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**BY HAND**

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

25 February 2025

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>078214-25</u>
ABP-	
<b>25 FEB 2025</b>	
Fee: €	<u>220</u> Type: <u>CARD</u>
Time: <u>12.05</u>	By: <u>HAWP</u>

Dear Sir/Madam,

**Section 5(3)(a) 'Referral of a declaration by a planning authority in relation to a question as to what is or is not development or exempted development' of the Planning & Development Act 2000 (as amended) to An Bord Pleanála in respect of a Section 5 (2) (A) Declaration issued by Wicklow County Council under case reg. ref. EX01/2025. The WCC decision pertains to a Section 5 referral / exemption declaration at Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, Co. Wicklow, A67EA39 (a farm holding encompassed by Land Registry Folios; WW34037F and WW34860F). A question arises as to whether: (1) The use the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and (2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the southeastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres along the northern boundary thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes.**

BPS Planning and Development Consultants LTD, a firm of Irish Planning Institute accredited town planning consultants, have been retained by Conor Browne of Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, Co. Wicklow, A67EA39 (hereafter client') to prepare and to lodge a Section 5(3)(a) referral to An Bord Pleanála (hereafter "ABP").

Section 5(3)(a) of the of the Planning & Development Act 2000 (as amended) [hereafter the "Act"] 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."

On the 29<sup>th</sup> of January 2025, Wicklow County Council [hereafter "WCC"] issued a Declaration under Section 5(2)(A) of the Act with regard to case reg. ref. EX01/2025. Our client wishes to refer this Declaration to ABP for review. This referral is lodged within 4 weeks of the WCC Declaration being issued (which is the 25<sup>th</sup> of February 2025). The statutory fee of €220 is attached.

## **1.0 Purpose of this Section 5 Referral**

This Section 5 Referral pertains to the issue of whether:

- (1) The use the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and
- (2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the southeastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres along the northern boundary

thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes.

## 2.0 Grounds for this Section 5 Referral

Regarding our client's grounds for making this referral, we have attached a copy of the original BPS letter which accompanied the Section 5 application lodged to WCC. The content of this, which offers the primary basis for this referral, is 'taken as read' and is not repeated herein.

In addition to the attached Section 5 case set out by BPS, the following responses are made in respect of the Declaration issued by WCC:

- **With respect to what WCC has had "regard to":**

- The WCC assessment appears to have strayed away from the strict requirements of a Section 5 assessment. Reference is made to the content of an out of date website owned by our client and to Facebook posts. Copies of these are not included in the WCC determination issued to our client and the WCC Section 5 file is not searchable. It is unclear precisely what is being referred to. The purpose of a Section 5 is to determine whether something is or is not "development" and is or is not "exempted development". WCC has visited the site, received considerable detail from our client as to the extent of his current agricultural operations, and it is unclear how resorting to investigating and patrolling old websites and social media posts further informs the matters set out in the attached BPS submission made originally to WCC. Had WCC needed Further Information, there is provision under Section 5(2)(b) and (c) to request this:

*(b) A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information.*

*(c) A planning authority may also request persons in addition to those referred to in paragraph (b) to submit information in order to enable the authority to issue the declaration on the question.*

Instead of seeking such Further Information, WCC has used the Section 5 assessment as an opportunity to make assumptions about our client's current agricultural operations at this location which are not based on fact. Further, he has been given no opportunity to respond and no copies of what he is expected now to respond to.

Mr Brown is a young man and began selling Christmas trees and wreaths from his farmlands when he was not even 18. His agricultural business has progressed significantly from that WCC has presumed. Mountain View Christmas Tree Farm is a farm. The farm is taxed as a farm and is subject to all standard farming laws, regulations, health and safety requirements, etc.

- WCC has relied on Referrals RL3321 and RL3061. Neither case is searchable online either at ABP or via Google. BPS requested copies from ABP via Public Access and the WCC Planning Section of the Board and received these by email. We have reviewed these cases and we find only Referral case RL3321 to be relevant to the current assessment. We trust that ABP will access and review copies of these assessments:

**RL3321** – This case refers to the processing of milk from within and outside the farm into cheese and yoghurt within a milking parlour. ABP's Planning Inspector and ABP itself agreed that "the use of the farm complex for the production of cheese and yoghurt is ancillary to and associated with agricultural operations on the landholding **and is not development**" (emphasis added). ABP concluded, inter alia, that:

*(a) the use of the milking parlour building comes within the scope of section 4(1)(a) of the Local Government (Planning and Development) Act 1963 and the provision of the milking parlour structure comes within the scope of Class 9 of Part III of the Third Schedule to the Local Government (Planning and Development) Regulations 1977. (b) the use of the farm complex for the production of cheese and yoghurt is ancillary to the agricultural use of the landholding and comes within the scope of section 4(1)(a) of the Local Government (Planning and Development) Act, 1963 and section 4(1)(a) of the Planning and Development Act 2000, as amended.*

With all due respect to WCC, it is hard to understand why they relied on this case. It confirms that processing agricultural produce with a farm is not development and is exempted development. Our client has fully accepted that retention planning permission will be required to retain some structures and the full area of other structures. This Section 5's purpose is to confirm that the agricultural use – making wreaths and processing Christmas trees and foliage does not – like the agricultural use involved in making cheese and yogurt from milk, require planning permission. ABP found in this case that some structures needed retention permission, and this is much the same situation as the current case.

Lastly, BPS notes that this 2015 case refers to the 1963 Act and not the 2000 Act (as amended) and to regulations which pre-date the 2001 (as amended) regulations. It did so as the use and some of the structures dated back to pre-2000. We have examined the provisions mentioned in the Board's assessment and they are much the same as those currently in use. There is therefore no need to repeat legislative or regulatory points already made by BPS in this letter or in our accompanying case made to WCC.



**RL3061** – This case referred to "Whether the use of land for training in horse riding and equestrian activities is or is not development or is or is not exempted development". This case does not involve matters which are at the centre of the current Section 5's assessment. This case pertained to the conversion of lands into commercial stables with outdoor arena and other facilities. The landowners had effectively converted the lands into a horse riding school and training facility with an arena, jumps, flood lights, etc. The riding school and training facility held events to which the public were invited to attend. The Planning Inspector noted how: "... there is evidence on file that horse riding and other activities which are not solely for the purposes of training horses but relate to other commercial equestrian purposes occurs at Hall Farm". The current case is much more like that of Referral case RL3321. The current case does not comprise the creation of a significant leisure and recreational facility for the public which is floodlit so as to hold public events. The current case involves the harvesting of Christmas trees and foliage and the processing of these including into wreaths. This is much the same as taking milk and converting it into cheese and yoghurt. It is nothing like using the lands as a horse riding facility or school which changed the facility into a de facto leisure centre for those with an interest in horses. ABP is asked to dismiss WCC's reference to this case.

BPS understands that what WCC is arguing is that the agricultural structures erected or extended within the current farmyard are the same as a horse riding / equestrian centre which is open to the public as a leisure facility with associated structures and so the use is, in WCC's opinion, commercial (so as to align, it seems, with the Enforcement File opened by WCC which makes the same argument). The attempt to equate RL3061 with the current situation is not accepted. Christmas trees and foliage and wreaths are bulky agricultural produce and require agricultural sheds and storage structures to contain them. If our client was a large tillage farmer, he would have large sheds for storing hay or straw and grain and all associated machinery (tractor, trailer, combine harvester, etc.) which would far exceed those in his farmyard. As noted elsewhere in this Section 4 referral, our client has already accepted that a retention planning application is needed to regularise the planning status of the agricultural sheds/storage structures as these exceed the areas allowed under the regulations. What we do not accept is that merely by erecting agricultural sheds and using them for agricultural use, this has caused the farmyard to become a commercial development like a horse riding arena designed to serve paying members of the public.

• **WCC's "Main Reasons with respect to Section 5 Declaration" are addressed as follows:**

