



Comhairle Contae Lú
Louth County Council

An Bord Pleanála,
64 Marlborough Street
Dublin 1
DO1 V902

AN BORD PLEANÁLA	
LDG-	<u>079 775-28</u>
ABP-	
06 MAY 2025	
Fee: €	<u>110-</u> Type: <u>pmc</u>
Time: <u>8.50</u>	By: <u>Post</u>

1st of May 2025

Re: Request for referral under Section 5(4) of the Planning Act 2000 (as amended)

Dear Sir/Madam,

Louth County Council is requesting a determination from An Bord Pleanála in respect of whether or not certain works are exempted development or are development. There are three questions for determination;

- 1) Whether the felling of trees, drainage and infilling of lands on the subject site at Arthurstown, Co. Louth is or is not development and whether such works is or is not exempted development
- 2) Whether the breaking/extraction of rock on the site for the purpose of recontouring the lands is or is not development and is/is not exempted development
- 3) Whether the widening of an entrance onto the local road is or is not development and whether such entrance is or is not exempted development.

Louth County Council were notified of the works by a state body responsible for the conservation and protection of habitats and species. The notification referred to the felling of trees, drainage and infilling of lands at Arthurstown, Co. Louth.

Some supporting documentation to assist with the determination is included as follows:

- Map/aerial photography to identify the site

- Correspondance from an interested party dated 13th of March 2025 (provided with consent from author).

Please feel free to make contact if you require any further information to assist with this determination.

Kind Regards

A handwritten signature in dark ink, appearing to read 'D. Kierans'. The signature is fluid and cursive, with a large initial 'D'.

Senior Executive Planner
Compliance and Land Activation
dkierans@louthcoco.ie
0429392922

Alan and Leona Hannify
Lynden Lodge
Arthurstown
Ardee
Co. Louth
A92 VK63

Friday, 14 March 2025

Ms Joanna Kelly
Senior Planner
Louth County Council
Town Hall
Crowe Street
Dundalk
Co. Louth
A91 W20C

[By email to: joanna.kelly@louthcoco.ie]

Dear Ms Kelly

**RE: UNAUTHORISED DEVELOPMENT AT ARTHURSTOWN, ARDEE, CO. LOUTH
GRID REFERENCE – EASTING: 098578, NORTHING: 455336**

LOUTH COUNTY COUNCIL PLANNING REF: UD/24/140

We write to you regarding the unauthorised development that has taken place on agricultural land in Arthurstown, Ardee, Co. Louth. These works are subject to an existing file opened by the Council's Enforcement Team (Planning Ref: UD/24/140).

We first wrote to the Enforcement Team at Louth County Council on 24 September 2024, raising our concerns with what we considered to be unauthorised development. However, we have struggled to obtain clear responses from the Enforcement Team during the intervening period. Some of our emails and the questions we raised were never addressed. We understand from neighbouring residents who contacted the Enforcement Team that they have also struggled to obtain any response or update on this case.

In light of the lack of engagement and the apparent lack of expediency in dealing with this case, we decided to seek legal advice. We also sent a copy of the documentation and correspondence to two Senior Planning Inspectors at An Bord Pleanála to obtain informal opinions from two independent professionals. The advice we have received from the legal and planning experts is that Louth County Council has erred in its assessment of the works that took place on the landholding at Arthurstown.

The development included works to wetlands and extended across an area that is well in excess of what is permitted under exempted development rights.

This letter is structured as follows:

- Section 1: Site Location and Description
- Section 2: Overview of Unauthorised Development
- Section 3: Relevant Planning Legislation
- Section 4: Development on Wetlands
- Section 5: Mineral Extraction and Processing
- Section 6: Widening of Site Access
- Section 7: Importation of Material
- Section 8: Summary and Conclusions

We wish to draw your attention to Section 4, which is particularly pertinent. It deals with the matter of development on wetlands, which is the most significant aspect of this case and raises concerns regarding the planning and environmental jurisprudence applied by Louth County Council in assessing this enforcement case.

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The landholding on which the unauthorised development has taken place comprises an overall area of approximately 11.6 hectares (please see Figure 1 below).

Figure 1: Site Location and Context Prior to Unauthorised Development



Source: Bing Maps(sourced in September 2024)

- 1.2 The landholding is accessed from the L5199 road and historically benefitted from a traditional agricultural entrance gate with a width of approximately 4 metres.

Site Location : Arthurstown, Dunleer (nearest Eircode A92 W892)



(Extract from Google Maps)

Railway Storage

TOWN

Rathbody

Abbey Art Studio

The Danny Boy Pub

CJ Callan Construction Ltd

Arthurstown

Arthurstown

RATHBODY

Arch

RATHORY

Wendy's Whistle Stop

L5199

KNOCKLORE

MULLAMORE

Smart Heating

ARTHURSTOWN
LITTLE

YLE

CARDISTOWN

TATTYBOYS

Terrain
View topography and elevation



Sign

- 1.3 The landholding sits within an undulating landscape. Prior to works commencing on the landholding, the topography dropped from the roadside along its south-eastern boundary towards a tree-lined watercourse and wet woodland. The land then rose steeply towards the northern-western boundary.
- 1.4 The tree-lined watercourse was a wetland, which traversed the landholding from southwest to northeast and provided drainage for the sloped land on either side. A second watercourse traversed the northern part of the landholding.

2.0 OVERVIEW OF UNAUTHORISED DEVELOPMENT

- 2.1 We understand that a complaint was first made to the [REDACTED] [REDACTED] in February 2024 regarding the removal of habitat features within the landholding. We first became aware of the physical works taking place on the landholding at the beginning of July 2024.
- 2.2 The existing entrance gate and part of the adjoining hedgerow were removed, thereby widening the access to approximately 11 metres. Figures 2 and 3 below provide a comparison between the old entrance and the new entrance.

