

The secretary An Bord Pleanála

64 Marlborough Street

Dublin 1

AN BORD PLEANÁLA
LDC 077615-25
ABP-
28 JAN 2025
Fee: € 220 Type: Bank Draft
Time: 9.49 By: Reg Post

Noel mc quillan & Mary mc quillan

Commons cross Dromiskin

County Louth Eircode A91A9W9

18th January 2025

This Section 5 Referral referring to the decision of Louth County Council under Reg. Ref. S52024/79 to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Act 2000 (as amended). The Section 5 application was submitted to Louth County Council on 10 DECEMBER 2024 in light of works been carried out on the site at commons road Dromiskin co Louth planning reference 211218 and board pleanala reference ABP-312591-22.

"Whether the current works to an unauthorised structure constitutes unlawful development, that being the placing of a concrete floor and reconfiguring the wall area in an unauthorised development represents unlawful development.

The placing of a hardstanding area around this structure on the west side and the placing of a concrete pad along the wall area next to my property is unlawful development.

Planning and Development Act, 2000 (as amended). "

The planning authority have declared it unlawful development, as this section 5 was found to be so, I am writing to the board to clarify some points as the enforcement office in this same council have previously said that it is unenforceable because of the seven-year rule (incorrect). The planning department have stated otherwise which is correct because of the unauthorised status will not allow any minor or major exemptions in such a case.

Clarification is sought on the works to the shed which your office dealt with in the previous case no ABP-312591-22. Perhaps considering these further works carried out on this structure you can understand my concerns. The shed is now being used for storage of building equipment and material (change of use)

I also wish that the board clarifies if the works including placing of a concrete floor and the ongoing use as a builders store along with the placing of hardstanding on the western side of this structure constitutes consolidation of this unauthorised structure. Also, following the council having accepted

a landscape drawing from the builders agent after the appeal process has run out (late 2023) . On this landscape drawing you will see a definite separation of the offending shed area to that of the original planning documents . This in my view is lending consolidation to this unauthorised structure . Given I was unable to appeal this design I feel it needs to be dealt with regarding clarification of the overall design and the consolidation of an unauthorised structure. If so, I believe the board should recommend that this shed be demolished. The shed has been used for unlawful storage of construction material as can be seen with the photographs in the section five declaration . This was the concern I expressed in my previous writing to yourselves, I will also include further photos in this appeal.

The enforcement office in county Louth will not take any action on my behalf and are constantly siding with the builder, regardless of what was submitted at planning and appeal stage. No planning was sought or given to the shed regarding a builder's store. They also turns a blind eye to the excavation of soil and the burying of builders rubble along my boundary line. (see photo)

The questions to be clarified are

1. Does the work to the shed area constitute consolidation of unauthorised development, to an unauthorised structure, if so, what action should be taken by enforcement. (no exemptions are available to an unauthorised structure for maintenance or otherwise including temporary use for the duration of the building project).
2. The placing of hardstanding and concrete pad. And dumping and burying of rubble and stone, without permission is unauthorised development and is allowing the site to be used as a builders yard (see pictures) this may also constitute consolidation of unauthorised development (builders yard). No change of use has been given for this. Please clarify !
3. Can the unauthorised shed be used for Temporary storage of materials or goods during a construction project under class 17. My understanding is as follows. It may not avail of such an exemption if the structure is unauthorised. 1) Such a development is not entitled to benefit from the exempted development provisions of the Planning and Development Regulations. The relevant provisions are article 9(1)(a)(viii) for unauthorised structures and article 10 for an unauthorised use. Please clarify!
- 4 Is the latest landscaping drawing a deviation from the original planning this separates the shed from the overall site area and consolidates an unauthorised development which is continually used as a builders store and yard both now and likely in the future. Please clarify!

I have also taken a case to the ombuds mans office in doing so the enforcement section in the council have stated the following .

The Council says the Planning & Development Regulations, 2001 (as amended) at Class 17 of Schedule 2, Part 1 – “Exempted Development – General” provide:

“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.

Conditions and Limitations

Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent, approval or confirmation granted under the Act or any other enactment."

This is wrong and the enforcement office will need to be directed to the correct the reply to this question. I will attach the findings of the ombuds-mans office for study. You will see from the enforcement office reply that they have little interest in following the planning and development act as a full document.

The section 5 declaration states that it is wrong, but the enforcement office in the council think otherwise. The findings of this section 5 will need to be clarified for myself and for Louth county council enforcement office in the referral to yourselves.

We enclose the following in addition to the above details:



Digging out and burying builders waste and rubble along boundary wall.



Storing equipment in shed area /builder's store.



Placing concrete slab next to my property /unauthorised development.



Placing unauthorised hard standing to the west of unauthorised development/consolidation of unauthorised development



Works to an unauthorised structure /laying of concrete floor and works to wall areas.



Placing material in shed area /using as builders store /this is a change of use



Placing of hardcore to west of shed with no planning for such a development.

Louth county council have an extensive record of past photos which they refuse to take any notice of ,if more photographs are wanted I will be happy to supply same. I will attach the findings of the ombuds man's office with this appeal.

many thanks Noel Mc Quillan (Registered building surveyor)

TEL [REDACTED]

11/10/23, 5:16 PM

Yahoo Mail - RE: use of shed as storage for machinery/ planning no 211218

RE: use of shed as storage for machinery/ planning no 211218

From: Noel Tully [REDACTED]
To: [REDACTED]
Cc: planningenforceadmin@louthcoco.ie
Date: Friday 29 September 2023 at 13:42 GMT+1

Dear Noel

Planning permission 211218 ABP-312591-212 did refuse permission for the retention and material change of use for the existing workshop to be used as a domestic garage.
However, there is no condition attached to remove the shed.

As regards planning enforcement, the shed has been in situ over seven years, therefore Planning Enforcement are statute barred from pursuing the shed as unauthorised development.

Under schedule 2 part 1 Exempted development class 16 The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out - such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

Structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out falls within the above Exemption Class 16 and therefore no unauthorised change of use is currently taking place.

Regards
Noel

Noel Tully

Technician

Planning Enforcement

about:blank

1/2

*This email shows the way the enforcement
office are treating this complaint, I hope
your office will echo section 5 findings in
relation to exemptions on unauthorised development
Noel McQuillan*

11/10/23, 5:16 PM

Yahoo Mail - RE: use of shed as storage for machinery/ planning no 211218

From: Noel Mc quillan [REDACTED]
Sent: 18 September 2023 13:50
To: planningenforcement@louthcoco.ie
Subject: use of shed as storage for machinery/ planning no 211218

A chara

I wish to bring to your attention the use of the agricultural store as a plant store in the development at commons cross dromiskin site planning non 211218.

this has been refused retention by an board pleanála. What action are you as the statutory body going to take in this regard. I await your reply.

noel mc quillan.

Le do thoil cuimhnigh ar an imshaol roimh priontáil an ríomhphost seo. Tá an ríomhphost seo (agus aon iatán a ghabhann leis) príobháideach agus rúnda agus d'fhéadfadh go mbeadh eolas inti atá faoi phribhléid dlíthúil. Ní ceadmhach úsáid an ríomhphoist seo d'éinne ach don té ar seoladh chuige é. Munar duit an ríomhphost seo nó an té atá freagrach as é a sheoladh, tá cosc ar chóipeáil agus ar sheachadadh a ríomhphoist seo agus aon iatán a ghabhann leis chuig éinne nó úsáid a bhaint as a bhfuil ann; ní ceart an ríomhphost seo nó aon iatán a léamh. D'fhéadfadh do mbeadh cosc iomlán dlíthúil ar sceitheadh nó comhfhreagras nó aon úsáid eile gan chead ar a bhfuil sa ríomhphost seo agus d'fhéadadh sé a bheith ina chion coiriúil.

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Illegal use under planning law.

