

The Secretary

Date: 08.11.24

An Bord Pleanála

64 Marlborough St.

Dublin 1

Referral By: Mr. Stephen Kavanagh, Ballymorris Lower, Aughrim, Co. Wicklow

RE: Section 5 Declaration on whether the provision of hard surface within the curtilage of the industrial building and in connection with the industrial process in the building is exempted development and is the installation of plant and machinery to the rear of the building at Ballymorris Lower, Aughrim, Co. Wicklow exempted development?

Wicklow Co. Council Reference: EX84/2024

A Chara,

In relation to the above, please find enclosed a declaration for review by the Board.

I include the following:

- Referral fee of €220.
- Copy of council's decision and reports.
- Copy of original submission, maps and drawings
- Copy of planning search and 85/1187 Bord decision

AN BORD PLEANÁLA	
LDG-	<u>076255-264</u>
ABP-	
14 NOV 2024	
Fee: €	<u>220</u> Type: <u>Chg</u>
Time: <u>9.06</u>	By: <u>Rogers</u>

I submitted a section 5 declaration application for the above development to Wicklow Co. Council and on the 21st October 2024, they issued the decision that the proposal was development and "not" exempted development.

Having reviewed their report, it is my opinion that they have based their decision on incorrect facts, and I kindly request the Board to review their decision.

Wicklow Co. Council Decision

The council decision has been largely based on the belief that industrial/ commercial use does not exist on the site and as a result, the criteria under which we are applying for exempt development did not apply.

A planning search request by the applicant (copy included) to Wicklow Co. Council provides evidence that industrial/commercial use was permitted on the site since 1978.

- **78/2735** – Permission was granted for a fish farm on the site by An Board Pleanala
- **85/1187** – Permission was granted for change of use to smokehouse, extension to premises and treatment tank on the site by An Bord Pleanala

Please note that we are still a fish processing unit, considerably smaller than the original grantee, and we have significantly less staff than the previous owners had at the height of their business. As an example, IDAS trout who were the previous owners, produced 500 tons of trout annually, much of it being processed and smoked in this premises. We extract 12 tons of oyster meat per year but process it into very high value, end-products.

The above approved planning was not taken into account by the council in their decision making and as a result, they deemed the site did not have the benefit of planning permission for industrial/commercial use.

The provision of a hard surface within the curtilage of the industrial building?

In relation to the above question, it is my opinion that in the Planning and Development Regulations, 2001 (as amended) Schedule 2 under class 21 (b), the excavation and subsequent hard surface provided for our process to be carried out fall within this meaning of 'any works' where it states,

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

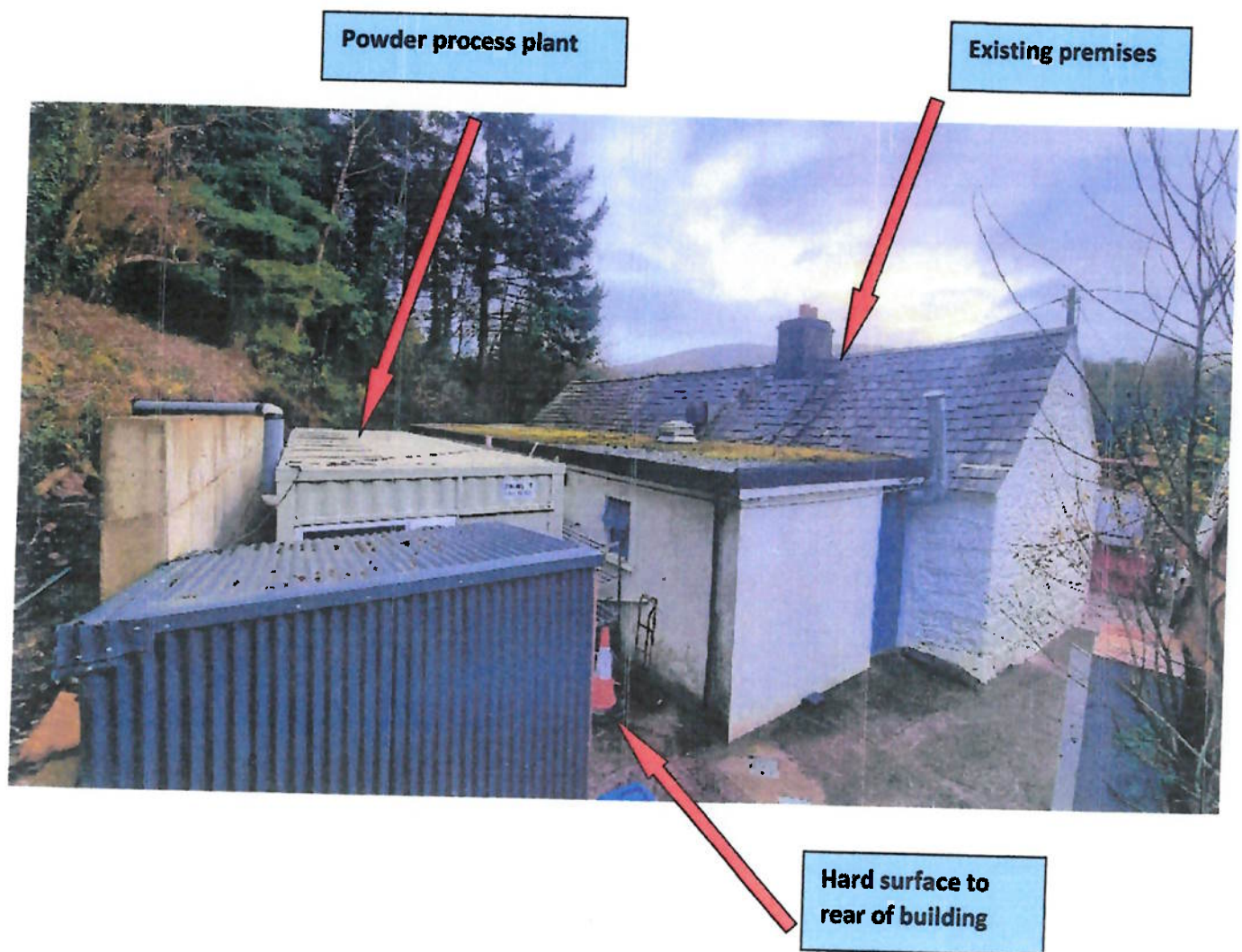
- I believe that cleaning up the rear of the premises to remove the mud slide and other issues associated with it which were compromising our ability to comply with health regulations fit this description of exempted development.
- 78/2735 and 85/1187 confirms that industrial/ commercial use is approved for the site.
- The council in their planning report for this referral also confirm that the site is "industrial" in nature.

