I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct and accurate:

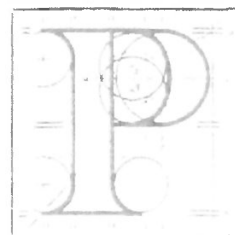
Signed: \_\_\_\_\_  
*Applicant*

Date: 16 October 2023



Our Ref: RL 10.RL3240  
P.A.Reg.Ref:  
Our Ref:

An Bord Pleanála



Kilkenny County Council,  
County Hall,  
John Street,  
Kilkenny.



15 JAN 2015

**Referral**

**Re:** Whether the intensification of use of Kilkenny Airfield for sponsored parachute jumping is or is not development or is or is not exempted development.  
Kilkenny Airfield, Holdensrath, Co. Kilkenny.


Dear Sir/Madam,

An order has been made by An Bord Pleanála determining the above-mentioned referral under the Planning and Development Acts 2000 to 2014. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website ([www.pleanala.ie](http://www.pleanala.ie)). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,

  
Rita Donnelly  
Executive Officer



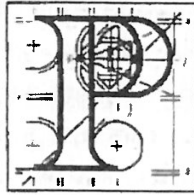
Encl:

RL 100





# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2014

**Kilkenny County**

**Planning Authority Reference Number: ENF14/036**

**An Bord Pleanála Reference Number: 10.RL.3240**

**WHEREAS** a question has arisen as to whether the intensification of use of Kilkenny Airfield for sponsored parachute jumping at Kilkenny Airfield, Holdensrath, County Kilkenny is or is not development or is or is not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Kilkenny County Council of County Hall, John Street, Kilkenny on the 7<sup>th</sup> day of August, 2014:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to sections 2 and 3 of the Planning and Development Act, 2000, as amended:

**AND WHEREAS** An Bord Pleanála has concluded that -

- (a) the airfield is an established development having been commenced before the 1<sup>st</sup> day of October, 1964 and containing certain related structures on site which have the benefit of planning permission,
- (b) the established use on site includes occasional use for parachute jumping, and

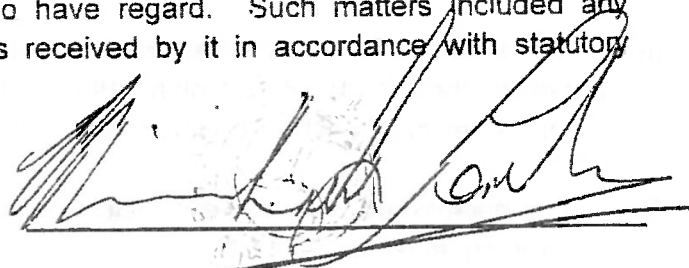
- (c) the significant increase in the frequency of take-off and landing manoeuvres of light aircraft, together with a significant increase in the extent to which such aircraft would be in the immediate vicinity of the aerodrome as a result of the increase in the use of the airfield for sponsored parachute jumping, constitutes an intensification of use. This intensification involves a material increase in the noise impacts and disturbance experienced by nearby residents of properties in the vicinity. These impacts would not have been anticipated at the time that the use as an aerodrome was established.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the said intensification of use of Kilkenny Airfield for sponsored parachute jumping constitutes a material change of use which is development and is not exempted development at Kilkenny Airfield, Holdensrath, County Kilkenny.

In deciding not to accept the Inspector's recommendation that the increased use of the aerodrome for parachute jumping was not development, the Board considered, notwithstanding the established use of the site as an aerodrome, that there are material consequences for proper planning and sustainable development of the area related to the introduction of sponsored parachute jumping which has a different pattern of use and intensity compared with the established flying club activities.

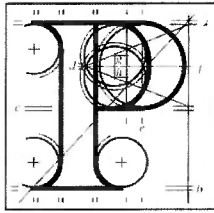
#### **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



**Member of An Bord Pleanála**  
duly authorised to authenticate  
the seal of the Board.

Dated this 14 day of January 2015.



An  
Bord  
Pleanála

## Inspector's Report RL3331

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### Question

Whether the use of lands at Kilkenny Airport for Airport and Aviation use is or is not development or it or is not exempted development.

### Location

Kilkenny Airport, Holdensrath, Co. Kilkenny.