From: Noel Mc quillan [REDACTED]

To: planningenforcement@louthcoco.ie

Date: Wednesday 5 January 2022 at 11:05 GMT



Mwac still illegally using shed at commons dromiskin on the 4th January 2022

Please send to miss mc cormack planning officer for this file 211218

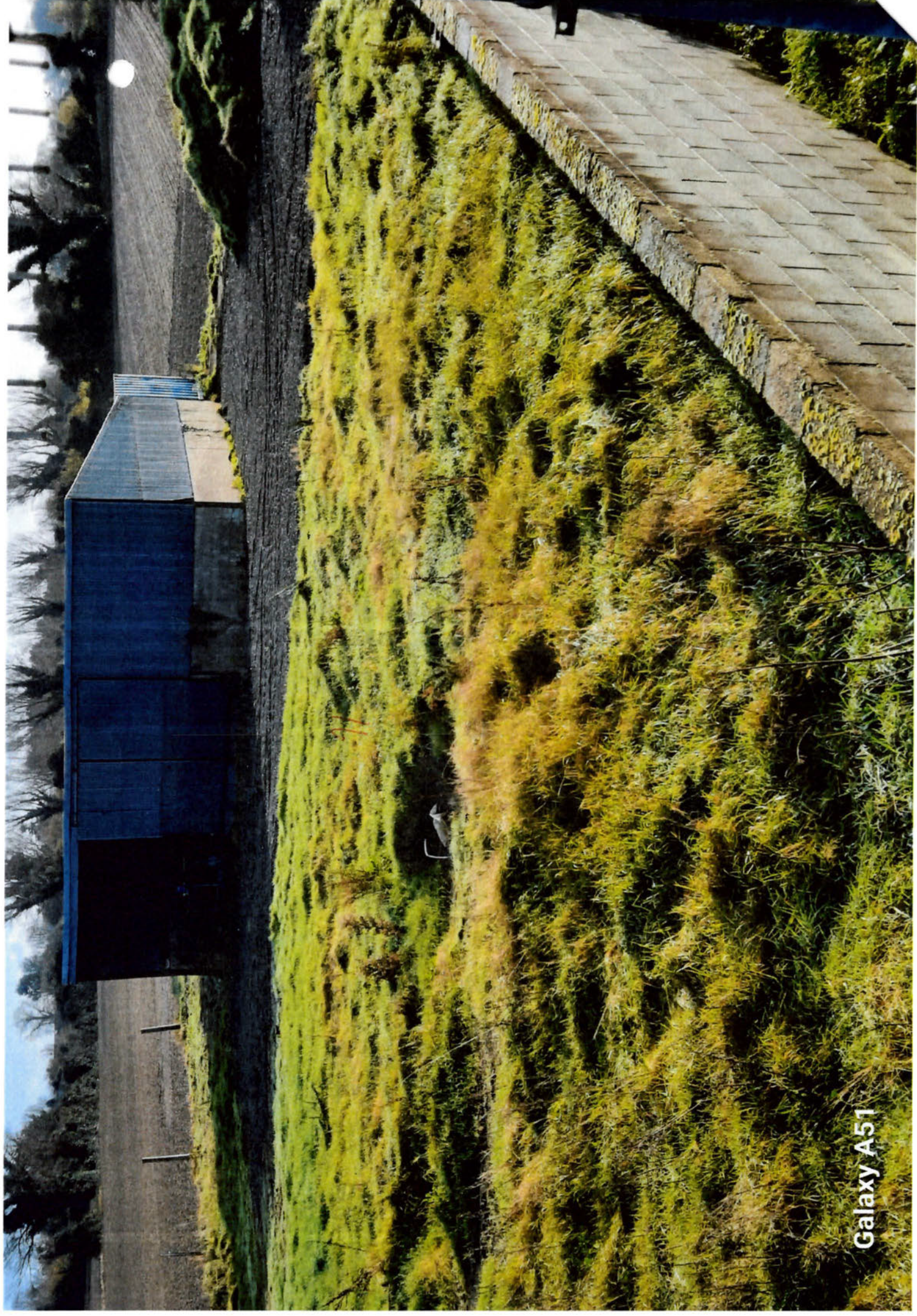
[Sent from Yahoo Mail on Android](#)

Ongoing use of shed over Dec 2022

Digging below
boundary wall of B. B. B.
Boundary wall visible.

Digging below boundary wall & burying building waste
on site area.





Galaxy A51

Handstanding with the intention of repeating
the abed area from the housing area and using
as a ladder yard



ENERGY

ENGINEERING

WATER

Energy Managers • Consulting Engineers • Surveyors
Project Managers • Water Conservation • Planning

37B CHURCH ROAD, FORKHILL, NEWRY BT35 9SX
Tel: (00353) 87 9235643
Email: gfmecitd@gmail.com

LANDSCAPING PLAN

COMMON'S ROAD, DROMISKIN

FOR

MWAC IRELAND LTD

*Landscape plan differs from
Proposed Site layout, which consolidates
The Unauthorised development of shed*



ENERGY

ENGINEERING

WATER

Energy Managers • Consulting Engineers • Surveyors
Project Managers • Water Conservation • Planning

37B CHURCH ROAD, FORKILL, NEWRY BT3 59SX
Tel: (00353) 87 9235643

ROI:15 CHURCH STREET, DUNDALK, CO. LOUTH

Planning Department
Louth County Council
Town Hall
Crowe Street
Dundalk
Co. Louth

25th August 2023

RE: Compliance with Condition 7 of Grant of planning permission reference number 211218, ABP Decision 312591-22 – 2 New dwelling houses and all associated site development works at Commons Road, Dromiskin, Co. Louth

Reference ~~23406~~

To Whom it may concern,

We act on behalf of the current owners MWAC Ireland Ltd. Following a grant of permission by An Bord Pleanála for the above site we seek your approval for landscaping proposal in accordance with (Condition No. 7)

Trusting all is in order.

Should you require any additional information please do not hesitate to contact me on [REDACTED] or [REDACTED]

Regards,

A handwritten signature in black ink, appearing to read 'Gary McArdle', written over a faint, diagonal watermark that says 'Planning Department - Viewing Purposes Only!'.

.....
Gary McArdle
M.Eng MIEI

1.0 Proposed Landscaping

The proposed landscape plan has been undertaken with consideration given to the existing ground conditions of the site and the proximity to farmland to the east and south. Consideration has also been given to the existing tree's and hedgerows which run along the northern boundary of the site.

All landscaping is to be undertaken in accordance with BS4428:1989 Code of Practice for General Landscape operations(excluding hard surfaces). When using pesticides the contractor must use a certified operator and take appropriate safety precautions in accordance with the control of pesticides Regulations 1986 (COPR) and the plant and protection products regulations 1993 (PPPR). Planting species chosen for this site are based on the Pollinator Friendly Planting Code – All Ireland Pollinator Plan 2015-2020.

In accordance with ABP grant of permission 312591-22 and LCC ref 211218 this submission is made as part of compliance to condition 7 and details the comprehensive boundary treatment and landscaping scheme.

1.1 Maintenance:

Good ground preparation is essential to minimise maintenance in the future.

- Removal of all root weeds before planting such as scutch grass, bindweed etc. will reduce weeding later on. Sometimes it is best to leave the site fallow for a season to sort out any issues.
- The soil must be well drained and not compacted, and have good nutritional content. Organic material can be added. There is usually no need to add fertiliser.
- Plants ideally should contain a slow release fertiliser in the pot and should be watered well before planting.
- In the first few months after planting beds will have to be weeded by hand as hoeing can damage spreading plants. This should be done regularly, maybe three or four times in year one depending on the weed population. When the perennials have established and provided dense cover, the frequency of weeding can be reduced.
- In year two and onwards, weed the beds at the beginning of and end of the growing season, and spot check for the odd weed in between.
- Watering may have to be taken into consideration during dry spells.
- Leave dead stems on plants for the winter as they provide protection for the plants, offer food and habitat and nesting materials for wildlife, prevent weed seeds from germinating and increase the organic matter.
- The dead foliage can be removed in spring by mass pruning to approx. 10cm height when there is new growth appearing. Some plants like Grasses & Thymes will look good without pruning back.
- Organic matter like compost can be added to keep the soil in good condition

1.2 Soft Landscaping

This report is to be read in conjunction with drawing number A2117-05-RevA. Placement and number of plants is also provided on these drawings.

1.2.3 Hedging – To property boundaries



Hawthorn Hedge



Blackthorn hedge



Hazel Hedge



Guilder Rose

2.3 Hard Landscaping

2.3.1 Permeable Tar

Roadstone Duraflow Porous Asphalt is to be used as a surfacing solution for driveways. Its is a porous pavement and complies with Sustainable Urban Drainage Systems (SUDS) requirements. Duraflow has been designed to soak away surface water which then percolates into a stone sub base layer – Roadstone Permeabase. Duraflow surface course incorporates Polymer Modified Bitumen (PMB) and carefully selected high quality aggregates to maximize performance and durability.