Figure 2: View of the Old Entrance



Source: Google Streetview (sourced in September 2024)

Figure 3: New Entrance (Photograph taken on 22 September 2024)



- 2.3 Large machinery and equipment were then moved onto the land, including diggers/excavators, bulldozers, and dump trucks. Work commenced with the stripping of topsoil and overburden, as well as the removal of the existing tree lines, wet woodland and associated habitat features (please see Figure 4 below).
- 2.4 This was followed by the extraction of the underlying rock. Rock-breaking equipment was then imported to the site, which was used to break the extracted minerals into smaller aggregates. The rock-breaking process led to continuous noise and vibration being experienced by neighbouring residents, which impacted on residential amenity. The noise from the rock breaking was a consistent impulsive noise, which was well above existing background noise levels and higher than the noise of the mobile plant and machinery.
- 2.5 In addition to the noise impacts, dust emissions from the extractive process and rock breaking impacted on neighbouring residents. The dust deposition was evident on windows of neighbouring dwellings and parked cars, with the level of residue dependent on the direction of the wind on a particular day.
- 2.6 The large machinery was regularly refuelled by fuel tanker lorries, which imported the fuel to the landholding. The refuelling regularly occurred in the vicinity of the wetland area, with no evident mitigation measures to deal with fuel spillages.

Figure 4: View of the Landholding after stripping of Soils and Removal of Wetland Habitat Features (Photograph taken on 2 August 2024)



- 2.7 The work continued on the land with the soils and aggregates being sorted into stockpiles across the landholding (please see Figure 5 overleaf). The wetlands were backfilled with extracted material, with the remaining soil and aggregate materials redistributed across the landholding. We have calculated that the works comprise approximately 2.3 hectares of wetlands.

- 2.8 Large pipes and ancillary infrastructure were imported to the site during the week commencing 16 September 2024. Work subsequently commenced on the construction of a sub-surface pipeline.

Figure 5: View of the Landholding from the South with Soil and Aggregate Stockpiles (Photograph taken on 22 September 2024)



- 2.9 The on-going work was highly visible from viewpoints along the L5199, notably along the south-eastern boundary where the entrance is located but also to the east where the lower topography of the land meant that the aggregate stockpiles were exposed to public views (please see Figure 6 below).

Figure 6: View of the Landholding from the East with Aggregate Stockpiles (Photograph taken on 24 September 2024)



- 2.10 The removal of the wetlands and the extractive works commenced without any prior notification or communication with neighbouring residents. The development was ongoing six days a week

from July to late November 2024, with work consistently commencing at 7am in the mornings and finishing as late as 11pm some nights. This caused considerable disturbance for neighbouring residents, notably in terms of the aforementioned noise and vibration, but also the dust particles and fugitive emissions which were prevalent throughout this period and visible as residue on the windows of neighbouring dwellings.

- 2.11 The alteration of the landscape resulted in the removal of existing wetlands and the associated wet woodland habitat, together with the inevitable changes to the drainage regime within the area. There is concern locally that the level of extraction on the land and the refuelling of vehicles within the landholding may have led to the infiltration of hydrocarbons into surface water and groundwater sources, thereby leading to contamination.
- 2.12 There are a number of residential dwellings which sit at Ordnance Datum levels below that of the landholding, which means the unauthorised development poses an increased risk to properties in the case of a flood event. This is particularly evident in the southwestern area of the landholding where the work has included the spreading of soil and overburden, thereby raising the levels above that of the adjacent residential property, Arthurstown House.
- 2.13 Following a temporary cessation of works during the winter months, works recommenced on 11 March 2025 with the importation of material to the landholding (please see Figures 7 and 8 below). At this juncture, it is unclear as to whether the imported material is soil, digestate, or a waste material. Several loads of material have been deposited on the landholding. However, there is no planning permission or permit in place for this activity.

**Figure 7: View of Imported Material being Deposited on the Landholding
(Photograph taken on 11 March 2025)**



Figure 8: View of Material being Imported to the Landholding



3.0 RELEVANT PLANNING LEGISLATION

3.1 We have considered the statutory provisions contained in the *Planning and Development Act, 2000 (as amended)* (hereafter referred to as 'the Act') and the *Planning and Development Regulations, 2001 (as amended)* (hereafter referred to as 'the Regulations').

3.2 The term "works" is defined as follows in Section 2(1) of the Act as follows:

"works" includes any act of operation or 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 the structure.'

3.3 Further to this, Section 3(1) of the Act defines "development" as follows:

'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.'

3.4 Article 8B of the Regulations refers to exempted development rights for field drainage for agriculture:

'Works consisting of field drainage for agriculture, other than drainage and/or reclamation of wetlands, shall be exempted development.'

- 3.5 Article 8C of the Regulations refers to exempted development rights for land reclamation works, stating as follows:

'Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.'

- 3.6 Class 11 of Part 3, of Schedule 2 of the Regulations refers to *'development consisting of the carrying out of drainage and/or reclamation of wetlands'*. The following conditions apply.

1. *The area to be affected shall not exceed 0.1ha.*
2. *Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.*

4.0 DEVELOPMENT ON WETLANDS

- 4.1 The key starting point in this case concerns the statutory provisions pertaining to development on wetlands. Class 11 of Part 3 of Schedule 2 of the Regulations is clear in stating that development consisting of the carrying out of drainage and/or reclamation of wetlands shall not exceed 0.1 hectares. In this regard, any development exceeding 0.1 hectares of wetlands is not exempted development and therefore requires planning permission.

- 4.2 The term "wetlands" is defined in Article 5 of Part 2 of the Regulations, as follows:

"Wetlands" means natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.'

- 4.3 The definition of "wetlands" in the Regulations is not subject to any requirement for a formal designation by a Local Authority or other statutory organisation. The definition is clear that it includes natural or artificial areas that are subject to constant or periodic shallow inundation. In this regard, the definition of "wetlands" in the Regulations is binary.

