

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

Aidan Kelly  
The Craft House  
Co. Kilkenny  
R95 FT82  
Email: [REDACTED]  
18<sup>th</sup> December 2024

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

**Your Case Number: ABP-TBC**

**Kilkenny Planning Section 5 Declaration Reference: DEC 849**

Dear Sir / Madam,

We refer to the above matter and hereby submit this referral to An Bord Pleanála for determination regarding a development which we believe contravenes planning legislation.

### **Details of the Development**

On or around 16th April 2024, construction, installation, and commissioning works were carried out for a large commercial-grade groundwater well on agriculturally zoned land (Folio KK7973), located at Wallslough, Co. Kilkenny. This land is owned by James Hughes (refer to Appendix A for location details).

The purpose of this groundwater well, to the best of our knowledge, is to supply water to commercial residential accommodation proposed for approximately 299 individuals within a neighbouring disused equestrian shed. This adjoining property is listed under Folio KK18995, jointly owned by Anne Hughes, James Hughes, Mary Hughes, and Thomas Hughes, operating under the limited company Wallslough Village Ltd.

### **Context of the Development and Procurement Process**

In January 2023, Wallslough Village Ltd. engaged in a public procurement process to accommodate displaced persons from Ukraine. This proposal sought to house 299 individuals within the equestrian shed, alongside 70 individuals in the adjoining 8 cottages on the property.

We note the following:

1. As of December 2024, no contract has been awarded by the Minister or relevant State authority for the 299 persons in the equestrian shed.
2. Nearly 24 months have passed since the commencement of this procurement process.

### **Legal Concerns Under S.I. No. 306 of 2022**

The provisions of S.I. No. 306 of 2022 exempt certain classes of development from the requirements of the Planning and Development Act 2000, provided the development is carried out "by or on behalf of a State authority". A State authority is explicitly defined as either a Minister of the Government or the Commissioners of Public Works in Ireland.

In this instance:

1. The well was developed on Folio KK7973, owned solely by James Hughes, a separate legal entity from Wallslough Village Ltd Folio KK18995.

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>077-274-25</u>
ABP-	_____
14 JAN 2025	
Fee: €	<u>70.00</u> Type: <u>CO.</u>
Time:	<u>11.09</u> By: <u>lamer</u>

2. The owner of Folio KK7973 did not enter into, nor was eligible for, a procurement contract to accommodate displaced persons under S.I. No. 306 of 2022.
3. As such, the development on this land cannot qualify for derogation under S.I. No. 306 of 2022.

### **Kilkenny County Council's Decision and Errors in Assessment**

Kilkenny County Council's decision under DEC849 appears flawed for the following reasons:

1. The Council incorrectly cited S.I. 3076/2022 as the relevant legal basis, a statutory instrument which does not exist.
2. Our submission (refer to Appendix B) makes no reference to this non-existent instrument, further highlighting the errors in Kilkenny County Council's assessment.
3. The Council's Section V (Refer to Appendix C) assessment fails to appropriately consider the terms and conditions of S.I. No. 306 of 2022, specifically the requirement that the development must be by or on behalf of a State authority.

### **Grounds for Referral**

Given the above, we respectfully request An Bord Pleanála to determine the following:

1. Whether the construction and commissioning of a large commercial-grade groundwater well on agriculturally zoned land (Folio KK7973,) constitutes unauthorized development.
2. Whether Kilkenny County Council's decision under DEC849 is valid, given the apparent misapplication of statutory instruments and errors in legal interpretation.
3. Whether the derogation under S.I. No. 306 of 2022 can lawfully apply to the development on Folio KK7973, considering it was not carried out by or on behalf of a State authority and is part of a different legal entity that was not part of the procurement process.

### **Conclusion**

We contend that the development in question does not meet the requirements for derogation under S.I. No. 306 of 2022 and constitutes a breach of planning legislation. We therefore seek An Bord Pleanála's determination on this matter.

Please find enclosed all relevant supporting documentation, including Appendix A and Appendix B&C, for your consideration.

We thank you for your attention to this referral and look forward to your response.