Kerbing to be Roadstone Kerb block in natural colour as shown below.



2.4 Boundary Treatments

2.4.1 Boundaries between dwellings

Within each site 2.1m high hit and miss timber fencing with concrete posts will be provided. The image below shows an example of this style of fencing. Drawing A2117-05-RevA shows the extent of this style of fencing.



2.4.3 Boundary between proposed site and adjacent east and south site

Proposed boundaries will be a combination of hazel, hawthorn and blackthorn in a mix in a staggered double row 200mm apart, at 450mm spacing at an overall rate of 6-8 plants per meter. Hedging will be planted bare root during the first full planting season.

2.4.4 Boundaries to existing dwellings

The existing boundary wall will be retained. A new 1.2m high block wall plaster both sides with concrete capping will be constructed between points D and E as shown on drawing A2117-05-RevA. The entrance will be formed with brick piers (brick to match proposed dwelling Butterly Sherwood Red Mixture). Natural wooden gates will be provided for security.



Example image.

APPENDIX A

MAINTENANCE PROGRAMME AND SCHEDULE – COMMON'S ROAD

1. INTRODUCTION

This document has been prepared by GFM Engineering to define the maintenance requirements for the soft landscape areas associated with proposed development at Common's Road, Dromiskin, Co. Louth soft landscape.

For timings and frequency of operations refer to Maintenance Schedules 1 to 5. This document should also be read in conjunction with drawings A2117-05-RevA.

2. OBJECTIVES

- The objectives of this maintenance specification centre on the maintenance and establishment of the soft landscape scheme, as shown on Drawings
- The proposed landscape scheme aims to provide an attractive environment and setting for the new development.
- The soft landscape scheme comprises:
 1. Hedgerow planting;
 2. Areas of amenity grassland; and
- The maintenance specification requirements of each soft landscape component are described in more detail in Section 3.

3. SPECIFICATION FOR THE MAINTENANCE OF SOFT LANDSCAPE AREAS

- The maintenance of the proposed landscape scheme covers the initial 2-year aftercare period. Each of the areas described are identified on Drawings General and detailed requirements for each landscape feature and habitat type are provided below:

3.1. GENERAL REQUIREMENTS

- **NOTICE TO RESIDENTS**

Give 2 days' notice before the following operations:

1. Application of fertilizer.
2. Watering.
3. Tree works

- **REINSTATEMENT**

Reinstate to original condition any damage or disturbance to soil structure, planting, grass, fencing, hard landscaping, structures or buildings.

- **CONTROL OF PESTS**

Only approved specialist firms and methods to be used. Contractor to submit proposals to Residents for written approval where required.

- **WATERING GENERALLY**

For specific watering requirements and frequency to individual areas refer to Schedules 1 to 5.

1. Obtain Residents written approval before using a supply other than Potable mains water.
2. Ensure full depth of topsoil is thoroughly wetted to aid plant establishment.
3. Do not damage or loosen plants.
4. Where required, loosen soil to direct water to rootzone.

- **WATER RESTRICTIONS**

If water supply is, or is likely to be, restricted by emergency legislation, submit proposals for an alternative suitable source of water. Obtain instructions before proceeding.

- **LITTER, FALLEN LEAVES and ARISINGS**

Collect and remove from site all extraneous rubbish/ arisings and dispose of in an appropriate manner. Remove soil and arisings from hard surfaces and leave the works in a clean, tidy condition at completion and after any maintenance operations. Collect fallen leaves from lawns, ornamental planting beds and swale and remove from site for recycling.

- **PRUNING GENERALLY**

Prune in accordance with good horticultural and arboriculture practice:

1. Do not damage or tear the stem or bark when removing branches
2. Keep wounds as small as possible and cut cleanly back to sound wood.
3. Make cuts above and sloping away from an outward facing healthy bud, angled so that water will not collect on cut area.
4. Prune larger branches neither flush nor leaving a stub, but using the branch bark ridge or branch collar as a pruning guide.
5. Thin, trim and shape each specimen appropriately to species, location, season, and stage of growth, leaving a well balanced natural appearance.
6. Use clean sharp secateurs, hand saws or other approved tools. Trim off ragged edges of bark or wood with a sharp knife.
7. Give notice to LA and residents if disease or infection is detected.
8. Do not use growth retardants, fungicide or pruning sealant unless instructed.

- **3.2.13. PRUNING OF EXCESSIVE OVERHANG**

Remove any growth annually, as outlined in Maintenance Schedules, encroaching onto grassed areas, paths, roads, signs, sightlines and light fittings.

3.2. PROPOSED HEDGEROWS

- **WATERING**

Water Twice Monthly from April to October.

1. Ensure full depth of topsoil is thoroughly wetted to aid plant establishment.
2. Soil moisture:

- **WEEDS**

Remove any weed growth within plant guards by hand and maintain a 0.3 m wide strip (on each side of the hedgerow) free from vegetation by spraying with glyphosate in early summer and late spring.

- **REFIRMING OF PLANTS**

Refirm after strong winds, frost heave and other disturbances.

- **FERTILIZER**

Apply Multi purpose plant food and soil improver fertiliser each season in March or April

- **REPLACEMENT PLANTING**

Replace any plants that have failed (between 1 November and 31 March).

- **DISEASE**

Carry out annual check for signs of disease and undertake treatment as required

- **HEDGEROW PRUNING**

1. New hedgerows will be pruned for the first 2 to 3 years to encourage dense bushy growth, in keeping with good horticultural practice
2. Allow to reach planned dimensions only by gradual degrees, depending on growth rate and habit.

3.5. PROPOSED AMENITY GRASS AREAS

- **MAINTENANCE OF GRASSED AREAS**

Maintain grass areas in a manner appropriate to the intended use.

- **MAINTENANCE OF GRASSED AREAS**

Maintenance to be carried out to BS 7370-3. Carry out maintenance appropriate to each category of turf, as follows:

1. To achieve maintenance objectives to BS 7370-3, table 6.
2. To a maintenance programme to BS 7370-3, clause 11.
3. Using appropriate mowing methods to BS 7370-3, table 3.
- 4.

- **GRASS CUTTING GENERALLY**

1. Before mowing remove litter, rubbish and debris.
2. Finish to be neat and even, without surface rutting, compaction or damage to grass.
3. Leave edges neat and well defined. Neatly trim around obstructions.
4. Adjoining hard areas are to be swept clear and arisings removed.
5. Obtain instructions from CA in drought or wet conditions.

- **TREE STEMS**

Do not use mowing machinery closer than 100 mm to tree stems. Use nylon filament rotary cutters and other hand held mechanical tools carefully to avoid damage to bark.

- **MOWING GRASS AREAS**

Maintain grass height: between 25 and 50 mm. Use Mulching mower to allow cut and drop of Arisings

- **RE-FORMING GRASS EDGES**

For all edges abutting paths, manhole covers, borders and the like:

1. Draw back soil and re-form edges to clean straight lines or smooth flowing curves, sloping slightly back from vertical.

- **FERTILIZER**

Apply approved appropriate lawn fertiliser each Spring and Autumn.

- **REINSTATEMENT OF DAMAGED LAWN**

Reinstate worn areas as follows:

1. Remove damaged turf to a depth of 150 mm.
2. Cultivate substrate to a fine tilth.
3. Reinstatement with either:
4. returfing with turf of a quality and appearance to match existing. or
5. topsoiling to BS 3882 multi purpose class, free from stones, debris and weeds, and reseed with a seed mix to match existing grass in quality and appearance.