- 4.4 The Environmental Protection Agency (EPA) provides guidance on how to define wetlands in their publication, *Irish Wetland Types – An Identification Guide and Field Survey Manual* (published in 2018). Chapter 2 of the guidance document is entitled, *'What is a Wetland?'* and states as follows:

'A wetland is an area of land that is saturated with water either permanently or seasonally, and where the water table is near or at the surface. "Wetlands" may vary considerably in visual appearance, owing in part to the setting in which they occur and the vegetation type(s) present. There are special suites of plants adapted to cope with wet conditions and, as these wet conditions vary spatially, a mosaic of habitats comprising different plant communities may occur within a single wetland.'

4.5 Further to this, the EPA Guidance goes on to state that "wetlands" include:

'... all lakes and rivers, underground aquifers, swamps and marshes, wet grasslands, peatlands, oases, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and all anthropogenic sites such as fish ponds, rice paddies, reservoirs and salt pans.'

[Our Emphasis]

4.6 As is the case with the Planning Regulations, it is evident that the EPA Guidance does not distinguish between "wetlands" of varying morphology, composition or habitat quality, nor does it make any reference to "wetlands" needing to be designated. In fact, it very clearly states that "all" rivers, marshes and wet grasslands fall within the definition.

4.7 Having regard to the enforcement case at Arthurstown, it is noted that a representative of the National Parks and Wildlife Service (NPWS) visited the landholding on 2 July 2024 and filed a complaint with Louth County Council's Enforcement Team on 3 July 2024. The complaint form and supporting correspondence referred to ongoing works to wetland areas. The correspondence included a map, as shown in Figure 9 below. The source of the mapping data was from Wetland Surveys Ireland and Foss Environmental Consulting.

Figure 9: Wetlands Map



Source: [REDACTED] Correspondence to Louth County Council (3 July 2024)

- 4.8 The correspondence submitted by [REDACTED] also included photographs of the wetlands, which were taken by the [REDACTED] during the site visit on 2 July 2024. The water course was very clearly visible, as shown in Figures 10 and 11 below.

Figure 10: View of Wetlands within the Landholding



Source: NPWS Correspondence to Louth County Council (3 July 2024)

Figure 11: View of Wetlands within the Landholding



Source: [REDACTED] Correspondence to Louth County Council (3 July 2024)

- 4.9 The Enforcement Officer from Louth County Council undertook an inspection of the landholding on 16 August 2024 and completed an Enforcement Report on 19 August 2024. A copy of the Enforcement Report is provided under Appendix A of this letter. It is understood that the Enforcement Officer was accompanied by a representative of the Environment Section of Louth County Council during the inspection. Section 5.0 of the Enforcement Report includes the following summary of the inspection and discussion with the landowner [Mr McCann]:

'Mr McCann said the lands had wetland areas due to his neighbour blocking a waterway. At this point the wetland was well under way of being excavated which was evident from the dark soil. The area involved is not site coded or registered as a designated wetland but shown on the wetlands maps as a wetland area. Mr McCann said he was carrying out the works to use the lands for agricultural purposes. I noticed a rock breaker in the centre of the field. Mr McCann said he was lowering the rock area and the excavated rock was being placed in the wet areas of the field. He asked Ben about the importation of more topsoil and was told planning permission and a permit would be required.'

- 4.10 The aforementioned extract from the Enforcement Report indicates that both the landowner and the Enforcement Officer considered that the works related to wetlands.
- 4.11 The subsequent Warning Letter issued by Louth County Council on 21 August 2024 also referred to the works being undertaken on wetlands. This position was reiterated in email correspondence sent by the Enforcement Officer to the landowner's planning consultant on 2 September 2024, which outlined the limitations imposed by Class 11 of the Regulations in respect of development on wetlands.
- 4.12 However, the position of the Enforcement Officer subsequently changed. On 5 November 2024, the Enforcement Officer responded to one of our emails, stating as follows:

'Planning Enforcement have been to the site and consider the works to be exempted development under Article 8C of the Planning and Development Regulations which states: 'Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding shall be exempted development'

The area of marsh on the site is not a designated wetland and as such is not afforded protection.'

- 4.13 We were surprised to learn that the Enforcement Officer now considered that the land comprised an "area of marsh" rather than the extensive watercourses that were visible on the site and documented in the correspondence and photographs provided [REDACTED]. Furthermore, we were surprised to read the reference to the land not being a "designated wetland" and therefore not being "afforded protection".

4.14 As outlined in this letter, the definition of “wetlands” makes no reference any requirement to be a “designated wetland”. There is no such distinction in the planning legislation, nor is any such interpretation provided in the EPA Guidance on wetlands.

4.15 We decided to contact Wetland Surveys Ireland, the company tasked with surveying wetland areas to ascertain whether there is some statutory designation that applies to wetlands. Dr Patrick Crushell, the Senior Environmental Consultant who established Wetland Surveys Ireland in 2007 responded by email on 6 March 2025. A copy of the email correspondence is provided under Appendix B of this letter and includes the following advice:

'We are an ecological consultancy that specialise in wetland ecology and have no role in the designation of wetlands. From our work (review of desktop and field survey sources) we have identified a wide number of wetlands throughout Ireland but this in no means assigns a designation of any type to these sites. There are plenty more wetland areas that we have not surveyed or identified. If an area fits the definition of a wetland then it would be considered a wetland under the regs regardless of whether we have identified it as a wetland or not.'

4.16 Dr Patrick Crushell’s advice is helpful in establishing that the mapping prepared by Wetland Surveys Ireland is not exhaustive and that a wetland area meeting the definition provided in the Planning Regulations is a wetland irrespective as to whether it has been identified as such.

4.17 Separately, we have sought legal advice from a planning barrister and sent the file to two Senior Planning Inspectors at An Bord Pleanála. Each of these independent parties advised that they believe the Enforcement Team at Louth County Council has erred in its judgement on what constitutes “wetlands”. Furthermore, it was suggested to us that the Council’s Enforcement Team may have conflated the protected status applied to designated habitat sites with the separate matter of defining wetlands in accordance with the Planning Regulations.