- The processing of Christmas trees and foliage and the making of wreaths are agricultural activities. The composition of a Conor Browne wreath is 99% foliage (with 1% decorations, ribbons, etc.), while Christmas trees and foliage are 100% tree. As with preparing cheese and yoghurt, bags of vegetables, punnets of mushrooms or strawberries, some packaging arises. Many farms across Wicklow and Ireland grow, prepare, and sell Christmas trees, foliage and wreaths. It is unclear what exactly is wrong with our client owning a farm which specialises in growing the agricultural raw materials for wreaths and then preparing them within the farm. Farms are businesses and farms of all types have to process crops into a format which can be sold. Our client owns and/or controls other farmlands which also grow Christmas trees which also supply the foliage needed for preparing the wreaths. The crops of these other lands are transported to Mountain View Christmas Tree Farm. A great many Irish farmers own lands which are not contiguous to one another, but which are all served by a central farmyard. On what basis should a crop of Christmas trees and other foliage used for wreath making be treated differently? WCC refers to "goods" being stored and sold and to materials being brought onto the site for sale and distribution. The "goods" are agricultural wreaths, and the materials are trees and foliage. Concerns arise that the tiny quantum of items such as ribbons attached to the wreaths has caused WCC to consider traditional Christmas wreaths to be the same as importing and exporting some non-agricultural produce when this is not the case.
- WCC refers to "expanded uses" which are not "ancillary to or associated with agricultural operations" but this is not explained. Mountain View Christmas Tree Farm grows trees and foliage as raw agricultural produce. This agricultural produce then acts as the raw materials to be prepared into Christmas trees, packed foliage, and wreaths for sale. This agricultural activity is mirrored across Ireland with some farmers being larger than others (as is the case with all types of farming). All farmers sell their produce – some from the farm itself and some transport it to market(s). WCC refers to "the bringing of materials onto site for sale and distribution". Written more objectively, the same statement might read – Mr Brown's central farmyard receives Christmas trees and foliage from his other farmlands. Would WCC prefer it if our client operated sheds within each area of farmland he controls and then prepare the trees, foliage, and wreaths in a decentralised manner before having all of these collected from different locations for sale? It is not clear what difference it makes? Further, why is it different if one large farmer prepares many wreaths rather than many individual farmers on the same area of cumulative land growing and preparing a similar number of Christmas trees, packs of foliage, and wreaths? The traditional and historic practices of growing and selling Christmas trees, wreaths, and foliage is either an agricultural activity and exempted development or the volume of farms across Ireland which would be deemed to be carrying out unauthorised development would be excessive. As prepared by our client's farm, Christmas trees, packed foliage, and wreaths are agricultural produce. Their harvesting and processing are ancillary to the farm as they are the farm's products. WCC is suggesting processed Christmas trees and foliage are not agricultural produce. Tell this to the large number of Irish farmers who have diversified into planting trees including arising from EU CAP grants. The WCC position is not accepted.
- WCC refers to "expanded operations". Again, it is not clear what is meant by this. The attached original case set out by BPS refers to how there are intensive farms, there are large-scale farms, there are farms which do considerable processing on site, and there are farms which sell produce off the farm (including eggs, fruit, mushrooms, vegetables, fruit, cheese, yoghurt, etc.). Our client is successfully using farmlands in Wicklow to grow agricultural produce in the form of trees and foliage and converting part of this into wreaths. There is no definition in the Act or in the planning regulations of how intensively a farm (contiguous or spread out) can be farmed. All farms have farmyards which are the intensive area of each farm business. Some have significant silage pits, milking parlours, pigsty structures, stables, granary, cold storage facilities,

machine sheds, butcher houses, mushroom house, compost shed, bee house, aquaponics, hydroponics, hay and/or straw barns, other storage structures, etc. Our client carries out some limited traditional agricultural processing work to create wreaths and packages these and Christmas trees, packed foliage, and wreaths for sale. This involves less processing than does converting milk into yoghurt or cheese. How is he acting in any way which is different to other farmers? He has a seasonal crop and prepares for one intensive season at every crop. Is this not the life of every farmer? Does every farmer not store some agricultural produce before sale? WCC is questioning the very ways in which farms operate and arguing that anything involving business is non-farming. This is wholly incorrect. The IFA will confirm that all farms are businesses. Some are small family owned businesses, and some are very large businesses owned by corporations. All are farms. The use of our client's farm is as a farm just with a crop which has, for some reason, caused WCC to find fault with a farmer who has diversified his crops into Christmas focused agricultural produce. All farmers distribute their produce – how else do they sell it?

- WCC refers to a "change of use". Where is the change of use? There is no change of use. The farm is operating as a farm. Its farmyard is acting as a farmyard. Farms cause some traffic. If our client farmed tillage there would be peak times each year where there would be tractors and trailers and combines on the roads, farm workers would be delivering grain to the nearest grain buyer, etc. No farm can cause no traffic. For most of the year, as with Wexford Strawberry farms, our client's farm causes no traffic. For a short time, every year, it, and other very seasonal farms, create some agricultural traffic to allow trees and foliage crops to be harvested, prepared for sale, and sold. Dairy farms on the other hand have milk collected every day by truck. The number of trucks collecting milk each year from one dairy farm would far exceed the number of vehicles collecting trees and wreaths from our client's farm during its limited season. Many farms employ staff, cause noise, and create some waste – why can't our client's farm? In fact, the farm generates minimal waste, has had no noise complaints as the work involved in preparing Christmas trees, packed foliage, and wreaths is significantly below that of a tractor ploughing a field or a combine harvester processing crops. BPS has visited the farm at peak times when trees and wreaths are being harvested and processed, and they are as one would expect from an agricultural operation. WCC's basis for arguing that a farm can be defined as not being a farm merely by creating some agricultural noise, waste, and employing farm workers is not accepted.
- There is no "material" change of use arising in this case. Our client's development is agricultural "development". All farms including our client's farm (in this case) rely on the following exemptions for agricultural and related tree growing and processing:

#### Article 4 of the Act:

Section 4(1)(a) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act. It states: "The following shall be exempted developments for the purposes of this Act— (a) **development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used**" [emphasis added].

Section 4(1)(i) of the Act refers to "development consisting of the thinning, felling and replanting of trees, forests and woodlands, the construction, maintenance and improvement of non-public roads serving forests and woodlands and works ancillary to that development, not including the replacement of broadleaf high forest by conifer species.

Article 5 of the Planning and Development Regulations 2001 (as amended) ["PDR"] defines "agriculture" as follows

"**agriculture**" includes **horticulture**, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and **nursery grounds, and "agricultural" shall be construed accordingly** [emphasis added].

The intention of the Oireachtas and the Minister in setting out Section 4 and Article 5 was clearly to allow farmers to farm. WCC's grounds for claiming a material change of use has taken place, would, if applied to every farm in Ireland, result in a significant number facing similar allegations from their respective local authorities. This would clearly be at odds with a functioning agricultural sector including that part of the sector which grows Christmas trees and foliage and sells these as packed trees and prepared wreaths.

- WCC argues that "works" and "use" cannot be separated yet they are individually defined under the Act. Section 2(1) 'Interpretation' of the Planning and Development Act 2000 (as amended) states:

In this Act, except where the context otherwise requires—

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon;

"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 [emphasis added].

"Development" is not defined until Section 3.

Our client fully accepts that he has undertaken works within the farmyard and to the sheds/storage structures which exceed the thresholds set out for exempted development agricultural structures under the regulations. He will be applying for retention for these works.

What our client does not accept is WCC's contention that the farmyard's use has been altered in a material manner arising from these works such that it is no longer agricultural.

The works undertaken in no way support WCC's position that larger sheds and storage areas cannot be agricultural in use.

The farm has been successful, and its peak Christmas period is intensive. This has required more agricultural sheds. The quantum of sheds is that required for the stated agricultural use.

With all due respect to WCC, we submit that the Section 5 Declaration issued to date is incorrect.

As set out in the attached letter originally submitted to WCC, the following are our professional opinions:

- The use of the farm complex for the processing of Christmas trees, packing foliage, and preparing wreaths is ancillary to and associated with agricultural operations on the landholding and is not development.
- The use of the farm complex for the processing of Christmas trees, packing foliage, and preparing wreaths constitutes "exempted development" having regard to Section 4(1)(a) and/or Section 4(1)(i) of the PDA.

No requirement to obtain planning permission arises as regards "use".

### 3.0 The issue of precedent Section 5 determinations

BPS can find no Section 5 Declaration from any planning authority including An Bord Pleanála which has determined that these types of farming and/or agricultural and tree growing activities have caused a farm owner to require planning permission arising from unauthorised development. Such a Section 5 determination would mean that no farmer in the country could sell Christmas trees, sell foliage, or prepare wreaths without planning permission. The avoidance of this is clearly what the Oireachtas had in mind when it enacted Section 4—(1) of the Planning and Development Act 2000 (as amended).

We have reviewed Section 5 referrals RL3321 & RL3061 noted by WCC and we find the former supports our client's case while the latter is not relevant to ABP's assessment as it pertained to the unauthorised development of a horse riding school/equestrian centre with all associated facilities which was a public facility for paying customers accessing events open to the public including under floodlights.

### 4.0 Recommendation

BPS recommends that An Bord Pleanála should decide this Section 5 referral in accordance with the following.

WHEREAS a question has arisen as to whether:

(1) The use of the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and

(2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the southeastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres along the northern boundary thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes

BPS, in considering this matter, has had regard particularly to –

- Sections 2(1), 3(1) and 4(1)(a) of the Planning and Development Act, 2000, as amended.
- Articles 5 (1), 6, 9 and 10 of the Planning and Development Regulations 2001, as amended.
- The Environmental (Miscellaneous Provisions) Act 2011,
- Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended,
- The nature of the established and current agricultural/farming and/or tree growing and processing uses on the site.
- The Section 5 Declaration and assessment issued by Wicklow County Council.



AND WHEREAS BPS has concluded that the existing use of the farm constitutes the continuation of an agricultural use, and no material change of use has arisen. No "development" arising from a change of use has arisen.

The use of the farm to grow and process Christmas trees, foliage and wreaths is also exempted development having regard to Sections 4(1)(a) and/or 4(1)(i) of the Act which state inter alia that development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used and development consisting of the thinning, felling and replanting of trees, forests and woodlands, the construction, maintenance and improvement of non-public roads serving forests and woodlands and works ancillary to that development, not including the replacement of broadleaf high forest by conifer species is exempted development.

NOW THEREFORE BPS submits that no "development" involving a material change of use has taken place and, in any case, the use of the farm to grow and process Christmas trees, foliage, and wreaths is exempted development these being wholly agricultural and/or forestry activities. A planning permission requirement does not arise as to any change of use (as alleged by WCC).

**Note:** This Section 5 referral does not assess the issue of retention permission being required for the works involved in increasing the size of the farmyard, the sheds, and for adding some storage structures. This matter is not in question.