### Declaration

Planning Authority

Kilkenny Co. Council

Planning Authority Reg. Ref.

Dec. 330.

Applicant for Declaration

David Byrnes

Planning Authority Decision

Is development and is not exempted development.

### Referral

Referred by

Kilkenny Co. Council

Owner/ Occupier

David Byrnes.

Date of Site Inspection

5<sup>th</sup>, June 2019

Inspector

Paddy Keogh

## 1.0 Site Location and Description

- 1.1. The subject site is located in the rural townland of Holdensrath, Co. Kilkenny. The site is accessed from the bottom of a narrow rural cul-de-sac (LR 10073-9) that terminates at the entrance to the site. The site is c. 2.5 km to the west of Kilkenny City. Documentation on file states that Kilkenny Aerodrome occupies a site of c. 65 acres.
- 1.2. The site comprises of an airfield containing a grass landing strip, control tower/club house and three other buildings.
- 1.3. There is a gravelled car parking area immediately inside the entrance. The control tower/club house is located to the east of the car parking area. The grass landing strip is located to the south of the control tower and runs in a roughly east/west direction.
- 1.4. On the western side of the site (adjacent to the boundary and car parking area) there are three large shed-like structures. Two of these are used as hangars for the storage and maintenance of small light aircraft.
- 1.5. I was granted access to the site for the purposes of my site Inspection by Mr Eoin Nevin. Mr. Nevin has referred a separate question to the Board pursuant to Section 5 of the Planning and Development Act, 2000. The latter referral is currently with the Board for determination.

## 2.0 The Question

- 2.1. On 6<sup>th</sup>, January 2015 the Board received a referral under Section 5(4) of the *Planning and Development Act, 2000*, as amended (the "Act"), per letters dated 23<sup>rd</sup>, December 2014 and 5<sup>th</sup>, January 2015.
- 2.2. The question referred by Kilkenny Co. Council is as follows:

***Whether the use of lands at Kilkenny Airport for Airport and Aviation use is or is not development or is or is not exempted development***

### 3.0 Planning Authority Declaration

#### 3.1. Declaration

None.

3.1.1. On 31<sup>st</sup>, October 2014 the planning authority received an application for a Declaration and Referral under Section 5 of the *Planning and Development Act, 2000, as amended* dated 30<sup>th</sup>, October 2014 from Mr. David Byrnes with an address at Kilkenny Aerodrome, Airfield Road, Holdensrath Co. Kilkenny.

3.1.2. The referrer's question to the planning authority is stated as:

***Whether the use of lands at Kilkenny Airport for Airport and Aviation use is or is not development and is or is not exempted development.***

3.1.3. The planning authority, per letter dated 19<sup>th</sup>, November 2014, sought 3 items of further information.

3.1.4. A reply from the referrer to the planning authority request for further information consisted of a letter dated 28<sup>th</sup>, November 2014 and accompanying documentation. This reply partly addressed the matters raised in the planning authority request for additional information.

3.1.5. The planning authority pursuant to its powers under Section 5(4) of the Act referred the question to the Board for determination (letters dated 23<sup>rd</sup>, December 2014 and 5<sup>th</sup>, January 2015).

3.1.6. The question referred by the planning authority to the Board replicates the question asked by Mr. David Byrne in is referral to the planning authority.

#### 3.2. Planning Authority Reports

##### ***Planning Reports***

3.2.1. A report from the planning Authority Senior Planner dated 18<sup>th</sup>, November 2014 includes the following:

- the history of the use of the lands (pre and post 1<sup>st</sup>, October 1964 – the operative date of the *Local Government (Planning and Development) Act, 1963*) is central to the question being asked in this case.
- The planning authority needs to establish the nature of the established use on 1<sup>st</sup>, October 1964 'beyond doubt'.
- Evidence in relation to use dating as far back as 1965 has been retrieved from records in the public library and by the planning authority. However, nothing has been found predating 1<sup>st</sup>, October 1964. In the absence of this information 'a declaration cannot issue as same cannot be based on assumptions'.
- The onus is on the applicant to prove that there was an airport use on 1<sup>st</sup>, October 1964 and that the use has not changed/intensified materially since then.
- (At the time of writing) a separate referral was with the Board for determination in relation to use for sponsored parachuting.
- It is considered that the current request should be referred to An Bord Pleanála.
- Recommendation that the referring party (Mr. David Byrnes) be requested to submit 3 no. items of further information and be advised that the matter will then be referred to the Board for determination.
- The 3 items of further information requested by the planning authority included:
  - (i) Map of land the subject matter of the Section 5 referral;
  - (ii) Copies of previous Board decisions on referrals (Ref. 677 and Ref. 19-8-255) referred to in documentation submitted with the applicant's referral to the planning authority.
  - (iii) Any information that the applicant may wish to bring to the attention of An Bord Pleanála.