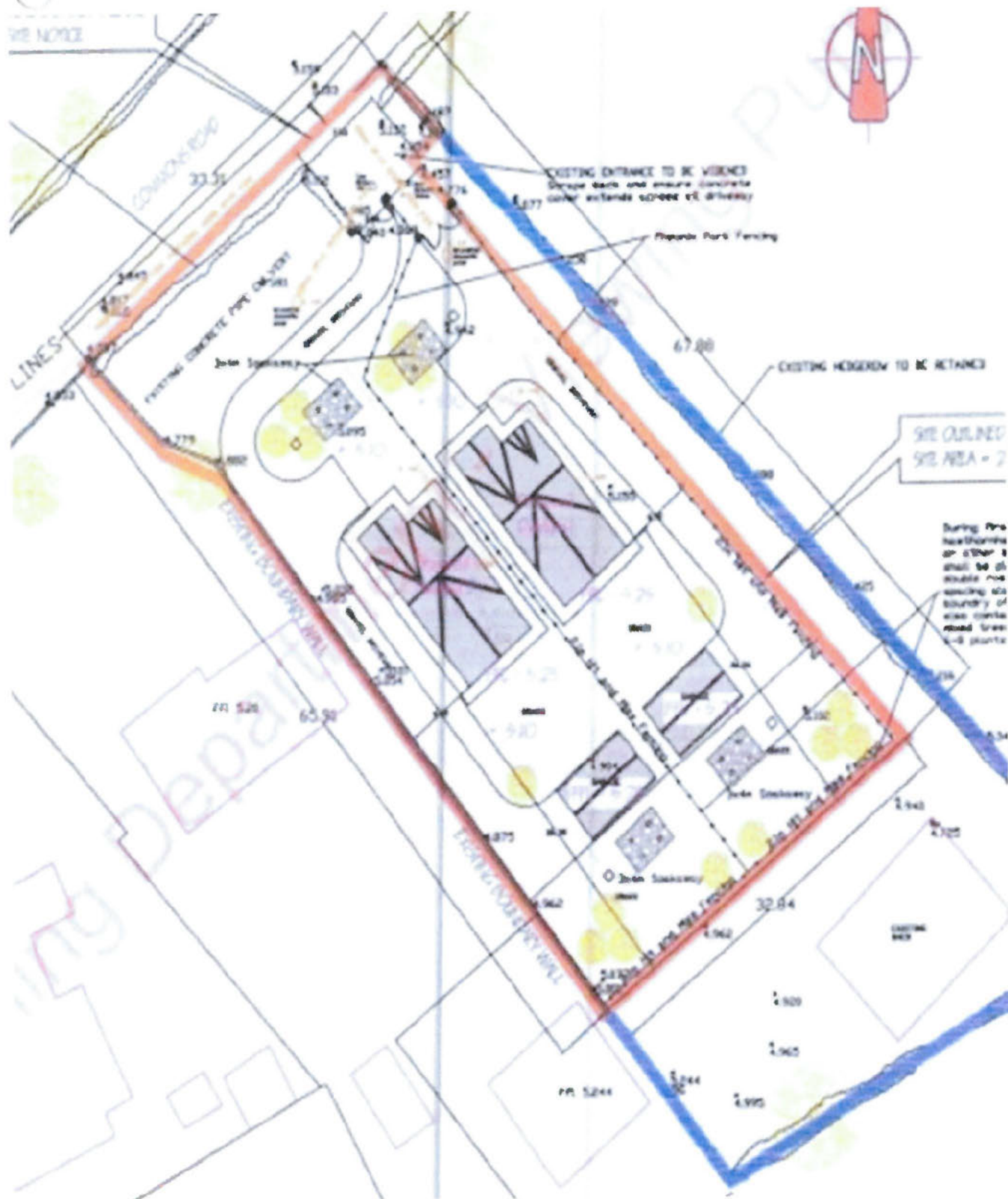
Maintenance Schedules (1 to 5): List of Operations, Timing and Frequency. To be repeated each year for duration of maintenance period.

The schedules below list the timing of key annual operations for specific soft landscape types, as shown on drawings A2302-101A & A2302-101B.

For required standard, the schedules should be read in conjunction with Specification for Maintenance and BS7370:Part 4 Grounds maintenance - Recommendations for maintenance of soft landscape.

The contractor shall provide rates for completion of a single operation, for the items where spaces are provided.

[illegible]



Note Fence lines separating
Shed area from sites. This
is consolidation of unauthorised structure

11 Previous Complaint not acted on!

Enforcement Complaint Form

Louth County Council

Please read the attached Notes before completing this Form.

A. Office Use Only

Fields marked * must be completed before returning to the Planning Enforcement Team for processing.

Date Complaint
logged by Admin

15 / 04 / 2024

Case ID

UD / /

Irish Grid Ref.

O 04814 99273

Municipal District

Dundalk

Priority

High



All Others



Case Officer

B. Complainant Details

*Name(s)

NOEL MC QUILLAN & MARY MC QUILLAN

& KYLE MC QUILLAN COMMONS ROAD DROMISKIN DUNDALK
COUNTY LOUTH EIRCODE A91A9W9.

Unauthorised development on site managed by mwac building contractors from planning reference 211218 shed unauthorised but immune refused permission as a domestic garage by board pleanala. Case reference abp-312591-22

The site is been used for the storage of materials no commencement notice has been issued with regard to this site. Therefore the storage of any material warrants enforcement action from the council. Digging along the boundary wall with no regard to the planning permission to leave a margin along this wall with a kerb line.

*Address (incl. Eircode)

Although immune from enforcement the shed was not to be used for commercial purposes ,no restrictions exist for taking enforcement with regard the use of this shed. (planning law states section planning and development act157(4)(b) provides a specific exemption from any limitation period with respect to any condition in a planning permission concerning the 'use' of the land to which the permission is subject. This states that "notwithstanding paragraph (a), proceedings may be commenced at any time in respect of any condition concerning the use of land to which the permission is subject". The following is also very relevant with regard to the works undertaken by the developer . The placing of a floor in this shed is also

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illegal .as the shed has no planning the builder by placing a floor in the shed is carrying out unauthorised development . STATUTORY EXEMPTION ALLOWED FOR UNDER SECTION 4(1)(H) OF THE

2000 act does not apply to unauthorised development either.

section 4(1)(h) allows for, among other things, repairs and maintenance without the necessity for planning permission.

This is not the case with unauthorised development under the law. Therefore the action by the builder is unauthorised development under the planning and development act. While there is no specific authority on the point, the cases of Fingal County Council v Crean and Signways Holdings Limited (2001), Sligo County Council v Martin (2007), Cork County Council v Slattery Pre-Cast Concrete Limited (2008), and Cronin (Readymix Limited) v An Bord Pleanála (2017) all indicate that an unauthorised-but-immune development cannot avail of this exemption.

I would therefore ask the council to take enforcement action to prevent what the planning permission stated that no commercial use can be taken with regard the shed.

Telephone No.0876851418

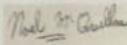
The builder is intending using this shed for business purposes. Hence the floor been constructed.

Email Address
noel.mcquillan@yahoo.ie

Tel [REDACTED]

Email [REDACTED]

*Signature:



C. Internal Complaints (Internal Use Only)

*Site Inspected?

If no, state reason for referral to Enforcement.

If yes, provide a brief note of observations. Attach photographs if possible.

*Photographs must be signed and dated

*Relevant planning history/ current planning application?

*Reported By:

*Date: / /

D. Alleged Breach of Planning Control

*Reported Address /Location of alleged breach (incl. Eircode, if known and/or attach location map)

Name(s) of Owner/Occupier

Address (incl. Eircode, if known)

Telephone No.

*Nature of the alleged breach of planning control (explain in the box opposite/tick below as appropriate)

Advertisement

☐

Breach of Condition /
Non-compliance

☐

Change of Use

☐

Demolition in an
Architectural
Conservation Area

☐

Demolition /
Endangerment of a
Protected Structure

☐

Quarry Operations

☐

Short-term Letting

☐

Special Planning
Control Area

☐

TPO Trees

☐

Works/Operations

☐

Additional Information which may be of use to the investigation e.g. date works/use commenced, previous use, planning history etc.

E. Manner in which complaint was received (Office Use Only)

Letter

☐

E-Mail

☐

Telephone

☐

DM Case Officer

☐

CRM (Sugar)

☐

Other (specify)

☐

*Name:

Date Received:

/

/

Our reference: OMB-149719-F3D6Z6

4 November 2024

Mrs Mary McQuillan
Commons cross
Dromiskin
Louth
A91 A9W9
(By Email)

Dear Mrs McQuillan

I refer to the complaint to this Office on your behalf from Mr Noel McQuillan regarding Louth County Council in relation to planning enforcement regarding its decision not to pursue laying a concrete floor in an unauthorised shed (but statute barred from prosecution) and, deviations to the landscape plan approved for the relevant planning permission as it relates to a gravel driveway.