## 5.0 Finally

We trust that sufficient information has been provided to allow this Section 5 to be fully assessed.

Please direct all correspondence to this office.

If you have any questions, please call BPS on 01-5394960 or 087-2615871.

Best wishes,

*Brendan Buck*

**Brendan Buck** MIPI  
Managing Director  
**BPS Planning & Development Consultants LTD**  
Corporate Member of the Irish Planning Institute

### Encl:

- Copy of WCC Section 5 Declaration.
- Copy of BPS Section 5 letter submitted to WCC.
- Cheque for the €220 statutory fee.



**Comhairle Contae Chill Mhantáin**  
**Wicklow County Council**

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

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25th January 2025

Brendan Buck  
BPS Planning & Development Consultants Ltd  
PO Box 13658  
Dublin 14  
D14 RW01

RE: Declaration in accordance with Section 5 of the Planning & Development Acts  
2000 (As Amended) - EX01/2025

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 Planning, Economic and Rural Development

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Suíomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

### DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS AMENDED

Applicant: Conor Browne

Location: Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, Co. Wicklow

Reference Number: EX01/2025

CHIEF EXECUTIVE ORDER NO. CE/PERD/2025/75

Section 5 Declaration as to whether "the use of the existing farmyard and associated structures in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use" at Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, 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.
- Website details for the operations of Conor Browne Wreaths, and associated Facebook details for Mountain View Christmas Tree Farm
- An Bord Pleanála Referral Declaration Reference RL.3321 and RL 3061
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- Article 2, 5 of the Planning and Development Regulations 2001 (as amended).


#### Main Reasons with respect to Section 5 Declaration:

- The operations on the farmholding have expanded to include the making of wreaths, and storing / sale of goods, and the bringing of materials onto site for sale and distribution.
- The expanded uses are not ancillary to or associated with agricultural operations on the landholding.
- It is considered that the expanded operations are different in character to agriculture use i.e. the making of an article i.e. wreaths, the bringing in and storage of goods for sale and distribution, the use of the farmyard for storage of Christmas Trees/ Foliage from outside the farm and distribution.
- The change in use would give rise to material planning considerations i.e. increase in traffic movements, increase in employees, increase in noise and wastes.
- The change of use is considered material, and would therefore be development, and there is no exemption for such a change of use in the Planning and Development Act 2000(as amended) or related Regulations.
- Question No. 2 is not considered a valid question, as it is considered that works and use cannot be separated as they are intrinsically linked.

The Planning Authority considers that "the use of the existing farmyard and associated structures in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use" at Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, 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

Da ted  January 2025



Tá an doiciméad seo ar fáil bhíonnáid eile ar an riaras.  
This document is available in alternative formats on request.

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







**Wicklow County Council**  
**County Buildings**  
**Wicklow**  
**Co Wicklow**  
**Telephone 0404 20148**  
**Fax 0404 69462**

**Office Use Only**

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: **Conor Browne of Mountain View Christmas Tree Farm.**
- (b) Address of applicant: **c/o BPS Planning & Development Consultants LTD, PO  
Box 13658, Dublin 14, D14 RW01.<sup>1</sup>**

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

**2. Agents Details (Where Applicable)**

- (b) Name of Agent (where applicable): **Brendan Buck MIPI.**
- Address of Agent: **BPS Planning & Development Consultants LTD, PO Box  
13658, Dublin 14, D14 RW01.**

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

**3. Declaration Details**

- i. Location of Development subject of Declaration: **Mountain View Christmas  
Tree Farm, Tullylusk, Rathdrum, Co. Wicklow, A67EA39.**
- ii. Are you the owner and/or occupier of these lands at the location under i. above?  
**Yes. Mr Browne is the landowner.**
- iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or  
occupier: **N/A.**

<sup>1</sup> Conor Brown's address is Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, Co. Wicklow, A67EA39.

- 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:

**Section 5 referral / exemption declaration at Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, Co. Wicklow, A67EA39 (a farm holding encompassed by Land Registry Folios; WW34037F and WW34860F). A question arises as to whether: (1) The use of the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and (2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the southeastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres along the northern boundary thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes.**

Additional details may be submitted by way of separate submission.

**Please find a covering letter attached which has been prepared by BPS Planning & Development Consultants LTD.**

- v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration:

**Please refer to the attached covering letter which has been prepared by BPS Planning & Development Consultants LTD.**

- 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:
- OS based site location map and by PACC Architects with all of the subject lands outlined in red.



viii. Fee of € 80 Attached? **Cheque for e80 attached.**

Signed: *Brendan Buck*

Dated: *3 January 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.

**ADDITIONAL CONTACT INFORMATION**  
**NOT TO BE MADE AVAILABLE WITH APPLICATION**

**Please note:**

- This page will not be published as part of the planning file.

**Applicant:**

<i>Telephone No</i>	086-3784399
<i>Email Address</i>	conorbrownreaths@hotmail.com
<i>Fax No.</i>	N/A

**Person/Agent acting on behalf of the Applicant (if any):**

<i>Telephone No.</i>	087-2615871
<i>Email Address (if any)</i>	info@bpsplanning.ie
<i>Fax No. (if any)</i>	N/A



X=721890 Y=688120

X=722690 Y=688120



X=721890 Y=687550

X=722690 Y=687550



SECTION 5 APPLICATION

<b>Section 5 Lands</b>	
22-003	
PROJECT NUMBER	
CLIENT: <b>Conor Browne</b>	
<b>Mountain View Christmas Tree Farm</b>	
PROJECT TITLE: <b>Fullstack, 2019/20</b>	
D. McElroy, 2019/20	
D. McElroy, 2019/20	
Section 5	
DATE: 19-12-24	SCALE: 1:2500
P0404, 64078 M.006, 0794819 E. info@pacc.ie	
<b>RIA</b>	
RIA Practice Member	
23015	
<b>PACC</b>	
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SITE AREA - 7.0053Ha



**Planning & Development  
Consultants**

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PO Box 13658

Dublin 14

**BY HAND**

The Secretary,  
Planning Department,  
Wicklow County Council,  
County Buildings,  
Station Road,  
Wicklow Town,  
County Wicklow.

3 January 2025

Dear Sir/Madam,

*Section 5 referral / exemption declaration at Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, Co. Wicklow, A67EA39 (a farm holding encompassed by Land Registry Folios: WW/34037F and WW/34860F). A question arises as to whether: (1) The use the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and (2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the southeastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres along the northern boundary thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes.*

BPS Planning and Development Consultants LTD, a firm of Irish Planning Institute accredited town planning consultants, have been retained by Conor Browne of Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, Co. Wicklow, A67EA39 [hereafter client<sup>1</sup>] to prepare and to lodge a Section 5 referral / exemption declaration application to Wicklow County Council [hereafter "WCC"] pertaining to the issue of whether:

(1) The use the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and

(2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the southeastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres along the northern boundary thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes.

The requirement for a Section 5 Declaration arises because for some reason, WCC seem to be considering our client's agricultural activities to be in some way different to other similar farming activities undertaken by others in the locality. While a great many farmers, including in Wicklow<sup>1</sup>, and around Rathdrum, grow Christmas trees and prepare wreaths for sale on and off the farm each Christmas (on an annual basis), Conor Browne's hard work has resulted in his Christmas tree farm becoming more successful than these others. With this success came the need to increase yard area, shed storage areas, and wreath preparation areas.

WCC's Enforcement Section has opened an Enforcement File, ref. UD5793, which alleges that unlike the many other Christmas tree farms operating in Wicklow and the rest of the country, our client's particular Christmas tree farm has crossed some unspecified line between agriculture and forestry use to some form of commercial use. Given that all farms are businesses, and

<sup>1</sup> Farms selling Christmas trees, cut foliage and wreaths both on and off the farm can be found in Redcross, Ballinaclesh, Avoca, Woodenbridge, Roundwood, Aughrim, Laragh, Tinahely, Carnew, etc.



While Ireland is moving towards vertical farming where smaller farms can intensively produce vegetables 365 days a year with significant processing on site into plastic packaging and transport to wholesalers and retailers thereafter, WCC is arguing that the intensive use of a Christmas tree farm to create wreaths which are made of foliage such as holly and Christmas tree branches is somehow different.

We do not believe this is the case. Many farms are intensively operated and many sell produce on and off site. This is the nature of agriculture. Many farming households sell eggs, vegetables, etc. from their yard and they also sell to shops, again, this is farming.

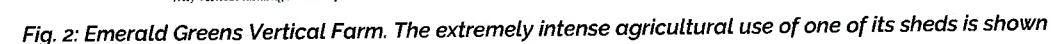
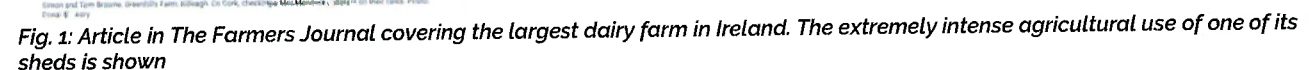




Fig. 3: Kearns Fruit Farm in Wexford. The extremely intense agricultural use of the lands and associated processing sheds can be viewed online

This Christmas and every Christmas, households, businesses, and even local authorities across Ireland rely on farmers such as Conor Browne to provide Christmas trees and wreaths from their farms. This is not an easy agricultural business. There is considerable advice online on how to start a Christmas tree farm<sup>2</sup>. It is not easy. To grow such a farming operation from a low base to being a success is not a change of use, it is story about a successful farmer.

