

DESIGN & CONSULTANCY SERVICES

Email: jjwarren06@gmail.com

Phone: 0877558896

AN BORD PLEANÁLA	
LDG-	<u>073403-24</u>
ABP-	
24 JUL 2024	
Fee: €	<u>280.00</u> Type: <u>cheque</u>
Time: <u>14.59</u>	By: <u>hand</u>

The Nook
Hillside,
Kilcullen,
Co. Kildare
R56Y651

23/07/2024

An Bord Pleanála
Marlboro Street,
Dublin.

Re: Referral of Application for a Declaration of Exempt Development
Under section of Planning and Development Act 2000(as Amended) for
Development at Grangebeg , Dunlavin, Co Kildare, as contained within
Kildare Co Council Exempt Development File Reg Ref No ED 1130 .
Applicant: Mr Tom Moore . Grangebeg Dunlavin Co Kildare

Dear Sir,

We wish to lodge this Referral in regard to the above application on behalf of our client , Mr Tom Moore.

We are lodging this referral on the grounds that the Planning Authority have not issued a declaration in relation to this application. The application was lodged with Kildare Co. Council Planning Department on 31st May 2024. The regulations state that the Local Authority has 28 days in which to make a declaration and if they fail to do so the applicant may make a referral to the Bord within a further 28 Days.

We enclose herewith the information which we lodged with the application.

1. Fully completed application form signed by Mr Tom Moore , the applicant.
2. Site Location Map to scale of 1:2500
3. Site Layout Plan indicating the Developers site , the applicants adjoining farm lands and the location of the development for which a declaration is sought .
4. A photograph showing the location of the point where the development commences.
5. Our covering Letter in support of the application.

We are enclosing, for the Bords benefit, a report carried out by us on behalf of the applicant dated 21st March 2022. We believe that the inspector and the Bord would benefit from knowing the history that has led to the current situation and give The Bord an insight into the applicants need to have this unauthorised development reversed. We would point out

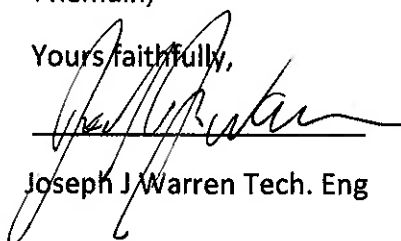
that the extent of flooding has increased significantly to over double the area of land shown in the report.

We also enclose the cheque for €220= being the required fee and a copy of the Receipt from Kildare Co Council for €80= , being the required fee for the Section 5 application . The date of the issue of the receipt is shown as 31/05/2024 .

We trust this application is in order and eagerly await the Bords Declaration in relation to this matter.

I Remain,

Yours faithfully,

A handwritten signature in black ink, appearing to read 'J. J. Warren', is written over a horizontal line.

Joseph J Warren Tech. Eng

Kildare County Council

Declaration of Exempt Development under Section 5, of the Planning and Development Act 2000 as amended

Incomplete application forms will
be deemed invalid and returned



All responses must be in block
letters

Section 1	Details of Applicants
------------------	------------------------------

1. Name of Applicant(s) A. Surname...Moore Forenames Thomas.....
Phone No 087 755 8896 Fax No.....
2. Address Grangebeg, Dunlavin, Co. Kildare.....

Section 2	Person/Agent acting on behalf of applicant (if applicable)
------------------	--

1. Name of ~~Person~~/Agent: Surname...Warren..... Forenames.....Joseph J.....
Phone No 087 7558896 Fax No.....
2. Address.....The Nook Hillside, Kilcullen, Co Kildare.....

Section 3	Company Details (if applicable)
------------------	--

1. Name of Companyna.....
Phone No..... Fax No.....
2. Company Reg. No.....
3. Address.....
.....

Section 4	Details of Site
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1. Planning History of Site...Pl Permission- Reg Ref No 16/283. Dwelling -WWTS and siteworks ..
2. Location of Proposed Development - Development has taken Place in Grangebeg Dunlavin, Co. Kildare...W91AHC9.....
3. Ordnance Survey Sheet N0 3780-C 3838.....
4. Please state the Applicants interest in the site- Applicant is the owner of adjoining lands East and South of the subject Site.....
5. Please state the extent of the proposed development...The piping and filling of open stream that flows south to north along the eastern boundary of the site within the curtilages of the site

Section 1
of the 1911 Act



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of the 1911 Act

6. Under what Section of the Planning and Development 2000 as amended and/or what provision of the Planning and Development Regulations 2001 as amended is exemption sought. The LA have issued a Declaration that the development... **'IS development and IS EXEMPTED development** pursuant to Section 2&3 of the Planning and Development Act as amended and Article 6, Part 3, Class 3 of the Planning Regulations as amended. We suggest that this, or any other exemption, cannot be applied in this case as the development contravenes conditions of the Planning Permission granted under PI Reg File Ref No 16/823 and more specifically Conditions No 1: 4 and 5 of that permission .

Restrictions on 9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—
 exemption.
 (a) if the carrying out of such development would—
 (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

7. Please give a detailed description of the Proposed Development (*Use separate page if necessary*).....
 Details of the development are included in the written submission.....the development involved the piping and filing in an open stream contrary to the conditions attached to Planning Permission granted under PI File Reg Ref No 16/823.

Section 5	The following must be submitted for a valid application
------------------	--

		(Please Tick)
1.	Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas)	X
2.	A Site Layout Plan (Scale 1:500) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	X
3.	Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	N/A
4.	All drawings to differentiate between the original building, all extensions and proposed development	N/a
5.	Fee of 80 Euro	X

Section 6	Declaration
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I, Thomas Moore certify that all of the above information is correct and I have submitted all the required documents as outlined at Section 6 above.

Signature: Thomas Moore Date: 21/05/2024

DESIGN & CONSULTANCY SERVICES

Email: jjwarren06@gmail.com

PH 00353 87 755 88 96

The Nook,
Hillside,
Kilcullen,
Co. Kildare
R56Y651

29/05/2024

Planning Dept.,
Kildare Co Council,
Aras Cill Dara,
Naas,
Co. Kildare

**Application for Declaration of Exempt Development under Section 5,
of the Planning and Development Act 2000 as amended. Development at
Grangebeg , Dunlavin, Co Kildare W91AHC9. Applicant: Thomas Moore**

Dear Sir ,

We wish to lodge this application for Declaration of Exempt Development in relation to development, namely, the piping and filling in of an open stream at the above address .

Our client, Mr Thomas Moore is the adjoining landowner, bounding the subject site to the East and South.

The LA recently gave a declaration stating that the development is development and IS EXEMPTED DEVELOPMENT. We are of the opinion that in making the decision Kildare Co Council did not adequately address the issue of ARTICLE 9 (1) RESTRICTIONS ON EXEMPTION in relation to this case.

The LA's declaration, contained in File Ref No ED1103, relies on Article 6 and schedule 2 Part3, Class 3 of the Planning and Development Regulations 2001 (as amended) to determine that the development is exempted. The case officer refers to Article 9.(1) as follows:

" -Article 9 (1) (a)(i) Restrictions on exemption-Development to which Article 6 relates shall not be exempted development for the purpose of the Act. There are a number of categories within this section, none of which are applicable in this instance" .The case officer actually

refers to the sub section 9(1)(a)(i) which is the exact section that restricts exemption under Article 6 in this case .

Article 9 (1)(a)(i) states:

**RESTRICTIONS ON
EXEMPTION**

***Article 9. (1) Developments to which Article 6 relates shall not
be exempted development for the purpose of the Act-***

- (a) If the carrying out such development would –
(i) Contravene a condition attached to a
permission under the Act or be inconsistent
with any use specified in a permission under
the Act .***

**PLANNING APPLICATION Reg Ref No 16/823- ABP Ref No PL 09-248060-
Conditions No 1;4;5 are contravened by the development –namely the
piping and filling in of the open stream -referred to as Ballybought Stream**

The developer who carried out this development received planning permission for the construction of a dwelling, WWTs and site development works under PI Reg File Ref No 16/823 . The issue of Flood Risk, on the surrounding area, was dealt with within a very detailed "Flood Risk Assessment" carried out by IE CONSULTING-WATER-ENVIRONMENTAL.

We strongly suggest that the Flood Risk Assessment, both the assessment and conclusions, rely entirely on the fact that the stream is, and will remain, an open stream and the integrity of this Flood Risk Assessment requires that the stream be reopened and returned to its open watercourse status.

The Flood Risk Assessment was lodged in support of the planning application, Ref No 16/823, and Condition No 1 of the grant of permission states that the development must be carried in accordance with all drawings and documents lodged with the application. The piping and filling in of the open stream ignore the contents and conclusion within the Floods Risk Assessment and therefore is in contravention of Condition No 1 of the permission granted under PI File Reg Ref No 16/823. Exemption under Article 6 cannot be applied in this case as Article 9 (1) (a)(i) clearly states this, therefore this development must be declared as not exempted development.

The developer lodged the Landscape Drawing, Drg No DR-178, containing the landscape proposal, in compliance with Condition No 5 of the grant of permission, under PI Reg File Ref No 16/823, on 31st July 2017 . This Layout Map clearly shows the stream as an open stream and actually refers to the open stream in the notes on the map as follows –
" 1.8m high treated timber post and rail fence with "childproof" chain-link fencing incorporated into functional design alongside the open stream". This landscape plan was lodged on the planning file and the Planning Department acknowledgement, and written

agreement, confirmed that condition No 4 and No5 have been complied with. This clearly means that the planning authority agreed to the stream remaining as an open stream.

To pipe and fill in this stream is in direct contravention with this agreement reached between the developer and the Planning Authority and represents contravening the Conditions of the Planning Permission. This contravention of the conditions of the planning permission means that the Article 6 exemption cannot be applied in this case and the development can not be declared as being exempt development.

We would ask that the Local Authority consider the serious implications of ignoring the specifics of the Flood Risk Assessment, not just in relation to this case but in countless Planning Permissions that were granted with flood risk assessments as an integral part of the applications.

This development contravenes conditions of Planning Permission granted under PI. File Ref. No 16/823 and as such the Restriction on exemption in Article 9 1 (a) (i) dictates that the Local Authority must issue a declaration stating that the development is NOT EXEMPT DEVELOPMENT .

