



Comhairle Contae Chill Mhantáin Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

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AN BORD PLEANÁLA

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15 AUG 2024

Fee: € _____ Type: _____
Time: 9.00 By: reg post

13th August 2024

RE: Referral Ref. ABP 320327-24

Dear Ms. Flynn,

I refer to your letter of the 06/08/24 in relation to the above mentioned Referral. The Planning Authority considers that its reasons and considerations in relation to the submitted S5 Declaration Request are fully set out in its planning report and Declaration previously forwarded to the Board. However, the Planning Authority would like, in the interests of clarification, to comment on the submitted Referral as follows.

In the PA's Declaration 17 reasons are given for why the PA considers the proposed development is not exempted development. These were generally laid out to match the various questions raised in the submitted S5 Declaration Request.

Prior to commenting on some of the specific referral items which are raised in the submitted Referral, the Planning Authority would like to note that the Referral includes 2 sections titled "Context" and "Conclusion", both of which do not deal with the questions required to be decided upon in the Referral. These 2 sections contain irrelevant matters and should not distract from the technical core issues on which a referral has to be determined on. The Planning Authority would request that these 2 sections are disregarded.

The following comments are laid out to correspond to the other sections in the submitted Referral.

3.0 Description of Buildings for which a Section 5 Declaration was requested

The Referrer notes that the S5 Declaration request invited the Planning Authority to issue a declaration in relation to works only and not to use.

It would appear that the S5 Declaration request was structured so, having regard to the belief that the various use/uses was/were exempted development. Reference in this regard was made to Class 14(h) and/or Class 20F and the "Dromaprop" decision of the High Court. No documentation was submitted to support this view and it was not shown how a High Court decision relating to a specific development is wholly relevant to the subject site, where different matters pertain.

It is noted the Planning Authority did not refer to Class 14(h) and/or Class 20F in its Main Reasons in the S5 Declaration. However, this does not indicate that the Planning Authority concurs with the views expressed by the Referrer in relation to either Classes 14 (h) & 20F or the applicability of the "Dromaprop" High Court Decision.



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The Planning Authority acknowledges that a S5 Declaration request can be limited to the question of whether a development is or is not development only, or can, additionally, relate to whether a development is or is not Exempted Development.

The Planning Authority also acknowledges that development for the purposes of planning can be either works or a material change of use. However, it is not always possible to have one without the other, as both the works and use can be intrinsically linked, e.g. a quarry will always include both works and use. In addition notwithstanding that works maybe exempt, the material change of use may not be eg. *Cork Corporation v O'Connell* (1982 ILRM 505SC) the works carried out to convert a retail hardware shop to an amusement arcade with 35 slot machines were exempt, but not the use of the former shop as an amusement arcade.

For the subject S5 Declaration Request, given the nature of the development, it is not readily obvious why the use was specifically requested to not form part of the S5 Declaration request, particularly, given various exemptions relied upon, can only be relied upon where a particular use is involved, e.g. Class 9, where the use of the works/structures has to be for agriculture. It is also noted that the submitted documentation with the S5 Declaration Request made reference to use.

As noted in its S5 Declaration report, the Planning Authority considered the S5 Declaration request to be unusually structured.

3.1 Structure No. 1

Class 17 is for persons who are employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out. Class 17 also comes under the heading in Schedule 2 of "Temporary structures and uses".