The installation of plant and machinery to the rear of the industrial building?

In relation to the above question, it is my opinion that under class 21 (a)iii, that the container and associated machinery therein we placed to the rear of the building fits the description for plant or nature of plant where it states,

(a)(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

- 78/2735 and 85/1187 confirm that industrial/ commercial use is approved for the site.
- I include the following additional information to show that the container to the rear of the building is plant and machinery as opposed to the assumption by the local council that it is a structure. Please see the enclosed drawing showing the size of the container is the same as a standard 40ft industrial container.

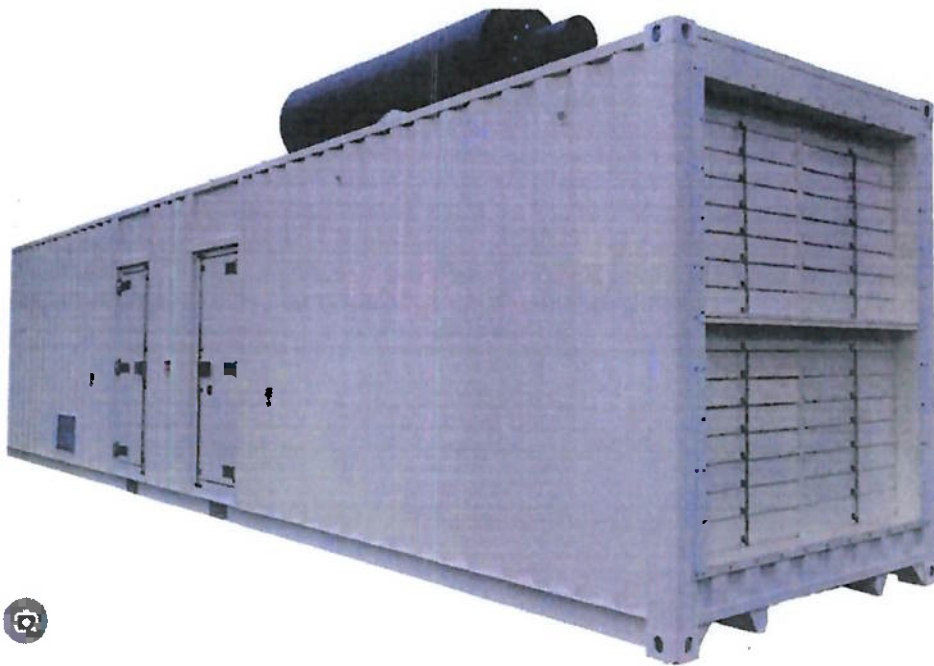


- I now include photographic samples of similar sized industrial plant and machinery containers

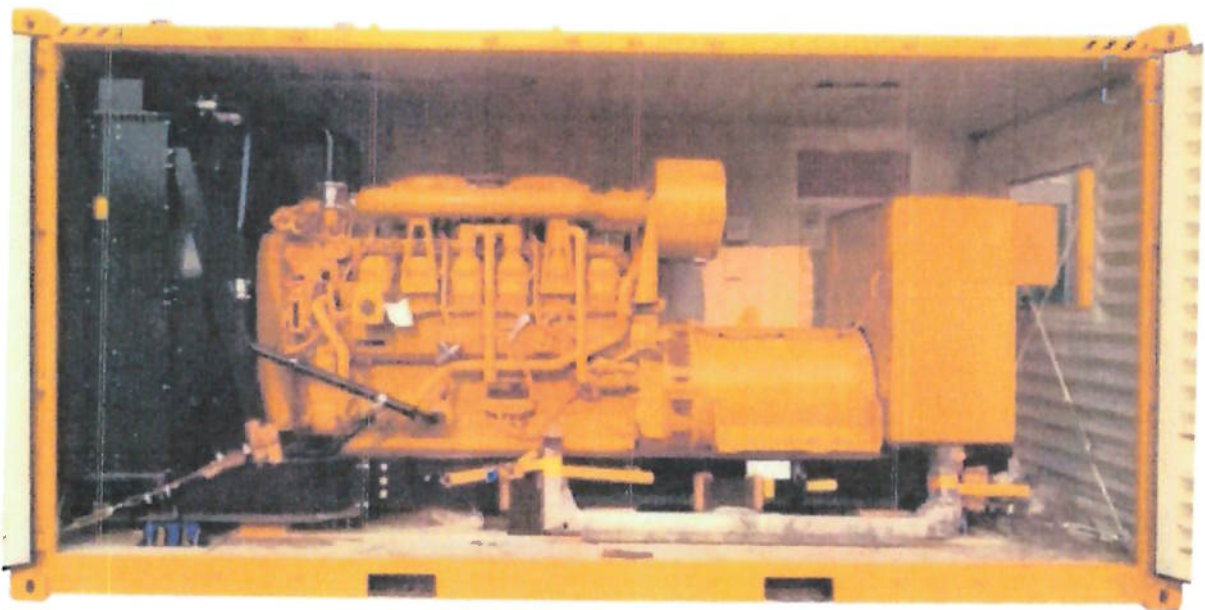
Examples of 40' plant units.