I Remain,

Yours faithfully,

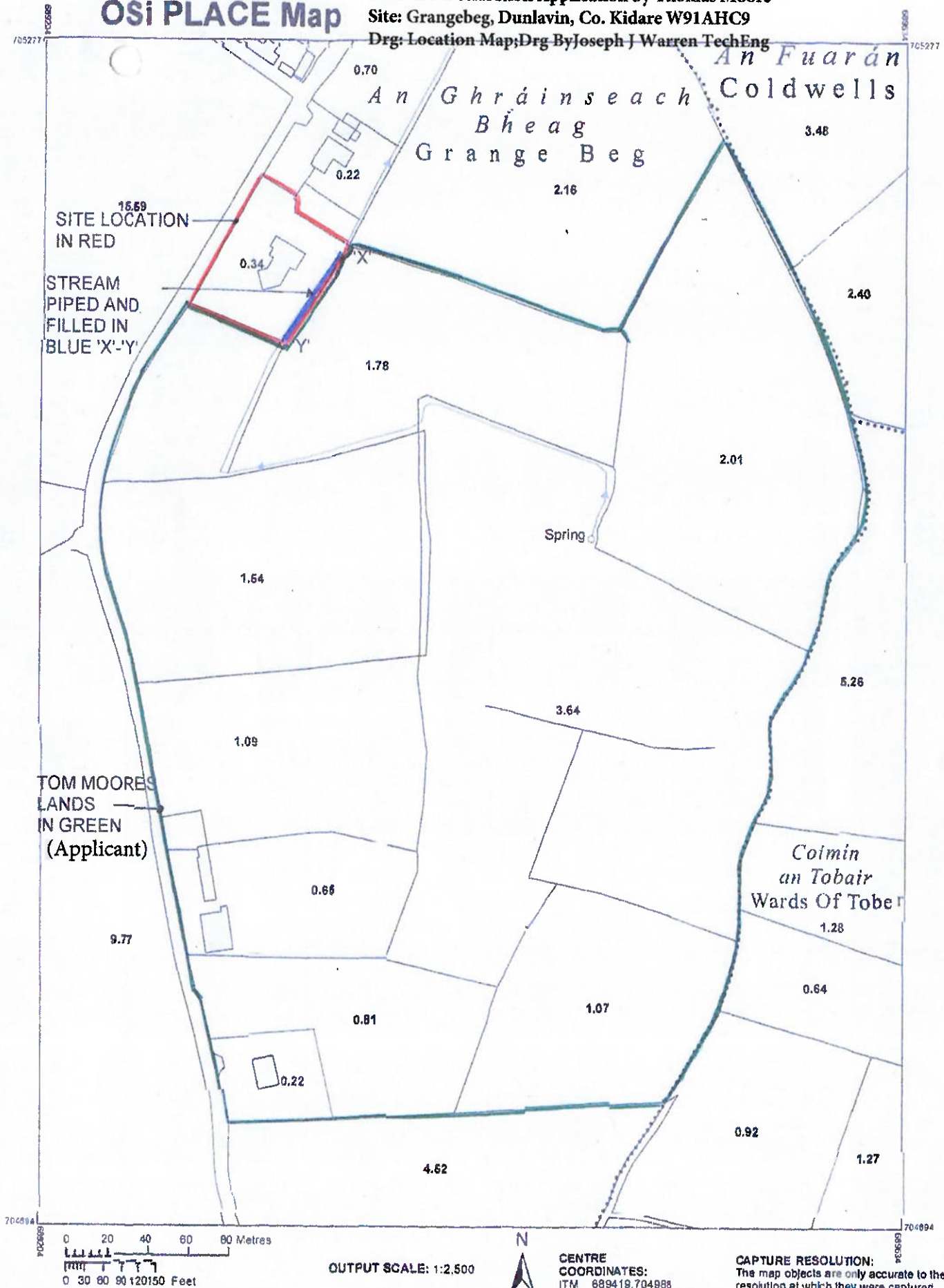
Joseph J Warren Tech. Eng.

OSi PLACE Map

Section 5 Declaration Application by Thomas Moore

Site: Grangebeg, Dunlavin, Co. Kidare W91AHC9

Drg: Location Map; Drg By Joseph J Warren TechEng



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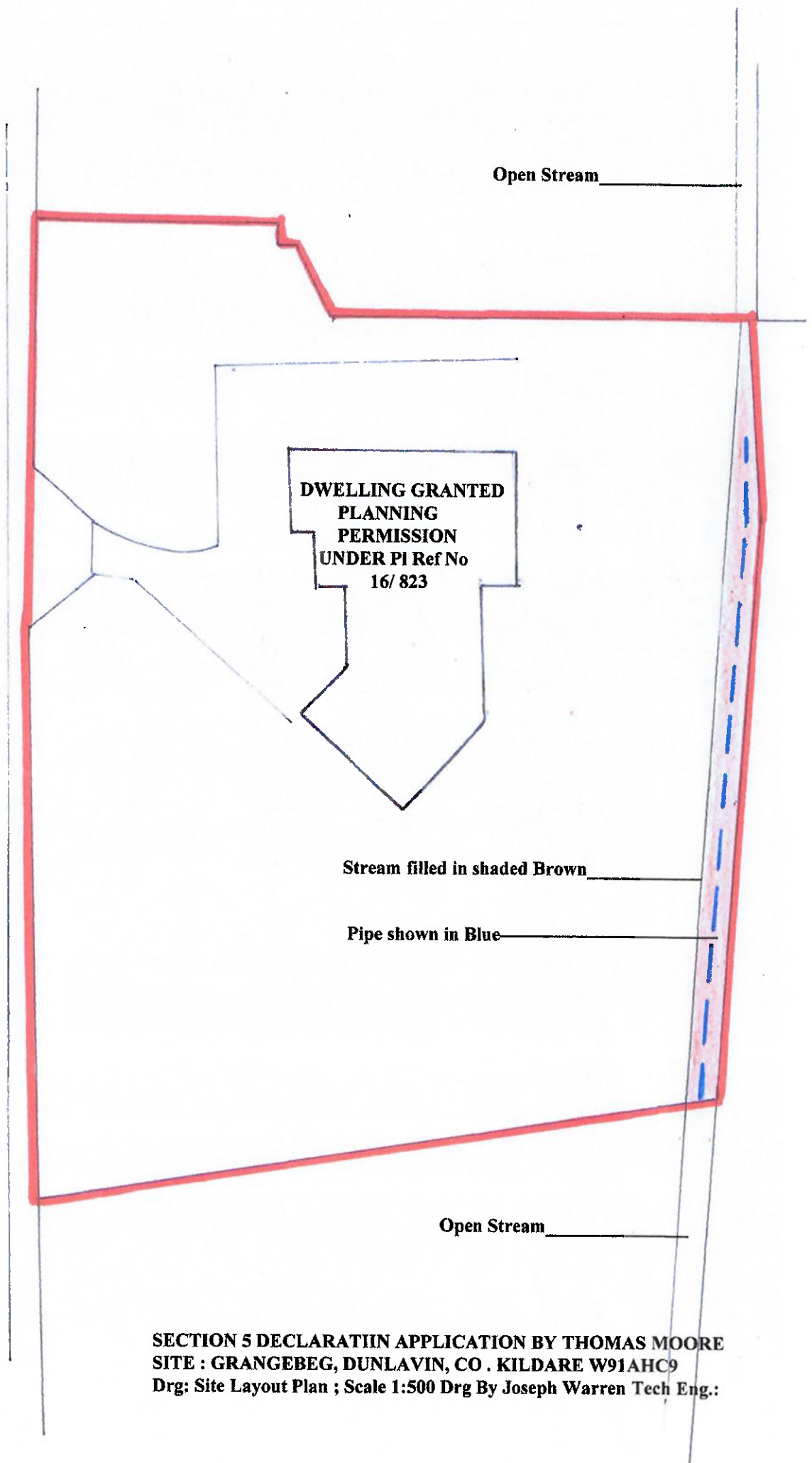
PUBLISHED: 16/03/2022
MAP SERIES: 1:2,500
1:5,000
ORDER NO.: 50256819_1
MAP SHEETS: 3780-C
3838

CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture
scale.
Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'
LEGEND:
<http://www.osi.ie>; search 'Large Scale Legend'





**SITE OUTLINED
IN RED**



**SECTION 5 DECLARATION APPLICATION BY THOMAS MOORE
SITE : GRANGEBEG, DUNLAVIN, CO . KILDARE W91AHC9
Drg: Site Layout Plan ; Scale 1:500 Drg By Joseph Warren Tech Eng.:**

A photograph of a stream bed covered in moss and various plants. A red line is drawn vertically through the center of the image, likely for measurement or identification purposes. The stream bed is composed of moss, small green plants, and some yellow flowers. The surrounding area is filled with dense vegetation, including tall grasses and shrubs.

$\frac{1}{n} \sum_{i=1}^n x_i$



FINANCE CASH OFFICE

Kildare County Council

Aras Chill Dara

Devoe Park

Naas

Co. Kildare

31/05/2024 14:50:12

Receipt No: FN1/0/600292

Ref: 210019

WATER DEVELOP FEES 80.00

0.00

Variable

80.00 EUR

80.00

0.00

Anthony Moroney

Financial Management Area

DESIGN & CONSULTANCY SERVICES

Email: jjwarren06@gmail.com

PH 00353 87 755 88 96

REPORT AND RECOMMENDATIONS IN RELATION TO RECENT FLOODING ON LANDS AT GRANGEBEG, DUNLAVIN, CO. KILDARE FOR TOM MOORE

A. FLOOD HISTORY

We are assured by the landowner, Mr Thomas Moore, that the flooding is a relatively recent occurrence and that these lands have no history of flooding, a fact that is supported by the 'OPW CFRAMS' records for this area. The 'CFRAMS-Summery Local Area Report' confirms that there were no instances of recurring or historical flooding in the area. This contention is also supported within a Flood Risk Assessment lodged in support of a planning application on the adjoining property north of our client's lands, that application is dealt with in detail within this report. We are advised that flooding only commenced in or about Autumn/Winter of 2020 .

B. ROAD FLOOD RELIEF OUTFALL DRAIN- REQUEST

Our client has informed us that in early May 2016 he was approached by the Kildare Co Councils' Local Area Engineer, Mr Noel Beggin Eng., seeking permission to lay a storm water pipeline from the Local Road, through his lands, to a ditch on his property. OS Map, marked 'Map No 1', included herewith, shows the approximate location of the pipe line and manholes. Following discussions, during which the capacity within the ditch and stream to receive the storm water was discussed, it was agreed that the volume of water could be absorbed by the ditch which joins up with another ditch and forms a small stream, which is known as Ballybought stream further north. This stream flows in a south to north direction, through our clients' lands and along the boundary with a neighbouring land holding to the north, at the rear of a recently constructed bungalow.

It was noted by both the LAs Engineer and Mr Moore that the stream was indeed an open stream throughout, save as for a field entrance culvert. Mr Moore's agreement to allow the Storm Water Outfall from the public road, be piped through his land and into an open natural land drainage system, was made in good faith and on the understanding that it would never have any adverse effects on his land holding or indeed his livelihood. The upgrading of the culvert, referred to above, was also included as part of the drainage project and two no 300mm Dia. pipes were laid at this point.

By Autumn of 2016 the pipes and manhole installation were completed.

DESIGN & CONSULTANCY SERVICES

PROJECT NO. 10000000000000000000

DATE: 10/10/2010

REPORT AND RECOMMENDATIONS IN RELATION TO ALLEGED FLOODING OF LANDS AT GRANGEVIEW DRIVE/VIN CO. ROAD FOR TOM MOORE

1. FLOOD HISTORY

It was noted by the landowner, Mr. Thomas Moore, that the flooding is a
recurring problem and that there have been no historical flooding events
that is reported by the GRANGEVIEW DRIVE/VIN CO. ROAD. The FLOODING
has occurred since the report confirms that there were no instances of flooding or
historical flooding events. The connection is also supported within a flood risk
assessment lodged in support of a planning application on the adjacent property.
In the event of a flood, that application is dealt with in detail within the flood
report. We are advised that flooding only occurred in or about August/September of
2010.