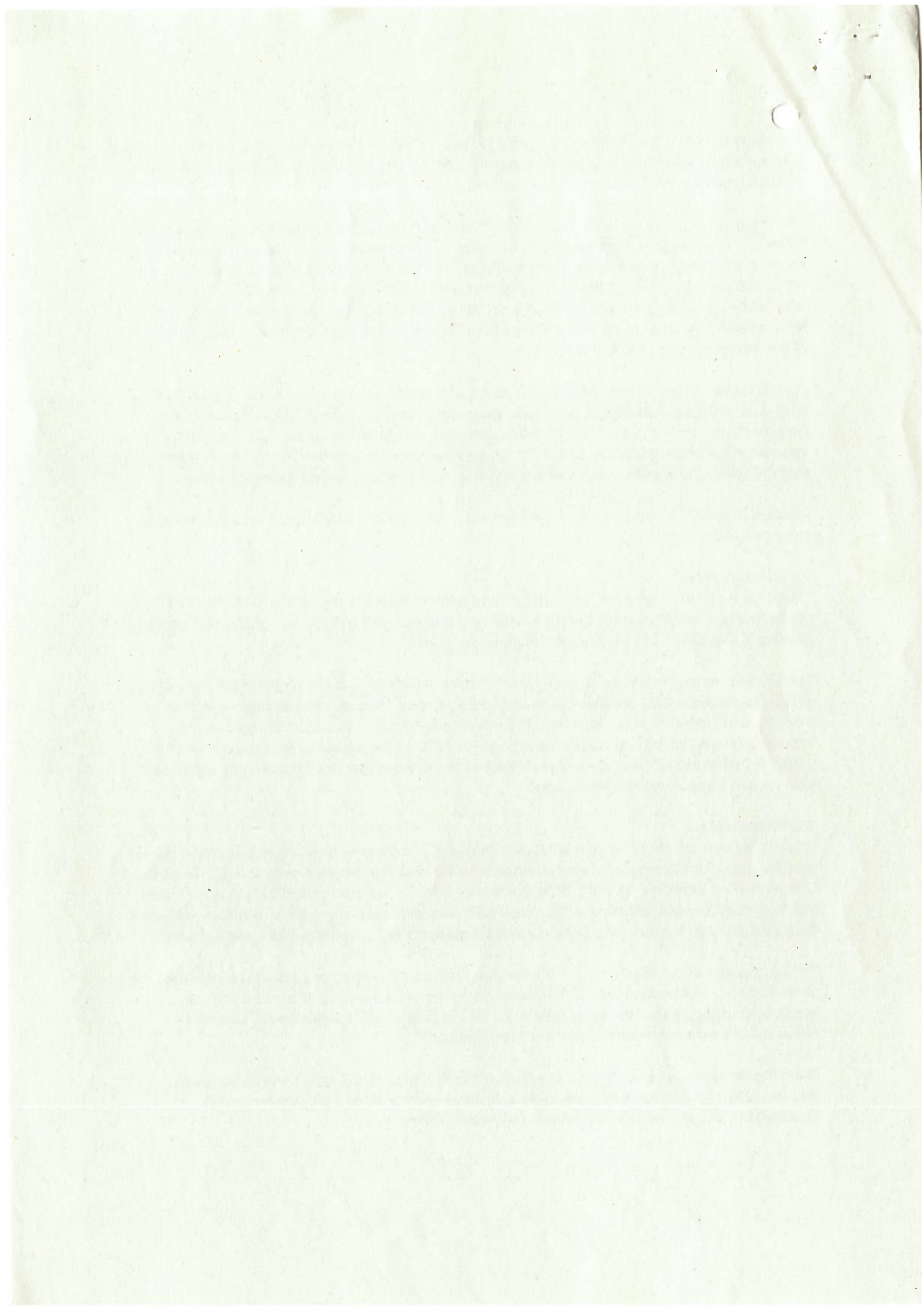
The rationale set out in the Referral for Class 17 being applicable to those employed in the operation of the development does not make sense. Expanding the meaning of "the carrying out of the development" to include the operation of the development, not only would represent a misunderstanding as to what is meant by the scope of "the carrying out of the development", it would also, if accepted, have the effect of using a class of exemption for temporary structures and uses for non-temporary/permanent uses.

3.2 Structure No. 2

Where materials are stored in an Agricultural Structure, just because they are materials that can be used for Agricultural purposes, does not automatically mean that the requirement in Conditions and Limitations No. 1 for Class 9 re use for agriculture or forestry has been met. What those materials are being used for is of relevance and hence if such materials are being used for development other than agriculture or forestry then Conditions and Limitations No. 1 would not be complied with.

The aggregation of the floor areas for the various structures the Referrer is claiming exemptions for under Class 9 is legitimate, as the Referral as a whole has to be assessed. It is noted that the assessment of aggregate floor areas is included for the purposes of completeness, so that all relevant Conditions & Limitations of Class 9 are assessed.

Given the definition of gross floor area as defined in Article 3 of the Regulations, it is considered that the inclusion of Mezzanine areas in the calculations of the sizing of such structures is appropriate and therefore the building does exceed 300sqm.



3.3 Structure No. 3

It is noted in the Planning Authority's report that the use of the structure for agricultural use was not demonstrated.

The comments under the above headings re aggregation are relevant.

3.4 Structure No. 4

Class 29 does not include works carried out on behalf of an electricity undertaking.

3.5 Structure No. 5

The comments under the above headings re aggregation are relevant.

3.6 Structure No. 6

The comments under the above headings re aggregation are relevant.

The Board may also wish to address the use of this structure, given the Referrer raises the use of the structure. It is noted the exemption under Class 9 includes a Condition & Limitation in relation to the use being only for agriculture or forestry.

It is noted that no evidence is provided to support the original agricultural use of the structure.

From the definition of gross floor area as defined in Article 3 of the Regulations it is considered the inclusion of upper floor areas in the calculations of the sizing of such structures is appropriate.

3.7 & 3.8 Structure No's 7 and 8

The Referrer's statement re the basis of the Planning Authority's determination re Structures No. 7 & 8 is inaccurate.