Our client's farmyard existed when he purchased the farm. The farm was already planted with Christmas trees when our client purchased it, and his main focus is now growing Christmas trees and foliage farming.

WCC finds something problematic in this. WCC is essentially arguing that Christmas trees and wreaths are not only agricultural produce: they are something different. WCC seems to consider our client's Christmas tree farming and wreath making agricultural and forestry activities to be a different from other farm or forestry businesses elsewhere in Ireland which are doing precisely what he is doing. Teagasc wrote an article in The Irish Examiner December 2024<sup>3</sup> which may confirm for WCC that it is the case that our client is doing exactly what Teagasc would expect his agricultural/forestry business to be doing. He forms part of the sector of Irish agriculture and forestry which serves the seasonal Christmas market for trees and wreaths:

*As mainstream farming enterprises come under increasing pressure, the forestry tax breaks for Christmas tree growers look more and more attractive.*

*This unusual crop was the topic for Teagasc forestry development officer Kevin O'Connell, in a recent Environment Edge podcast.*

*"There is no income tax on the sale of Christmas trees," Kevin says. "It is liable for URC and PRSI alright, depending on your age".*

*"We're producing about 650,000 Christmas trees per year in Ireland. About 450,000 of them are sold on the home market and the balance of about 200,000 are exported, primarily to the UK, but also some to Europe," he adds.*

*"It's estimated to be worth about €21m to the Irish economy. If you have a good product, you will sell it."*

*Growing Christmas trees is an investment, with associated risks, including trespass and damage from rabbits, as well as from deer, goats and other animals.*

*"A big one would be fungal or insect outbreaks," Kevin says. Proper, sustained, maintenance is key.*

*"A big one is theft, believe it or not." Battery chain saws have facilitated such thievery. "From here on in, security around Christmas tree farms would be high in the priority."*

*Non-payment for trees supplied is another risk factor.*

*"The species selection, the trees that you'll use, will be dependent on the site that's available to you. Basically, you're looking for a good soil type, free draining, but with some retention of moisture.*

*"You're marrying the trees with the site, but you're also trying to get a species of tree that will sell and that you can manage. The main ones that are on the market at the moment would be the Nordmann fir and Noble fir. The Nordmann is a European species from the Caucasus. The Noble fir would be North American."*

*The old traditional one would be Norway spruce. It's gone out of favour, because it tends to lose its needles when it goes inside, whereas the Nordmann and the Noble will retain their needles if looked after properly, Kevin explains. However, Norway spruce is still a good choice for a large outdoor Christmas tree.*

*For growing Christmas trees, exposed sites and frost pockets should be avoided. "Avoid areas where there's poor air circulation," Kevin advises (because fungal diseases can develop). "Ideally, you're looking at a north-easterly aspect, but you mightn't have that luxury. Avoid proximity to existing woodlands, particularly conifer woodlands, because they could harbour deer or insects that will migrate to your Christmas trees," he says.*

<sup>2</sup> <https://hardunnechristmastrees.ie/how-to-start-a-christmas-tree-farm-an-ultimate-guide/>

<sup>3</sup> <https://www.irishexaminer.com/farming/arid-41538263.html>



The Christmas tree plantation should be fenced off to protect the growing trees from animal damage. Soil is fundamentally important. "Because they're conifers, you're looking at a pH range of 5ft to about 6.5ft, he says. Soils with too much calcium are not suitable. "Avoid wet ground. Trees do not like wet feet." While the soil needs to be reasonably fertile, with P and K and trace elements, very fertile soil is not suitable, because it would create a burst of growth in the tree and encourage rank growth of weeds.

"You're trying to produce a compact tree, as opposed to one with an extended leader," Kevin says. For root development, a phosphate-based fertiliser is applied. "You're looking for bud production on the tree. You're looking for colour, to bring out the strongest colour on the year of sale. Most of that would be brought on by a foliar nitrogen," he explains.

But too much nitrogen will result in an unwanted spurt of growth. While trees are growing, you would undertake foliar analysis to assess nutrient needs.

"In general terms, you're looking at from seven to 10 years of a rotation. You're looking to get a tree that's two metres plus in height. There are markets of course for smaller trees," Kevin says. Typically, about 20% of the dominant trees will mature early, the main body (60%) will be ready in the middle years, and the final, slower-growing 20% will be ready at about nine or 10 years of age.

The provenance of the trees is vitally important. Ideally, Irish grown trees will be used. "They're more adapted to our environment," Kevin says. "The provenance will dictate the shape of the tree, the growth rate, the resistance to disease, its colour, its growth habit. What we look for is a two plus one, which would be generally a tree that's two years in the seedbed and one year in the transplant line, coming from the nursery."

Spacing is important. "For a two-metre tree, you're looking to 1.2m by 1.2m spacing. That will give you a stocking of nearly 7,000 trees to the hectare. But bear in mind you will be taking off 10% of that for tracks and roadways, and another 20% of loss. You're going to get at least 20% failure, not so much that they won't grow, but they won't be to the standard that you wish them to be. That will bring you to a stocking rate per hectare of about 5,000 trees," Kevin says.

Taller trees (over 2m) would require a space of 1.5m by 1.5m, generating about 3,200 trees per hectare.

The base of the tree should be 60% of the height of the tree.

Management includes replacement of saplings that fail, management of the leader shoot to prevent it from bolting (using hormones), pruning the bottom branches of the young tree to facilitate air movement, as well as weed control, shaping the sides of trees and terminal bud picking to thicken the tree. Diseases have to be monitored and managed.

Layout of tracks at the Christmas tree farm or plantation is very important, so the trees can be readily accessed for harvesting pre-Christmas. "You want a clean loading area. Buyers are fussy. They don't want dirty trees," Kevin says. "You have a short window for cutting, for netting and transporting your trees."

Expect 50% of the trees planted to be premium quality, about 25% to be standard grade, 50% poor grade, and 20% not saleable. The premium grade trees would likely retail at €50 to €70, with the standard grade selling for a little less. "The poor grades, you're down to haggling, whatever you can get."

Buyers will arrive from Europe the previous summer to mark out premium grade trees, returning to collect them for the Christmas market.

**Teagasc also offers advice to farmers and foresters on the use of cut foliage for wreaths. This is a well-known and well established form of agricultural and/or forest produce that arises from farms.** BPS can find no single planning case online of where a planning authority has considered a farmer making wreaths for sale has been the subject of enforcement action over a change of use on the farm from carrying out this activity. Further, we can find no Section 5 determination on Christmas trees or Christmas wreaths. This is perhaps because such activities are, as noted below, exempt from planning permission requirements as regards use.

BPS has advised our client to lodge a Section 5 to confirm that the use of the farm as a Christmas tree farm which makes wreaths from cut foliage constitutes exempted development.

WCC will likely point to how our client must prepare wreaths on the farm. This is an established agricultural practice in the same way that fruit pickers are employed in Wexford to pick fruit. As fruit must be put into packaging, our clients farm produce must be handled in a similar way. It needs to be clarified, that wreaths are arranged from farm grown produce with very minor preparation involved.

## i Validation of this Section 5

In terms of validation of this Section 5, we refer to Section 5.—(1) of the Planning and Development Act 2000 (as amended) which states:

*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 this Act, 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.*

Please find a cheque for €80 attached which is the statutory fee payable for a Section 5.

To further support this Section 5 application, BPS has:

1. Provided a completed WCC Section 5 Form.
2. Set out in this letter the question which has arisen in this case as to whether:

(1) The use of the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and

(2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the southeastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres along the northern boundary thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes.

3. Set out in this letter details of matters relevant to the assessment of this Section 5.

4. Attached an OS Site Location Map outlining the location of the subject lands. Photographs are also provided in this letter.

We accept that WCC may need more detail, and we note how under Section 5 (2) (b) "A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question ...".

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## 1.0 Site location & description

This Section 5 pertains to an existing Mountain View Christmas Tree Farm, Tullylusk, Rathdrum, Co. Wicklow, A67EA39 (a farm holding encompassed by Land Registry Folios; WW34037F and WW34860F).

The farm is located in the townland of Tullylusk. The sport playing pitches of Avonmore football club are sited to the east of the farm.

The farm is located approx. 3km to the east of Rathdrum. The main route to the site is via a local road, the L5153, which passes south off the L1152 Local Road (see Figs. 4 and 5). The farm has two road entrances each with piers and gates and two access roads in. The extent of the farm is set out in the attached OS map. The lands in red are owned by Conor Browne and those in green by Conor Browne's company (this is a 2 acre field adjacent to the soccer pitch - Folio 31783F Wicklow - which is owned by Mountain View Woodlands Ltd. There are established boundaries around the farm.

For the purposes of this Section 5, it is necessary to divide the farm into two areas – north and south – such that I can explain the focus of this Section 5 (see Fig. 6)

WCC's Enforcement Section has written to our client referring to the use of the "south-eastern part of this farm holding" which is a farmyard. Reference is then made to the carrying out of the following works "in the 'south-eastern yard'".

The focus of this Section 5 is therefore on the south-eastern area of the farm (see Fig. 6). The south area of the farm is accessed from the entrance shown in Fig. 6. This was and is an existing farm entrance. An existing farm track has been landscaped from the public road gate up to an agricultural yard area. Alongside the farm track, areas of farmland are heavily planted with crops of Christmas trees, Holly and other indigenous trees.