Having investigated the matter, I regret to inform you that this Office is only in a position to partially uphold your complaint. I have set out the reasons for the decision below.

Council's Report

On receipt of the complaint, this Office requested a report from the Council details of which I have outlined below for your information.

Response to emails about the matter

The Council says further to complaints made by you (and Mr McQuillan) on 23rd May and 27th May 2024, a member of the enforcement team, had a telephone conversation on the 29th May 2024 with yourself. The Council says a file note of this phone call was recorded and the matter was considered to have been dealt with.

The Council says complaints have been made over a protracted period in respect of the unauthorised development at this location. The Council says it accepts that the shed is unauthorised, however, as previously set out and indicated to you the shed is statute barred by virtue of the period of time it has existed. The Council says hence, it is precluded in law from taking enforcement unless there is a material change in planning terms.

The Council says the owner of the shed has a planning permission (File Ref No. 21/1218) which permits two dwellings to be constructed on the land. The Council says as part of this permission, the applicant sought to retain the shed (the subject of these complaints) which was refused by An Bord Pleanála on appeal. The Council says therefore, the implementation of this permission will necessitate the removal of the shed. The Council says, however, until such time as the dwellings are complete it is precluded from taking enforcement.

Announced or unannounced site inspections

The Council says the site inspection undertaken as part of the planning application process was unannounced. The Council says details of reports pertaining to same are available online using the reference number 21/1218. The Council says the Inspector's report from An Bord Pleanála is also available on their website <http://www.pleanala.ie/>.

Council's further Report

I subsequently requested further information from the Council details of which I have outlined below for your information.

Clarification regarding the shed having to be removed or not in order to comply with the requirements of the planning permission (given its statute barred status).

The Council says under Planning Reference 21/1218 (ABP-312591-22) planning permission was sought for the following:

1. Permission for two new detached dwelling houses and detached garage to dwelling number 2.
2. Retention permission and material change of use for existing workshop to be used as a domestic garage for dwelling number 1.
3. Full permission to include alterations to existing site entrance and all associated site development works and retention of two shipping containers for duration of construction.

The Council says it has addressed the two planning scenarios below.

If the development granted under planning reference 21/1218 (ABP-312591-22) is not carried out

The Council says An Bord Pleanála refused permission for the retention and material change of use of the workshop (shed) to be used as a domestic garage for dwelling number 1. The Council says this refusal does not affect the position that it is statute barred from taking any enforcement action in relation to the shed pursuant to Section 157(4)(a)(i) of the Planning and Development Act 2000 (as amended), due to the passage of time.

If the development granted under planning reference 21/1218 (ABP-312591-22) is carried out.

The Council says if the development permitted under planning reference 21/1218 (ABP-312591-22) is commenced, then the conditions attached to that permission will be enforceable. The Council says however, the conditions included in the grant of permission are silent on the requirement to remove the unauthorised structure.

The Council says furthermore, condition 1 of planning permission 21/1218 (ABP-312591-22) requires the development to be carried out in accordance with the plans and particulars lodged with the application and those plans and specifications identify the shed in question in site layout plan format, in elevations and in the plan. The Council says therefore, it is its professional opinion that even in the event that the development is commenced, there would be limited scope to pursue a breach of planning condition(s) by the non-removal of the shed.

The Council says notwithstanding the foregoing, it is entirely likely the vendor of house number 1 will seek to demolish the unauthorised shed structure. The Council says this is on the basis that any potential purchaser (save for a cash buyer) would be unable to secure a mortgage (or similar loan type) to purchase house number 1 where there is an active enforcement case, something which would be picked-up in any financial lenders standard planning search which is undertaken as part of due diligence.

Clarification regarding the exemption referred to applying (in light of the unauthorised status of the shed) as it relates to any storing of building material/ machinery to facilitate the development construction.

The Council says the Planning & Development Regulations, 2001 (as amended) at Class 17 of Schedule 2, Part 1 – “Exempted Development – General” provide:

“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.

Conditions and Limitations

Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent, approval or confirmation granted under the Act or any other enactment.”

Did the Council investigate the 2 new issues raised and, if not, the reasons for same

The Council says it is its understanding that the phone call on 29th May 2024, was in relation to the content of the complaint which was submitted on 27th May 2024 which included:

- (a) the placing of a floor in the shed, and
- (b) placing of gravel in and around the shed for a yard area.

The Council says it is not proposed to further investigate the two items outlined at point (a) and/or (b) as referenced above. The Council says the placing of a concrete floor within the shed does not have any implications in terms of impact on visual amenity and/or residential amenity, being internal works to the structure. The Council says notwithstanding the fact that the shed does not have the benefit of planning permission, the internal works are considered to be minor in nature and, as such, pursuant to Section 152(2) of the Planning and Development Act 2000 (as amended), a Warning Letter has not issued.

The Council says the placing of gravel in and around the shed are considered works of the nature of pre-development facilitating works pursuant to the grant of planning permission granted in this case. The Council says a photograph (*provided to this Office*) taken on 17th October 2024 identifies the gravel in question to the right foreground of the shed.

Any other information

The Council says that a commencement notice has been submitted for the development and that it is expected that the permission granted under planning reference 21/1218 will commence construction.

Council's Previous Report to this Office

I have also outlined relevant details of the Council's report to this Office on foot of our previous investigation of a complaint from Mr McQuillan regarding this site in the interests of clarity.

Change of use of the shed from agricultural to a builder's store

The Council says that you describe the shed as agricultural in nature while the developer describes the structure as a workshop. The Council says that there is no evidence to either support or disprove the assertion by either party. The Council says nothing in section 154() of the Planning and Development Act 2000 (as amended) precludes the use of the shed for anything other than agricultural use. The Council says it is however accepted that a change of use normally requires planning permission. The Council says however, there is a difference of opinion as to what was the use purpose of the shed when it was constructed over 28 years ago. The Council says that there is no evidence to either support or disprove the assertion by either party.

Site being used for a store or dump of building materials

The Council says a photograph of the site taken on the 20 December 2023 shows the site is not being used as a dump or store of building material (*a copy of which was provided to this Office at the time*).

The role of the Ombudsman

The Ombudsman may examine actions carried out by certain public sector providers, where there is evidence to suggest that maladministration (i.e., improper, incorrect or unfair administration) has occurred and the action complained of has had an adverse effect on the complainant. Where the evidence shows that maladministration and adverse effect have occurred, the Ombudsman may recommend that the body take a certain course of action to provide redress to the complainant. In the absence of evidence of maladministration and adverse effect, there is no basis for pursuing a complaint with a body.

The role of the Ombudsman in relation to planning

As you are aware, appeals against planning decisions made by local authorities may be referred to An Bord Pleanála, which is an independent statutory body, not within the jurisdiction of the Ombudsman (the Second Schedule of the Ombudsman's Act, specifically lists An Bord Pleanála, as one of the bodies not subject to the Ombudsman's remit).

Because there is a statutory right of appeal against planning decisions to An Bord Pleanála, the Ombudsman cannot examine the making of planning decisions by local authorities. The Ombudsman can examine complaints concerning the administration of the planning process and concerning planning enforcement. However, any investigation by this Office regarding the planning process will not alter a grant of planning. I would add that complaints to this Office should be made within 12 months of the action occurring unless special circumstances apply.

I should also explain that in relation to planning enforcement, local authorities have discretion, under the Planning and Development Act, 2000 (as amended) on whether to take enforcement action in cases of breach of planning legislation. In deciding to take such action they usually take account of the extent of non-compliance, if any, and the likelihood of successfully pursuing the matter through the courts. The role of the Ombudsman in cases like this is to consider whether the Council has used its discretionary powers in a reasonable manner.

The view of this Office

Planning administration

At the outset, I would note that no special circumstances have been provided for raising the aspect of the complaint that the planning application should have been invalidated due to unauthorised development taking place at the time. Notwithstanding this, I have addressed this aspect of your complaint. The Council has clarified that the relevant planner's report was compiled on foot of an unannounced site inspection. Therefore, there is no basis to pursue this aspect of your complaint further in the absence of evidence that the site inspection was not unannounced. In this regard, the Council says that the original planning application was deemed invalid due to machinery in the shed and containers on site and it issued a Warning Letter in respect of same.