4.18 The Senior Planning Inspectors have referred us to a number of Planning Appeals and Section 5 Referrals determined by An Bord Pleanála, which confirm how the definition of “wetlands” should be applied and the restrictions that this places on exempted development rights.

4.19 One such case was a Section 5 Referral dealt with by An Bord Pleanála, which concerned the infilling of a marl hole on a site at Crosstown, Ardcavan, Co. Wexford (Reference: ABP-303109-18). The Section 5 Referral considered the following question:

'Whether the removal of trees and other vegetation from the site and infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the hole to discharge to natural drainage network is or is not development or is or is not exempted development.'

- 4.20 In considering whether the works benefitted from exempted development rights, the Planning Inspector assessed whether the marl hole that was infilled was a wetland. The Planning Inspector started by questioning whether the infill works were actually intended for agricultural purposes and then reached the following conclusion regarding the status of the marl hole as a wetland:

'The second issue to arise is whether the referral site is or is not a wetland. In accordance with Article 5 of the Planning and Development Regulations, 2001, as amended, 'wetlands' are defined as natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water'. I would consider based on the information provided, including photographic evidence, by the referrer and having regard to the aforementioned definition that it is possible to conclude that the referral site is a former wetland.'

- 4.21 It should be noted that the marl hole was not identified on any wetlands mapping, nor was it ascribed any protected status within the Development Plan or as a habitat site. Notwithstanding this, the Planning Inspector determined that the former marl hole met the definition of "wetlands", and that the area exceeded 0.1 hectares. An Order was subsequently issued by An Bord Pleanála determining that the works were not exempted development, including confirmation that the works related to former wetlands. A copy of the Inspector's Report is provided under Appendix C of this letter.
- 4.22 In summary, the position of Louth County Council's Enforcement Team and their definition of "wetlands" appears to be contrary to the position of An Bord Pleanála and relevant experts in the [REDACTED], the EPA and Wetland Surveys Ireland. Moreover, the Enforcement Team's reference to "designated wetlands" is inconsistent with the definition in Article 5 of Part 2 of the Regulations. It is our contention that the Council's judgement in this instance has no basis in planning law.

5.0 MINERAL EXTRACTION AND PROCESSING

- 5.1 Notwithstanding our stated position that the works undertaken on the landholding do not benefit from exempted development rights, it is also worth highlighting that the development on the land included the extraction of sub-surface minerals. The works also included the use of a mechanical process to break the minerals into aggregates on the landholding.
- 5.2 The definition of 'minerals' is outlined in the *Minerals Development Acts 1940-1979*, as follows:

'Minerals means all substances (other than the agriculture surface of the ground and other than turf or peat) in, on, or under land, whether obtainable by underground or by surface working, and includes all mines whether they are or are not already opened

or in work, and also includes the cubic space occupied or formerly occupied by minerals and for greater certainty but without prejudice to the generality of the foregoing, the said word includes all scheduled minerals.'

- 5.3 The Council's Enforcement Report prepared on 19 August 2024 referred to the rock breaking process, as follows:

'I noticed a rock breaker in the centre of the field. Mr McCann said he was lowering the rocked area and the excavated rock was being placed in the wet areas of the field. He asked Ben about the importation of more topsoil and was told planning permission and a permit would be required.'

- 5.4 As the above extract explains, this was "excavated rock" that was being processed; it was not merely a case of the landowner segregating rock elements contained in the topsoil.

- 5.5 The rock breaking activity was extensive across the landholding and took place over a number of months. It is our considered opinion that the excavation of rock (as described by the Enforcement Officer) and the use of industrial rock breaking equipment is an industrial process which would require planning permission in its own right.

- 5.6 We wish to refer Louth County Council to the EPA Guidance entitled, *Guidance to Planners, Planning Authorities and An Bord Pleanála on the Management of Excess Soil and Stone from Developments*. On page 7 of the EPA Guidance, there is a definition of "normal industrial practice", which states as follows:

'In the context of soil and stone, normal industrial practice is taken to mean physical steps such as modification of size or shape by mechanical treatment. It may also be considered to include steps such as filtering, washing and drying or adding materials necessary for further use, or carrying out quality control.'

- 5.7 The EPA's definition of "normal industrial practice" is taken from the EU Commission Guidance. In light of this definition, we would welcome the Council's feedback as to how the Enforcement Team reached a judgement that the extraction and processing of rock is exempted development.

- 5.8 The overall landholding at Arthurstown has an area of approximately 11.6 hectares. Using the aerial photography and online mapping tools, we have calculated that the extraction and processing of minerals occurred over an area of approximately 6.7 hectares. This raises questions regarding the absence of an Environmental Impact Assessment.

6.0 WIDENING OF SITE ACCESS

- 6.1 The historic access gate to the site had a width of approximately 4 metres. However, this was extended to a width of approximately 11 metres as part of the unauthorised development.

- 6.2 Louth County Council was made aware of the widening of the access in a letter we sent to the Enforcement Team on 24 September 2024.
- 6.3 We understand that a Warning Letter was issued to the landowner on 17 December 2024 regarding the unauthorised widening of the access. The Enforcement Officer subsequently advised us that the landowner would be restoring the access to its previous width.
- 6.4 We contacted the Enforcement Team on 11 March 2025, which was exactly 12 weeks from the date of the Warning Letter. No restoration works had been undertaken, nor had any Enforcement Notice been issued by Louth County Council.
- 6.5 It is noted that the Office of the Planning Regulator published *A Guide to Planning Enforcement in Ireland*, with the following statement included on page 5 of the document:

'The planning authority should, where possible, make its decision on further action within 12 weeks of sending the warning letter. It is the objective of the planning authority to meet this timeline taking account of the overall enforcement workload.'

- 6.6 The 12-week period has now elapsed since the Warning Letter was issued. Given that the site access was widened in July 2024 and that a Warning Letter was only issued in December 2024, there is a need for the Council's Enforcement Team to act with expediency on this matter and issue an Enforcement Notice.