It is not clear why a request for further information was necessary to clarify incorrect statements made as part of the S5 Declaration Request.

3.10 Structure No. 10

The Planning Authority, as it is entitled to do, determined that Structure No. 10 was significantly altered such that it was now inconsistent with the character of the original structure. There is no requirement to assess what the perspective of 03rd Parties from the public domain would be.

It also determined that the significant alterations did not come within the scope of S4 (1) (h).

3.11 Structure No. 11

The reference to the 2024 Compact Growth guidelines was used to give context to what has been accepted as the understanding of what is meant by "private open space". The Guidelines are merely a current example of what is understood by that term, an understanding that has been in existence for many years in the planning system.

The scope of the "laying out" of lands in Class 33 has to have regard to the degree of alteration to existing ground levels that is required to achieve the laying out. In relation to the laying out works, the PA would note that not all proposed development comes within the scope of an exemption Class, just because it is the same type of development that is in effect described for the class. Consideration has to be given to what is envisaged by the exemption Class. In this regard, the PA would refer the Board to one of many S5 Declarations the Board have issued, where it considered that a proposed development did not come within the scope of what was envisaged by an exemption class, i.e. An Bord Pleanála Reference Number: 06D.RL.2076. In this referral the Board



concluded that the laying out and use of the said field as a hard surface area for sports and recreational use does not come within the scope of laying out and use of land as set out in Class 33 (c) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001: having regard to (a) the extent of works, (b) the raising and lowering of ground levels, and (c) the importation of large quantities of fill material. This referral in effect states that the scale of development has to be considered when considering an exemption class.

3.12 Structure No. 12

It is noted that no evidence/detailed information has been provided in relation to the statement of the Referrer that "This building complex was known on the estate as the 'long barn' and had various uses, renovations and alterations down the years", nor any commentary as to the planning status of the uses, renovations and alterations down the years

It is also noted that no detailed drawings, etc., have been provided to accurately describe the original pre '64 structure and the alterations stated to have been undertaken. From its analysis the Planning Authority concluded that the existing structure was significantly different in terms of size, scale and location.

It was also noted in the Planning Authority's report that no evidence had been provided that the construction of this structure at the date of construction was being provided on behalf of a State Authority.

3.13 Structure No. 13

The Planning Authority determined that the provisions of S 4 (1) (h) did not apply to this structure based on what was in existence on the site in terms of the cladding and the provision of an extended covered area.

3.14 Structure No. 14

The comments of the Planning Authority in relation to the meaning of the "carrying out of a development" in relation to Structure No. 1 above are relevant to this as well.

3.15 Structure No. 15

The Referrer statement re the basis of the Planning Authority's determination in relation to this structure is inaccurate.

As the designated authority for issuing a S5 declaration request, the Planning Authority is required to carry out an Appropriate Assessment Screening in relation to any development the subject of the S5 Declaration Request. There is no requirement for the Planning Authority to seek information from the Applicant to allow it to carry out its statutory function. The Planning Authority determined that an Appropriate Assessment was required.

3.16 Structure No. 16

It is not clear how a temporary building whose principal components were manufactured off site can be considered to come within the scope of S4 (1) (h) for works carried out to what is stated to be a pre '64 structure.

It is noted that the Planning Authority did not include in its Declaration under its Main Reasons the fact it considered S4 (1) (h) did not apply to Structure No. 16. However, it did set this out in its planning report. The Board may wish to consider this when issuing its Declaration.

3.17 General

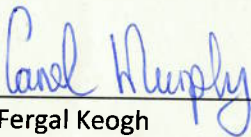
No supporting information has been put forward in relation to the Referrer's statement that the on-site storage of soil/stone, etc., is exempted development by virtue of Class 16.

As the designated authority for issuing a S5 declaration request, the Planning Authority is required to carry out an Appropriate Assessment Screening in relation to any development the subject of the S5 Declaration Request. There is no requirement for the Planning Authority to seek information from the Applicant to allow it to carry out its statutory function. The Planning Authority determined that an Appropriate Assessment was required.

In conclusion, the Planning Authority would re-iterate its concerns in relation to the structure of the S5 Declaration Request as submitted to it and the lack of evidence/information submitted to support the various contentions of the Applicant. In particular, the Planning Authority would request the Board to consider the issue of the Referrer asking the Board to ignore the Planning Authority's commentary in relation to 'use' and to not consider 'use' in reaching its determination. The Board may wish to broaden the Referral to deal with the matter of 'use' in a more detailed manner than the Planning Authority did, given 'use' is an intrinsic matter in determining some of the questions posed.

The Planning Authority would request that the Board has regard to the above.

Yours Sincerely



PP
Fergal Keogh
Senior Engineer
Planning & Development
Wicklow County Council