2. ROAD FLOOD RELIEF OUTLET DRAIN REQUEST

It was noted by the landowner, Mr. Thomas Moore, that in early May 2010 he was approached by the Vin
Co Council, Local Area Engineer, Mr. David Morgan, asking permission to lay a
storm water pipe from the local road, through the lands, to a ditch on the
property. The request, "Request for a Storm Water Pipe", shows the approximate
location of the pipe line and manholes. Following discussion, during which the
capacity within the ditch and stream to receive the storm water was discussed, it
was agreed that the volume of water could be absorbed by the ditch which joins
with another ditch and forms a small stream, which is known as Ballybough Stream.
The stream flows in a south to north direction, through the lands, and along
the boundary with a neighbouring land holding to the north, where
it is a recently constructed boundary.

It was noted by both the Local Area Engineer and the Moore that the stream was indeed an
open stream throughout, save as for a brief entrance where the Moore's agreement
to allow the Storm Water Outlet from the public road, the piped through the lands, and
into an open area of land through a stream, was made in good faith and on the
understanding that it would never have any adverse effect on his land holding or
indeed his livelihood. The opening of the outlet, referred to above, was
included as part of the drainage project, and the 100 and 150 pipes were laid at
this point.

As a result of the drainage project, the lands are now free of flooding.

C. RECENT FLOODING HISTORY

Over the four-year period following the installation of the LA outfall drain, Mr Moore states that there were no problems with the drainage system, despite the fact that the winter of 2016 was one of the wettest winters in recent years. The flooding of the road ceased completely at the two locations where it was addressed by the drainage system installed. The system continued to operate without any flooding up to Autumn/Winter 2020. From late Autumn of 2020 "pockets of flooding" started to appear in some low areas of the fields, in the general area of the storm drain outfall. By early winter large areas of three fields around the ditches and stream became saturated and extensively flooded. The flooding was to such an extent that these areas were totally unusable. The areas have remained saturated, virtually all the time, even despite spells of dry weather. Photographs, included herewith, indicate the extent of the flooding. The location from where the photographs were taken are indicated on the OS Map, Map 'A', referred to earlier. The following is the photo reference.

Photo No 1 . This shows the outfall pipe which is a 225 dia. pipe .

Photo No 2. This outside of the ditch, to the north, where the outfall pipe is located . This area is constantly under water and wet now.

Photo no 3. This is a view back towards the farmyard and clients dwelling. This is a very extensive wet area and relatively new rushes can be seen.

Photo No 4. The intersection of the two field ditches where they join to form the stream. This swelling is well above the stream banks. This never happened before 2020 .

Photo No 5. An area out in a third field with considerable flooding also .

Photo No 6. The mature rushes can be seen close to the bank of the drain. Newly growth rushes are clearly visible further out from the watercourse indicating that the flooding is recent and causing new rushes to flourish.

Photo No 7. This Photo Shows pebble where the piped section of the stream starts. The pipe is not visible. There appears to be little or no movement of the water in the stream, at this point, algae on top of the stream would support this assumption.

Photo No 8. This photo shows that this entire field is not fit for use as areas where there is no lying water the field is saturated and soft under foot throughout.

D. STOCK LOSS AND ANIMAL WELFARE .

The result of the flooding is that the land owner has had losses of stock as a result of ewes contracting liver fluke, which is directly attributable to the poor damp ground condition. Mr Moore's excessive fatalities in ewes can be verified within his records,

which clearly show a marked increase in the number of animals he had to dispose of since 2020, compared to previous years. The wet conditions have also resulted in a significant frequency of rot in the sheep's hooves and water borne ticks and nematodes, the latter condition has a considerable adverse effect on lambs' health resulting in reduced weight which in turn reduces their value at sale time. The affect is that considerable cost has been incurred by Mr Moore in Veterinary fees and treatment costs, and considerable loss of earnings. There are significant animal welfare issues arising from the situation also.

E. LOSS OF GRAZING LANDS

A conservative estimate of the affected area of land as a result of the flooding would be in the region of 2 Ha. **Teagasc**, (the Agricultural Food Development Authority) concur with this estimate of the affected area and have advised Mr Moore to fence off the affected areas of his lands in order to avoid continued hardship on animals and further losses in the future. We include a letter from Teagasc, enclosed herewith, Marked DOC No 1, where they have expressed their opinion on the overall situation regarding the flooding. Teagasc concur with our points relating to the effects of the flooding on the farm and stock, made in this report. The extent of lands that are currently affected is in the region of 2 Ha (5Acres), this area may well increase as lands get saturated and the effects of flooding increases. The present extent of flooded area relates to, in the region of, 15 % of this landholding, owned by Mr Moore. On the advice of Teagasc Mr Moore has no alternative but fence off this entire area in the interest of the health and welfare of his stock and to avoid further fatalities and hardship on his flock. This will affect the overall size of his flock reducing the number of stock considerably.

F. FINANCIAL LOSS AND INSURANCE

The financial impact of the flooding and subsequent loss of this area of land is extremely significant. The loss is in relation to ewes in particular, but not exclusively, dying from diseases as a result of wet and damp conditions, as alluded to earlier and referred to in the letter from Teagasc. The cost in relation to Veterinary fees and treatments for the stock that contract the specific conditions referred to earlier. There is also the considerable amount of additional time related to the administration of medications and treatment by Mr Moore to the animals. The loss also as a result the reduction of flock size as referred to in Para E above. These losses are currently being assessed by Mr Moore's accountants and he is currently inquiring as to his insurer's liability for the losses incurred to date and ongoing. His insurers, are insisting on information regarding the ingress of the storm water from the public road through the outfall drain, installed by the LA, and all related issues being provided.

G. POSSIBLE CAUSE OF FLOODING

In assessing the situation we have ascertained that the flooding only commenced in Autumn/Winter 2020 . We are informed by the client that the stream, between his lands and the new dwelling was piped by a third party in or about May 2020. The section of the stream, which has been piped, is directly to the rear of a dwelling house which has recently been constructed .

It would appear that the diameter of the pipe, which was laid, is not properly sized to take the capacity of water in the stream. The pipe is not visible at the southern end, therefore it is not possible to ascertain the size of it . There is significant algae on the top of the stream which, we suggest, indicates poor aeration due to a lack of flow through the pipe as a result of it being too small in diameter, we contend this is causing the back up of storm water which is creating the flooding Mr Moore's lands. The volume of water from the LA storm drain is extremely high, when it rains, and we are of the opinion that the volume of water from this pipe is the major contributor to the flooding problem. While the stream was open there was no issue and therefore the piping of the stream, taking place in the same year as the flooding commenced, is the only logical reason for the flooding.

H. RESPONSIBILITY FOR THE PROBLEM

We strongly contend that the Local Authority has a duty of care to Mr Moore, who agreed to allow the drainage works take place through his lands . Mr Moore's decision was taken in the interest the greater public good and we suggest that it would be unfair and un-just to allow the current situation prevail and continue to cause him further financial loss and indeed considerable stress.

While we suggest that the LA have a duty of care to the landowner, we also suggest that the LA can discharge that duty of care by ensuring that actions are taken to alleviate the flooding by insisting that the stream be reopened and reinstated to its condition prior to the piping of it in 2020 an open watercourse .

We suggest that responsibility for the problem lies with the landowner who filled in the stream and incorrectly piped it with insufficient size pipe, notwithstanding the pipe size, this stream has historically been an open stream and should not be piped under any circumstances.

I. POSSIBLE UNAUTHORISED DEVELOPMENT

We suggest that the piping and filling in of this stream may in itself be an unauthorised development as it interferes directly with the drainage from a public road, insofar as it restricts the flow of water in the stream thereby causing the flooding . The LA installed the drainage system on our clients' property in order to

alleviate a serious flooding problem, in two locations, on the public road, therefore any action that adversely affects the ability of the storm water, from that outfall system, to get away through the natural land drainage system, must be considered as interference with the road drainage. On this basis we feel that the LA should insist on the stream being reinstated and the LA should take whatever enforcement measures are at their disposal to ensure it is done.

J. NON- COMPLIANCE WITH PLANNING PERMISSION

Mr Moore attempted to have this problem dealt with within the unauthorised development mechanism within Kildare Co Council Planning Department. He sought the LA's opinion on whether the piping of the stream in question, represented an unauthorised development in relation to planning application Pl. Reg. No 16/ 823, the aforementioned new Dwelling adjoining his lands. In the UD File Ref No. UD7742, the response from the UD Section, enclosed herewith, Marked DOC No 2 , it states that.... Quote...

"Following a site inspection, it was confirmed that there is no breach in the requirements of Pl. Ref. 16/823(ABP Ref. PL09.248060) and the works carried out outside of the site boundaries are exempt from the requirement for planning permission."

We disagree entirely with this decision. The decision is based on the incorrect assertion that the stream WAS NOT included within the RED LINE, outlining the site, on the Site Location Map or on the Site Layout Plan submitted with the aforementioned planning application. Following receipt of the UD decision, by email, I spoke to Mr Stephen Cunningham, Staff Officer in the UD Section, to seek clarity. He informed me that the inspector noted that the stream WAS NOT within the RED LINE which delineated the site boundary on the Maps accompanying the planning application and therefore the stream was deemed not to be part of the subject site .

We inspected the hard copy of the planning file, PL Reg Ref No 16/823 On 4TH March 2020, in the planning, office of the LA, and what we have found is totally at variance with the assessment of the LA's inspector, within the UD File.

Drg. No. 4111-01 is the Site Location Map which was lodged with the planning application, copy included herewith, Marked 'Map No 2', the Stream is clearly indicated on the Ordnance Survey Map and the RED LINE indicating the site boundary is clearly along the most south eastern boundary of the stream . The Site Layout Plan, Drg No 4111-02, enclosed herewith, Marked 'Map No 3', which was lodged in reply to the further information request on, 5th Jan 2017, also clearly shows the stream and the RED LINE which delineates the extent of the site is shown on the most south/eastern side of the stream. This clearly shows that the stream is indeed within the curtilages of subject site, as delineated in the documents lodged with Pl. App. Reg. Ref. No. 16/823 and any works to that stream must comply with the planning permission conditions, any deviation from this position represents non-compliance with the planning permission. Condition No 1 of the Grant of Planning

permission under File Ref No. 16/823 states that the development must be carried out strictly in accordance with the documents and drawings lodged with the application, save as where amended by a condition within the grant of planning permission. There was no suggestion that the stream was to be piped within the documentation lodged with the planning application.