7.0 IMPORTATION OF MATERIAL

- 7.1 On 11 March 2025, the importation of material to the landholding commenced, with several loads of material deposited. However, there is no planning permission or permit in place for this activity. At this juncture, it is unclear as to whether the imported material comprises soil, digestate, or a waste material.
- 7.2 We have reported the matter to the Council's Enforcement Team, and we have been advised that it will be investigated.
- 7.3 Given that the landowner was previously advised by representatives of the Council's Enforcement Team and Environment Section that the importation of topsoil would require planning permission and a permit, it is incumbent on the Council to act in an expeditious manner and ensure that this matter is investigated as a priority.

8.0 SUMMARY AND CONCLUSIONS

- 8.1 In summary, we consider that the on-going works undertaken on the landholding in Arthurstown demonstrate a flagrant disregard for the planning process. The unauthorised development has already resulted in irreversible damage to wetlands, associated habitats, and

landscape features. Moreover, it has caused environmental impacts in the form of noise, dust and fugitive emissions. There also remains concern regarding the potential contamination of surface water and groundwater sources.

- 8.2 We have outlined in this letter that the landholding in question included wetlands, as defined in the *Planning and Development Regulations, 2001 (as amended)*. The description of the wetlands and the photographic evidence was very clearly set out in the correspondence submitted by the [REDACTED] in July 2024. Indeed, the reference to wetlands was also used by the Council's Enforcement Officer in the Enforcement Report, dated 19 August 2024. The same report also quotes the landowner as referring to the wetlands.
- 8.3 We note that the Enforcement Officer subsequently altered his position, referring to an "area of marsh" and considered that the wetlands definition did not apply on the basis of the land not being a "designated wetland".
- 8.4 However, the judgement reached by the Enforcement Officer is contrary to the definition in the *Planning and Development Regulations, 2001 (as amended)*. It is also contrary to the definition in the guidance used by the EPA, which is entitled *Irish Wetland Types – An Identification Guide and Field Survey Manual*. The definition of "wetlands" is well established through a series of Planning Appeals and Section 5 Referrals determined by An Bord Pleanála.
- 8.5 We have sought advice from independent legal and planning experts, who have each advised us that Louth County Council erred in its judgement on this piece of legislation. This raises concerns regarding the planning and environmental jurisprudence applied by Louth County Council in assessing this enforcement case.
- 8.6 The enforcement file remains open and there remains an opportunity for Louth County Council to address and rectify these outstanding matters in a manner that is equitable and transparent for all parties. In your role as Senior Planner, we would request that the following matters are addressed accordingly:
- **Development on Wetlands:** In light of the information we have submitted, we hereby request a written response setting out Louth County Council's position in relation to development on wetlands. We expect that a period of 10 working days (Monday, 31 March 2025) should be sufficient time for you to provide a written response. The response should include the Council's interpretation of the definition of "wetlands" contained in Article 5 of Part 2 of the *Planning and Development Regulations, 2001 (as amended)*. Should Louth County Council's interpretation differ from what we have set out, we would invite the Council to submit a Section 5 Referral to An Bord Pleanála. A Section 5 Referral would provide clarity from an independent assessor, thereby representing an equitable and transparent solution.

- **Mineral Extraction and Processing:** We invite the Council to comment on the extraction of minerals within the site and the processing activity used to break the extracted rock into smaller sized aggregates. We would like to understand how the Council categorises the processing activities with reference to the definition of "normal industrial practice", which is contained in the EPA's *Guidance to Planners, Planning Authorities and An Bord Pleanála on the Management of Excess Soil and Stone from Developments*.
- **Widening of Site Access:** We expect that Louth County Council will issue an Enforcement Notice for the unauthorised widening of the access from the L5119.
- **Importation of Material:** We expect that Louth County Council will investigate the recent importation of material to the landholding as a matter of urgency.

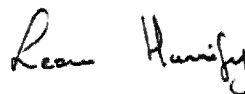
8.7 We consider that the breaches in planning law that have taken place are of such significance that they potentially raise issues in respect of the legislation and guidance that emerged following the European Court of Justice (ECJ) Judgement from 2008 pertaining to Derrybrien Windfarm (Case 215/06). In this regard, the need for screening of Environmental Impact Assessment and the undertaking of an Environmental Impact Assessment remains pertinent to this case.

8.8 We look forward to receiving clear responses to the matters raised in this letter and Louth Council's position. Should you have any queries, please do not hesitate to contact us.