This section of the farm is not accessible to or aimed at the public. The overall farm's main produce is in fact Christmas tree branches known as seasonal cut foliage. Our client is one of Ireland's largest producers and sellers of such seasonal cut foliage. While Christmas trees are being grown on the farm, there are also other trees and bushes grown on the farm only for their foliage which is cut away and sold. Lands are also leased by our client across Wicklow and Wexford from which this seasonal foliage is harvested and transported to the farm where it is prepared for shipping across Ireland and internationally. This is an agricultural success story where the traditional Christmas market for seasonal foliage has gradually been more successfully captured each year by our client's business. He is now the market leader in Ireland. The farm diversification business also prepares natural wreaths for sale using the seasonal foliage. These are prepared on the farm by seasonal workers. A letter from the WCC Enforcement Section referred to "the production and distribution of decorative floral/foliage wreaths and Christmas trees," which is correct. Christmas trees, Holly and other indigenous tree and bush varieties, all agricultural nursery products, form the basis for a seasonal agri-business. The farm and other farmlands supply agricultural raw materials for this agri-business.

When our client began his seasonal agri-business, it was a small operation, and he did all the work himself and leased lands. As the business grew, he needed a base where he could grow Christmas trees, Holly and other trees and bushes. The farm now provides this base. The farmyard is the base for the agricultural business. The aerial photograph is out of date and Wicklow County Council may have more up to date imagery.

The existing buildings within the farmyard are used as follows:

1. **Shed for seasonal foliage prepared for export.** This low height shed appears brand new and was used for the first time in 2023. The shed is designed to offer watertight storage for seasonal foliage prepared and ready for transport.
2. **Machinery shed & container area (for farm equipment, parts, etc.).** Given the speed at which the agri-business has expanded, our client resorted to adding containers alongside existing sheds. This area currently contains a small shed and a container. These are used for storage of equipment pertaining to the farm.
3. **Containers for storage.** This area contains a number of containers which were used by our client prior to his installing the shed detailed in point 1 above. Given the rapid expansion of demand for the seasonal foliage side of the business, the containers are still used for the storage of harvested cut foliage.
4. **Foliage packing and wreath making shed with farm office above.** This is the largest shed in the yard and is the centre of the agri-business. I have had a full tour of the building. The ground level is laid out to receive seasonal foliage and there is a large packing area. There is then an area where seasonal workers prepare wreaths. The ground floor operation appears agricultural. It does not have the factory floor appearance of standard commercial operators. It is more like a shed one would find on a large sheep farm where shearing takes place, fleeces are prepared and packed, and the stored for transport. The shed contains empty boxes and all the associated equipment required by the farm's processing area. There is an upper mezzanine floor which has clearly been used as the farm office for some time and contains a small kitchen, staff room, toilet and changing room. The shed is used to store numerous types of farm equipment used in the maintenance and harvest of his crop. Also stored here are raw materials for the wreaths which are kept in boxes (the wreaths are approx. 95% seasonal foliage; however, sometimes natural pinecones, bows or other decorative materials may be added).

Photos of seasonal foliage being processed at the farm are included below.

BPS notes that WCC Enforcement Section has previously noted that there have been mobile homes on site for seasonal staff. Two are shown in Fig. 6D. These have now been removed from the farm.

In lodging this Section 5, we note that WCC Enforcement Section has not raised concerns, including during a site visit undertaken on the 19<sup>th</sup> of December 2024, regarding some wooden enclosures and an associated small shed to the north of the lands. Given this, I have not included this area in what follows.

Finally, as this Section 5 pertains only to the use of the farm for growing Christmas trees, foliage, and preparing wreaths (made of foliage including Holly), we have provided only an OS map of the farm, the aerial photos included below (which do not accurately represent what is presently on the site), and some drone photographs. It is acknowledged that retention planning permission is required for works and a planning application will be submitted once the issue of use has been decided by way of this Section 5.