### ***Other Technical Reports***

3.2.2. None

## 4.0 Planning History

Referral No. 10.RL.3590 – This is a current referral before the Board concerning a question as to whether or not a steel support structure for sliding doors to the front of a hangar building within the site at Kilkenny Airport, Holdenrath, Co. Kilkenny is or is not development and is or is not exempted development.

Referral No. 10.RL.3240 – The Board determined per Order dated 14<sup>th</sup>, January 2015 that the intensification of use of Kilkenny Airfield for sponsored parachute jumping is development and is not exempted development.

Reg. Ref. 11/179 - Planning permission refused by the planning authority for the retention for a period of 10 years of a metal storage container used as a club room for the Recreational Flying Club. The structure which was located to the north of the control tower on site was subsequently removed. Two reasons for refusal were stated by the planning authority, Briefly, these reasons related to (1) consolidation and intensification of existing unauthorised development and (2) wastewater treatment and disposal.

Reg. Ref. 11/180 - Planning permission refused by the planning authority for the retention for a period of 10 years of a portacabin used as a club room for the Recreational Flying Club. The structure which was located to the north of the control tower on site was subsequently removed. Two reasons for refusal were stated by the planning authority, Briefly, these reasons related to (1) consolidation and intensification of existing unauthorised development and (2) wastewater treatment and disposal.

Reg. Ref. 06/1286 – Planning permission granted by the planning authority to Kilkenny Airport Limited per Order dated 20<sup>th</sup>, September 2006 for the erection of a hangar for the storage of an aircraft.

Appeal No.10.LV.2590 - The Board refused Reichard Cass of Holdenrath, Co. Kilkenny leave to appeal the planning authority decision under Reg. Ref. 06/1286.

Reg. Ref. 11/520 – Planning permission granted by the planning authority for an extension of the duration of the planning permission granted under Reg. Ref. 06/1286.

Reg. Ref. 05/753: - Planning permission granted by the planning authority to M Breen, D. Bowe, D. Carr and T. Toner for a single storey light-weight structure for the storage of aircraft. Condition No. 3 attached to this grant of planning permission limited the period of the permission to 7 years. The structure was then to be removed unless a subsequent grant of planning permission had been obtained. [It appears that this structure remains on site]

Reg. Ref. 04/241 – Outline planning permission granted by the planning authority to Kilkenny Airport Limited for a single storey extension to the existing club house/control tower building. [It appears that this development did not proceed]

Appeal No. 10.LV.2276 – The Board refused Richard Cass, Holdenrath, Co. Kilkenny leave to appeal the planning authority decision under Reg. Ref. 04/241.

Reg. Ref. 1/1/5312 – Planning permission was granted by the planning authority per Order dated 20<sup>th</sup>, May 1976 for the construction of a reception area and lookout tower at Holdenrath, Co. Kilkenny.

***Enforcement:***

ENF 10135: An Enforcement Notice (dated 9<sup>th</sup>, March 2012) was issued relating to an unauthorised portacabin style structure and timber decking in the confines of Kilkenny Airport. It was served on Tandem Skydive Club. The planning authority subsequently determined that the Notice had been complied with.

ENF 12051: An Enforcement Notice (dated 22<sup>nd</sup>, May 2012) was issued seeking the cessation of the unauthorised commercial skydiving activity related to Freefall Ireland



Skydive Centre Limited T/A Tandem Skydive Kilkenny. The planning authority subsequently determined that the Notice had been complied with.

ENF 14036: - Enforcement case concerning a number of complaints received by the planning authority in May 2014 relating to the use of the airfield for intensive commercial skydiving.

***Other Sites:***

Ref. 27.RF.677 – The Board decided per Order dated 6<sup>th</sup>, July 1994 that the laying out and use of lands at Leamore Upper, Newcastle, Co. Wicklow is exempted development.