40ft-cummins-diesel-generator-set-1000kw-1250kva power



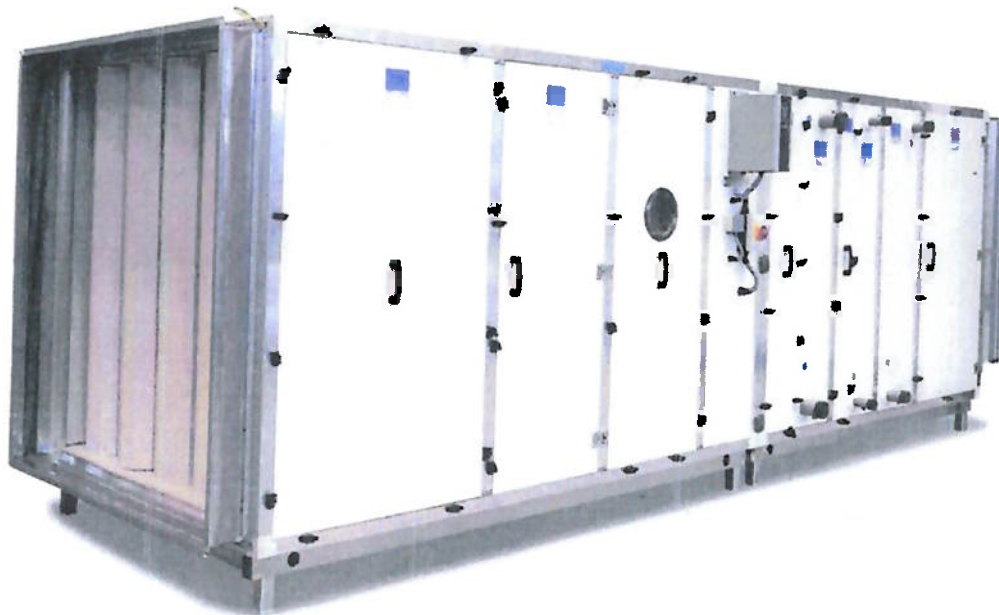
Sound-proof generator, practically identical to what we have installed.



Internal view of 40' plant unit.



Power Generation Plant



40' air handling plant unit.



40' powder handling unit.

Above are some examples of plant units that bear very close resemblances to our installed plant at our premises. It is quite common for plant to be put inside 40' units and for very good reasons. These are mainly for transport and installation, sound proofing to avoid disturbing people close by, protection from the elements and / or for the containment and control of certain aspects of that plant. The above examples are of power generation plant, air handling plant, and powder handling plant. Several of the units above have doors so the internal plant can be accessed during operation, no different from what we have done.

The container for which we are applying for exemption is a powder handling plant unit which is used in our process. Our plant has been connected to our building because of the need for us to maintain public health and safety in our process and as part of our biosecurity policy which is an FDA requirement for the goods we export to the USA.

Specifically, I will direct you to the following as it pertains to our business.

In line with Regulation EC 852/2004 on the hygiene of foodstuffs, chapter 1 on GENERAL REQUIREMENTS FOR FOOD PREMISES, point 2 (a) states

The layout, design, construction, siting and size of food premises are to: (a) permit adequate maintenance, cleaning and/or disinfection, avoid or minimise air-borne contamination, and provide adequate working space to allow for the hygienic performance of all operations;"

We have installed this powder handling plant to facilitate the safe production of our products and to protect public health and as a result it is critical "plant and machinery "to the operation of our business and so deem it exempted development.

We have extended an invitation to the local planning authority to come and see this plant in operation, but that offer has to date not been accepted. We would like to extend the same offer to An Bord Pleanala so that they can have an accurate opinion on same.

Please can you confirm that the works carried out are exempted development.

Yours sincerely



Stephen Kavanagh



Comhairle Contae Chill Mhantáin
Wicklow County Council

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

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco.i
Suíomh / Website: www.wicklow.ie

21st October 2024

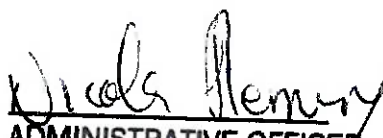
Stephen Kavanagh
Ballymorris Lower
Aughrim
Co. Wicklow

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) - EX84/2024

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000.

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,



ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT





Comhairle Contae Chill Mhantáin Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
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DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS AMENDED

Applicant: Stephen Kavanagh

Location: Ballymorris Lower, Aughrim, Co. Wicklow

Reference Number: EX84/2024

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1284

Section 5 Declaration as to whether "1) the provision of a hard surface within the curtilage of the industrial building, 2) the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building" at Ballymorris Lower, Aughrim, Co. Wicklow constitutes exempted development within the meaning of the Planning and Development Act, 2000(as amended).