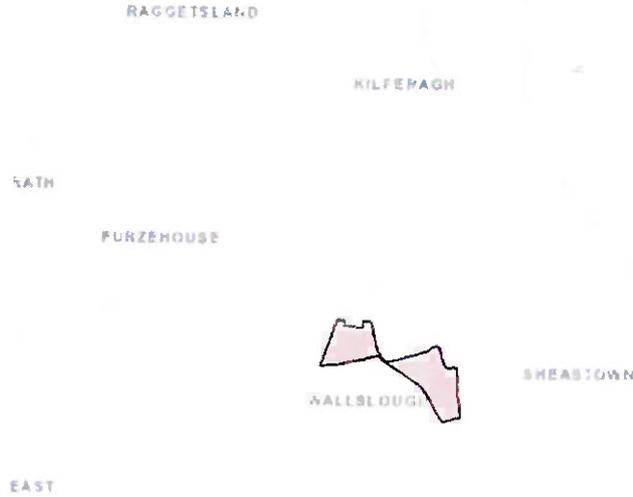
Aidan Kelly

The Craft House

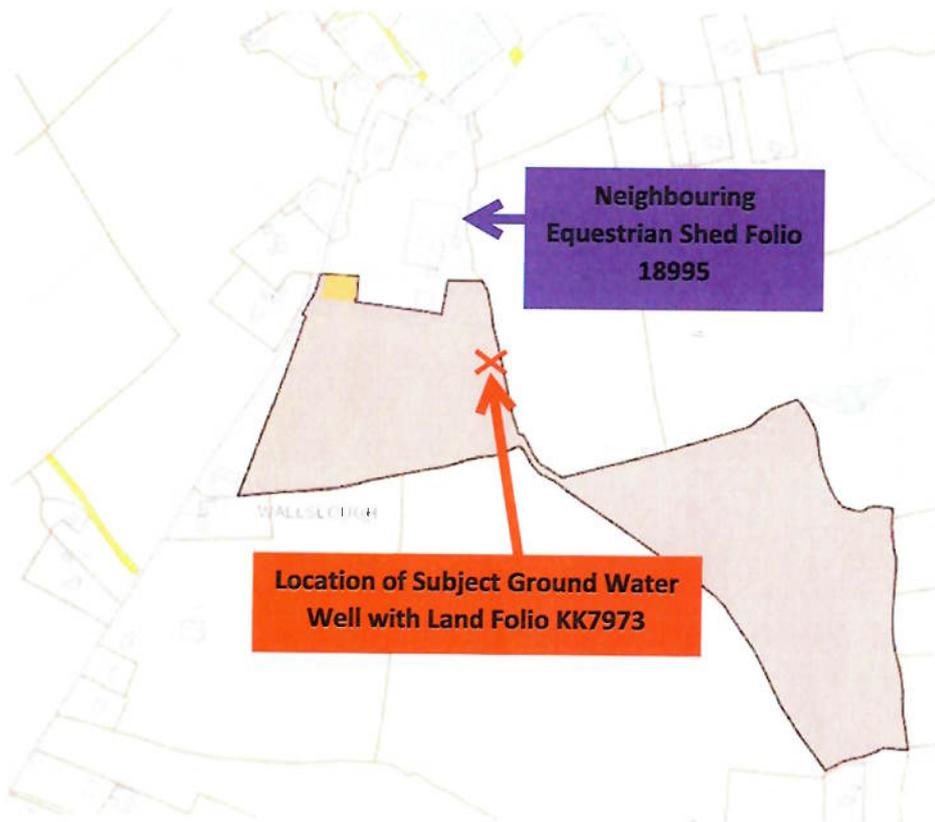
Co. Kilkenny

R95 FT82

# APPENDIX A



**Image 1: Folio KK7973, owned by "James Hughes"**



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

## APPENDIX B & C



**Comhairle Chontae Chill Chainnigh**

Talla an Chontae Sraid Eoin Cill Chainnigh  
R95 A39T

**Kilkenny County Council**

County Hall John Street Kilkenny  
R95 A39T

*Kilkenny*

Ref: DEC849

18/11/2024

Aidan Kelly  
Wallslough  
Kilkenny  
Co Kilkenny

**Re: Application for Declaration under Section 5 of the Planning and  
Development Act 2000 (as amended)**

**Address of Development**  
**Wallslough, Kilkenny**

A chara

I wish to acknowledge receipt of your application in connection with the above 13/11/2024  
and inform you that the matter is receiving attention. You will be informed of the  
Council's decision in due course.