## **5.0 Policy Context**

### **5.1. Natural Heritage Designations**

The subject site is located c. 3km from the River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 002162).

The site of the proposed development is located c. 3km from the River Nore Special Protection Area (SAC) (Site Code 004233).

## **6.0 The Referral**

### **6.1. Referrer's Case**

In circumstances where the question has been referred to the Board by the planning authority (no declaration made by the planning authority), no particular case has been argued by the referrer. However, a report prepared by the planning authority Senior Planner dated 23<sup>rd</sup>, December 2014 accompanied the letter of referral from the planning authority received by the Board on 6<sup>th</sup>, January 2015. This report includes:

- The planning authority does not dispute that a use (as an Aerodrome) has been established on the lands since 1<sup>st</sup>, October 1964. This fact has been

communicated to the party who referred the matter to the planning authority in the first instance and to the Board in previous correspondence.

- Evidence concerning activities on the site prior to the 1<sup>st</sup>, October 1964 available to the planning authority is only circumstantial. Notwithstanding the confirmation/determination by the planning authority that the Aerodrome is pre 1<sup>st</sup>, October 1964 the planning authority considers that the evidence provided to date is not sufficient grounds on which to issue a declaration of fact which is considered by the planning authority to carry a significant burden of factual proof. The planning authority therefore requires the Board to consider the extent of factual proof required for the issuing of a declaration.
- The planning authority requests the Board to consider the term 'Airport and Aviation' in its broadest sense against the background of the planning history and the extent of the use established on 1<sup>st</sup>, October 1964.
- The planning authority request the Board to consider, having regard to a broad definition of 'airport and aviation' whether the established use on 1<sup>st</sup>, October 1964 is sufficient in nature to allow the potential diversity of use that these terms encompass into the future. It is stated that should sport use fall within a broad definition the Board may need to consider separate declarations in relation to sport use pre and post 1<sup>st</sup>, October 1964.

## **6.2. Applicant to Planning Authorities Case**

- 6.2.1. The case made by the original referrer in his reference to the planning authority for a declaration in this matter states that the Airport use on the lands has allegedly been established since 1963.
- 6.2.2. The Applicant also submitted documentation in response to request from the planning authority, per letter dated 19th, November 2014, for further information including (1) a letter from the Irish Aviation Authority dated 10<sup>th</sup>, July 2012 stating that an aerodrome was first licenced at Holdenrath, Co. Kilkenny on 30<sup>th</sup>, April 1965, (2) Copy of a Board Order dated 6<sup>th</sup>, July 1994 (Referral No. 27.RF.277) and Planning Inspector's Report in relation to a Reference to the Board concerning the laying out and use of lands at Leamore Upper, Newcastle, Co. Wicklow as an airfield - determined by the Board to be development and exempted development, (3) correspondence relating to the

investigation by the Health & Safety Authority of complaints made by a local landowner and farmer in relation to alleged nuisance arising out of the use of the facility for parachuting, (4) narrative of the planning history of the site.

### **6.3. Further Submissions**

- 6.3.1. In addition to the submissions at Paragraphs 6.1 and 6.2 above, the Board has received submissions from the Irish Skydiving Club (in response to a Section 131 request for observations made by the Board) and from Richard Cass.
- 6.3.2. Richard Cass is a neighbouring farmer who has objected to the planning authority about noise nuisance and alleged injury to the welfare of his herd arising from the parachuting and skydiving activities at Kilkenny Airport.
- 6.3.3. The content of the submissions from the Irish Skydiving Club and Richard Cass largely centre on establishing the case in relation to the nature of the established use on 1<sup>st</sup>, October 1964, the intensification in parachuting and skydiving activities at the airport in recent years, allegations of nuisance arising from the parachuting activities etc.
- 6.3.4. The documentation submitted by the Irish Skydiving Club and by Richard Cass is substantially a duplication of documentation previously considered by the Board in the context of RI3240.