Having regard to:

- The details submitted with the Section 5 Declaration.
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- Article 6(1) & 9(1)(a)(viii) of the Planning and Development Regulations 2001 (as amended).
- Class 21 Schedule 2: Part 1 of the Planning & Development Regulations 2001 (as amended).
- The planning history of the site particularly PRR 24/16

Main Reasons with respect to Section 5 Declaration:

- The provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building, the installation of plant and machinery to the rear of the building constitutes development having regard to the provisions of Section 3 of the Planning and Development Act 2000 (as amended).
- Having regard to Article 9 (1) (a) (viii) of the planning and development regulations 2001 (as amended), and to the use of the existing structures on site for industrial use which does not have the benefit of planning permission, the provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building, the installation of plant and machinery to the rear of the building, would not constitute exempted development because they would consist of the extension and alternation of a structure the use of which is an unauthorised use.
- Having regard to the type and construction of the structures to the rear, it is considered that the "plant and machinery" are not "plant and machinery" that would come within the scope of Class 21 (a), as they are not structures of the nature of plant and machinery. Furthermore, these structures are in effect an extension to a building. There are no exemptions contained in the planning legislation that apply to extensions to industrial buildings.
- Having regard to the unauthorised status of the industrial building, it is considered that the provision of hard surface with the curtilage of the industrial building would not come within the scope of Class 21(b) as Class 21(b) can only relate to development within the curtilage of an authorised industrial building.



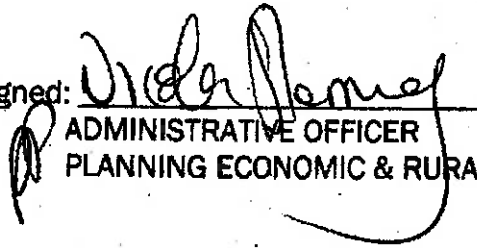
The Planning Authority considers that “

“1) the provision of a hard surface within the curtilage of the industrial building, at Ballymorris Lower, Aughrim, Co. Wicklow is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).

And

2) the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building” at Ballymorris Lower, Aughrim, Co. Wicklow is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed:



ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT

Dated 21st October 2024

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)

SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1284

Reference Number: EX84/2024

Name of Applicant: Stephen Kavanagh

Nature of Application: Section 5 Declaration request as to whether or not: -
"1) the provision of a hard surface within the curtilage of the industrial building, 2) the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building" is or is not development and is or is not exempted development.

Location of Subject Site: Ballymorris Lower, Aughrim, Co. Wicklow

Report from Andrew Spencer, EP & Suzanne White, SEP

With respect to the query under section 5 of the Planning & Development Act 2000 as to whether "1) the provision of a hard surface within the curtilage of the industrial building, 2) the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building at Ballymorris Lower, Aughrim, Co. Wicklow is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Having regard to:

- a) The details submitted with the Section 5 Declaration.
- b) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- c) Article 6(1) & 9(1)(a)(viii) of the Planning and Development Regulations 2001 (as amended).
- d) Class 21 Schedule 2: Part 1 of the Planning & Development Regulations 2001 (as amended).
- e) The planning history of the site particularly PRR 24/16

Main Reason with respect to Section 5 Declaration:

- I. The provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building, the installation of plant and machinery to the rear of the building constitutes development having regard to the provisions of Section 3 of the Planning and Development Act 2000 (as amended).
- II. Having regard to Article 9 (1) (a) (viii) of the planning and development regulations 2001 (as amended), and to the use of the existing structures on site for industrial use which does not have the benefit of planning permission, the provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building, the installation of plant and machinery to the rear of the building, would not constitute exempted development because they would consist of the extension and alternation of a structure the use of which is an unauthorised use.
- III. Having regard to the type and construction of the structures to the rear, it is considered that the "plant and machinery" are not "plant and machinery" that would come within the scope of Class 21 (a), as they are not structures of the nature of plant and machinery.

Furthermore, these structures are in effect an extension to a building. There are no exemptions contained in the planning legislation that apply to extensions to industrial buildings.

- IV. Having regard to the unauthorised status of the industrial building, it is considered that the provision of hard surface within the curtilage of the industrial building would not come within the scope of Class 21(b) as Class 21(b) can only relate to development within the curtilage of an authorised industrial building.

Recommendation:

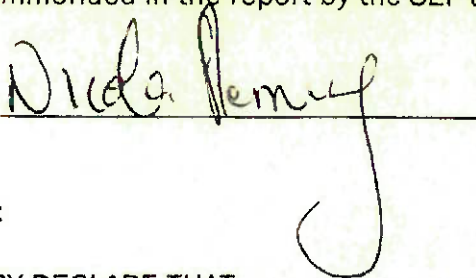
The Planning Authority considers that: -

"1) the provision of a hard surface within the curtilage of the industrial building, at Ballymorris Lower, Aughrim, Co. Wicklow is development and is NOT exempted development

And

2) the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building" at Ballymorris Lower, Aughrim, Co. Wicklow is development and is NOT exempted development as recommended in the report by the SEP and SE.

Signed



Dated 21st day of October 2024

ORDER:

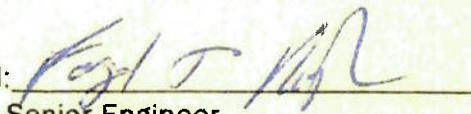
I HEREBY DECLARE THAT:

"1) the provision of a hard surface within the curtilage of the industrial building, at Ballymorris Lower, Aughrim, Co. Wicklow is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).

And

2) the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building" at Ballymorris Lower, Aughrim, Co. Wicklow is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed:



Senior Engineer

Planning, Economic & Rural Development

Dated 21st day of October 2024

21/10/24

EX 84/2024
SS Declaration re
Development in
Ballymorris Lr, Aghr

The submitted query contains 2 questions \Rightarrow Should be split. Also the query contains a reference in the 2nd part to "the installation of plant and machinery". However the structures to the rear of the existing structure is not of a plant and machinery type but represents a structural building, which forms an extension of the existing structure. Therefore, the Declaration should be re-formed as detailed below.