Please find enclosed receipt for €80.00 confirming payment of the application fee.

*Mise le meas*

*May Heffernan*

**Planning**

**Comhairle Chontae Chill Chainnigh**

Halla an Chontae Sraid Eoin Cill Chainnigh  
R95 A39T

**Kilkenny County Council**

County Hall John Street Kilkenny  
R95 A39T

*Kilkenny*

**Ref: DEC849**

**11/12/2024**

***Sent by email***

Aidan Kelly  
Wallslough  
Kilkenny

**Re: Application for Declaration under Section 5 of the Planning & Development Acts 2000- as amended**  
**Address of Development: Wallslough, Kilkenny**

A Chara,

I refer to the above application and now attach Declaration relating to same.

Mise le meas

*Aidan Kelly*

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**Planning Section**



**Declaration and Referral on Development and Exempted Development under Section 5  
of the Planning & Development Acts 2000-2022  
Kilkenny County Council Reference: Dec 849**

**WHEREAS** a question has arisen "Is the installation, commissioning, and use of a well for a commercial building situated on one entity's land which is seeking a derogation under SI 3076/2022, while the well itself is located on a different entity's land which has not sought any derogation or exemption, would be considered an exempt development when used for commercial purposes"

**AND WHEREAS** the said question was referred to Kilkenny County Council by Aidan Kelly, Craft House, Wallslough, Kilkenny R95 FT82 on 13/11/2024.

**AND WHEREAS** Kilkenny County Council, in considering this referral, had regard to:

- (a) Section 2 & 3 of the Planning and Development Act 2000, as amended
- (b) S.I 306 of 2022 - EUROPEAN UNION (PLANNING AND DEVELOPMENT) (DISPLACED PERSONS FROM UKRAINE TEMPORARY PROTECTION) REGULATIONS 2022
- (c) Section 181(A) to 181(C) of the Planning and Development Act 2000 as amended

**AND WHEREAS** Kilkenny County Council has concluded that:

The installation, commissioning, and use of a well for a commercial building situated on one entity's land which is seeking a derogation under SI 3076/2022, while the well itself is located on a different entity's land which has not sought any derogation or exemption, would be considered an exempt development when used for commercial purposes,

**NOW THEREFORE** Kilkenny County Council, in exercise of the powers conferred on it by Section 5 of the 2000-2022 Act, hereby decides that The installation, commissioning, and use of a well for a commercial building situated on one entity's land which is seeking a derogation under SI 3076/2022, while the well itself is located on a different entity's land which has not sought any derogation or exemption, would be considered an exempt development when used for commercial purposes is exempt development by the virtue of S.I 306 of 2022 - EUROPEAN UNION (PLANNING AND DEVELOPMENT) (DISPLACED PERSONS FROM UKRAINE TEMPORARY PROTECTION) REGULATIONS 2022

**MATTERS CONSIDERED**

In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard.

**U. Kealy, AO**  
**PLANNING**

**Date: 11/12/2024**

**Footnote:**

Section 5 (3)(a) of the Planning & Development Acts 2000 states: 'Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.'

An Bord Pleanala, 64 Marlborough Street, Dublin 1, Tel 01 8588100 or LoCall 1890 275175

[www.pleanala.ie](http://www.pleanala.ie)

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



Tel: 056 7794000 / Fax: 056 7794004  
Email: [Planning@kilkennycoco.ie](mailto:Planning@kilkennycoco.ie) /  
Website: [www.kilkennycoco.ie](http://www.kilkennycoco.ie)

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

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

**APPLICANT DETAILS:**

Applicant Name	Aidan Kelly
Address:	Wallslough, Kilkenny, Co. Kilkenny
Contact Telephone No:	██████████
Fax No. or E-mail Address, if any:	████████████████████

**PERSON/AGENT ACTING ON BEHALF OF APPLICANT (IF ANY):**

Name	N/A
Address:	N/A
Telephone No:	N/A
Fax No. or E-mail Address:	N/A
Should all correspondence be sent to the Agents address? Yes { } No { }	

Section 5 of the Planning and Development Acts 2000 (as amended) states that if any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of these Acts, any person may, on payment of the prescribed fee, request in writing from the relevant Planning Authority a declaration on that question, and that person shall provide to the Planning Authority any information necessary to enable the authority to make its decision on the matter:

**Sample Question:** Is the construction of shed at Hebron Road, Kilkenny development and if so, is it exempt development?