## **7.0 Statutory Provisions**

### **7.1. Planning and Development Act, 2000**

- 7.1.1. Section 2(1) (Interpretation) states:

*'In this Act, except where the context otherwise requires-*

*'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....'*

*"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined.*

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34 or 37G of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

7.1.2. Section 3 (1) states:

*‘In this Act, ‘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.’*

7.1.3. Section 4(4) states:

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

7.1.4. Section 138 (1)(b) states:

*The Board shall have an absolute discretion to dismiss an appeal or referral where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to*

(i) *The nature of the appeal (including any question in the Board’s opinion is raised by the appeal or referral), or*

(ii) *.....*

## **7.2. Planning and Development Regulations, 2001 (the "Regulations")**

- 7.2.1. Article 5(1) of the Regulations includes the following definitions for the purposes of interpretation in respect of exempted development provisions:

"aerodrome" means any definite and limited area (including water) intended to be used, either wholly or in part, for or in connection with the landing or departing of aircraft.

"airport" means an area of land comprising an aerodrome and any buildings, roads and car parks connected to the aerodrome and used by the airport authority in connection with the operation thereof.

"airport operational building" means a building other than a hotel, required in connection with the movement or maintenance of aircraft, or with the embarking, disembarking, loading, discharge or transport of passengers, livestock or goods at the airport.

## **8.0 Assessment**

### **8.1.1. Background**

- 8.1.2. Kilkenny Airport has been the subject of a number of planning applications and referrals since it was first developed in the early 1960s. The facility has also been the subject of enforcement action by the planning authority on a number of occasions. These include enforcement action initiated by the planning authority in or around 2014 following complaints (including complaints from a neighbouring farmer – Richard Cass) in relation to the use of the facility for skydiving/commercial parachute jumping activities (Enforcement 14036).
- 8.1.3. Following receipt of a referral by David Byrnes, Kilkenny Aerodrome (Referral No. RL3240) the Board decided per Order dated 14<sup>th</sup>, January 2015 that the intensification of use of Kilkenny Airfield for sponsored parachute jumping constitutes a material change of use which is development and is not exempted development.
- 8.1.4. Referral No. RL3240 was made to the planning authority in the first instance and was subsequently referred on to the Board by the planning authority for determination

pursuant to Section 5(4) of the Act. The current referral was received by the planning authority in or around the same time as referral RL3240. Documentation submitted from the planning authority that accompanied the current referral includes a report prepared by the planning authority Senior Planner dated 23<sup>rd</sup>, December 2014. This report states that RL3240 is relevant to the current referral in *'that is relates to the same aerodrome and in the opinion of the planning authority both referrals are intrinsically linked to the question of what was actually established [on the subject lands] on 1<sup>st</sup>, October 1964.*

## **8.2. Preliminary Matter**

- 8.2.1. In my opinion, as a preliminary matter consideration must be given to determining what has been established on the subject lands.
- 8.2.2. Planning permission for an airfield/aerodrome/airport has never been obtained on these lands. However, use of the lands as an aerodrome since before 1<sup>st</sup>, October 1964 (the commencement date of the *Local Government (Planning and Development) Act, 1963*) has been accepted by the planning authority. Accordingly, use as an aerodrome is not unauthorised.
- 8.2.3. I note the relatively long planning history pertaining to the site. In the context of different planning applications and referrals the facility at Holdensrath has variously been described as an 'airstrip', 'airfield', 'aerodrome' and 'airport'.
- 8.2.4. I note the following definitions from the Collins English Dictionary:
- Airstrip – *A cleared area for the landing and taking-off of aircraft; runway. Also called landing strip.*
  - Aerodrome – *A landing area that is smaller than an airport.*
  - Airport – *A landing and taking off area for civil aircraft, usually with runways and aircraft maintenance and passenger facilities.*
- 8.2.5. I note the above dictionary definitions merely in passing and in the interests of clarity. The Board must, in the first instance, have regard not to dictionary definitions but to definitions provided in the Act or Regulations. In this regard, the following definitions are set out in Article 5 of the Regulations:

- “aerodrome” means any definite and limited area (including water) intended to be used, either wholly or in part, for or in connection with the landing or departing of aircraft.
- “airport” means an area of land comprising an aerodrome and any buildings, roads and car parks connected to the aerodrome and used by the airport authority in connection with the operation thereof.
- “airport operational building” means a building other than a hotel, required in connection with the movement or maintenance of aircraft, or with the embarking, disembarking, loading, discharge or transport of passengers, livestock or goods at the airport.