In addition there are no exemptions in the legislation that relate to the extension of an industrial building (which would be of relevance if the industrial building was authorised).

Furthermore, Class 21 (b) of Schedule 2 Part 1 of the P&O Regs 2001, would not apply, as an unauthorised industrial use does not change a building description to an industrial building. Hence, the proposed Landstanding would not come within the scope of the Class 21 (b) description:

Declaration as follows:

With respect to the ~~query~~ under S5 of the P&O Act 2000, as amended, as to whether:

- 1) the provision of a hard ~~standing~~ surface within the curtilage of the industrial building
- 2) the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building

at Ballymorris Lower, Aghrim, Co. Wicklow, is or is not exempted development within the meaning of the P&O Act 2000, as amended

P.T.O. \rightarrow

The Planning Authority considers that

- 1) as per overlook...
is development and is not exempted development
- 2) as per overlook...
is development and is not exempted development

Main considerations with respect to SS Declaration

- a) → e) as per original recommendation with
- d) amended as follows:

Class 21 ~~21~~ Schedule 2: Part 2 of the Planning and Development Regulations 2001, as amended

Main Reasons with respect to SS Declaration

- (i) as per original ~~text~~
- (ii) as per original
- (iii) Having regard to the type and construction of the structures to the rear, it is considered that the ~~plant~~ "plant and machinery" are not plant and machinery that would come within the scope of Class 21(a), as they are not structures of the nature of plant and machinery. Furthermore, these structures are in effect and extension to a building. There are ~~not~~ exemptions contained in the planning legislation that apply to extensions to industrial buildings.
- (iv) Having regard to the unauthorised ~~status~~ status of the industrial building, it is considered that the ~~land~~ provision of land surface within the curtilage of the industrial building would not come within the scope of Class 21(b), as Class 21(b) can only relate to development within the curtilage of an authorised ~~building~~ industrial building.

Fogel T My L 52 24/10/24



**WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT**

Section 5 – Application for declaration of Exemption Certificate

REF: EX 84/2024
NAME: STEPHEN KAVANAGH
DEVELOPMENT: HARD SURFACE AND INSTALLATION OF PLANT AND MACHINERY TO REAR OF INDUSTRIAL BUILDING.
LOCATION: BALLYMORRIS LOWER AUGHIRM.

The Site:

The subject site is located within along the R747 linking Arklow to Aughrim. The subject site is of an elongated/rectangular shape. On site is a pitched roof single volume old cottage which has overtime been converted to use as a processing unit to facilitate the manufacture of marine health supplements. There is an open yard area to the front which is used as for parking associated with the enterprise. There is an existing cottage adjacent to the west of the subject site. To the north rear of the subject site is a forested area which rises in ground levels to the north. A retaining wall has been constructed to the rear of the processing unit and a storage container installed to the rear of the processing unit.

Planning History (subject site):

2416 - Stephen Kavanagh - (1) excavation works to rear of existing commercial property and construction of concrete wall and (2) placement of a container on lands along with all associated site development works - Refused:

1. Having regard to:
 - (a) The industrial nature of the existing use of the subject site
 - (b) The inappropriate location of the subject site within a rural area adjoining a residential site.
 - (c) The constricted nature of the site
 - (d) The rapid expansion and intensification of the existing useIt is considered that the proposed development is at variance with the objectives of the Wicklow County Development Plan pertaining to economic development in rural areas as the proposed development is not considered to be appropriate to and compatible with the character of the rural environment and would be detrimental to the character, amenity, scenic value, heritage value and environmental quality of a rural area and therefore contrary to the proper planning and sustainable development
2. The proposed development would represent consolidation of un-authorised development on this site having regard to the existing development on site for which no permission exists. The provision of such a form of development unduly impacts on the amenities of the area, public health, the amenities of adjoining properties, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area.
3. The proposed development would endanger public safety by reason of serious traffic hazard because the applicant has provided no details demonstrating:
 - (a) Safe road access being generated by the development.
 - (b) Adequate parking and circulation areas within the site.

Enforcement:

UD5733 – Alleged unauthorised development at Coates Bridge consisting of excavation works and placement of a container without the benefit of planning permission. Warning Letter Issued.

Question:

The applicant has applied to see whether or not the following is or is not development; and is or is not exempted development:

Is provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building, exempted development and is the installation of plant and machinery to the rear of the building, exempted development.

Legislative Context:

Planning and Development Act, 2000 (as amended):

Section 3(1) of the Act states the following in respect of '**development**':

"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."

Section 2(1) of the Act states the following in respect of the following:

'Works' include *"Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal"*

Section 4 sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act.

Planning and Development Regulations, 2001 (as amended):

Article 6

(1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) Note: see Regulations for full Article

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Schedule 2 : Part 1 Exempted Development - General:

Part 1 (Classes 21-22) of Schedule 2 describes classes of development, with respect to industrial developments provided that such development complies with the associated conditions and limitations. It is considered that the relevant class in this instance is Class 21

CLASS 21

(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—

- (i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,
- (ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,
- (iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

Associated conditions and limitations:

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.
2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

Assessment:

The first assessment must be whether or not the proposal outlined above constitutes development within the remit of Section 3 of the Planning and Development Act 2001. In this regard, Section 3 of the Planning and Development Act provides that:

"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.

It should be noted that Section 2 of the Act defines works as:

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

I am satisfied that the provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building and the installation of plant and machinery to the rear of the building involves works and therefore constitutes development.