Yours sincerely



Alan Hannify BA(Hons) MRUP MRTPI



Leona Hannify BA(Hons) MRUP MRTPI

Appendix A

Copy of Louth County Council's Enforcement Report, dated 19 August 2024

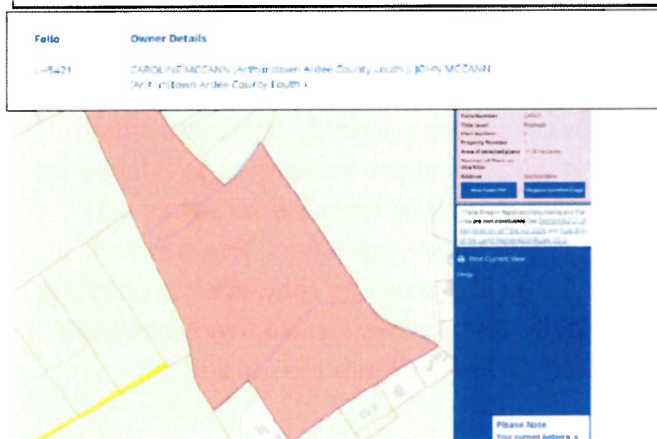


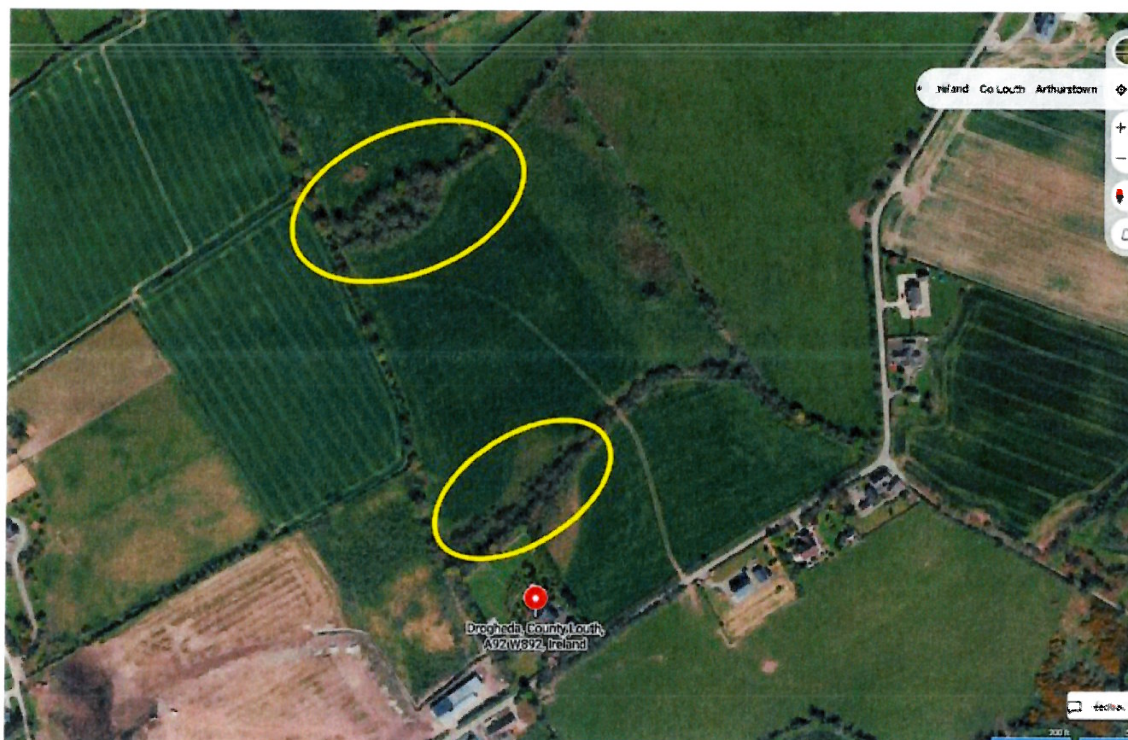
Comhairle Contae Lú
Louth County Council

Enforcement Report - Warning Letter

Case ID:	UD/24/140
Nature of Complaint:	Alleged unauthorised destruction of wetlands
Alleged Breach Type:	Alleged unauthorised infilling of wetlands
Location:	Arthurstown Dunleer County Louth
Complaint Date:	Nearest Eircode A92 W892 03/07/24
Inspection Date:	16/08/24
Report Date:	19/08/24
Recommendation:	Issue Warning Letter Choose an item.

Case Officer:	Noel Tully
Alleged Offender:	John and Caroline McCann [REDACTED]
Source of Complaint:	Government Body
Landowner:	Caroline and John McCann Arthurstown Ardee County Louth
Folio:	LH5421
GIS Plotted:	Yes 692542,795948





Aerial photograph.

2.0 Background and reason for investigating this matter.

This matter has come to the attention of the Planning Enforcement Section and is under investigation as a result of a submission from another government body.

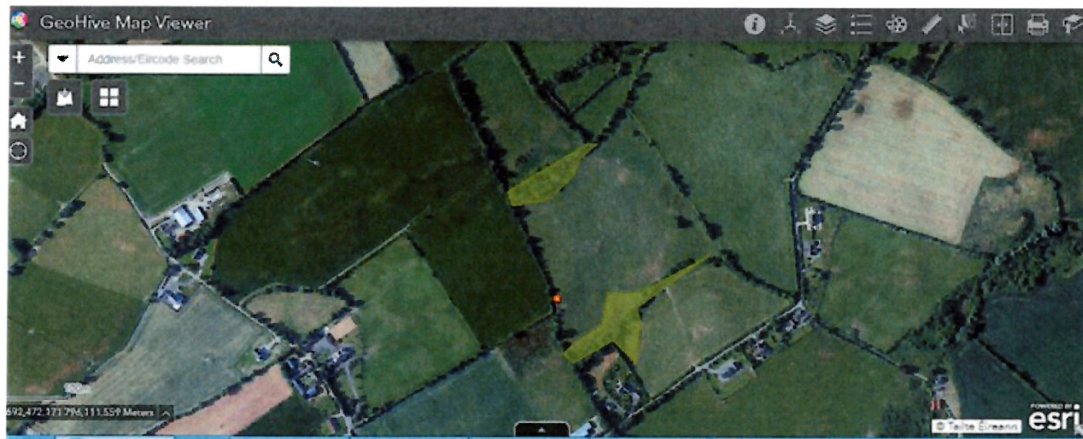
2.1 Nature of the allegation

The submission/complaint relates to the following.

Complaint received from different members of the public in relation to hedgerow destruction at Arthurstown, near the L5199 road, in February 2024. This was reported to [REDACTED] by the [REDACTED]. A forestry inspector followed it up and contacted the [REDACTED] in June about two wetland areas impacted by felling and drainage at the same location (see map 1). This Planning Enforcement complaint is in relation to the latter. Map 2 shows the two wetland areas impacted in relation to the wetland area listed on the map of Irish wetlands.

During a site visit on 2/07/24 by the [REDACTED] works were allegedly observed which appeared to be done to shape the lands and wetland areas into drainage ditches for the field. Vegetation was cleared in some areas and spoil from the wetlands was compacted along the new ditches covering the wetland vegetation. The wetland areas impacted amount to approximately 1.2 ha. There are no requests for planning permission at this location on the ePlan website. Landowner details were obtained from landdirect website. The [REDACTED] have had no contact with the landowner.

Map 1. Location of works observed at Arthurstown, Co. Louth. Green polygons indicate where wetland areas were impacted by felling and drainage. Area 1 to south, area 2 to north.