8.2.6. The Board in their recent decision on referral RL3240 decided, as follows:

- (a) the airfield is an established development having been commenced before the 1<sup>st</sup> day of October, 1964 and containing certain related structures on site which have the benefit of planning permission,
- (b) the established use on site.....
- (c) the significant increase in frequency of take-off and landing manoeuvres of light aircraft, together with a significant increase in the extent to which aircraft would be in the immediate vicinity of the aerodrome as a result of the increase in the use of the airfield..... [*emphasis added*]

8.2.7. Thus, (i) the documentation submitted by the referrer explicitly states that the planning authority accept that there was an established use of the lands at Holdensrath as an airfield and aerodrome on 1<sup>st</sup>, October 1964 and (ii) the Board decision in RL3240 explicitly acknowledges the established use on 1<sup>st</sup>, October 1964 and that the facility included an airfield and aerodrome.

8.2.8. In addition to (i) and (ii) above, planning permission has been obtained for ‘airport operational buildings’ (as defined for the purposes of the Regulations) on the site (e.g. Reg. Ref. 06/1286 - hangar building).

8.2.9. The above decisions taken in combination might not be sufficient to fall within the Collins Dictionary definition of an airport (lack of passenger facilities/terminal building etc.). However, in my opinion these decisions (airfield, aerodrome, permitted maintenance buildings etc.) in combination amount to a facility that comes within the

definition of an airport as defined for the purposes of the Regulations. This is the definition that must be considered by the Board.

8.2.10. Thus, albeit small scale and infrequently used for significant periods of time, I consider that facility at Holdensrath and the subject matter of this referral can reasonably be regarded as an airport for the purposes of the Act and Regulations..

### 8.3. The Referrer's Question

8.3.1. The question asked by the refer is:

***Whether the use of lands at Kilkenny Airport for Airport and Aviation use is or is not development and is or is not exempted development.***

8.3.2. The question being asked by the referrer is expanded upon in the context of documentation accompanying the letter from the planning authority including a report dated 23<sup>rd</sup>, December 2014 prepared by the planning authority Senior Planner. This report sets out some background in relation to the planning history and history of the development of Kilkenny Airport. The report acknowledges that the planning authority have previously determined (as a matter of fact) that there was an established airfield and aerodrome on the site pre 1<sup>st</sup>, October 1964. Notwithstanding this determination, the report goes on to seek guidance from the Board in respect of the following matters (i) the standard of factual proof required in relation to establishing the nature and extent of the established use at 1<sup>st</sup>, October 1964 and (ii) allowing for definitions of the terms 'airport' and 'aviation' in their broadest sense, whether the use established on 1<sup>st</sup>, October 1964 will have been sufficient in nature to allow the potential diversity of use that these terms encompass into the future (to include the consideration of air sport within the definition of the terms both pre and post 1<sup>st</sup>, October 1964).

8.3.3. I consider that matters raised by the planning authority in their referral (as elaborated upon in the report from the Senior Planner) are not matters that fall within the scope of a referral under Section 5(1) (or Section 5(4)) of the Act. Section 5(4) provides for a planning authority to ask a question of the Board, in any particular case, as to what is or is not development or is or is not exempted development. I consider that the operation of the section requires that the question asked must be specific in its nature and scope. I do not consider that that the operation of the section permits the asking of questions that are overly general in their nature as in the current instance.