Previous use of the shed

Furthermore, I cannot conclude that the Council's position as it relates to the previous use of the shed is unreasonable based on the available information. Additionally, I note your unauthorised development complaint to the Council says that the builder is intending to use the shed for business purposes. I would note that, in order for this Office to examine a complaint a person must demonstrate how they have been adversely affected by the action. In this case, it appears you have concerns about the future use of the shed. In the circumstances, this Office is not in position to pursue this issue as we do not examine potential adverse effect.

Shed being statute barred from prosecution

As you may be aware, this Office previously investigated a complaint regarding this issue and was satisfied the Council's position was reasonable. However, while the Council is of the view that the concrete floor in the shed is development it has decided not to issue the developer a Warning Letter due to it deeming these works to be minor in nature.

I would note that section 152 (2) of the Planning and Development Act 2000 (as amended) under the 'Warning letter' provides:

"(2) Notwithstanding subsection (1), where the development in question is of a trivial or minor nature the planning authority may decide not to issue a warning letter."

<https://www.irishstatutebook.ie/eli/2000/act/30/section/152/enacted/en/html#sec152>

Given the nature and location of the works, this Office tends to the view that the reasons offered by the Council for not pursuing the developer under the planning enforcement code are not unreasonable having regard to competing demands on its resources.

Additionally, the Council has now clarified that the grant of permission does not include a condition specifically requiring the removal of the shed and notes that it was shown in the plans and particulars accompanying the application. Although, the Council also references a live enforcement file as it relates to potential purchaser due diligence, I note that its email to Mr McQuillan dated 22 May 2024 said that unauthorised development complaint file 21U231 had been closed. However, I do not propose to pursue this aspect of your complaint further as I understand your concerns relate to the future subdivision of the site with the shed subsequently being utilised as a builder's yard/ compound.

While I fully appreciate your concerns, as outlined above, this Office cannot examine something that may or may not happen in the future. In saying this, if such a change of use of the shed does take place and you are dissatisfied with the Council's investigation on foot of a new complaint, you can contact this Office again with copies of the relevant correspondence. At that stage, we will examine whether to pursue the matter.

Re-setting the clock on the 7 year rule and landscape plan

Having examined the court judgement of Mahon vs Butler referenced by Mr McQuillan in support of this issue, I am satisfied that it did not deal with a similar situation of the laying of a concrete floor which would then bring the original statute barred structure back within the scope of enforcement action. Furthermore, I cannot conclude that the other court case also referenced by Mr McQuillan regarding a quarry is comparable as this related to ongoing quarrying and a material alteration to the nature of the works. Specifically, the shed in this case has been in situ for more than 7 years and, as such, the physical structure cannot be pursued from an enforcement perspective.

However, as outlined above, if there is a change of use, then the 7 years does not apply as there is no planning enforcement time limit regarding the use or intensification of use (e.g. enhanced quarrying) of land. It follows therefore that while the laying of a concrete floor in a statute barred shed does constitute development, the Council has outlined why it decided not to pursue enforcement action regarding these new works, which have been in situ for less than 7 years.

Furthermore, I have examined the landscape plan submitted by the developer for approval by the Council which shows grass in the area in question. However, I cannot fault the Council's explanation that the laying of this material would be considered pre-development works and would note that the completed development will determine compliance with this landscaping. Therefore, I am not in a position to find that the Council's decision not to currently pursue enforcement action is unreasonable.

Storing of building material/ machinery to facilitate the development construction

In relation to this aspect of the complaint, I understand you consider the shed cannot be used for this purpose as distinct and separate from the rest of the site given its unauthorised status. As you may be aware, a question may sometimes arise as to what is or is not development. Section 5 of the Planning and Development Act 2000 (as amended) provides for anyone to request, in writing, from the appropriate planning authority, in this case Louth County Council, a declaration on that question. There is a fee for this request as set out in Schedule 10 of the Planning and Development Regulations, 2001 (as amended). I have attached a link where you can find the Section 5 declaration form for your information - <https://www.louthcoco.ie/en/services/planning/planning-forms/>

Although the Council has outlined the relevant exempted development statutory provision in support of its position, you will still have to go through the process of seeking a declaration in writing from it regarding the matter. You may then refer the issue to An Bord Pleanála on payment of the appropriate fee for a final determination on the matter as it is the higher planning authority. Please see page 22 of the following link for the applicable fee to the Bord if you choose to seek a section 5 declaration - http://www.pleanala.ie/about/Fees/full_fees_guide.pdf

Therefore, given that there is an effective right of appeal regarding this aspect of your complaint, this Office is not in a position to pursue this issue further with the Council.

Decision regarding your unauthorised development complaint

I note that the Council communicated the decision in respect of your unauthorised development complaints dated in May 2024, during a telephone conversation with you. I do not consider that this is in line with best administrative practice as it was not followed up in written format to both you and Mr McQuillan - which was obtained following the intervention by this Office as outlined in details of the Council's report above. As such, I am upholding this aspect of your complaint and will feed this back to the Council.

Conclusion





In summary, while I appreciate that you will be disappointed with the outcome of our examination, based on all the information available to us, this Office is not in a position to pursue the matter further with the Council at this stage. I hope the above clarifies the position for you and I regret that, other than explain the position to you, I cannot be of further assistance to you on this occasion. Accordingly, I am now closing your file.

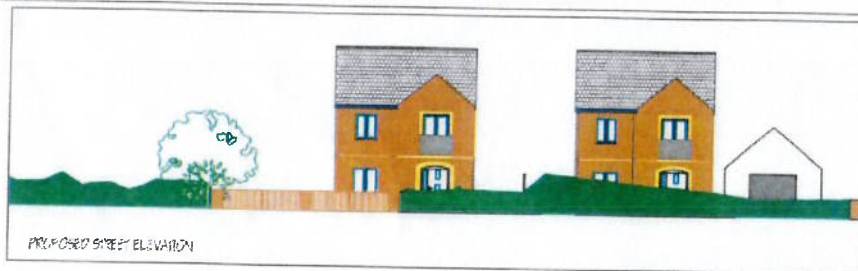
Please feel free to contact me on the number below if you wish to discuss any of the above.

Yours sincerely

Ahmed El Baradie
Investigator

[REDACTED]

	GAULTHERIA ROSE to be planted 10m apart 60-90cm and 90-120cm planted at 1m ²
	HEDGE to be planted 10m apart 60-90cm and 90-120cm planted at 450cm centres
	BLACKTHORN to be planted 10m apart 60-90cm and 90-120cm planted at 450cm centres
	HAWTHORN to be planted 10m apart 60-90cm and 90-120cm planted at 450cm centres