Furthermore, Condition No 4& 5 required landscaping details to be submitted to the planning department, for their approval, prior to commencement of development. The applicant lodged the Landscaping Plan. The Landscape Drawing, Ref Dr-178, received by the LA in compliance correspondence on 31 July 2017, is enclosed herewith and marked Map No 4, indicates 'the open stream', it is not just shown, but specifically referred to in the notes on that drawing ..Quote:

"1.8m High post and rail fence with childproof chain-link fencing incorporated into functional design alongside the open stream".

This is absolutely conclusive proof that the stream IS within the curtilages of the site boundary and IS NOT to be piped. There was no permission sought or granted to pipe this stream and all the documentation within this application file dictates that the piping, that has taken place, is an unauthorised development as it contravenes the conditions of the planning permission.

In fairness to the inspector/planner, who was involved in the UD assessment, there is a red line shown along the inside edge of the stream, on Drg No 178, and this may have well been construed as representing the rear boundary of the site, IT IS NOT, this red line is clearly indicated as representing the timber post and rail fence described above and this contention is clearly supported by the fact that a red line is shown either side of the entrance, to the front of the site ,again indicating New timber post and rail fence .

It is indisputable that the stream should be left open, as it has been historically, at no point within the documents or drawings, lodged in connection with the planning application, was it ever suggested that this application included the piping of the stream, quite the contrary, the fact that the stream is to remain open is clearly and unambiguously stated.

The piping of this stream is directly in contravention of the documentation and drawings lodged and the development has not been carried out strictly in accordance with those documents/drawings and the conditions contained in the grant of planning permissions contained in PI File Ref No 16/823 . Therefore, the piping of the stream is an unauthorised development, notwithstanding the assertion in the letter received from the UD section that *"the works outside the site are exempt from the requirement of planning permission "*, An exemption cannot be applied where it conflicts with the compliance with conditions within the grant of planning permission. There is no exemption in relation to the piping of this stream as it is an integral part of the planning application.

A flood risk assessment was lodged with the planning application, this assessment was carried out by 'IE Consulting Water-Environmental-Civil'. We include herewith extracts from that report which we attained from the planning file in the LA's planning office .

The first extract from this report is marked DOC No 3 . The OPW Flood Map for the area is shown and the author refers:

'Figure 4 above indicates no instances of recurring or historical flooding in the vicinity of the proposed development site'

DOC No 5 the author refers to the historical 25 inch map on this extract :

'The historic 6 inch and 25 inch mapping does not indicate any historical or anecdotal instances of flooding within or adjacent to the boundary of the proposed development site.'

This confirms our client's contention that there was never flooding in this overall area, historically.

DOC Marked No 5 from the report refers within section 6.6.1 Hydraulic Analysis

....the Ballybought Stream flows as an open channel watercourse

...The stream channel was observed to be free flowing and relatively free from any significant vegetation..

The integrity of this report relies totally on the stream remaining as described above, an open channel watercourse

DOC NO 6 from the report refers within section 6.6.6

....the twin 300mm pipe culverts in figure 17 below. These pipes were recently installed by Kildare County Council.

This statement concurs with our reference to the pipe installation earlier in this report.

DOC No 7 from the report refers within section 6.8 :

Secondary flood risk can be attributed to a potential blockage of the twin 300mm pipe culverts located at the downstream end of the Ballybought Stream....

...In the event the culverts get blocked and begin to surcharge it is predicted that, based on the existing ground levels, flood waters would overtop the field access point above the culvert as shown in Figure 19 below . These flood waters would re-enter the stream on the downstream end of the twin culverts

This assessment of secondary flood risk clearly demonstrates the Authors reliance on the Stream remaining an open channel watercourse and there is no suggestion anywhere that this stream can be piped. The Author specifically states that the secondary flood risk assessment in this section is "Based on existing ground levels",

the piping and filling in of the Stream significantly altered the ground level and therefore the integrity of this report has been fatally flawed.

DOC No 8 from the report refers:

Figure 19 – Twin culverts overtopping field access way.

DOC No 9 from the report :

Zone C- Low to Negligible Probability of Flooding

....not considered at risk of fluvial flooding and would not adversely affect adjacent lands and properties from a flood risk perspective.

The area has been classed as Zone C within the report therefore there SHOULD NOT be flooding on the adjacent lands .

DOC NO 10 from the report refers

This section concludes That: *The proposed development WILL NOT RESULT in an adverse impact to the hydrological regime of the area.*

The Author of this report was correct in the conclusion reached, at the time, however, this Flood Risk Assessment is no longer fit for purpose it is now outdated as a result of piping and filling in of the Stream. The integrity of this entire report relied on the Ballybought Stream remaining an open channel watercourse, as it has always been historically.

The action of piping the stream represents non-compliance with the planning permission granted under PI File Reg Ref No 16/823. The Flood Risk Assessment was lodged in support of this application and as so it is an integral part of the planning permission which was granted. The drainage in this area has been seriously interfered with by the action of piping and represents a breach of the conditions contained within the planning grant, the development was to be carried in strict accordance with all the documentation lodged on the planning file .

K. CONCLUSION

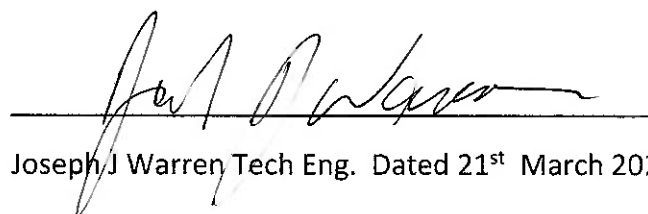
- (i) The reinstatement of Mr Moore's lands, to the condition they were in prior to Autumn/Winter 2020 , is of paramount importance as the current situation is resulting in serious losses to him, loss of his flock, both from death of animals and the decrease of his flock numbers. Loss related to various conditions within his flock as a result of the flooding and wet condition over c.2 Ha. of his lands.
- (ii) The flooding has been caused, it did not just appear by itself. The only logical answer to the question as to what caused the flooding is that the piping of

the stream is obstructing the natural flow of the stream and the water can only disperse over the surrounding fields, due to saturation the field is then flooding.

- (iii) Mr Moore cannot relieve the situation himself as the stream is not on his property, it is within the curtilages of adjoining site. There are no remedial works he can carryout to alleviate the flooding, he has attempted to clear the drain and stream but it has proven to be of little or no use.
- (iv) Kildare Co Council Roads Section have responsibility for road drainage and storm water management within the County. The outfall drain on our clients land was carried out in discharging that responsibility. We do not content that the LA's Roads Section are responsible for the flooding on these lands and we have offered our opinion on what caused this situation and the possible way to solve it.
- (v) The reopening of the stream WILL SOLVE the flooding problem on Mr Moore's lands. How the LA set about achieving this is obviously up to them, however, we have offered an opinion on the possible measures that the LA could take. Whether they choose the first option, treating the piping as an unauthorised development, based on the premise that it represent interference with the road drainage or treat it as a non-compliance issue with the planning permission granted under PI App Reg Ref No 16/823 is obviously up to them . The LA may consider that they have other options which they can employ to have the Stream reinstated to its historic open water course status.
- (vi) Mr Moore could well have considered other options regarding the outfall drain, where he could have blocked the pipe coming into his fields and closed off cuttings in the embankments. He did not consider this as an option as he is completely aware of the benefit of this particular outfall drain to the integrity of the public road, a stretch of road travelled on a regular basis by himself, his family and his neighbours.
- (vii) Finally, we would ask the LA to give urgent consideration to the predicament that our client finds himself in. We would ask the LA to consider also the possible adverse effects that this situation would have, if allowed to continue, on the Roads Section ability in getting the same cooperation, for similar type of outfall drainage, through other farmers lands.

We trust the LA roads Section will carefully consider this submission and revert to us at the earliest possible time.

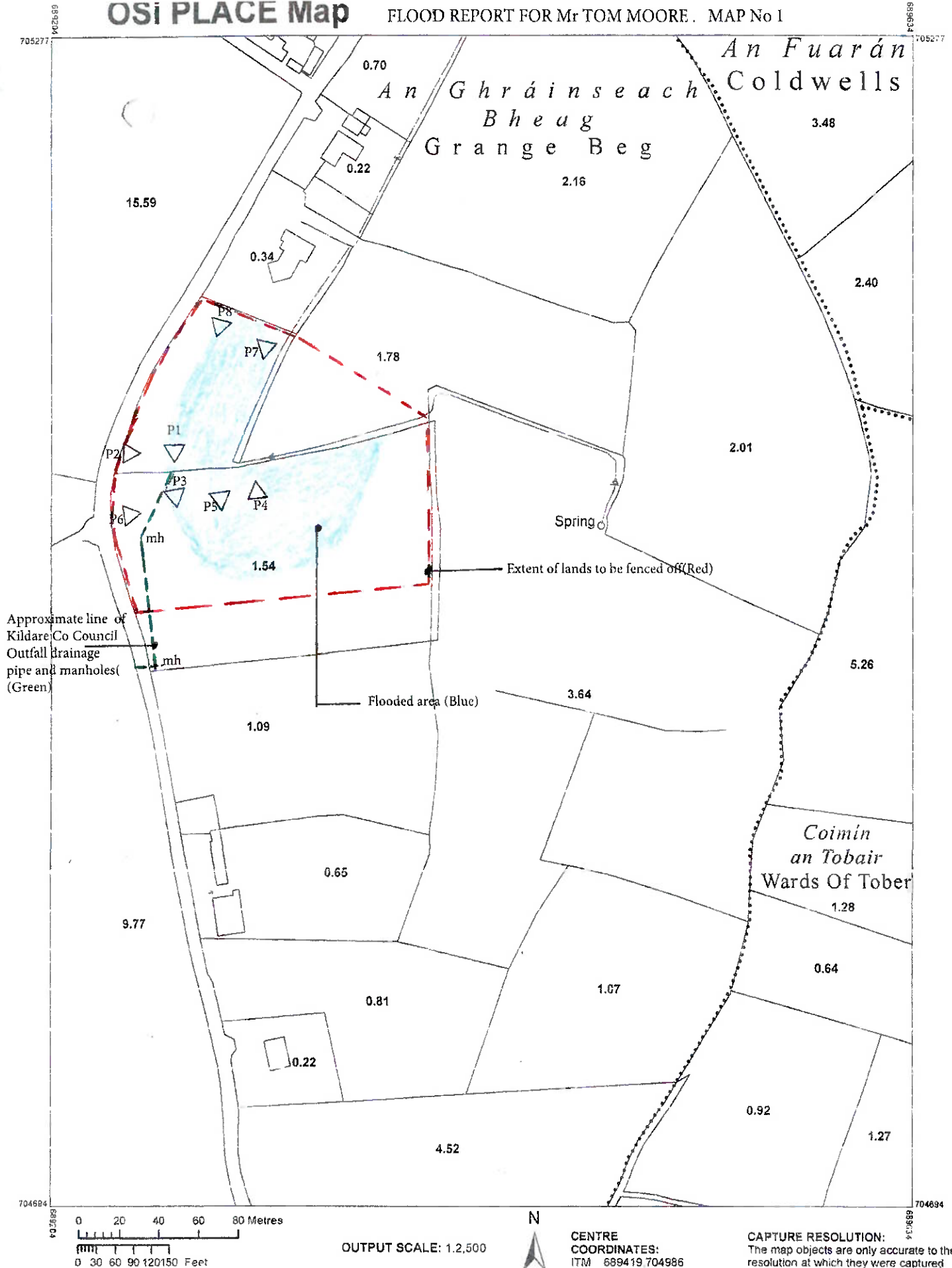
Signed:



Joseph J Warren Tech Eng. Dated 21st March 2022

OSi PLACE Map

FLOOD REPORT FOR Mr TOM MOORE . MAP No 1



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Phoenix Park,
Dublin 8,
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16/03/2022
MAP SERIES:
1:2,500
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50256819_1
MAP SHEETS:
3780-C
3838

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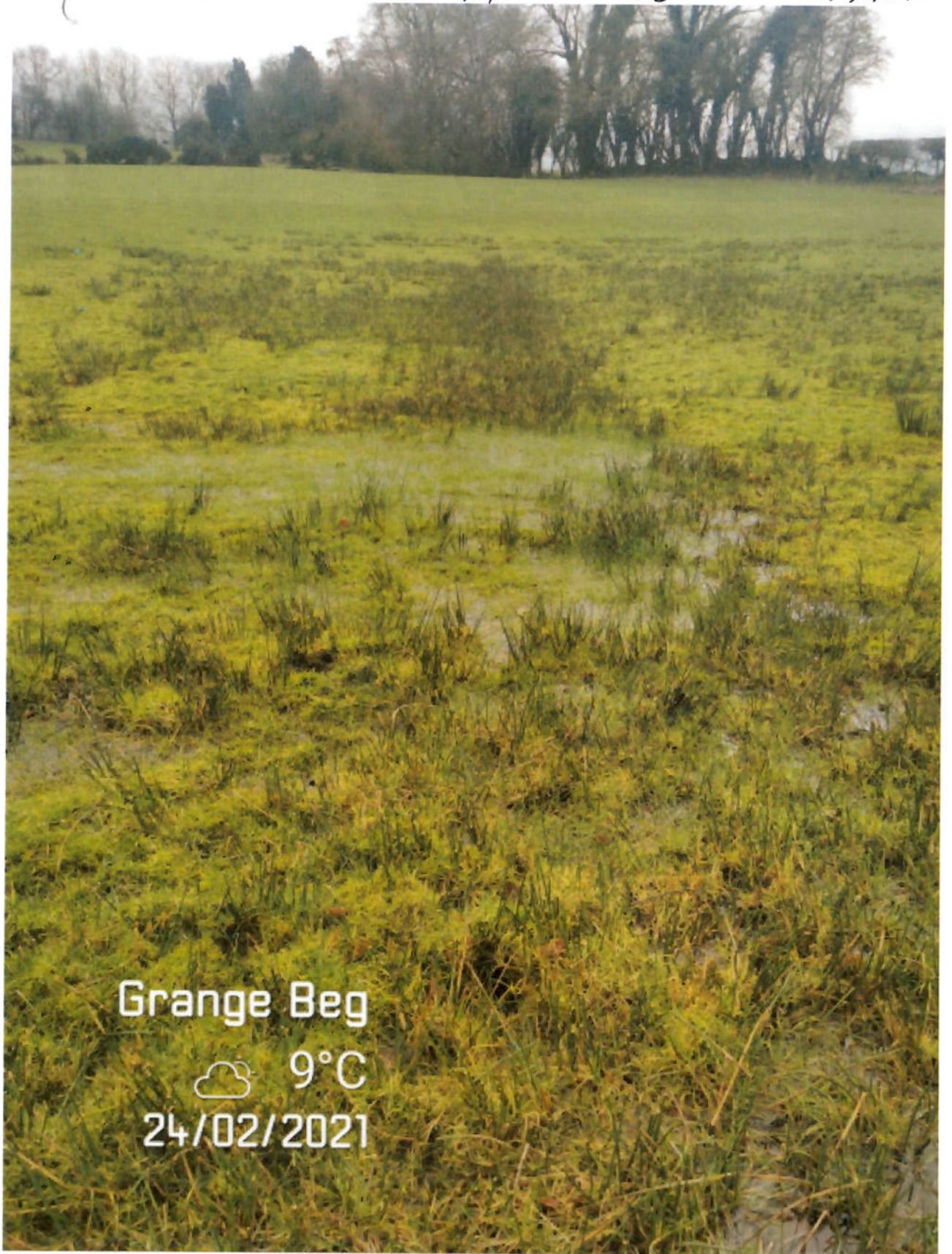
FLOOD REPORT Mr Tom Moore Photo 16/1



FLOOD REPORT MR TOM MOORE Photo No 2



FLOOD REPORT MR. TOM MOORE PHOTO NO 3

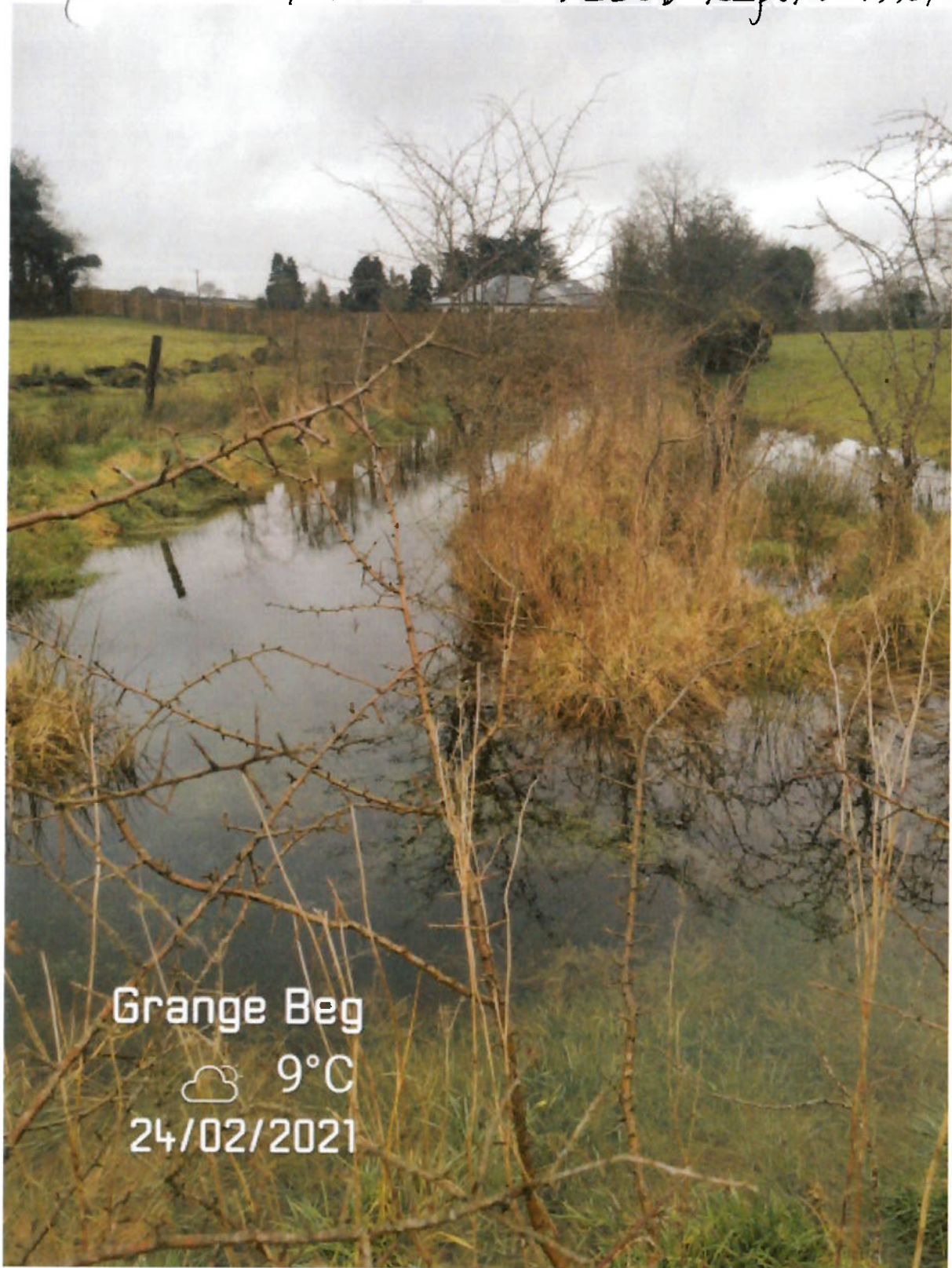


Grange Beg

☁ 9°C

24/02/2021

MR TOM MOORE FLOOD REPORT PHOTO NO 4



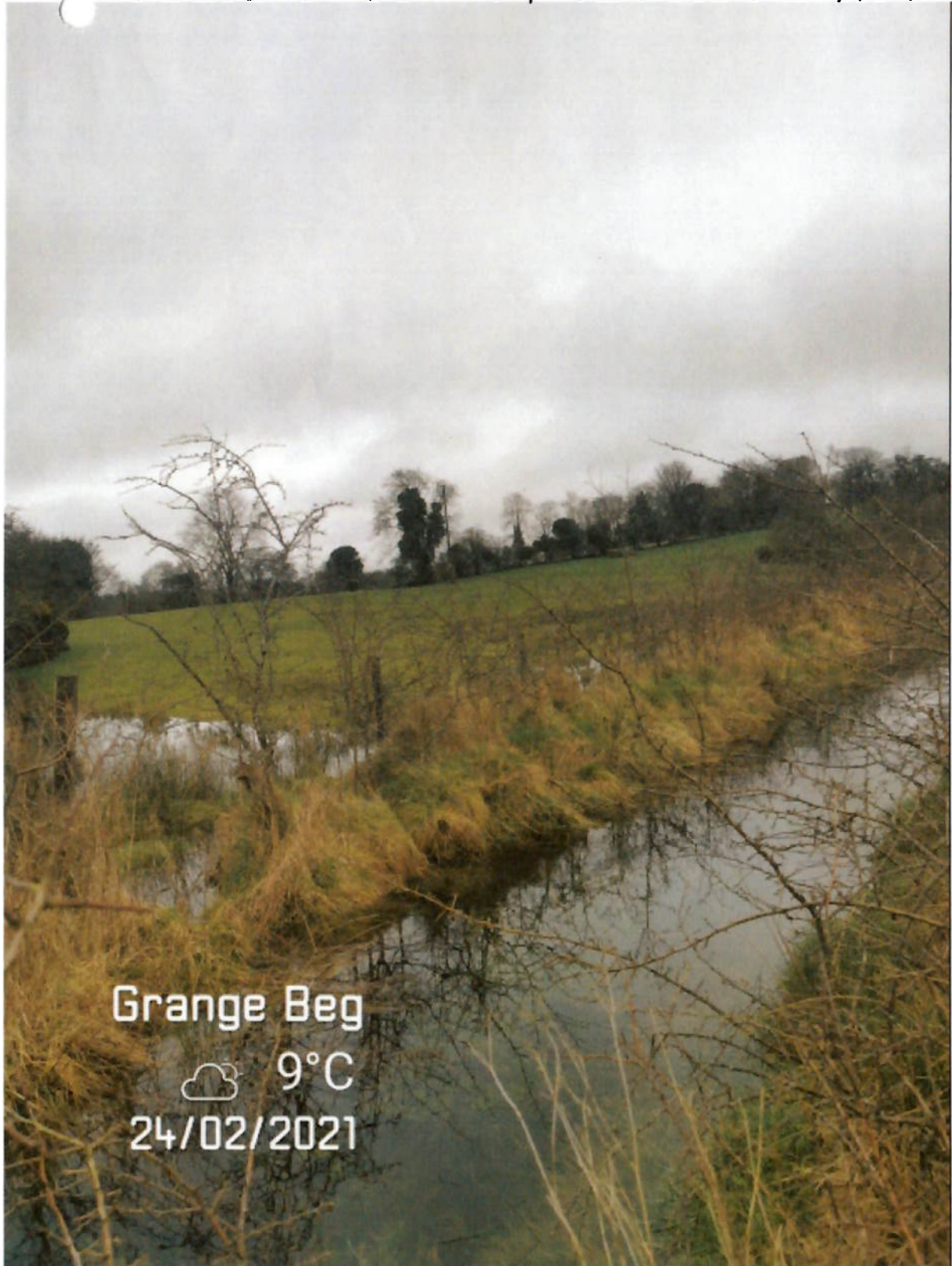
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9°C