Fig. 4: The location of the farm

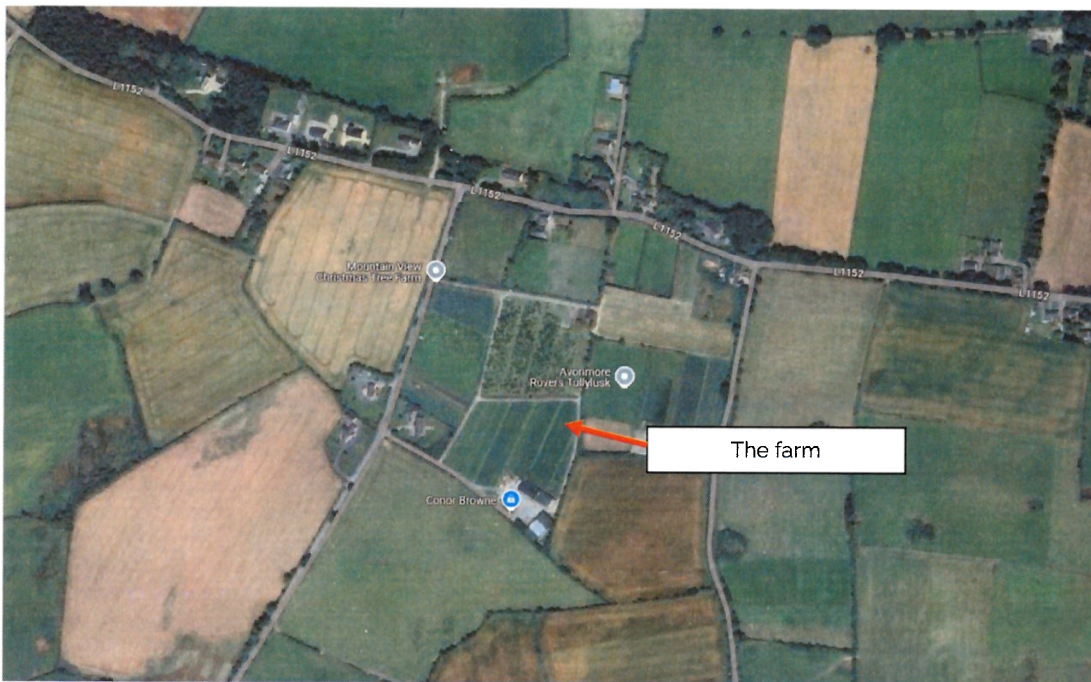


Fig. 5: The location of the farm





Fig. 6A: The north and south areas of the farm as set out in this Section 5

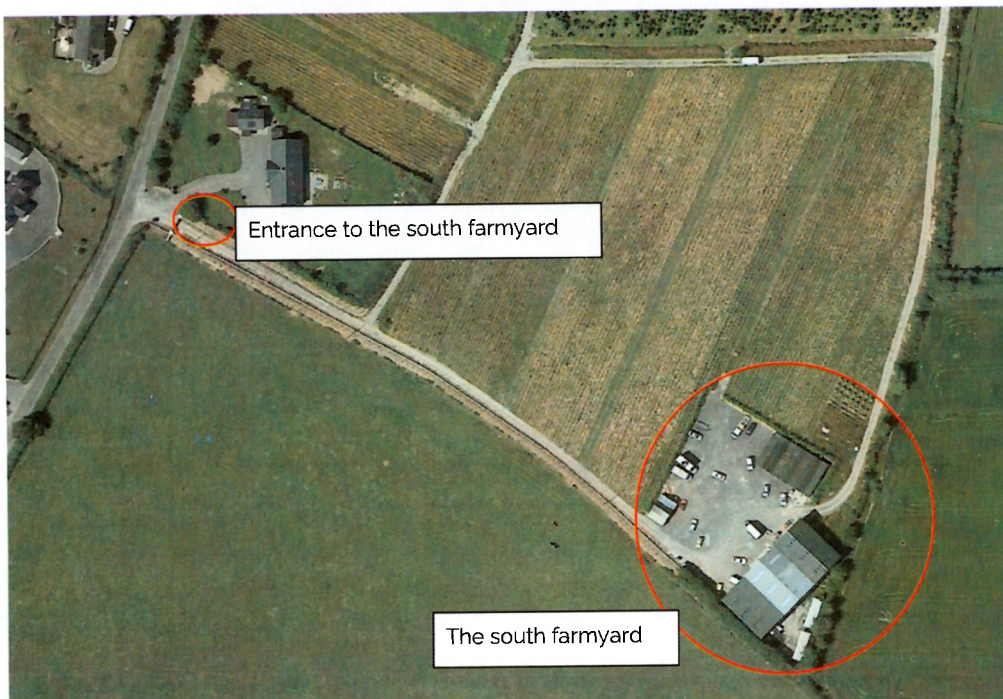


Fig. 6B: The southern area of the farm





Fig. 6C: Farm gate serving the existing farm – this is not open to the public

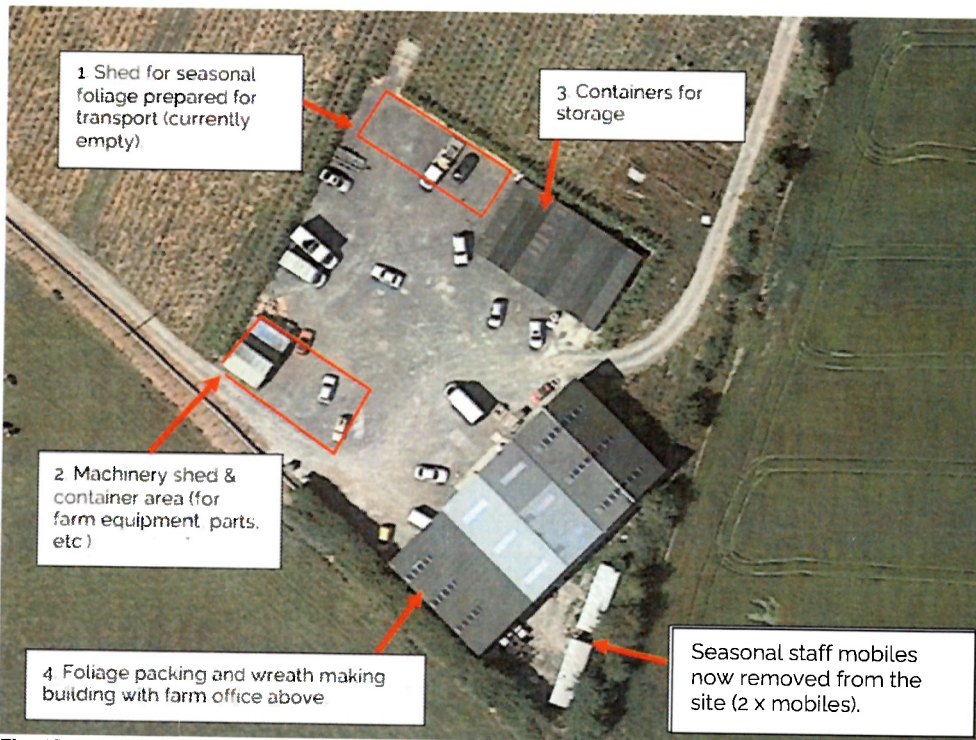


Fig. 6D: Structures sited within the existing farmyard now serving the agri-business



Fig. 6E: Foliage being stored in the farmyard's sheds





*Fig. 6F: Foliage being processed at the farmyard*



*Fig. 6G: Foliage being processed at the farmyard*



*Fig. 6H: Foliage being processed at the farmyard*



*Fig. 6I: Foliage being processed at the farmyard*



*Fig. 6J: Foliage being processed at the farmyard*



*Fig. 6K: Foliage being processed at the farmyard*





Fig.6L: Foliage being processed at the farmyard

## 2.0 Section 5 question arising

The question referred to the planning authority pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended ("the Act") for review is, as follows: "(1) The use of the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and (2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the south-eastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres (24m x 12.5m) along the northern boundary thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes."

## 3.0 Background to Section 5

### 3.1 Planning & Enforcement History of the Site

- **Planning application reg. ref. 09741.** 1 no agricultural entrance. Address: Tullylusk, Rathdrum, Co. Wicklow. Decision: Refuse planning permission. Date: 3/12/2009.

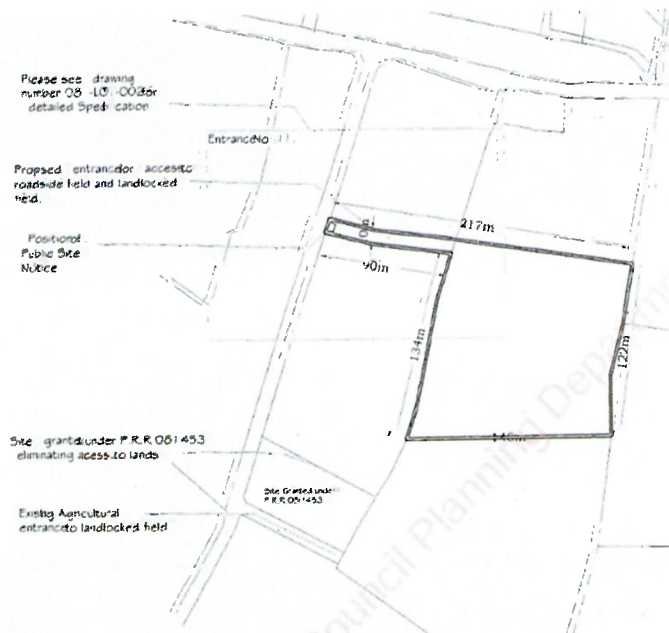


Fig. 7: Site Location Map pertaining to planning application, reg. ref. 09741

- **Planning application reg. ref. 08/1681;** permission sought for agricultural entrance application withdrawn, the planners report on file recommends refusal on the basis of; No evidence has been submitted to show that this development is necessary to service a farm holding and to allow this development would set an undesirable precedent for similar types of development on

this substandard road. The proposed development would endanger public safety by reason of serious traffic hazard because the proposed development, taken in conjunction with existing agricultural and residential entrances in the area, would result in an excessive number of entrances and unnecessary traffic movements on this narrow secondary local road

- **Planning application reg. ref. 08/608:** Application submitted by Liam O'Toole for 3 no agricultural entrances withdrawn.

There is no other planning history pertaining to these lands which is available to view on the Wicklow County Council Planning Department's planning applications search engine.

There is one Enforcement file open for the farm:

- **Enforcement file reg. ref. UD5793.** The site is presently the subject of Enforcement file reg. ref. UD5793. This is a live enforcement case and, as per the Planning & Development Act 2000 (as amended), WCC Enforcement Section is permitted to set out allegations as regards purported unauthorised development. These are not reproduced here as the alleged issue of unauthorised use is to be determined by this Section 5. Matters pertaining to the southeastern yard and buildings therein and the need for retention will be addressed in a forthcoming planning application.

### 3.2 Planning history in the vicinity

#### Avonmore Football Club:

- 17/185 - Permission was granted for construction of new detached clubhouse to provide changing and shower facilities, new wastewater treatment system to EPA 2009 standards, private well and all ancillary works.
- 14/1148 - Seamus O'Toole - Construction of a new artificial turf (Astroturf) training area with boundary fencing and all associated works on site. – Grant.
- 08/1995 - Avonmore Football Club - football playing field and ancillary works – Grant.

#### A number of rural house planning applications have been permitted in the vicinity including:

- 09/806 - Permission granted to Michelle Hayes via s. 140 motion for rural dwelling subject to conditions.

### 4.0 Policy context

#### 4.1 Wicklow County Development Plan 2022-2028

The subject site is not a sensitive one regarding the following:

- The farm is in agricultural/forestry use within the rural area of County Wicklow.
- The farm is located in the South East Mountain Lowlands (1 – Area of High Amenities).
- The farm does not contain a protected structure and is not sited within an Architectural Conservation Area.
- The farm is accessed by entrances which have been used to access the farm for many years.
- The farm is not in an area visible within protected views or prospects.
- The farm does not flood.
- Regarding Environmental Impact Assessment and Appropriate Assessment, WCC's Planner's Reports pertaining to Avonmore Football Club to the east have each found that EIAR is not required and have screened out a requirement for Appropriate Assessment. The current Section 5 refers to agricultural and/or forestry uses which may also be assessed as follows:

*From examining schedule of Schedule 5 of the Planning and Development Regulations 2001 (as amended), it is noted that the proposed development does not come within any of the classes of development that requires an EIAR.*

*Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the absence of any pathway linking the site to any Natura 2000 sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site and therefore a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.*

- Having regard to the farming history of the lands and the existing use of the lands for agriculture/forestry, the continuation of Christmas tree farming and associate development at this location would accord with these activities and the County Development objectives for agriculture and forestry and for farm diversification. The existing use does not impinge on the

amenities of the area, is not prejudicial to public health and accords with proper planning and sustainable development of this rural agricultural area.

## 5.0 Statutory Provisions

### 5.1 PDA- Planning and Development Act 2000 (as amended)<sup>4</sup>

Section 2(1) 'Interpretation' of the of the Planning and Development Act 2000 (as amended).

In this Act, except where the context otherwise requires—

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon;

"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 [emphasis added].

#### Section 3

3.—(1) 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 4

Section 4(1)(a) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act. It states: "The following shall be exempted developments for the purposes of this Act— (a) **development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used**" [emphasis added].

Section 4(1)(i) development consisting of the thinning, felling and replanting of trees, forests and woodlands, the construction, maintenance and improvement of non-public roads serving forests and woodlands and works ancillary to that development, not including the replacement of broadleaf high forest by conifer species;

### 5.2 PDR - Planning and Development Regulations, 2001 (as amended)

#### Article 5 (1) In this Part -

"**agriculture**" includes **horticulture**, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and **nursery grounds, and "agricultural" shall be construed accordingly** [emphasis added].

"**business premises**" means— (a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons. Commented [l13]: Inserted by article 3 of S.I. No. 235/2008 Planning and Development Regulations 2008 (b) a hotel, hostel (other than a hostel where care is provided) or public house, or (c) any structure or other land used for the purposes of, or in connection with, the functions of a State authority; "care" means personal care, including help with physical, intellectual or social needs; "childminding" means the activity of minding no more than 6 children, including the children, if any, of the person minding, in the house of that person, for profit or gain.

"**industrial process**" means any process which is carried on in the course of trade or business other than agriculture, and which is— (a) for or incidental to the making of any article or part of an article, or for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes— (i) a vehicle, aircraft, ship or vessel, or (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database.

"**industrial undertaker**" means a person by whom an industrial process is carried on and "industrial undertaking" shall be construed accordingly.