Map 2. Wetland areas listed on map of Irish Wetlands.



Image 1. Wetland area 1 impacted as observed 02.07.2024





Image 2. Wetland area 2 impacted as observed 02.07.2024.



3.0 Planning History of the location in question

There is no planning history

4.0 Enforcement History

There is no enforcement history

5.0 Site Inspection

A site visit took place on the 16th of August with John McCann and Ben Gallagher from the Environment Section. Mr Mc Cann said the lands had wetland areas due to his neighbour blocking a waterway. At this point the wetland was well under way of being excavated which was evident from the dark soil. The area involved is not site coded or registered as a designated wetland but shown on the wetlands maps as a wetland area. Mr McCann said he was carrying out the works to use the lands for agricultural purposes. I noticed a rock breaker in the centre of the field. Mr McCann said he was lowering the rock area and the excavated rock was being placed in the wet areas of the field. He asked Ben about the importation of more topsoil and was told planning permission and a permit would be required. I advised Mr McCann that Planning Enforcement issued a Warning Letter which he said he had not received as he lives up North (he did provide me with an address) and the Warning Letter sent was returned to the office. Mr Mc Cann said he was going to consult with an Agent to regularise the matter with the Planning Authority. I gave him a copy of the Warning letter and said I would issue a new one to his new address.

Contact No. [REDACTED]

6.0 Development (alleged unauthorised drainage of wetland sand infilling of lands)

- 6.1** Section 3 of the Planning and Development Act, 2000 (as amended) defines development as *inter alia* 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 etc.

In this case I consider that the matter relates to the carrying out of any works on, in, over or under land and as such constitutes development.

7.0 Exempted Development

- 7.1** I consider that the development as described in Section 6.1 of this report does not constitute Exempted Development

This is on the basis that there is no such exemption for the development in question

8.0 Statute of Limitations

- 8.1** Section 157 of the Act provides a statute of limitation (the "seven-year rule") for taking action against development where no permission has been granted, after seven years from the date of the commencement of the development.

In this case, there is photographic evidence to identify that the unauthorised development has been in place for less than seven years. The Planning Authority is therefore not statute barred and a Warning Letter/Enforcement Notice may be issued/served.

9.0 Summary

A complaint was received from a government body in relation to works carried out on land sat Arthurstown folio No. LH5421. The complaint refers to infilling and drainage of lands which affects the wetland area (*Wetland indicating sediment, Sediment type alluvium Area 17. ha*) and allegedly the **nearby** wetland site **code 170 (N148 Ornamental plants occur in this area)** Wetland area consists of small mesotrophic lake surrounded by woodland and degraded marsh which is dominated by grasses and has affinities to GS2 E Rating local conservation (Low value).

An arranged site inspection was carried out 13th August 2024 (See Item 5)

9.2 In light of the foregoing I recommend the following .

I recommend issuing a Warning Letter to:

John and Caroline McCann



Re: Lands at Arthurstown Folio No. LH5421

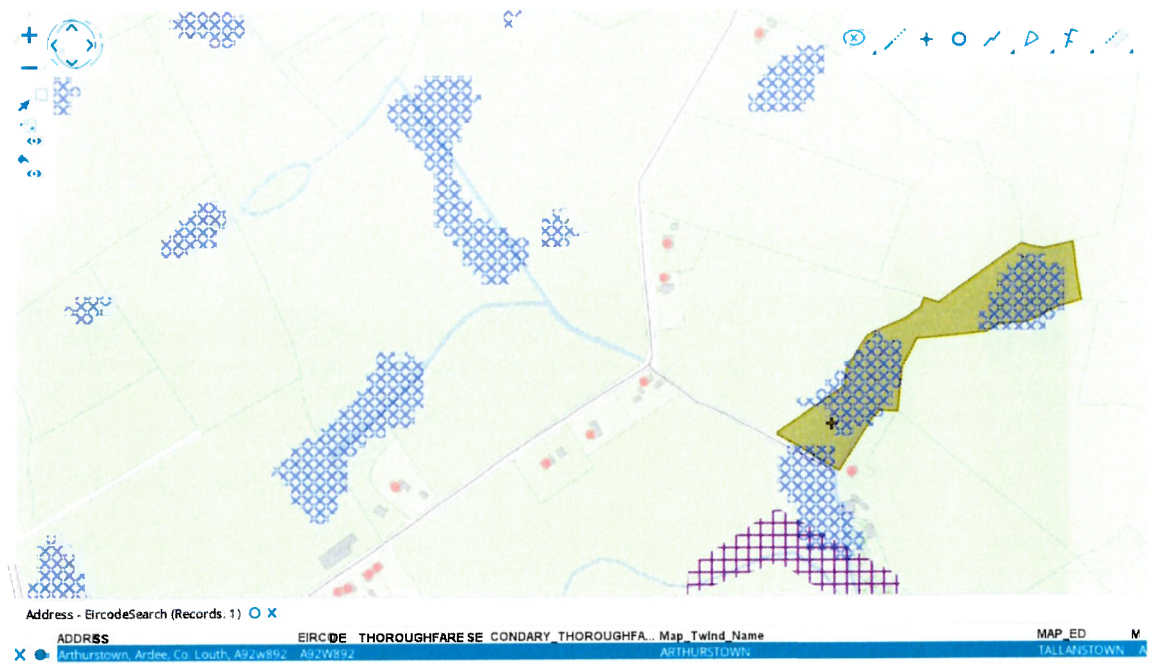
Re: It is alleged that unauthorised drainage and infilling of wetlands has taking place at the above address .