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

Is the installation, commissioning, and use of a well for a commercial building situated on one entity's land which is seeking a derogation under SI 306/2022, while the well itself is located on a different entity's land which has not sought any derogation or exemption, would be considered an exempt development when used for commercial purposes?

**Completion of this question is essential. Failure to do so will invalidate your application.**

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

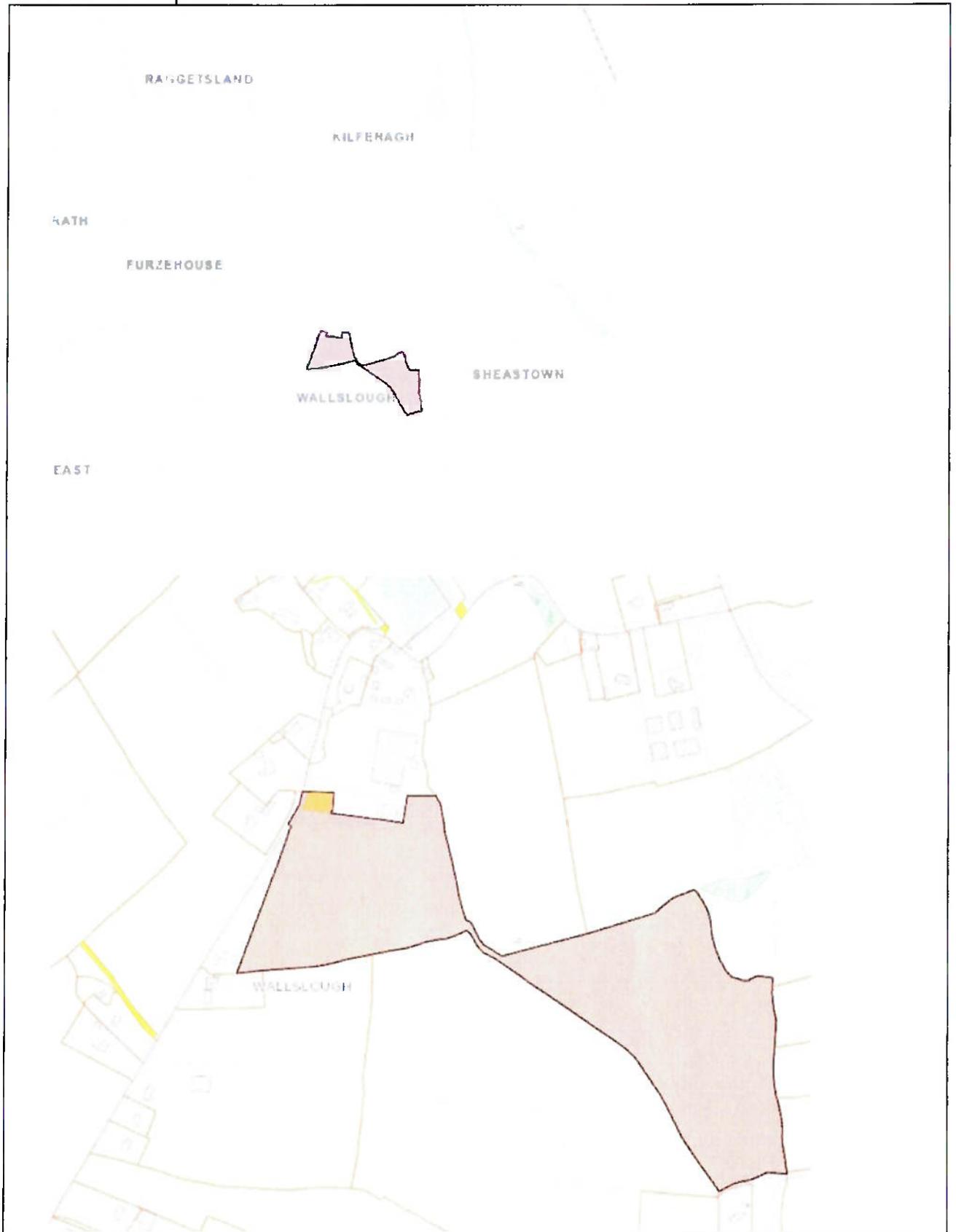
I would like to bring to your attention that there is a well located outside the boundary of the Wallslough Arena.