"industrial building" means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of **any industrial process** [emphasis added].

#### 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.

<sup>4</sup> References refer to: <https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/html#SEC4>



Article 9(1)(a)

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 – ...

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users ...
- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000,
- (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,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan ...
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

Article 10 (1)

Article 10 (2) (a) states: "A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use."

Schedule 2

Part 1 'Exempted Development', 'General', of Schedule 2 sets out exempted development class for exempted development general to which Art 6(1) refers.

Schedule 2, Part 3, sets out a wide range of 'Exempted Development – Rural' including 'Agricultural Structures' which can take place without requiring planning permission. These structures must be used for agriculture.

**Note:** BPS acknowledges that areas of the existing sheds and some of the storage structures will require regularisation by way of a retention planning application. We understand that the sheds and storage structures were measured by WCC Enforcement Section during a site visit on the 19<sup>th</sup> of December 2024. This application cannot be lodged before this Section 5 is assessed by WCC and/or ABP as WCC Enforcement currently disputes the full agricultural and/or forestry use of the structures.

## 6.0 Assessment

The purpose of this assessment is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area, but rather **whether or not** the matter in question constitutes development, and **if so**, falls within the scope of exempted development within the meaning of the relevant legislation.

### 6.1 Assessment under the PDA

#### 6.1.1 Is or is not development

The subject lands have always been a working farm. The current use of the farm for growing Christmas trees for sale and their foliage for sale and for the making of wreaths, also with the use of Holly, remains agricultural. Farms across Wicklow and Ireland grow Christmas trees and they are an established agricultural and/or forestry crop. When farmers plant trees under Irish or EU grants, they do not change the use of their farmlands. They are merely farming trees.

##### 6.1.1.1 PDA - Planning and Development Act, 2000 (as amended)

Section 2(1) 'Interpretation' of the of the Planning and Development Act 2000 (as amended) states "use", in relation to land, does not include the use of the land by the carrying out of any works thereon.

This Section 5 pertains only to the use of the lands and structures on those lands for agricultural purposes. While some works have been undertaken on site, these are to support an agricultural use (and as noted above, following this Section 5, retention permission will be sought to retain areas of the existing agricultural sheds and some other storage structures.

Section 3(1) of the of the Planning and Development Act 2000 (as amended) states "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.

As the use of the farm remains agricultural, as growing and selling Christmas trees, foliage, and preparing wreaths using foliage including Holly are farming activities as recognised by Teagasc.

The making of a wreath involves the cutting of foliage and the shaping of this into the shape recognisable on the doors of homes and businesses across Ireland at Christmas. These wreaths are 99% farm produce and are mostly sold plain with no additions, however a portion may have natural pinecones and other basic decoration added. It has been a historic tradition in Ireland for farms to prepare and sell wreaths.

There is nothing in Section 3(1) of the act which states that the intensive use of a farm for agricultural purposes can cause that farm to no longer be a farm.

We submit that no change of use has taken place; therefore, no development has taken place (putting aside the farm buildings and storage structures which are to be treated separately by way of a retention planning application).

#### Section 4

Section 4(1)(a) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act. It states: "The following shall be exempted developments for the purposes of this Act— (a) **development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used**" (emphasis added).

The Act is very clear, "development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used." Our client is using the farm and its buildings for agricultural uses. He is doing so intensively, but, again, there is nothing in Section 4(1) which prevents the intensive use of a farm. Indeed, as noted above, many farms are more intensively used for agriculture whether it be dairy farming, horticultural farming, etc.

BPS can find no reason why our client's Christmas tree farm's agricultural activities would not constitute farming.

When WCC visited the site, our client gave the example of an organic farmer who runs an intensive vegetable farm. That farmer must, for example, plant carrots, tend their growth, protect the carrots against thieves/animals/disease, must hire people to harvest the carrots, must transport the carrots to a shed using some machinery, must cut and clean the carrots using some machinery, must put the carrots into bags or boxes or tie them together, must store the carrots ready for sale, must transport the carrots for sale, etc. Such farms do so with every type of vegetable.

Wexford strawberry farms do likewise except they place the strawberries into plastic punnets.

The minimal agricultural processing which takes place on the farm is wholly in line with what is undertaken on other farms.

There are at least 20 farms in Wicklow which focus on Christmas trees, foliage, and wreaths. This is just in Wicklow. There are 100s of farms across Ireland that do so. To call such farms anything but farms would be to fundamentally alter the intention of the Oireachtas as set out under Section 4(1) of the Act.

Farmers should be free to go about farming and not be the subject of claims that their farms are somehow commercial in a way which would require planning permission. All farms are businesses, and many are companies of various sizes.

BPS submits that the existing use of the farm is agricultural and exempt from obtaining any planning permission for the current use.

In any case, our client could also rely on Section 4(1)(i) of the PDR which exempts "development consisting of the thinning, felling and replanting of trees, forests and woodlands, the construction, maintenance and improvement of non-public roads serving forests and woodlands and works ancillary to that development, not including the replacement of broadleaf high forest by conifer species."

The use of the farm for agricultural use (or for trees under Section 4(1)(i) of the PDR is not a material change of use and is not development.

### 6.1.1.2 PDR - Planning and Development Regulations, 2001 (as amended)

Article 5 (1) of the Planning and Development Regulations, 2001 (as amended) states that "**agriculture**" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly.

If Section 4(1) of the Act is clear that our client's farming activity is agricultural, then Article 5(1) makes it crystal clear.

Christmas trees, foliage, and wreaths are all agricultural produce. BPS considers that this farming activity can be considered as horticultural, osier tree growth, nursery grounds for trees and Holly, etc. In short, growing Christmas trees, foliage, and making wreaths has formed part of Irish agriculture for essentially all time.

There are no Section 5s which BPS can find which have ever found growing Christmas trees, foliage, and making wreaths not to be agricultural.

Should WCC decide that these are not agricultural activities, this will, as noted above, have ramifications for farms across Ireland.

Article 5(1) does not set any maximum intensity by which a farm may operate or any agricultural threshold beyond which the use of farmlands and associated structures may be used, so long as it is agricultural.

The use of the farm for agricultural use is not a material change of use and is not development.

### 6.1.1.3 Conclusion – 'Is or is not development'

Arising from the above assessment carried out under the PDA and PDR, we conclude that the use of the farm for agricultural use is not a material change of use and is not development.

## 6.2 The question of "exempted Development"

These lands are a working farm, and they were a working farm before our client purchased them. Their established use is agricultural.

Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act. It states: "The following shall be exempted developments for the purposes of this Act— (a) **development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used**" [emphasis added].

Our client acknowledges that the farm is primarily focused on growing Christmas trees, foliage farming and natural wreaths from the farm produce. This is a natural continuation of the past farming activity on these lands, as large amounts of Christmas trees were grown and harvested on the farm prior to the purchase of the farm by our client. Therefore, no material change of use has taken place.

Our client is entitled to carry out this exempted agricultural development as set out under the Planning & Development Act (2000) as amended and the Planning & Development Regulations (2001) as amended.

For our client to rely on the exempted development provisions of the Act and the Regulations, the onus is on him to prove the works constitute exempted development (see *South Dublin County Council v Fallowvale Ltd.* [2005] IEHC 408; later approved in *Meath County Council v. Murray* [2017] 2 I.R. 297; and accepted (obiter) in the statement of Simons J in *Waterford v Centz* [Judgement of Simons J, 27 November 2020] as being correct). See also *Doorly v Corrigan* [2022] IECA 6 at p. 121; and *Diamrem Limited v Cliffs of Moher Centre Limited* [2021] IECA 291 at p. 47.

BPS, PACC Architects, and the Enforcement Section of WCC have visited the site. Our client is operating a Christmas tree farm. This has no more processing involved than many farms of various kinds. That our client employs some seasonal staff to prepare the



Christmas trees, foliage, and wreaths for sale is no different to any farmer, particularly horticultural farmers, preparing their produce for sale.

We consider the farming activities being undertaken by our client on these lands to constitute exempted development as intended by the Minister when the PDRs were signed.

It would not be credible to believe that any Minister would have intended any farmer to be the subject of Enforcement action and/or allegations of a change of use merely for farming Christmas trees, foliage, and wreaths.

It is acknowledged how Section 4 was amended by the Environmental (Miscellaneous Provisions) Act 2011 to prescribe that notwithstanding the provisions of Section 4, development shall not be exempted development if an EIA or an AA of the application lodged by the adjoining football club would not require either EIA or AA and ongoing farm operations do not generally require EIAR or AA. Further, the sheds and storage structures are relatively standard as is the farmyard. BPS has considered the CJEU decision in the People over Wind case<sup>5</sup> which determined that mitigation measures should not be considered at a screening stage for an AA. The ongoing use of the farm to grow Christmas trees, foliage, and to prepare wreaths using foliage, Holly, etc. does not require mitigation measures.

BPS accepts that the existing structures generate surface water run-off but this is only surface water and it is not altered in any way by passing from these structures to the surface or ground of the farm. In any case, surface water drainage measures are not mitigation measures. For example, in *Kelly v An Bord Pleanála*,<sup>6</sup> Barniville J in the High Court found that "Sustainable Urban Drainage Systems" (SuDS) incorporated into a development were not mitigation measures. The Court found that it was clear from the evidence that the inclusion of the SuDS measures was not with the intention of avoiding or reducing any potentially harmful effect on a European site, and their inclusion was required for completely different reasons.