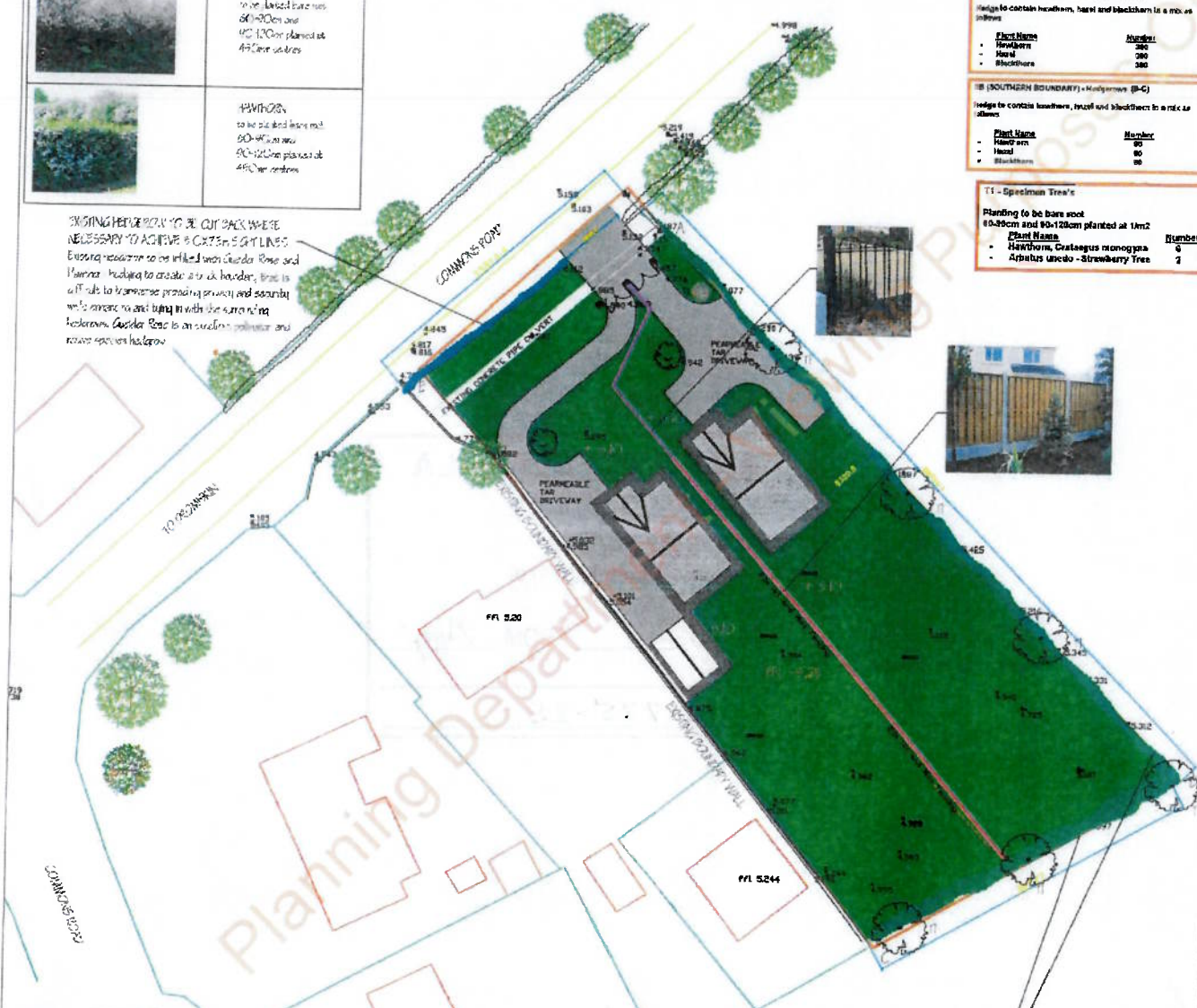












12 (EASTERN BOUNDARY) - Hedgerows (A-E)	
Hedge to contain Hawthorn, Hazel and Blackthorn in a mix as follows	
Plant Name	Number
Hawthorn	250
Hazel	250
Blackthorn	250

13 (SOUTHERN BOUNDARY) - Hedgerows (B-C)	
Hedge to contain Hawthorn, Hazel and Blackthorn in a mix as follows	
Plant Name	Number
Hawthorn	50
Hazel	50
Blackthorn	50

T1 - Specimen Tree's	
Planting to be bare root 60-80cm and 90-120cm planted at 1m ²	
Plant Name	Number
Hawthorn, Crataegus monogyna	6
Abutilon unedo - Strawberry tree	2

EXISTING FENCE ROW TO BE CUT BACK WHERE NECESSARY TO ACQUIRE 6 METRE'S GUTTERING. Existing hedgerows to be filled with Gaultheria Rose and Hawthorn. Hedgerows to be cut back where necessary to allow for transverse privacy and security with access to and from the surrounding hedgerows. Gaultheria Rose to be planted 10m apart and Hawthorn 450cm centres.



KEY:	
Existing Boundary Fence to be retained	
Proposed 2.0m High Block Wall	
Proposed 2.1m Concrete post and panel wall	
Proposed 1.8m Hk and miss fencing	
Pearmeable Tarmac Driveways	
Gravel Path	
Private open Space	
Concrete footpath	
Existing Boundary to be retained	
Phoenix Park Rails	



During first full planting season a hedgerow (Crataegus monogyna) or other hedgerow species hedge shall be planted in a staggered drill row 300cm apart, at 450cm spacing along the eastern and southern boundary of the site. Hedges to also contain Hawthorn, Hazel and Blackthorn with an overall rate of 15 plants per metre.

A	On	SIGNIFICANT FURTHER INFORMATION		07.12.21
Rev	Chk	Amendment		Date
<p>Project NO. 2021/05 AND A HALF DWELLING HOUSES AND DETACHED GARAGES AT COMMONS ROAD, DROMERIN, CO. LOUTH ADJACENT TO A51 AWP. Permission to include alterations to existing site entrance and all associated site development works.</p> <p>Project Status: PLANNING PERMISSION</p> <p>Title: PROPOSED SITE LAYOUT</p>				
Drawn by	A2117-05	Date	08.07.21	Scale
Checked by	A	Date	11.00	Scale
Drawn by	S.B. MCARDLE		Date	
Checked by	G.M. MCARDLE		Date	

GFM

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SURVEYORS
PROJECT MANAGERS

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Tel: 028-2258641 • Tel: 02834-433727 • E-mail: gfm@ghm.com

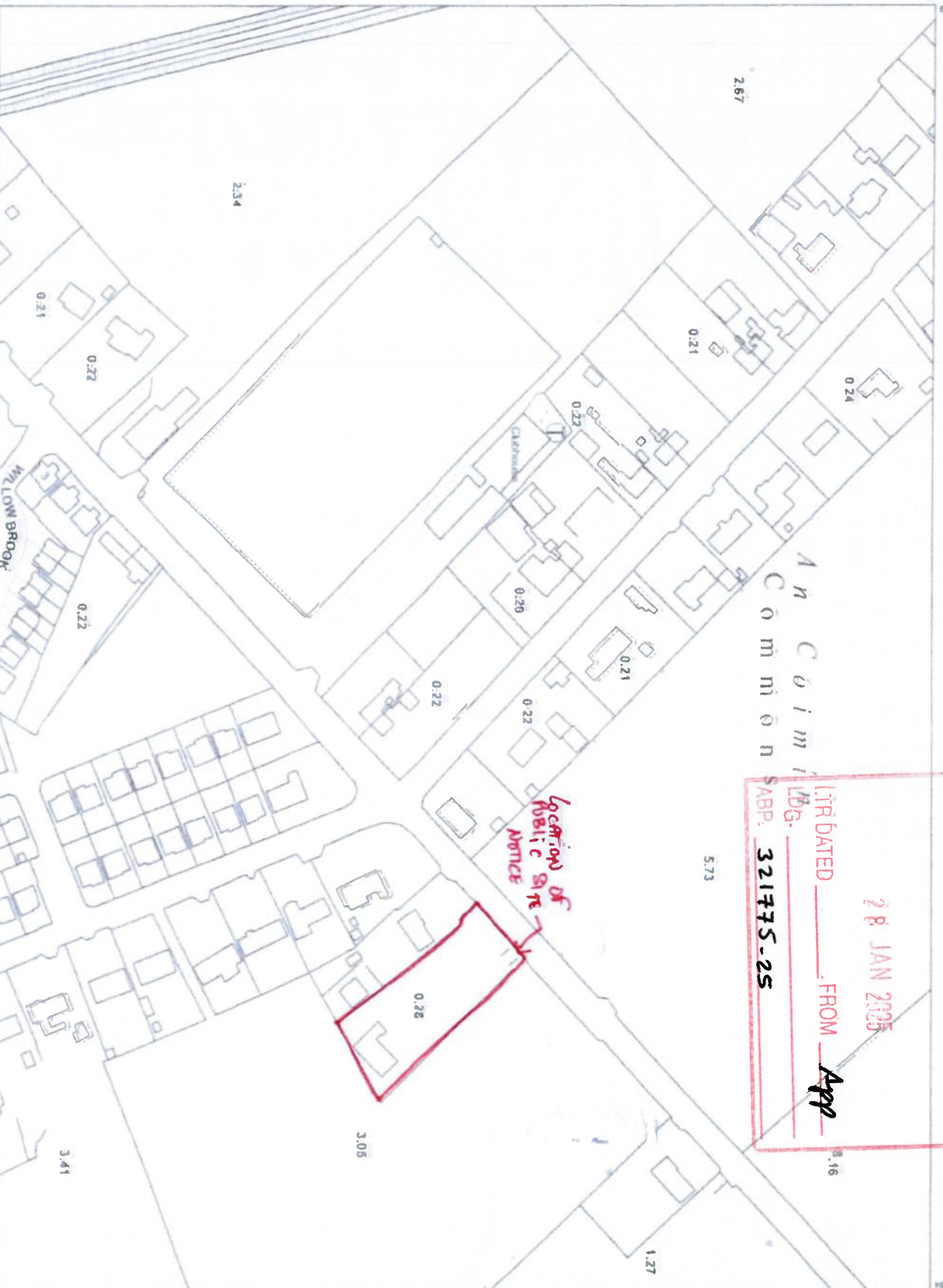
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Planning Pack Map

AN BORD PLEANÁLA

28 JAN 2025

IR DATED _____ FROM App
LDG. _____
SABP. 321775-25



CENTRE
COORDINATES:
ITM 704573.789326

PUBLISHED: 15/10/2018
ORDER I 5002962

MAP SERIES:
1:5,000 1832
1:2,500 1832-A
1:2,500 1832-C

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OUTPUT SCALE: 1:2,500



AND BOND PLEANNALA



Handwritten notes:

10/12/20
10/12/20



The main object is to study situations in which there were complex and subtle social and cultural influences of the cultural capital and social status of the respondents. Information is available in the form of a questionnaire and a list of the respondents.

