

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902

Mark Hennessy
Wallslough
Co. Kilkenny
R95 YF6E
9th February 2025

Re: Observation to the Referral against Kilkenny County Council Planning Section 5 Declaration (Ref.: DEC 849)

Your Case Number: ABP-321664-25

Kilkenny Planning Section 5 Declaration Reference: DEC 849

Dear Sir / Madam,

Based on the above submission of Mr. Kelly, I wish to make the following observations:.

Construction of Large Commercial-grade Water Well outside the Grounds of Permission P97/396 and Land Folio KK18995

The construction of this very large ground water commercial grade water well is **located outside the grounds of the equestrian shed** (granted under permission P97/396 and Land Folio KK18995) **and therefore cannot be exempt development under S.I. 306 of S.I 306 of 2022** – European Union (Planning and Development) (Displaced persons from Ukraine temporary protection) Regulations 2022. Please see appendix A.

No Basis to Entitlement of Exemption Under the Terms of SI 306 of 2022

I believe Kilkenny County Council's decision under DEC849 does not align with the derogation terms in SI 306/2022, and is incorrect.

Not Entitled to Benefit of SI 306 of 2022 as No EIA or AA Screening Completed Prior to Work

There is no evidence of an EIA or AA screening being completed by a suitably qualified ecologist prior to work commencing. Please see attached "FOI Request 79/2024" Schedule of Record in appendix D.

The Minister for the Dept. of Children, Equality, Disability and Youth (DCEDIY) **has conceded two recent legal challenges**. It was claimed the "Minister failed to adequately screen the project for potential environmental impacts and that he lacks the expertise to carry out such assessments" (see appendix B&C).

Below is an extract from the relevant terms and conditions of SI 306 of 2022 setting out the rules of utilising the statutory instrument. I have set out my observations vis-à-vis the subject matter ground water well that demonstrates **Folio KK7973, owned by "James Hughes"** is not entitled to planning exemption under SI 306/2022.

S.I. No. 306 of 2022 (extract)	
<p>3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.</p> <p>(2) A reference to “proposed development” in sections 181A to 181C of the Act of 2000 shall include a reference to development of a class specified in the Schedule to which section 181A(1) of the Act of 2000 would apply if it was development of a class specified in regulations made under section 181(1)(a) of the Act of 2000.</p>	<p>Under SI , it is essential that it undergoes assessment in accordance with the Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) screening before any building can be exempt under SI 306/2022. Directive and the Habitats Directive, particularly given its proximity to the River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 002162) and the River Nore Special Protection Area (SPA) (Site Code 004233).</p> <p>To date, no EIA or AA screening has been conducted prior to the commencement of works. Mr. Liam Barton sought a copy of same under an FOI and KCC’s “FOI Request 79/2024” dated 24th of September 2024 enclosed of a “Schedule of Records” and no screen report was identified as listed as completed on file by KCC (see appendix D).</p> <p>There is no evidence of an ecologist's involvement, nor is there a standalone EIA or AA screening report; only a brief reference exists within the planner’s report for a separate property (namely Folio KK7973 under “Wallslough Village Ltd”).</p> <p>I am concerned that the development at Folio KK7973, owned by “James Hughes” has not undergone proper EIA screening, as the installation of wastewater treatment plants falls under Category 11(C) of Part 2, which specifically excludes such developments from being categorized as exempt.</p> <p>Given the necessity for an EIA or AA screening, this development falls outside the scope of SI 306/2022 and, therefore, requires planning permission.</p>
EXPLANATORY NOTE	
<p>The Regulations relate to the non-application of the Planning and Development Act 2000 to certain <u>classes of development by or on behalf of a State</u> authority, which is defined as a Minister of the Government or the Commissioners of Public Works in Ireland.</p>	<p>There is no apparent Letter of Intent or Contract from the minister authorising the use of the agricultural field under Folio KK7973, owned by James Hughes, to accommodate displaced persons from Ukraine under S.I. 306 of 2022.</p> <p>Therefore, per the wording of under derogation under S.I. 306 of 2022 can never be given to Folio KK7973, owned by “James Hughes” to carry out “<u>development by or on behalf of a State</u> authority, which is defined as a Minister of the Government or the Commissioners of Public Works in Ireland.”</p>

Therefore, the planning authority's assessment is incorrect, as the development at **Folio KK18995** does not qualify for the planning exemption under SI 376/2023 and constitutes an unauthorized development.