The second assessment is to determine whether or not the works would be exempted development under the Planning and Development Act 2000 (as amended) or its associated Regulations.

The Planning and Development Act provides under Section 4 that the Minister may by regulations provide any class of development to be exempted development. To this end Part 1 Schedule 2 of the Planning and Development Regulations 2001 (as amended), provides for Exempted Development Classes with respect to General development. Class 21 (a) and (b) is the relevant class in this instance.

Article 6 of the Planning and Development Regulations 2001 (as amended) states that:

- (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) of the Planning and Development Regulations 2001 (as amended) states that: Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Having regard to Article 9 (a) (viii) above it is my opinion that the existing structures on site, ~~the use of which does not have the benefit of planning permission.~~ The provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building and the installation of plant and machinery to the rear of the building, falls outside the scope of Schedule 2 Part 1 Planning and Development Regulations 2001 (as amended).

use of the

is unauthorised use

is therefore not exempted development. Having regard to Article 9(i)(a)(viii)

It is therefore my opinion that the provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building and the installation of plant and machinery to the rear of the building is **not** exempted development.

Recommendation:

With respect to the query under Section 5 of the Planning and Development Act 2000 (as amended), as to whether

the provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building and the installation of plant and machinery to the rear of the building is exempted development within the meaning of the Planning and Development Act, 2000 (as amended)

The Planning Authority considers that:

the provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building and the installation of plant and machinery to the rear of the building **IS** development and is **NOT** exempted development.


Main Considerations with respect to Section 5 Declaration:

- a) The details submitted with the Section 5 Declaration.
- b) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- c) Article 6(1) & 9(1)(a)(viii) of the Planning and Development Regulations 2001 (as amended).
- d) Schedule 2: Part 1 Exempted Development - General.

The planning history of the site, particularly RR 24/16
Main Reasons with respect to Section 5 Declaration:

- I. The provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building and the installation of plant and machinery to the rear of the building constitutes development having regard to the provisions of Section 3 of the Planning and Development Act 2000 (as amended).

- it to the use of the*
- II. Having regard to Article 9⁽¹⁾(a)(viii) of the planning and development regulations 2001 *for industrial* (as amended), the existing structures on site, the use of which does not have the benefit of planning permission, the provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building and the installation of plant and machinery to the rear of the building, *fall outside the scope of Schedule 2 Part 1 Planning and Development Regulations 2001 (as amended)* ~~would not constitute exempted development, because they would consist of the extension and alteration of a structure the use of which is an unauthorised use.~~


Andrew Spencer
Executive Planner
18/10/2024

Agreed as amended
St. John's SEP
18/10/24

Noted. Cf. attached Report / Direction re this declaration
Paul T. M. L. S.
21/12/24

MEMORANDUM
WICKLOW COUNTY COUNCIL

TO: Andrew Spencer
Executive Planner

FROM: Nicola Fleming
Staff Officer

RE:- Application for Certificate of Exemption under Section 5 of the
Planning and Development Acts 2000 (as amended).
EX84/2024

I enclose herewith application for Section 5 Declaration received 25th September 2024.

The due date on this declaration is 22nd October 2024.



Staff Officer
Planning Development & Environment



Comhairle Contae Chill Mhantáin
Wicklow County Council

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

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email plandev@wicklowcoco
Suíomh / Website www.wicklow.ie

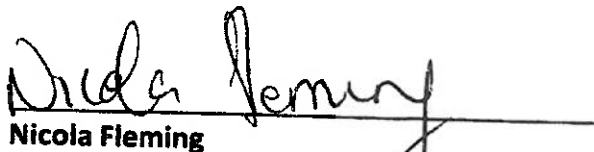
1st October 2024

Stephen Kavanagh
Ballymorris Lower
Aughrim
Co. Wicklow

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX84/2024
A Chara

I wish to acknowledge receipt on 25/09/2024 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 22/10/2024.

Mise, le meas


Nicola Fleming
Staff Officer
Planning, Economic & Rural Development



Stephen Kavanagh
Coatsbridge
Ballymorris Lower
Aughrim
Co. Wicklow

WICKLOW COUNTY COUNCIL

25 SEP 2024

PLANNING DEPT.

Wicklow County Council
Planning Development and Environment
County Buildings
Wicklow Town
Co. Wicklow

25th September 2024

Your ref: UD 5733

RE: Section 5 Declaration on whether the provision of a hard surface in connection with the industrial process carried on in the building and the installation of plant and machinery to the rear of the building on lands at Ballymorris Lower, Aughrim, Co. Wicklow is or is not exempted development.

A Chairde,

Please find enclosed a section 5 declaration for the above matter.

Having studied the Planning and Development Acts 1963 and 2000 and now also S.I. No. 600/2001 - Planning and Development Regulations, 2001 in relation to exempted development, the following is stated in CLASS 21 (a) (iii) in relation to Development for industrial purposes.

(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

We believe the machinery and plant, collectively described on our site plan as a powder process plant for the purpose of compliance Regulation EC 852/2004 on the hygiene of foodstuffs, chapter 1 on GENERAL REQUIREMENTS FOR FOOD PREMISES, point 2 states The layout, design, construction, siting and size of food premises are to: (a) permit adequate maintenance, cleaning and/or disinfection, avoid or minimise air-borne contamination, and provide adequate working space to allow for the hygienic performance of all operations;"

The plant is located to the rear of the building as per the enclosed site map.