- 8.3.4. The referrer asks the Board to consider the standard of factual evidence that is required in relation to the determination of the established use prior to 1<sup>st</sup>, October 1964. This question is asked in circumstances where the planning authority have already decided on the basis of the factual evidence available that use as an airfield and aerodrome was established prior to 1<sup>st</sup>, October 1964 and where the Board have already made the same determination (RL3240). I consider that for the Board to reconsider the matter in the context of the current appeal would involve revisiting a determination already made by the Board in January 2015. In any event, in my opinion, the role of the Board under Section 5 of the Act centres on interpretation of legislative provisions in relation to exempted development. Giving advice on the standard of factual evidence required to prove a use or uses falls outside the remit of Section 5 of the Act.
- 8.3.5. The referrer asks that the Board determine if airport and aviation use is or is not development and is or is not exempted development subject to a requirement that the terms airport and aviation be given a broad definition in order to accommodate a wide diversity of uses. I consider that this essentially equates with asking the Board to determine what airport and aviation uses are permitted within an airport. Attempting to answer the question would involve the Board engaging in determining a schedule of uses that would constitute exempted development within an airport provided for under the Act and Regulations. I consider that answering a question framed in such general terms lies outside the scope and remit of the statutory provision under Section 5 of the Act. Furthermore, while the term airport is defined for the purposes of the Regulations no definition of aviation is provided in the Act or Regulations. In order to answer the question in the manner framed by the referrer, I consider that the Board is essentially being asked to provide a definition of the term for the purposes of the Act and Regulations. Where no definition of a term is provided in the Act or Regulations the Board is entitled to have regard to definitions found elsewhere (e.g. other statutes, the dictionary etc.) in order to interpret legislation as it pertains to exempted development. However, this is not what the Board is being asked to do in the current instance. The Board is being asked to provide a definition of aviation for the purposes of interpretation of the Act and Regulations. Provision of such a definition is a matter for the legislature not the Board.

- 8.3.6. In determining the answer to a question posed in a referral the Board is entitled to re-formulate the question. However, this power is limited – any reframing of the question must ensure that the question that has been posed by the referrer is answered. I have considered the possibility of how the question posed by the referrer might be re-formulated. However, I have failed to frame a re-wording of the question in a manner that satisfactorily answers the question posed. This I believe is a consequence of the overly general nature of the question posed by the referrer.
- 8.3.7. The submission received from the referrer asks should air sport be included in ‘Airport and Aviation’. There may be scope for the Board to re-formulate the question asked in the current referral into a much narrower question relating to the use of the airport for air sport. However, the referrers question in relation to air sport is again non-specific in relation to the character of such air sport. It is reasonable to assume that air sport would include skydiving and parachuting. A considerable amount of the documentation on file (submitted in response to a Section 131 request from the Board to the Irish Skydiving Club etc.) concerns the use of the Airport for skydiving and sponsored parachute jumps etc. The Board has already determined in January 2015 that the occasional use of the aerodrome (airport) for parachuting has been established, but that the use for sponsored parachute jumping would constitute development (a material change of use) which is not exempted development. In this respect I consider that any reframing of the question in the context solely of air sport is of limited merit in circumstances where the question has largely been addressed already by the Board in the context of RL3240.
- 8.3.8. A submission from the initial referrer (David Byrnes) to the planning authority refers to a determination made by the Board on 6<sup>th</sup>, July 1994 that the use of lands as an aerodrome and flying school at Leamore Upper, Newcastle, Co. Wicklow is exempted development. (Reference No. 27.RL.677). I consider that this reference case is of limited precedent value in the context of the current referral in circumstances where it has already been determined by the Board that an aerodrome (including occasional use for parachute jumping) has been established on the site at Holdensrath.
- 8.3.9. In conclusion, on the basis of the above, I consider that the current referral should be dismissed by the Board pursuant to their powers under Section 138(1)(b)(i) of the Act.

#### **8.4. Appropriate Assessment**

Having regard to the general and non-specific nature of the question posed by the referrer, I consider that it is not possible to determine whether or not any development coming within the ambit of the question posed would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### **8.5. Environmental Impact Assessment**

Having regard to the general and non-specific nature of the question posed by the referrer, I consider that it is not possible to determine whether or not there is a real likelihood of significant effects on the environment arising from the development.

### **9.0 Recommendation**

- 9.1. I recommend that the Board pursuant to its powers under Section 138 (1)(b)(i) of the *Planning and Development Act, 2000*, as amended should DISMISS this referral for the Reasons and Considerations as set out below.

## REASONS & CONSIDERATIONS

Section 5(4) of the *Planning and Development Act, 2000*, as amended, allows for the referral of a question by a planning authority to the Board where a question arises as to what is or not development or is or is not exempted development in any particular case. It is considered that the question which has been referred to the Board in the current instance is of a general and non-specific nature which does not relate to a particular development or proposed development. It is considered that a question framed in such general terms and so wide ranging in its nature and scope does not come within the scope of the statutory provision under Section 5(4) for want of precision and clarity. In the circumstances outlined, the Board is precluded from addressing the question and dealing with this matter.

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Paddy Keogh  
Planning Inspector

7<sup>th</sup>, October 2019