Regards

Mark Hennessy

APPENDIX A

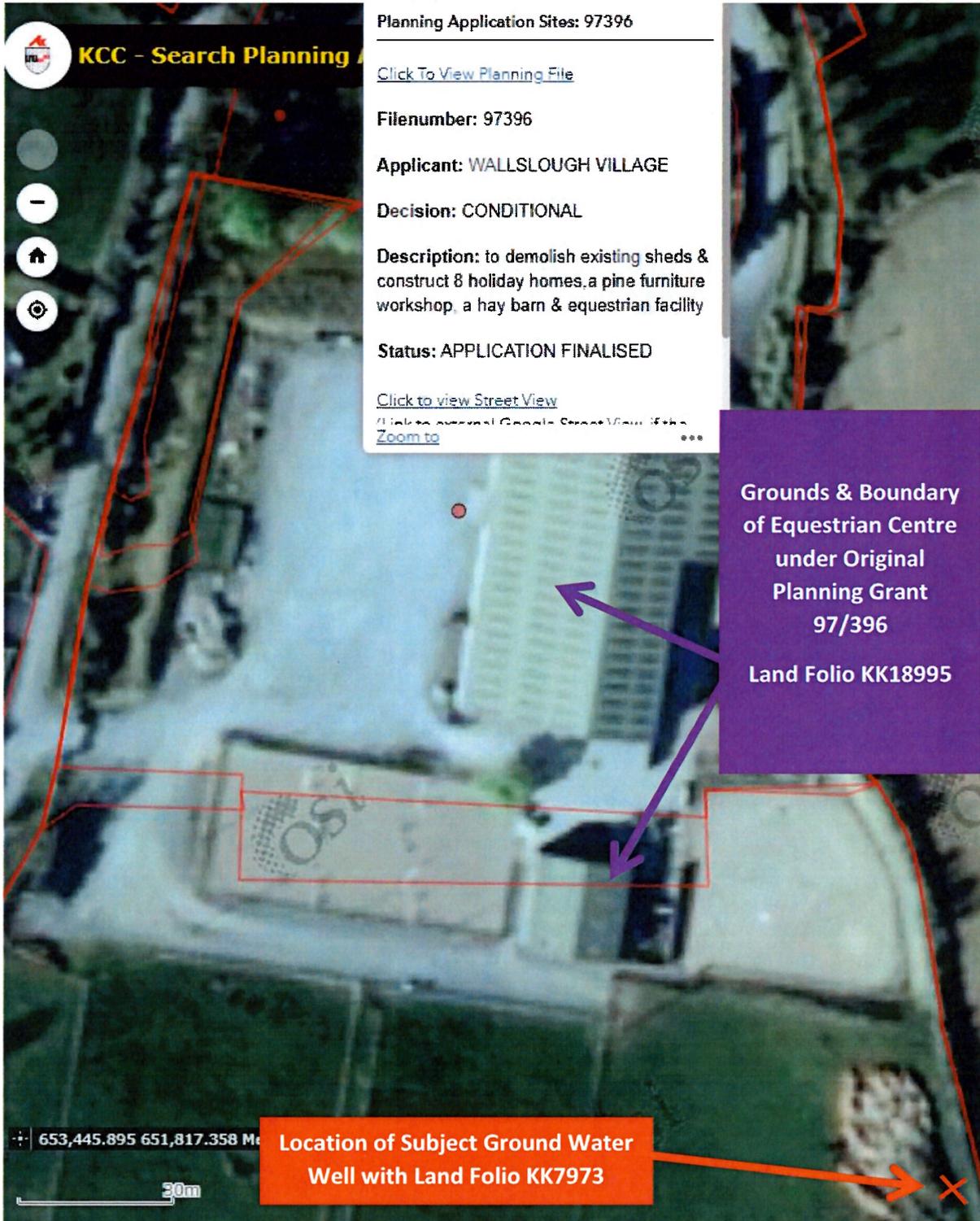


Image 1+2: Constructed Ground Water Well Outside Boundary of Equestrian Facility



Image 2: Folio KK7973, owned by "James Hughes" and Location of Subject Ground Water Well