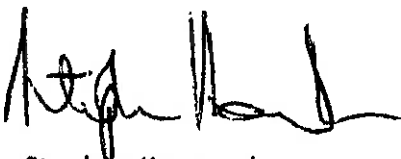
It goes on further to state in CLASS 21 (b)

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

We believe that provision of the hard surface to the rear of the premises and the removal of mud and debris and other issues associated with it such as water ingress, which were compromising our ability to comply with health regulations, fit this description of exempted development. We feel the works and subsequent provision of a hard surface in connection with our industrial process carried on in the building fall within this meaning, and especially the meaning of 'any works'.

We thank you for your time on this matter and await your response.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Stephen Kavanagh', with a stylized, cursive script.

Stephen Kavanagh.

Wicklow County Council
County Buildings
Wicklow
0404-20100

25/09/2024 12:26:11

Receipt No L1/0/334973
***** REPRINT *****

STEPHEN KAVANAGH
COARSBRIDGE
BALLYMORIS LOWER
Aughrin

PLANNING APPLICATION FEES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total	80.00 EUR
-------	-----------

Tendered	
Credit Card	80.00

Change	0.00
--------	------

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Wicklow County Council
County Buildings
Wicklow
Co Wicklow
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Date Received _____

Fee Received _____

**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

- (a) Name of applicant: Stephen Kavanagh
Address of applicant: Ballymorris Lower, Aughrim, Co. Wicklow, IE

Note Phone number and email to be filled in on separate page.

2. Agents Details (Where Applicable)

- (b) Name of Agent (where applicable) Not Applicable

Address of Agent : _____

Note Phone number and email to be filled in on separate page.

3. Declaration Details

i. Location of Development subject of Declaration _____
Ballymorris Lower, Coatsbridge, Aughrim, Co. Wicklow, IE

ii. Are you the owner and/or occupier of these lands at the location under i. above ?
Yes

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier _____

iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration
Is provision of a hard surface within the curtilage of the industrial building and in connection with the industrial process in the building exempted development and is the installation of plant and machinery to the rear of the building exempted development.

Additional details may be submitted by way of separate submission.

v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration
Planning and Development Acts 1963 and 2000 and S.I. No. 600/2001 - Planning and Development Regulations, 2001 in relation to exempted development, the following is stated in CLASS 21 (a) (iii) in relation to Development for industrial purposes.
(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

It goes on further to state in CLASS 21 (b)

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

Additional details may be submitted by way of separate submission.

vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure) ? No

vii. List of Plans, Drawings submitted with this Declaration Application _____
Plans, elevations and section for plant and hard surface
Site Layout Plans
Site Location Maps

viii. Fee of € 80 Attached ? _____

Signed : [Signature] Dated : 25/09/2024

Additional Notes :

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below :

A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- Site Location Map
- Floor area of structure in question - whether proposed or existing.
- Floor area of all relevant structures e.g. previous extensions.
- Floor plans and elevations of relevant structures.

- Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.

C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.



Comhairle Contae Chill Mhantáin Wicklow County Council

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

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Sulomh / Website: www.wicklow.ie

PS/JQ/25/2024

Jonathan O'Toole
Dublin Road
Tiknock
Arklow
Co. Wicklow

Date; 22nd April 2024

RE: Planning Search: Ballymorris Lower, Aughrim, Co. Wicklow

A Chara,

I wish to acknowledge receipt of your recent request requesting us to carry out a planning search in relation to the above property and would like to advise you that there was 2 planning applications found relating to this site.

Planning Register Reference:	85/1187
Applicant Name:	Robin Dillon Mahon
Location of Development:	Fish Farm Cottage, Ballymorris Lower, Aughrim, Co. Wicklow
Development Description:	Smokehouse, extension to premises and treatment tank
Decision:	Granted
Decision Date:	31/10/1985
Decision by:	An Bord Pleanala

Planning Register Reference:	78/2735
Applicant Name:	Robin Dillon Mahon
Location of Development:	Ballymorris Lower, Aughrim, Co. Wicklow
Development Description:	Fish Farm
Decision:	Granted
Decision Date:	23/03/1979
Decision by:	An Bord Pleanala



Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas.
This document is available in alternative formats on request.

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe.
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development.



Planning Register Reference: 24/16
Applicant Name: Stephen Kavanagh
Location of Development: Ballymorris Lower, Aughrim, Co. Wicklow
Development Description: (1) excavation works to rear of existing commercial property and construction of concrete wall and (2) placement of a container on lands along with all associated site development works
Decision: Refused
Decision Date: 07/03/2024
Decision by: Wicklow County Council

Current enforcement: UD 5733
Zoning: Not Zoned
Protected Structure: None
Derelict Site: Not on derelict site register

Wicklow County Council wishes to advise that we can only conduct planning searches from 1988 to date in respect of planning applications processed by **Wicklow County Council**. This was when the Council's electronic system was introduced. Planning applications prior to this can only be located by supplying the name/ reference number of the person/company who applied for the planning permission at that date.

Please note that the files relating to planning applications processed by **Arklow Town Council, Bray Town Council and Wicklow Town Council** prior to the 1st June 2014 have been transferred to Wicklow County Council with effect from that date. Wicklow County Council is presently collating this data and until such time as this process is complete, Wicklow County Council cannot guarantee or warrant that any information supplied is complete. Accordingly, Wicklow County Council will not be liable for any loss or damage which may result from any omission or inaccuracy which may occur.

We trust this information will assist you.