According to the folio maps, Folio KK18995F is owned by Anne Hughes, James Hughes, Mary Hughes, and Thomas Hughes (Entity 1), while the land containing Well No. 2, listed under Folio KK7973, is owned by James Hughes (Entity 2).

As the land is owned by two separate entities, and Entity 1 is seeking a derogation under SI 306/2022, Entity 2, being distinct, has not sought such a derogation, as they are not providing accommodation. Therefore, Well No. 2 requires planning permission.

**LOCATION ADDRESS OF DEVELOPMENT:**

Site Location Map must be attached





**SITE AREA:**

Area of site to which the application relates in hectares	10.66 ha
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**WHERE THE APPLICATION RELATES TO A BUILDING OR BUILDINGS IF AVAILABLE:**

Gross floor space of any existing building(s) in unknown m <sup>2</sup> :
Gross floor space of proposed works in unknown m <sup>2</sup> :
Gross floor space of work to be retained in m <sup>2</sup> (if appropriate): unknown
Gross floor space of any demolition in m <sup>2</sup> (if appropriate): unknown
Overall height of any existing structure in metres: 0
Overall height of any proposed structure in metres: 2 metres
Distance of existing or proposed structure to nearest dwelling(s) not being the applicants, where appropriate: C. 200m to private dwelling, or C. 95 m to building which is a change of use

**WHERE THE APPLICATION REFERS TO A MATERIAL CHANGE OF USE OF ANY LAND OR STRUCTURE OR THE RETENTION OF SUCH A MATERIAL CHANGE OF USE:**

Details of Existing or Previous use: agricultural land
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Proposed use (or use it is proposed to retain) . Commercial water well.
Nature and extent of any such proposed use (or use it is proposed to retain) Construction of a well into the aquifer, associated civil works to connect the well to the building, and the construction of a structure to house the well.

**LEGAL INTEREST OF APPLICANT IN THE LAND OR STRUCTURE:**

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

Where legal interest is 'Other', please expand further on your interest in the land or structure:

I am a neighboring property own.

Name & Address of Landowner and/or Occupier if not the Applicant:

James Hughes Wallslough, Kilkenny, Co. Kilkenny

**DEVELOPMENT DETAILS**

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

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

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

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The Applicant is advised that notwithstanding the completion of the above application form, that the Planning Authority may require the Applicant to

submit further information or particulars with regard to the request in order to enable the Planning Authority to issue the declaration on the question.

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

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

**APPLICATION FEE ATTACHED:**

Fee payable €80.00: Payment must be made by Cash or Cheque which should be made payable to Kilkenny County Council
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I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct and accurate:

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
*Applicant or Agent as appropriate*

Failure to complete this form or attach the necessary prescribed documentation, or the submission of incorrect information or omission of required information will lead to the invalidation of your application.

**THE FOLLOWING DOCUMENTATION IF AVAILABLE SHOULD BE SUBMITTED WITH YOUR APPLICATION:**

- Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas) with location of works clearly marked in red
- A Site Layout Plan (Scale 1:500)
- Drawings of the development (Scale 1:50)
- All drawings to differentiate between the original building, all extensions and proposed development
- Copy of Planning Permission, Fire Safety Certificate or any other statutory approval already obtained, where applicable
- Prescribed Fee of €80.00 Euro

**COMPLETED APPLICATIONS TO BE RETURNED TO:**

**Kilkenny County Council  
Planning Department  
County Hall  
John Street  
Kilkenny**