It is also acknowledged how Article 9(1)(a) sets out limitations on Article 6. While our client is not seeking to rely on Article 6, it is worth noting how these limitations do not apply because:

- The ongoing use of the farm as a farm does not contravene a condition attached to a permission under the Act nor would it be inconsistent with any use specified in a permission under the Act,
- The existing accesses to the farm are not endangering public safety by reason of traffic hazard or obstruction of road users.
- The use of the farm as a farm does not interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- The use of the farm as a farm does not consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
- The use of the farm as a farm does not consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
- The use of the farm as a farm does not comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would not require an appropriate assessment because it would not have a significant effect on the integrity of a European site,
- The use of the farm as a farm would not consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- The use of the farm as a farm does not 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 (that areas of the sheds and the storage structures require planning permission is accepted and not disputed and, as such, this is not relevant to this Section 5's determination).
- The use of the farm as a farm does not consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan ...
- The use of the farm as a farm does not of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

<sup>5</sup> Case C-327/13, *People over Wind and Peter Sweetman v Coillte*.

<sup>6</sup> [2019] IEHC 84.

## 6.2.1 "Exempted Development" - conclusion

In the opinion of BPS: (1) The use of the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere does not constitute a change of use from agriculture and/or forestry to any other use; and (2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are not works which have changed the use of these yard areas and buildings from agricultural use.

The use of the farm for farming Christmas trees, foliage, and wreaths is exempted development under Section 4(1)(h) of the PDA.

Our client could also rely on Section 4(1)(i) of the PDA which exempts "development consisting of the thinning, felling and replanting of trees, forests and woodlands, the construction, maintenance and improvement of non-public roads serving forests and woodlands and works ancillary to that development, not including the replacement of broadleaf high forest by conifer species."

The use of the farm for agricultural use (or for trees under Section 4(1)(i) of the PDR) is not a material change of use and is not development.

## 7.0 The question of whether an industrial process arises or if the farm is a business premises

While the farm grows its own farm produce 'and' imports other farm produce from leased farmlands, this is all one farm operation. It is all agricultural activity.

The sheds and containers, described above, all form part of the agricultural operation. I have called it an agri-business, but it is reasonable to state that all farms are businesses. Farms milk cows and export the milk. Farms shear sheep and export the fleeces. Farms keep chickens and sell the eggs. Wexford farmers grow strawberries and other fruit and, in addition to inviting people to pick their own, they employ workers to fill punnets and other packages for sale.

Our client has diversified an existing farm into producing agricultural products for which there is significant demand. The uses of the sheds and containers are all associated with the farm's Christmas tree, seasonal foliage, and wreath products, as such they are reasonably development consisting of the use for that purpose of any building occupied together with land so used. That our client has managed his farm's sales in an organised manner is reasonable. This is not a retail business. It remains a farm.

The next question is whether our client is undertaking an industrial process in preparing wreaths which are over 95% made of seasonable foliage (Christmas tree, Holly and other trees and bushes). Under Article 5 'Exempted Development' of the Planning and Development Regulations 2001 (as amended) "industrial process" means, "any process which is carried on in the course of trade or business, **other than agriculture**, and which is- (a) for or incidental to the making of any article or part of an article, or for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes- (i) a vehicle, aircraft, ship or vessel, or (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database" (emphasis added). This is an agricultural farm with nursery Christmas trees. There is no industrial process taking place.

The next question is whether our client is undertaking an industrial process and whether the structures are "Industrial Buildings". Whether our client is an "industrial undertaker", and whether an "industrial process" is taking place. Under Article 5 'Exempted Development' of the Planning and Development Regulations 2001 (as amended) "industrial process" and "industrial building" mean:

... any process which is carried on in the course of trade or business, **other than agriculture**, and which is- (a) for or incidental to the making of any article or part of an article, or for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes- (i) a vehicle, aircraft, ship or vessel, or (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database (emphasis added).

... a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of **any industrial process** (emphasis added).

This is an agricultural farm with nursery Christmas trees, Holly and other indigenous trees. There is no industrial process taking place and the structures are not industrial buildings. Our client is not an "**industrial undertaker**" (which means a person by whom an industrial process is carried on and the PDR states that "industrial undertaking" shall be construed accordingly). The farming processes taking place are agricultural and the buildings and containers are in agricultural use. While it is accepted that the making of wreaths from the cut foliage grown on the farm may sometimes involve the addition of some Christmas decorations such as natural pinecones, bows and other recognisable additions, these are wholly ancillary to the primary agricultural process involved in preparing wreaths. These are about as natural a product as one can buy at Christmas.

The next question is whether the use of farm buildings and storage containers for the preparation and transport for sale of seasonal foliage, Christmas trees and wreaths makes any part of the existing yard and its buildings a "business premises". Under Article 5 'Exempted Development' of the Planning and Development Regulations 2001 (as amended) "business premises" means:

(a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used



for the provision therein of services to persons, (b) a hotel, hostel (other than a hostel where care is provided) or public house, or (c) any structure or other land used for the purposes of, or in connection with, the functions of a State authority etc.).

The farm and existing structures on the farm are not normally used for any professional, commercial or industrial undertaking or normally used for the provision therein of services to persons. The structures form part of a primary agricultural farm diversification business wherein farm produce is transported for sale 'as is' or branches are removed from trees and sold or branches are removed from trees and bushes and Holly is harvested and the foliage is made into wreaths with some decorations added. Many farms across Wicklow sell Christmas trees and prepare wreaths.

## 8.0 Conclusion

In conclusion, it is our professional opinion that the current farming operations on the subject lands which pertain to Christmas trees, foliage, and wreaths:

- Does not constitute a material change of use such that development would have taken place.
- Constitutes "exempted development" having regard to Section 4(1)(a) and/or Section 4(1)(i) of the PDA.

No requirement to obtain planning permission arises.

BPS can find no Section 5 Declaration from any planning authority including An Bord Pleanála which has determined that these types of farming and/or agricultural and tree growing activities have caused a farm owner to require planning permission arising from unauthorised development. Such a Section 5 determination would mean that no farmer in the country could sell Christmas trees, sell foliage, or prepare wreaths without planning permission. The avoidance of this is clearly what the Oireachtas had in mind when it enacted Section 4.—(1) of the Planning and Development Act 2000 (as amended).

## 9.0 Recommendation

BPS recommends that Wicklow County Council should decide this Section 5 referral in accordance with the following.

WHEREAS a question has arisen as to whether:

- (1) The use the existing farmyard in the south-eastern part of this farm holding to prepare Christmas trees and wreaths for annual seasonal sale on the farm and for their transport and sale elsewhere constitutes a change of use from agriculture and/or forestry to any other use; and
- (2) Works in the 'south-eastern yard' to the existing farmyard and farm buildings are or are not also works which have changed the use of these yard areas and buildings, including: (i) The enlargement of a yard by circa 200% to an area of circa 5000 square metres; (ii) The construction of new extension bays to the two respective side elevations of an existing shed building (Structure no. 1), to enlarge its footprint to circa 860 square metres, positioned in the southeastern corner thereof; (iii) The construction of a new rectangular shaped shed (Structure no. 2), with a footprint of circa 300 square metres along the northern boundary thereof; (iv) The construction of a new machinery shed building (Structure no. 3), in the south-western thereof with an undefined footprint; and (v) The placement of circa 6 steel shipping containers for storage purposes

BPS, in considering this matter, has had regard particularly to –

- Sections 2(1), 3(1) and 4(1)(a) of the Planning and Development Act, 2000, as amended.
- Articles 5 (1), 6, 9 and 10 of the Planning and Development Regulations 2001, as amended.
- The Environmental (Miscellaneous Provisions) Act 2011,
- Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended.
- The nature of the established and current agricultural/farming and/or tree growing and processing uses on the site

AND WHEREAS BPS has concluded that the existing use of the farm constitutes the continuation of an agricultural use, and no material change of use has arisen. No "development" arising from a change of use has arisen.

The use of the farm to grow and process Christmas trees, foliage and wreaths is also exempted development having regard to Sections 4(1)(a) and/or 4(1)(i) of the Act which state inter alia that development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used and development consisting of the thinning, felling and replanting of trees, forests and woodlands, the construction, maintenance and improvement of non-public roads serving forests and woodlands and works ancillary to that development, not including the replacement of broadleaf high forest by conifer species is exempted development.

NOW THEREFORE BPS submits that no development involving a material change of use has taken place and, in any case, the use of the farm to grow and process Christmas trees, foliage, and wreaths is exempted development these being wholly agricultural

and/or forestry activities. A planning permission requirement does not arise as to any change of use (as alleged by WCC's Enforcement Section).

**Note:** This Section 5 does not assess the issue of retention permission being required for the works involved in increasing the size of the farmyard, the sheds, and for adding some storage structures. This matter is not in question.

## 9.0 Finally

We trust that sufficient information has been provided to allow this Section 5 to be fully assessed.

Please direct all correspondence to this office.

If you have any questions, please call BPS on 01-5394960 or 087-2615871.

Best wishes,

*Brendan Buck*

**Brendan Buck MIPI**  
**Managing Director**  
**BPS Planning & Development Consultants LTD**  
**Corporate Member of the Irish Planning Institute**

Encl:

- Completed WCC Section 5 Form.
- Map as listed in Section i of this letter (2 copies).
- Cheque for the e80 statutory fee.