24/02/2021

FLOOD REPORT MR TOM MOORE PHOTO NO 5



Grange Beg



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24/02/2021

MR TOM MOORE FLOOD REPORT PHOTO No 6



Grange Beg



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24/02/2021

FLOOD REPORT MATOM MOORE PHOTO NO 7



FLOOD REPORT MR TOM MOORE PHOTO No 8



Doc no. 1.



Seirbhísí Comhairleacha agus Oiliúna
BÓTHAR NA MAINISTREACH
An Nás, Co. Chill Dara
Advisory and Training Services
FRIARY ROAD
Naas, Co. Kildare
Tel: 045-879203/897205 Fax: 045-879093
W91 HP38

03 March 2022

To whom it may concern,

I have been asked by Mr. Thomas Moore of Grangebeg, Dunlavin, Co. Wicklow (Kildare) to inspect and report on the condition of part of his farmlands at Grangebeg which he claims are now damaged and in a poor state of production as a consequence of restricted drainage capacity and additional surface waters being diverted from the adjacent public road arising from a drain inserted by the Local Authority in or around 2016.

I visited the site of this claim on Thursday 17 February 2022 and spoke with Mr. Moore.

Having examined the site in question, it is very clear to me that there is an area of land near a small valley that is very wet and not trafficable by machinery or livestock including sheep. The Local Authority drainage pipe location is clearly visible as there is a stone filled channel just about visible running along the ground starting at the road boundary of the land and running downhill towards a small stream at the base of a small valley. There is considerable rush growth and rough land where this flooded area exists adjacent to the watercourse.

I was informed that there had been an open drain running from this area along the boundary of the adjacent new dwelling that is now piped and filled in. The watercourse here is now no longer visible although the end of the pipe appears to be present under the water level. There is a fence running along the watercourse on Mr. Moore's lands leading to this area. I was informed that his neighbour filled in and piped this watercourse, it being the boundary between the two premises.

Having examined the land, it is clearly unsuitable for grazing stock on and would be a source of infection to the farmers sheep for Liverfluke and waterborne ticks and nematodes. As an agriculturist I would have to recommend that the area be fenced off and abandoned from an animal health point of view and from a machinery perspective for the control of invasive vegetation growth.

It appears that the combination of the watercourse flow added to the additional flood waters from the public road, combined with the infilling of the old open drain is directly responsible for the current flooding situation which appears to be relatively recent in nature. As Mr. Moore stated to me that the watercourse was filled in around 2020 with a small pipe inserted, I can not disagree with his statement as the vegetation present is relatively new and is only getting established.

I can only conclude that the infilling of the drain combined with the additional drainage waters has directly led to the present flooding and that there has been a failure by the Local Authority to ensure that there continues to be adequate drainage capacity to remove these two water sources now combined. In effect the additional road drainage has contributed to

the problem and no additional maintenance measures to ensure adequate capacity to drain these waters can be carried out by Mr. Moore as he is not the owner of the lands where the open drain, now filled in exists.

Yours sincerely,



087 6458543



Comhairle Contae Chill Dara
Kildare County Council



Planning Department
PLANNING CONTROL SECTION
045-980839

Doc No 2

Our Ref: UD7742 (Please quote this reference in future correspondence)
19th April 2021.

Mr. Thomas Moore,
Grangebeg,
Dunlavin,
Co. Kildare.
W91VHHO.

RE: Development – Grangebeg, Dunlavin, Co. Kildare

Dear Mr. Moore,

I refer to the above development and your complaint received in respect of same.

Following a site inspection, it was confirmed that there is no breach in the requirements of Pl. Ref. 16/823 (ABP Ref. PL09.248060) and the works carried out outside of the site boundaries are exempt from the requirement for planning permission. Accordingly, there is no planning enforcement action to consider and the Planning Authority has closed this case. You will need to seek your own independent legal advice in relation to any civil case as this is not a matter for the Planning Authority and we cannot advise you in this regard.

I would also strongly advise you to contact the Kildare/Newbridge Municipal District Office directly in relation to any issues with surface water draining from the public road to your land/drains.

Yours sincerely,


**Senior Executive Officer,
Planning Department.**

Doc No. 3

4.3 OPW Flood Maps Website

The OPW Flood Maps Website (www.floodmaps.ie) was consulted in relation to available historical or anecdotal information on any flooding incidences or occurrences in the vicinity of the proposed development site. Figure 4 below illustrates mapping from the Flood Maps website in the vicinity of the proposed development site.

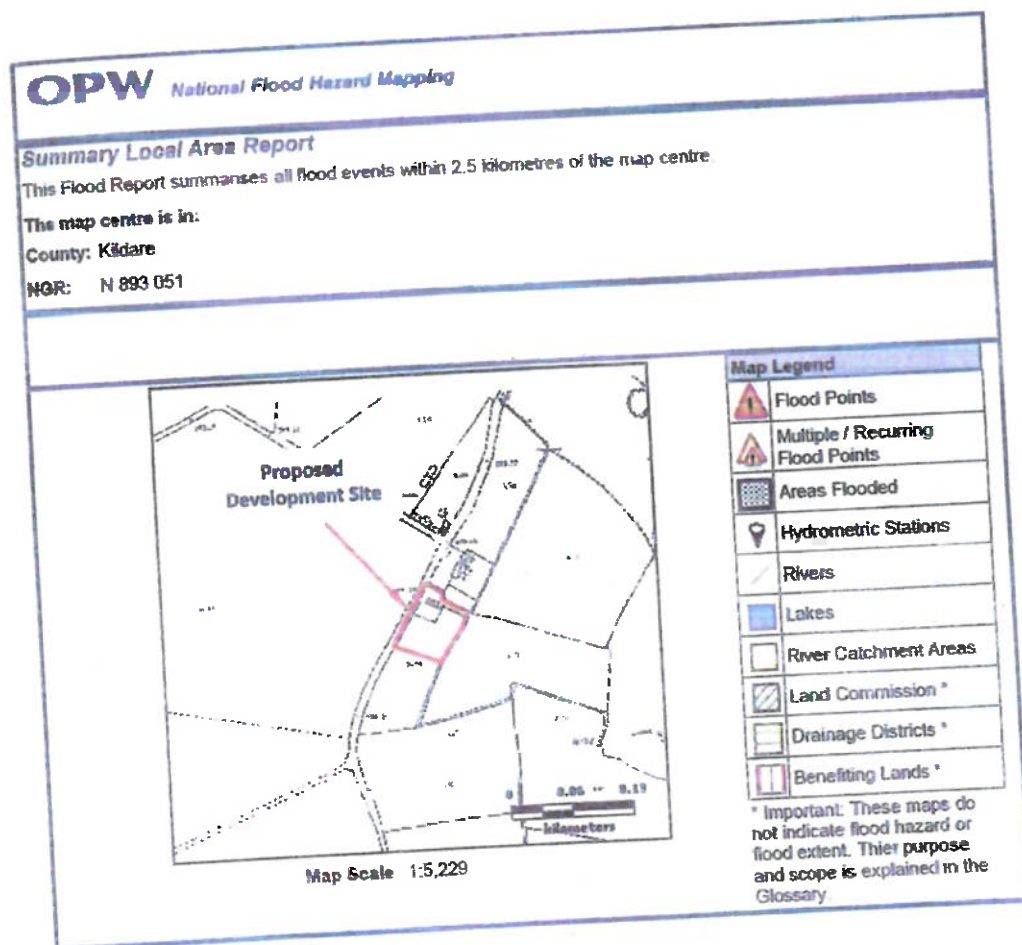
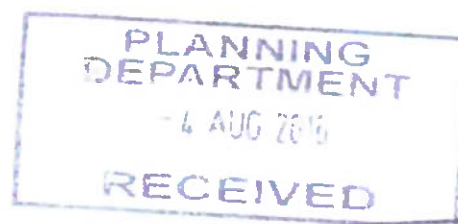


Figure 4 – OPW Flood Maps

Figure 4 above indicates no instances of recurring or historical flooding in the vicinity of the proposed development site.



Doc No 5



6.6 Hydraulic Analysis of the Ballybought Stream Channel

6.6.1 Hydraulic Analysis

As illustrated in Figure 13 below, the Ballybought Stream flows as open channel watercourses adjacent to the eastern boundary of the proposed development site. The Ballybought Stream is conveyed via twin 300mm pipe culverts at the north-eastern corner of the site. A survey of the stream and culvert was undertaken on the 19th of July 2016. The watercourse channel was surveyed at the cross-sectional locations shown in Figure 13 below. The stream channel was observed to be free flowing and relatively free from any significant vegetation.



Figure 13 – Ballybought Stream

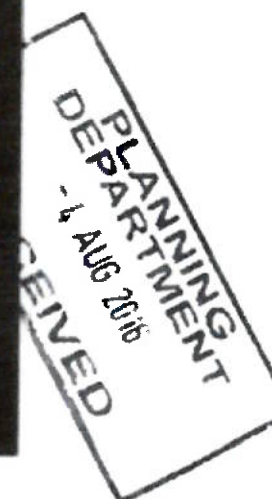




Figure 16 – Section 4 Looking Downstream

6.4.6 Initial Preliminary Hydraulic Model Development

A total channel length of approximately 77m between Sections 1 and Section 5 along the stream watercourse channel was modelled as shown in Figure 13 above. The cross-sections surveyed were georeferenced and incorporated into the model together with the twin 300mm pipe culverts as shown in Figure 17 below. These pipe culverts were recently installed by Kildare County Council at this location.