LTR DATED _____ FROM *App*
LDG- _____
ABP # *321775-25*

28 JAN 2025

Pseudotsuga

25 NOV 2024



TOTAL AREA 128M2
ORIGINAL CLAY FLOOR AREA
CHANGES MADE PLACING OF
A CONCRETE FLOOR
REBUILDING OF WALL AREAS

1238

0.7365

TOTAL AREA 128M²
 ORIGINAL CLAY FLOOR AREA
 CHANGES MADE PLACING OF
 A CONCRETE FLOOR
 ARE BUILDING OF WALL AREAS

13.2701
 9.7387

PLAN VIEW

13 6724

FRONT VIEW

12.8072

BACK VIEW

SECTION VIEW

SIDE VIEW

410 2016

SIDE VIEW

112

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AN BORD PLEANÁLA

28 JAN 2025

LTR DATED _____
FROM _____

LDG-

ABP- 321775-25

[illegible]

NOELS MARY MC QULLAN

COMMONS ROAD DROMISKIN COUNTY LOUTH
EXISTING SHED
DECLARATION REQUEST

1000

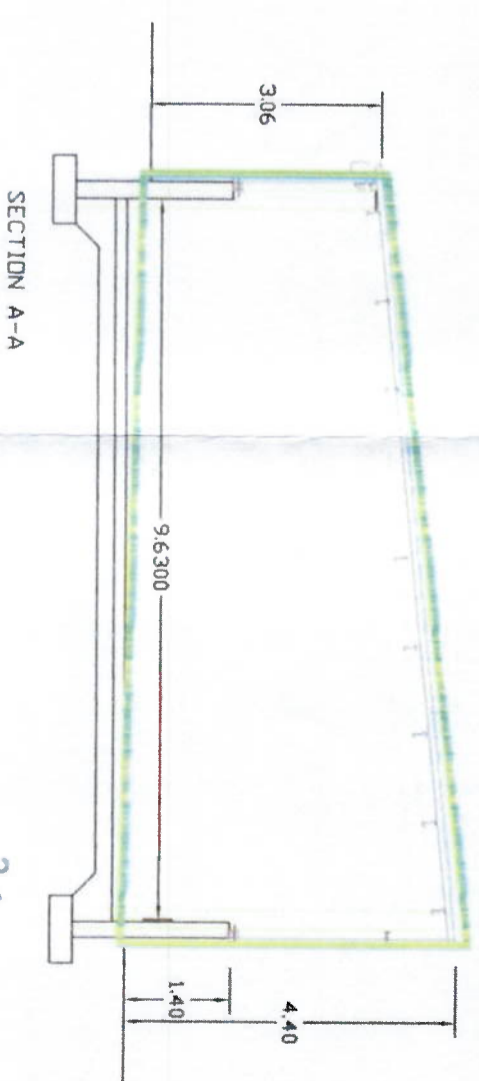
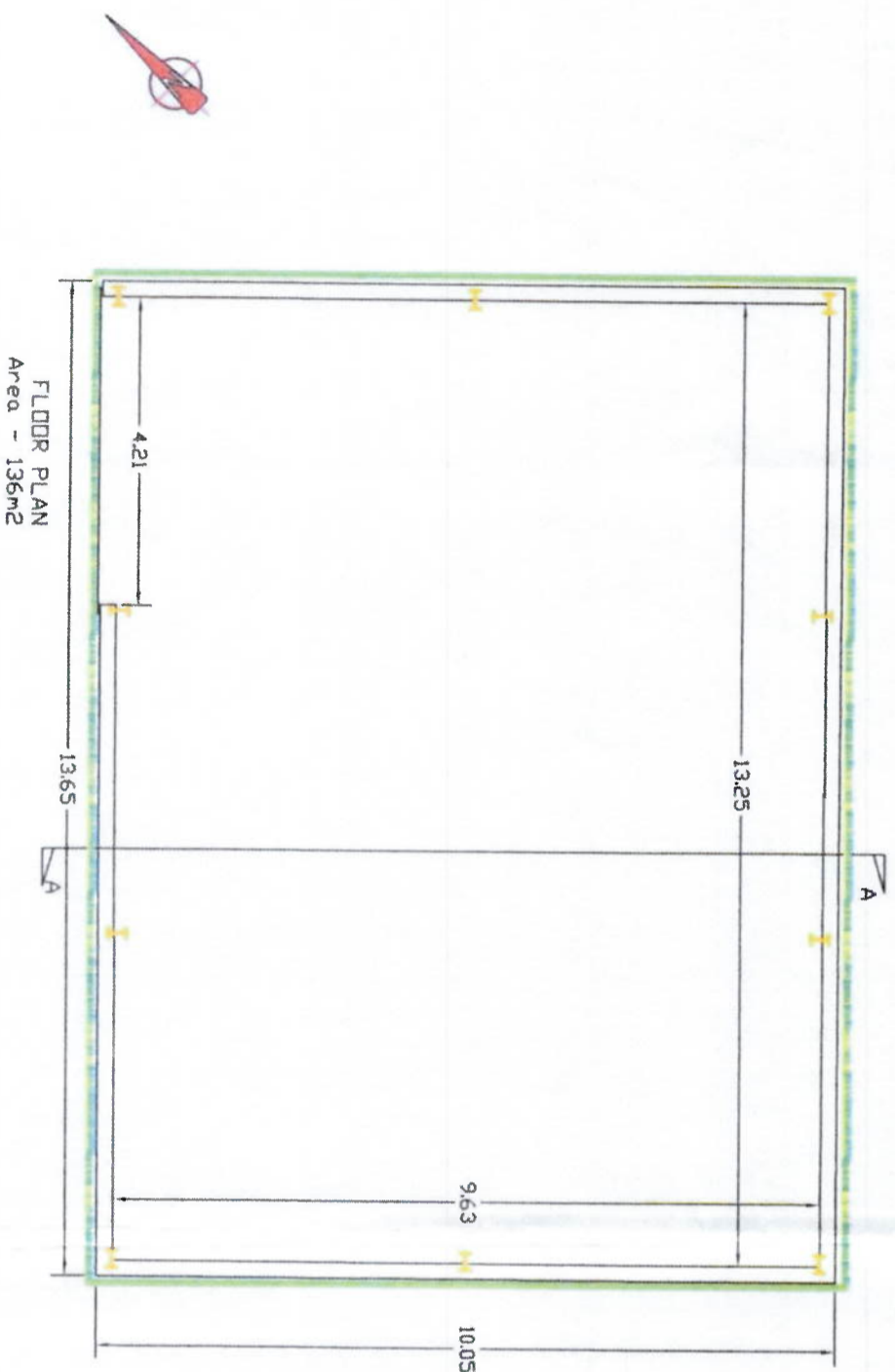
DATE	30/07/24
TIME	08:45 11:00
	CHECKED

PLANNING DRAWINGS

JOB NUMBER

DRAWING FOR PLANNING DEPARTMENT

ORIGINAL SHEET SIZE = A2



TO BE RETAINED
SHOWN THUS:

AN BORD PLEANÁLA

28 JAN 2025

LTR DATED FROM *Agg*

LDG-

ABP- 321775-25

21/12/13