Mise, le meas,



ADMINISTRATIVE OFFICER
PLANNING, ECONOMIC & RURAL DEVELOPMENT

Planning Pack Map

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12/12/2023

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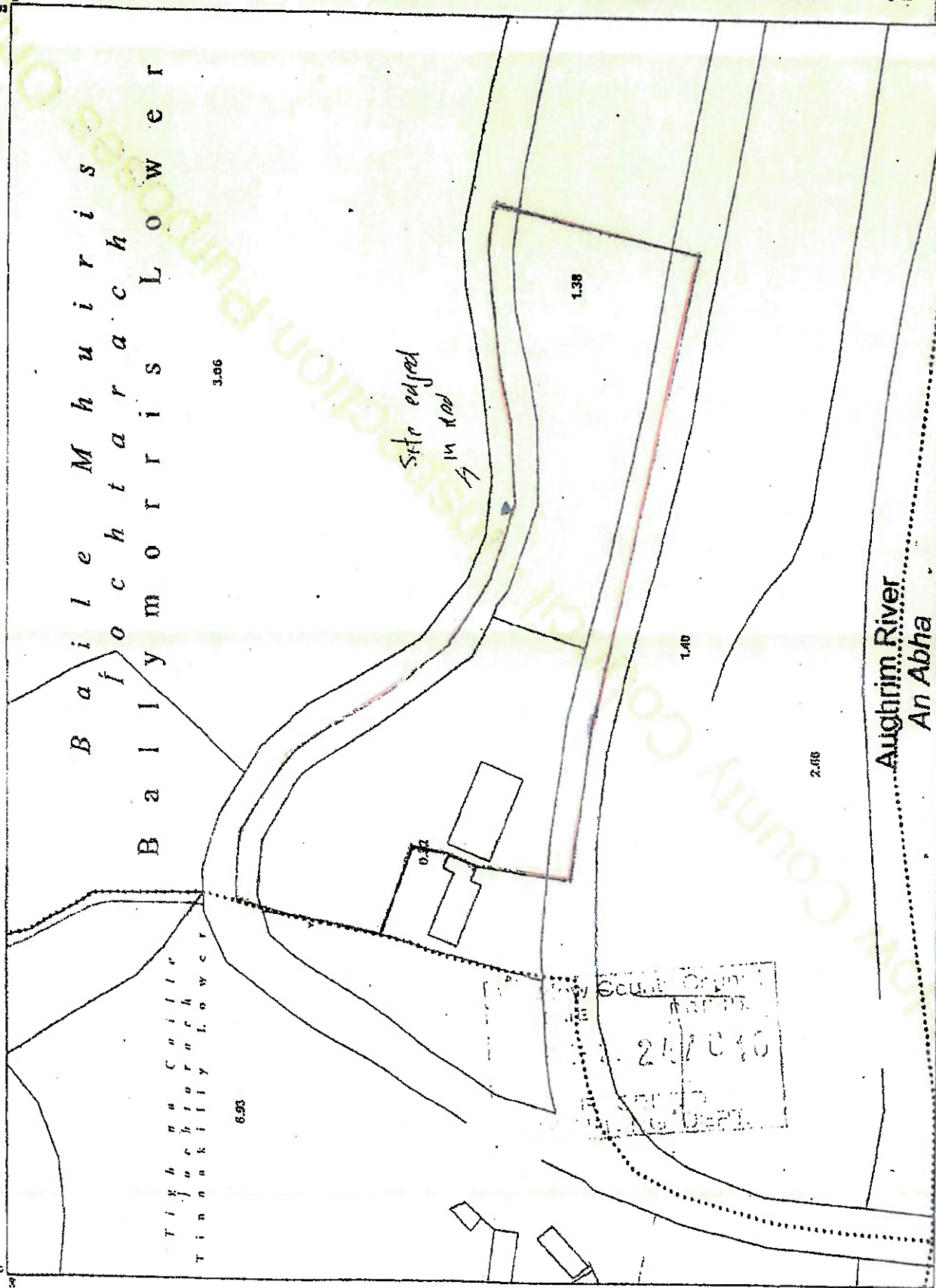
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LEGEND:
To view the legend visit www.oni.ie and search for 'Large Scale Legend'.

OUTPUT SCALE: 1:1,000

AN BORD PLEANALA

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1983

County Wicklow

Planning Register Reference Number: 1187/85

APPEAL by Robin Dillon-Mahon of Ballard House, Ballinaclesh, Rathdrum, County Wicklow, against the decision made on the 14th day of June, 1985, by the Council of the County of Wicklow, to refuse a permission for development comprising the extension and change of use of a house to a smokehouse and provision of a treatment tank at Fish Farm Cottage, Coat's Bridge, Ballymorris Lower, Aughrim, County Wicklow, in accordance with plans and particulars lodged with the said Council:

DECISION: Pursuant to the Local Government (Planning and Development) Acts, 1963 to 1983, it is hereby decided, for the reasons set out in the First Schedule hereto, to grant permission for the said development in accordance with the said plans and particulars, subject to the conditions specified in the Second Schedule hereto, the reasons for the imposition of the said conditions being as set out in the said Second Schedule and the said permission is hereby granted subject to the said conditions.

FIRST SCHEDULE

It is considered that the proposed development if carried out in accordance with the permission granted by this order would not give rise to traffic or health hazard or injury to amenity or be otherwise contrary to the proper planning and development of the area.

SECOND SCHEDULE

1. Disposal of effluent shall be subject to any conditions specified by Wicklow County Board in any licence issued under the Local Government (Water Pollution) Act, 1977.

Reason: To ensure the proper planning of disposal of effluent.

2. A sluice valve shall continue to be maintained at the outlet of the fish farm to prevent pollution of the river in the event of the breakdown of control of water quality standards and precautions.

Reason: To protect public health.

Contd./.....

- 4 NOV 1985