6.7 Flood Zone Mapping & Delineation

Utilising the results of HEC-RAS model and the DTM illustrated in Figure 14 above, and the predicted 1 in 100 year (1% AEP) and 1 in 1000 year (0.1% AEP) extreme fluvial flood levels for the Ballybought Stream adjacent to the proposed development site, flood zones were delineated using the hydrology module of an appropriate software package. The software enables a user defined flood level to be mapped and modelled onto a DTM over the extent of an assessed watercourse reach length.

The highest topographical elevation within the boundary of the proposed development site is 198.473m OD, which is located at the south-western corner of the site. The lowest topographical elevation within the site is 195.87m OD, which is located at the northern boundary of the site.

The DTM illustrated in Figure 15 above indicates that the northern area of the existing site is below the 1% AEP predicted fluvial flood levels and the 0.1% predicted flood levels listed in Table 5 above. Drawing Number IE1212-002-A, Appendix A illustrates the delineated 1 in 100 year (1% AEP Flood Zone 'A') and 1 in 1000 year (0.1% AEP Flood Zone 'B') predicted fluvial flood extents over the full extent of the site. The area where development is proposed at the site (dwelling house, garage & wastewater treatment system) is not located within the mapped 1 in 100 year or 1 in 1000 year flood extents and therefore falls within Flood Zone 'C'. A very small area of Flood Zone 'B' (approximately 2m²) is mapped as potentially encroaching within the driveway area of the proposed development, however this is considered as negligible in the context of the proposed development works.

6.8 Assessment of Secondary Flood Risk

Secondary flood risk can be attributed to a potential surcharge due to blockage of the twin 300mm pipe culverts located at the downstream end of the Ballybought Stream adjacent to the north-eastern boundary of the proposed development site. The existing ground levels above the field access culverts were examined during the site visit by a Hydrological Engineer from IE Consulting. The field access point is approximately 1.4m lower than the site levels as shown in Figure 19 below. In the event the culverts become blocked and begin to surcharge it is predicted that, based on existing ground levels, flood waters would overtop the field access point above the culverts as shown in Figure 19 below. These flood waters would re-enter the Ballybought Stream on the downstream end of the twin culverts and not enter the area of the proposed development site.

PLANNING
DEPARTMENT

Doc No 8



Figure 19 – Twin Culverts Overtopping Field Access Way



Zone C – Low to Negligible Probability of Flooding. Development in this zone is appropriate from a flood risk perspective. Developments in this zone are generally not considered at risk of fluvial flooding and would not adversely affect adjacent lands and properties from a flood risk perspective.

This flood risk assessment has determined that the proposed development site falls within Flood Zone 'C'. In accordance with the *Planning System & Flood Risk Management Guidelines, DOEGLG, 2009* the site is not subject to the Justification Test.



8 Summary Conclusions & Recommendations

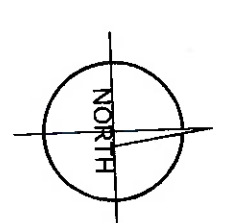
In consideration of the findings of this site specific flood risk assessment and analysis the following conclusions and recommendations are made in respect of the proposed development site:

- A Site Specific Flood Risk (SSFRA) assessment, appropriate to the type and scale of development proposed, and in accordance with 'The Planning System and Flood Risk Management Guidelines - DoEHG-2009' has been undertaken.
- The area of the proposed development site has been screened, scoped and assessed for flood risk in accordance with the above guidelines.
- The primary flood risk to the proposed development site can be attributed to a fluvial flood event in the Ballybought Stream.
- Secondary flood risk can be attributed to potential blockage of a twin 300mm field access culvert on the Ballybought Stream located adjacent to the north-eastern corner of the proposed development site. In the event the culverts become blocked and begin to surcharge it is predicted that flood waters would overtop the access point and re-enter the Ballybought Stream on the downstream end and not enter the proposed development site.
- A hydrological analysis has been undertaken to estimate the predicted 100 year (1% AEP) and 1000 year (0.1% AEP) flood volumes + climate change in the watercourse in the vicinity of the proposed development site.
- A detailed hydraulic analysis of the stream channel and existing culverts in the vicinity of the site has been undertaken.
- A detailed Digital Terrain Model (DTM) has been developed for the area of the proposed development site. Utilising the DTM the predicted 1 in 100 and 1 in 1000 year flood extents have been delineated over the full extent of the DTM.
- In consideration of the findings of this Site Specific Flood Risk Assessment, and in the context of 'The Planning System & Flood Risk Management Guidelines - 2009' the area where development is proposed at the site falls within Flood Zone 'C'. The proposed development is therefore considered to be appropriate from a flood risk perspective, and not subject to the requirements of The Justification Test.
- The proposed development will not result in an adverse impact to the hydrological regime of the area and is therefore appropriate from a flood risk perspective. Overall, the flood risk to the proposed development is considered to be LOW.

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Map No 4. Flood Report for Mr. Tom Moore

AN BORD PLEANÁLA

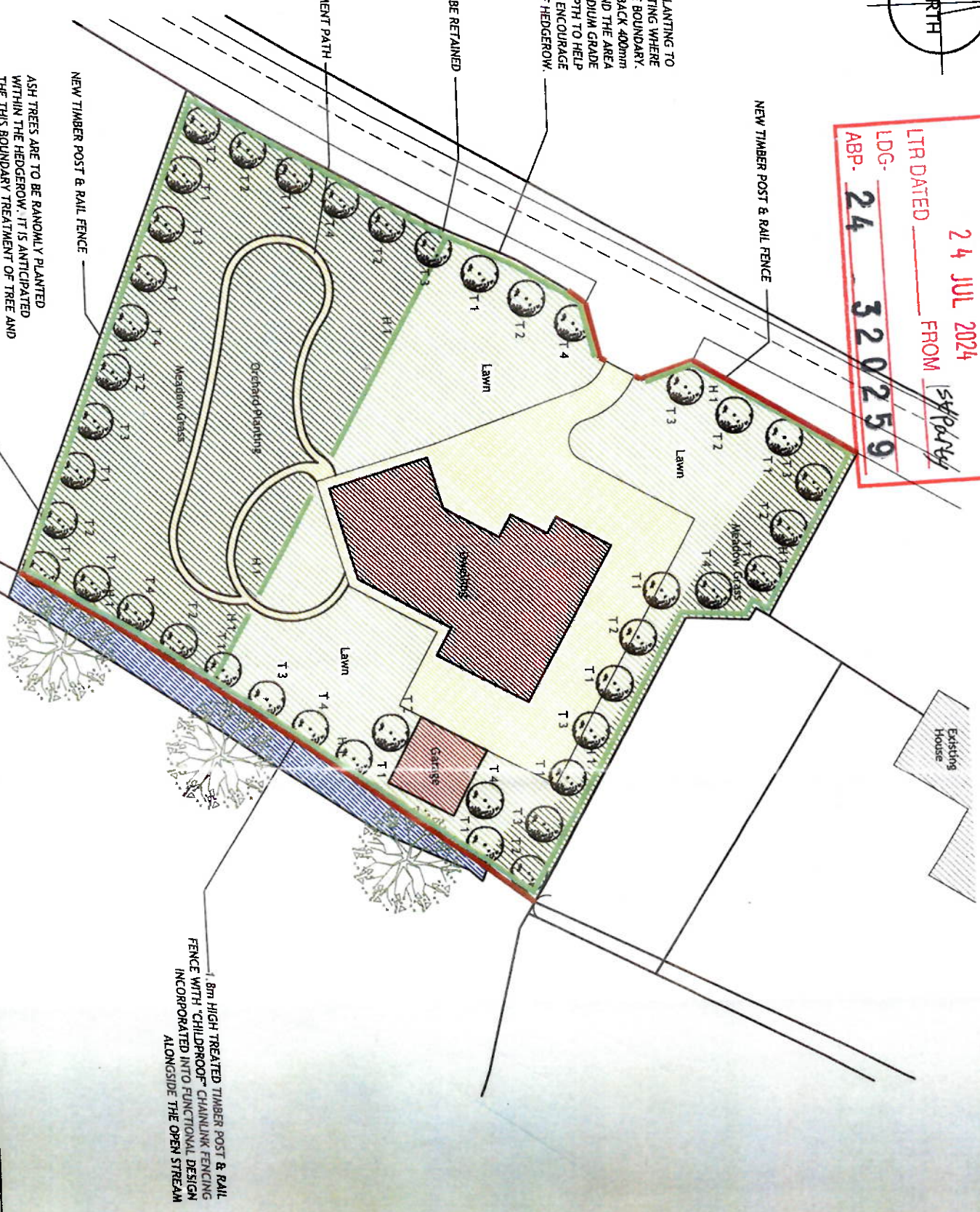


LTR DATED 24 JUL 2024 FROM SPRINT
LDG. 24 320259
ABP. 24

NATIVE HEDGEROW & TREE PLANTING TO SUPPLEMENT EXISTING PLANTING WHERE NECESSARY INSIDE THE BOUNDARY. THE HEDGEROW IS TO BE SET BACK 400mm FROM THE BOUNDARY LINE AND THE AREA BENEATH SURFACED WITH A MEDIUM GRADE BARK MULCH AT 50mm DEPTH TO HELP SUPPRESS WEED GROWTH AND ENCOURAGE ESTABLISHMENT OF HEDGEROW.

ASH TREES ARE TO BE RANDOMLY PLANTED WITHIN THE HEDGEROW. IT IS ANTICIPATED THE THIS BOUNDARY TREATMENT OF TREE AND HEDGEROW PLANTING REFLECTS THE FIELD BOUNDARIES IN THE SURROUNDING LANDSCAPE.

KEY TO RANDOM ORCHARD PLANTING			
BOTANICAL NAME	COMMON NAME	SIZE	QUANTITY
EVERSTE	CRAB APPLE	3-5CM GIRTH B/R	10
COX'S ORANGE	APPLE	3-5CM GIRTH B/R	10
GLEN CLOVA	RASPBERRY	2-4CM GIRTH B/R	10
ELENA	PLUMB	3-5CM GIRTH B/R	10



KEY TO TREE PLANTING			
REF.	BOTANICAL NAME	COMMON NAME	SIZE
T1	FRAXINUS EXCELSIOR	ASH	10-12CM GIRTH B/R
T2	BETULA PENDULA	SILVER BIRCH	10-12CM GIRTH B/R
T3	SORBUS AUCUPARIA	MOUNTAIN ASH	10-12CM GIRTH B/R
T4	QUERCUS ROBUR	OAK	12-14CM GIRTH B/R

KEY TO HEDGEROW PLANTING			
REF.	BOTANICAL NAME	COMMON NAME	SIZE
H1	CRATAEGUS MONOGYNA	HAWTHORN	60-90CM B/R
	PRUNUS SPINOSA	BLACKTHORN	60-90CM B/R



BETULA PENDULA



FRAXINUS EXCELSIOR



SORBUS AUCUPARIA



QUERCUS ROBUR



GRAVEL

PLANTING PROGRAMME
All planting is to be carried out within the first winter (planting) season following completion of the proposed buildings during the months of November to March.
All areas for planting are to be topped with a minimum depth of 400mm to all shrub and hedgerow areas and 1000mm to all tree pits. Topsoil should be free from stones over 50mm diameter and should not be spread during wet weather as this leads to compaction and the destruction of the soil profile.