APPENDIX B&C

State concedes case brought by councillor over plan to tent 1,000 male asylum seekers in Athlone

IRELAND



Oisin Collins SC, for Cllr Paul Hogan, told Mr Justice Richard Humphreys that "the case is being conceded" by the Minister for Children, Equality, Disability and Youth.

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16/12/2024 | 17:40 PM
HIGH COURT REPORTERS

The Government has conceded a High Court challenge brought by a local councillor against a plan to house around 1,000 male asylum seekers in Athlone.

At the High Court, Oisin Collins SC, for Cllr Paul Hogan, told Mr Justice Richard Humphreys that "the case is being conceded" by the Minister for Children, Equality, Disability and Youth and that "the development will be an unauthorised development".

Ms Aoife Carroll SC, for the State, said that the case was due to be heard on Thursday of this week but that now the matter could be put in remission on the same date.

Ms Carroll said she would take instruction from the Minister in the matter before Thursday.

In his challenge, Mr Hogan, who secured 4.8 per cent of first preference votes running for Independent Ireland in Longford-Westmeath in the recent General Election, claimed the ministerial process providing for the plan was unlawful, irrational and a breach of fair procedures.

A fundraising website, which amassed over €50K in donations, said the challenge was being brought on behalf of Mr Hogan and four other Athlone-based representatives, including freely re-elected independent TD Kevin 'Boxer' Moran and councillors Frankie Keena and Aengus O'Rourke of Fia nna Fáil and John Dolan of Fine Gael.

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Protests were held in Athlone over the plan to develop army-tent accommodation for 1,000 asylum seekers, in up to 150 tents, on a site to the rear of an existing district provision centre in Lissywollen, Athlone. It had been proposed that the tents would eventually be replaced with modular units.

Mr Hogan's legal papers relied on similar grounds to one recently brought by a north Dublin group that secured a strike-down of a statutory instrument that had paved the way for 1,000 international protection applicants on a State-owned site near Dublin Airport.

Minister for Integration Roderick O'Gorman contested Mr Hogan's case.

Mr Hogan wanted an order either pausing or quashing the statutory instrument the Minister made for the Athlone site.

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The instrument confirmed the project did not need an An Bord Pleanála approval and noted Mr O'Gorman was satisfied two specific EU law environmental assessments did not need to be conducted before proceeding with the plan.

Mr Hogan claimed the Minister failed to adequately screen the project for potential environmental impacts and that he lacks the expertise to carry out such assessments. There were also deficiencies in the assessment of wastewater requirements and effect on traffic, Mr Hogan claimed.

He claimed the occupants would be free to move about and will "inevitably cause a significant traffic hazard and a health and safety issue" next to the site and along the road.

In an affidavit, Mr Hogan said local councillors were informed about the Government's plan on October 7th and had "no prior consultation or communication" from the Department of Integration.

site. The State also agreed to pay the residents' costs.

The order was initially made by Integration Minister Roderic O'Gorman in August. On Monday, counsel for the minister requested a two-week adjournment of the case to give time to revoke the order — a de facto concession of the action.

The judicial review, first lodged on October 5, argued that the order should not be allowed to stand as inadequate environmental screening had been performed at the rural site in advance of the establishment of a tented camp.

The move to use Thornton Hall was first announced early last summer as the Department of Integration came under pressure to source alternative accommodation for asylum seekers after months of tented encampments springing up in Dublin city centre.

However, the project has been hit by multiple environmental snags since, including the lack of a sewage connection on site and the fact that the proposed tents would be overflowed by hundreds of low-flying aircraft



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