Tree Planting
All trees are to be supplied bareroot during the months of November to March, inclusive. Trees are to be planted at the locations on the landscape plan in tree pits 900 x 900 x 800mm and backfilled with clean topsoil. Tree stakes should be located to the side of the tree before backfilling. All trees are to be staked with two knee high posts and crossbar, tied with flexible rubber ties.

Shrub & Hedgerow Planting
All shrubs and hedgerow plants are to be supplied bareroot or containerised as specified. Bareroot stock is to be planted during the winter season. All shrubs are to be planted at the densities specified. The area for planting is to be weed free and cultivated to a depth of 230mm prior to planting.

MAINTENANCE PROGRAMME
Shrub Aftercare
All areas of shrub planting are to be mulched with a medium grade bark mulch to a minimum depth of 50mm, spread evenly over all areas, suppressing the emergence of weeds. As bark mulch is a natural material it will degrade over time. Therefore it should be replenished every 2-3 years.

Hedgerow Aftercare
All hedgerows are to be maintained at a maximum height of 2.5m. Pruning to take place mid to late summer. All areas of hedgerow are to be surfaced with bark mulch to a depth of 50mm.

Tree Aftercare
A circular space with a radius of 500mm should be kept bare around the base of the tree to prohibit the growth of grass and weeds as this only increases the competition for soil moisture. All tree ties and stakes should be checked at yearly intervals and adjusted as the tree develops and removed once the tree has become established. Usually five years after planting.

Midare County Council
Planning Department
31 JUL 2017

REV.	DESCRIPTION	DATE	BY

DATE: July 2016
JOB NUMBER: DR-178
SCALE: 1:500
DRAWN: G. SMITH
B.S.C.H.

KEY TO LANDSCAPE TREATMENT
PROPOSED TREE PLANTING
(see schedule)
PROPOSED HEDGEROW PLANTING
(see schedule)

AN BORD PLEANÁLA

24 JUL 2024

LTR DATED FROM 15th July

LDG- 24 320259
ABP-

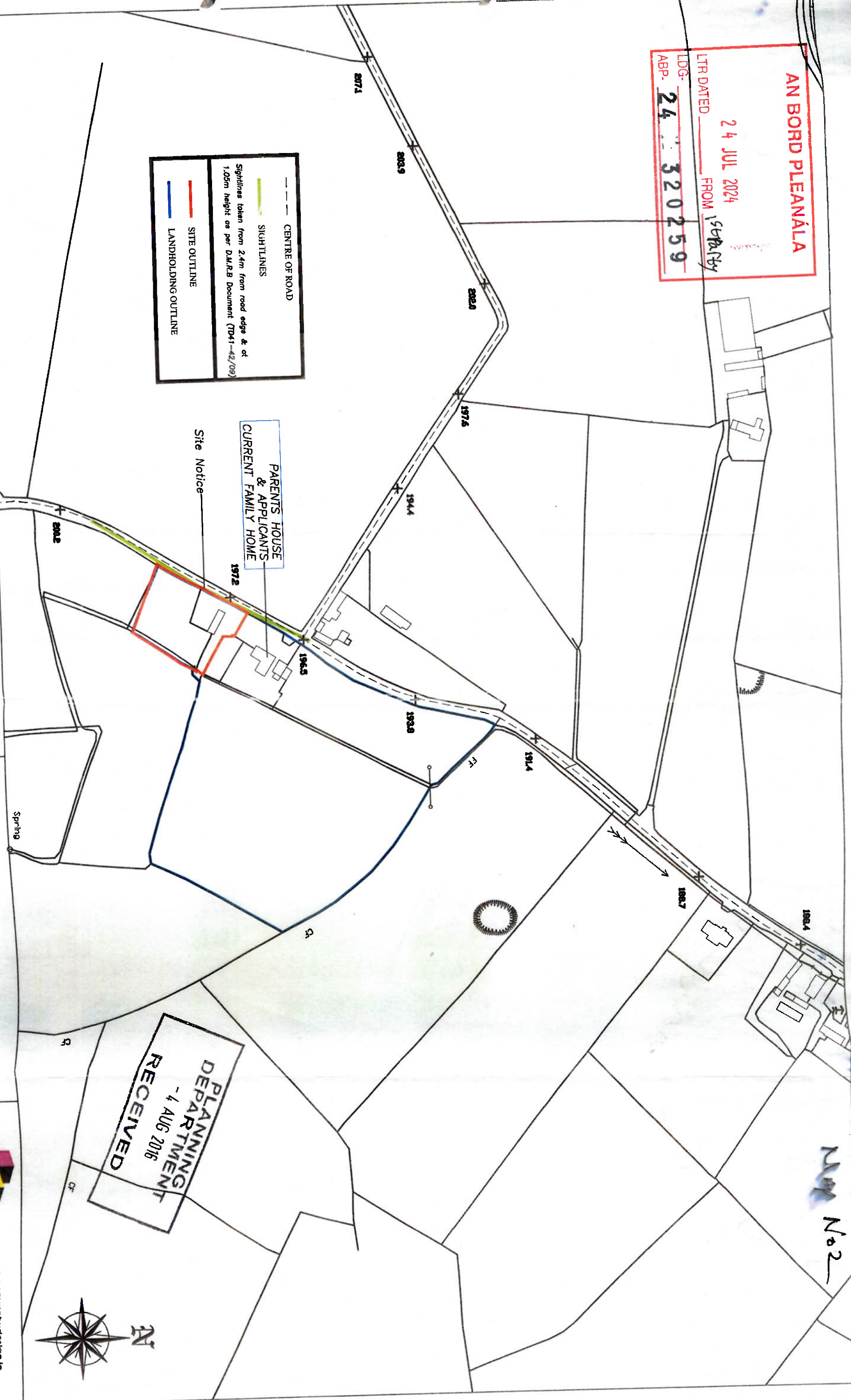
--- CENTRE OF ROAD

--- SIGHTLINES

Sightlines taken from 2.4m from road edge & at 1.05m height as per D.M.R.B Document (TD41-42/09)

--- SITE OUTLINE

--- LANDHOLDING OUTLINE



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SITE LOCATION PLAN

DIMENSIONS EXCLUDE CONSTRUCTION TOLERANCES TYPICALLY +/- 30 ON DIMENSIONS, LEVELS AND ANGLES.

Proposed Dwelling
At, Grangebeg,
Dunlavin, Co. Kildare

OS Ref: 3780 Issue: PLANNING

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tel: 087 6857909
email: murphydesign.ie

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Architectural Services Build Surveying
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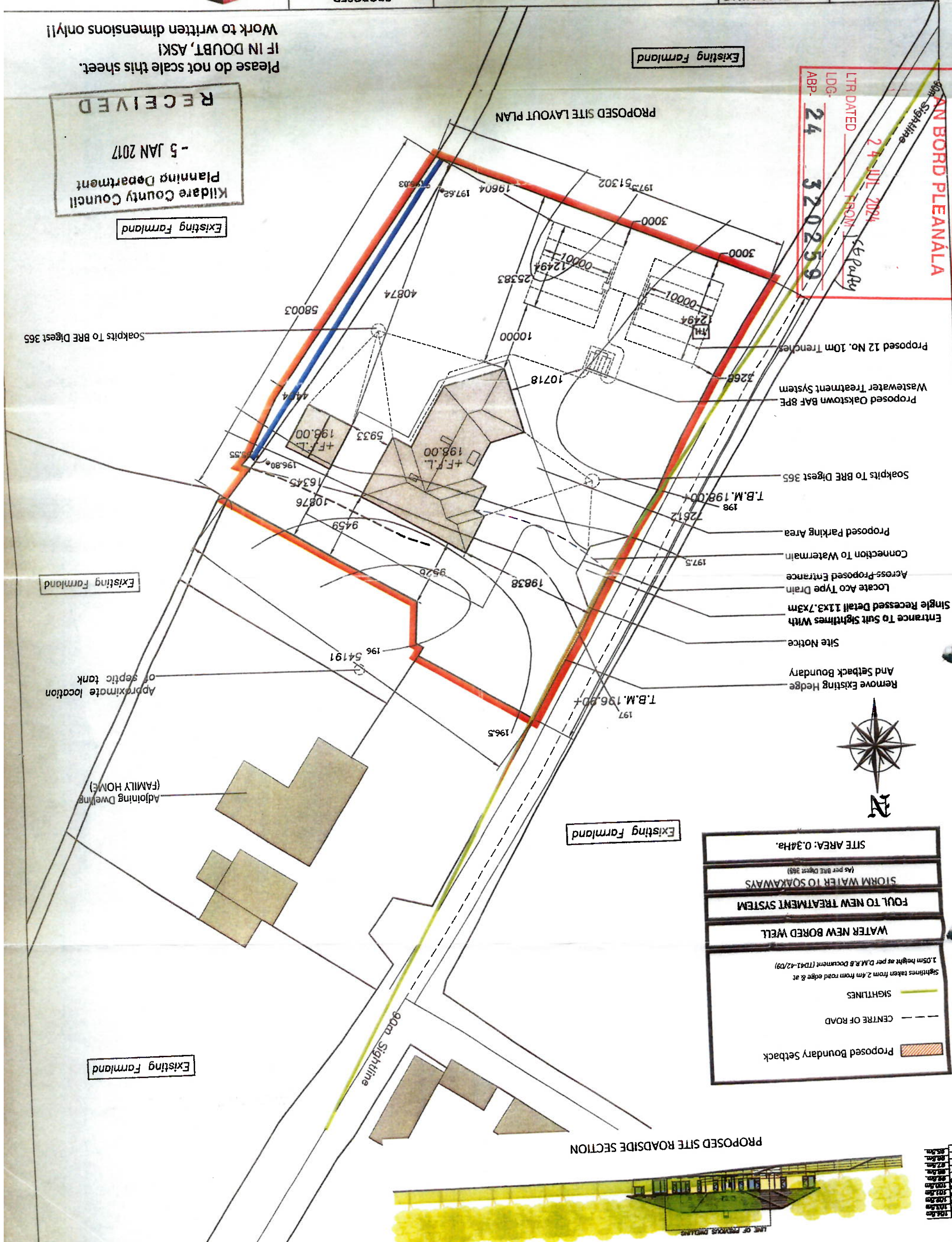
Flood Report for Mr Tom Moore
Map No 2



17th Nov
Good Report for Mr. [illegible]

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- 5 JAN 2017
Kildare County Council
Planning Department

AN BORD PLEANÁLA
30m - 50m
LTDG. _____
LTR DATED 24 JUL 2024 FROM 1st Party
ABP. 24 320259



~~Flood Report For M. Tom Moore Map No 3~~