Noel Tully, Case Officer
19 August 2024

Recommendation Accepted

David Hall, Executive Planner





Part 3, Article 6 of the Planning and Development Regulations (Consolidated Version) –

Exempt Development Rural

Exemptions for works of a similar nature (Smaller scale)

Part 3, Article 6 of the Planning and Development Regulations (Consolidated Version) –

Exempt Development Rural

Minor works and structures

CLASS 3

Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works

Land Reclamation

CLASS 11

Development consisting of the carrying out of drainage and/or reclamation of wetlands

Conditions and Limitations

1. The area to be affected shall not exceed 0.1 hectares.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

Appendix B

**Copy of Email Correspondence from Dr Patrick Crushell of Wetland Surveys Ireland,
dated 6 March 2025**

From: Patrick Crushell <patrick@wetlandsurveys.ie>
Sent: 06 March 2025 13:05
To: Alan Hannify [REDACTED]
Subject: Re: Wetlands - Planning Designation

Yes NPWS have responsibility for designating nature conservation sites (SAC / SPA /NHA), a significant proportion of which include wetland areas.
Agree with your synopsis.
Kind regards,
Patrick

On Thu, Mar 6, 2025 at 12:59 PM Alan Hannify [REDACTED] wrote:
Hi Patrick,

Many thanks for your email. I appreciate the prompt and clear response.

That explanation is really helpful and aligns with my own thinking. Would I be right in saying that it is the National Parks and Wildlife Service that has responsibility for designating wetlands?

Notwithstanding any designation, my planning interpretation is consistent with the one you've articulated. If an area fits the definition of a wetland, then it would be considered a wetland under the regs regardless of whether is identified or not.

Many thanks,

Alan

From: Patrick Crushell <patrick@wetlandsurveys.ie>
Sent: 06 March 2025 12:51
To: Alan Hannify [REDACTED]
Subject: Re: Wetlands - Planning Designation

Hi Alan,

Yes, your interpretation is correct.

We are an ecological consultancy that specialise in wetland ecology and have no role in the designation of wetlands. From our [work](#) (review of desktop and field survey sources) we have identified a wide number of wetlands throughout Ireland but this in no means assigns a designation of any type to these sites. There are plenty more wetland areas that we have not surveyed or identified. If an area fits the definition of a wetland then it would be considered a wetland under the regs regardless of whether we have identified it as a wetland or not.

Kind regards,

Patrick

On Thu, Mar 6, 2025 at 12:25 PM Alan Han nify [REDACTED] wrote:

Dear Sir / Madam,

I am emailing in relation to wetlands and was hoping to get an understanding of their status from a planning perspective.

As you will be aware, Article 5 of the Planning and Development Regulations defines 'wetlands' as follows:

"natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water."

In this regard, I wanted to query whether a wetland needs to be identified and mapped by Wetland Surveys Ireland in order to be designated as a wetland in line with planning legislation? The alternative is that some wetlands exist but are not formally identified (or have yet to be identified) as such by Wetland Surveys Ireland.

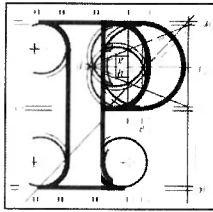
My interpretation as a planning professional is that a wetland can be defined as a wetland based on its appearance and characteristics, irrespective as to whether it is identified as such by Wetland Surveys Ireland. However, I would greatly appreciate your feedback and expertise on this matter.

Many thanks,

Alan

Appendix C

**Inspector's Report from An Bord Pleanála regarding infilling of Wetlands at Crosstown,
Ardcavan, Co. Wexford (Reference: ABP-303109-18)**



An
Bord
Pleanála

Inspector's Report ABP-303109-18

Question	Whether the removal of trees and other vegetation from the site and infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the hole to discharge to natural drainage network is or is not development or is or is not exempted development.
Location	Crosstown, Ardavan, Co. Wexford
Referrer	Michael Brennan
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	ExD. 00729
Observer	None
Date of Inspection	7 th February 2019
Inspector	Kenneth Moloney

Contents

1.0 Site Location and Description	3
2.0 The Declaration	3
3.0 The Question	4
4.0 Policy Context.....	4
4.1. Development Plan.....	4
5.0 The Referral.....	5
5.1. The following is the summary of a referral;.....	5
5.2. Planning Authority Response	6
5.3. Referrer's Response	6
5.4. Observations	6
6.0 Evaluation.....	7
7.0 Recommendation.....	14

1.0 Site Location and Description

- 1.1. The referral site is located on the northern outskirts of Wexford town in a semi-rural setting.
- 1.2. The referral site adjoins an agricultural field, situated to the immediate north, and this agricultural field was the subject of a recent appeal (appeal ref. 302310¹) with the Board.
- 1.3. The referral site is sandwiched between an existing housing development to the east, 3 no. houses under construction to the south-west and an agricultural field to the north, which was the subject of planning.
- 1.4. The ground conditions on the referral were soft and there was also pooling during my site inspection. There are also new trees planted on the referral site.
- 1.5. The newly constructed houses situated to the east are sizable detached houses comprising of both 2-storey and single storey units.
- 1.6. The wider area is characterised by individual houses situated on sizeable plots to the south and agricultural fields to the north.

2.0 The Declaration

- 2.1. The Planning Authority issued a declaration on the 9th of November 2018, to the effect that the
 - (a) The removal of trees and other vegetation from the site is development and is exempt development, and
 - (b) Infilling of the existing hole (understood to be a former marl hole), with unknown infill material and top soiling of the filled hole. Also carrying out works to allow water held in the hole to discharge to the existing natural drainage network is development and not exempted development.
- 2.2. This Declaration has now been referred to the Board, pursuant to Section 5 of the Act, for review.

¹ The Board refused permission for a development of 24 no. houses.

2.3. The main points of the Planner's report, upon which the Declaration decision was based, is summarised as follows: -

- The estimated size of the site is 0.2ha.
- It is submitted that the nature of the works is development.
- Having regard to Class 11 'Land Reclamation' the area to be effected shall not exceed 0.1 ha.
- Any previous development on the same farm holding, the total area of any such development along with the area of the previous development, shall not exceed an area greater than 0.1ha.
- The marl holes exceeds 0.1ha and notwithstanding that the fill material originated within the landholding the development is not considered exempt.
- If the fill material was waste material the infilling is not exempted development as no such exempted development provision exists.

3.0 The Question

"Whether (a) the removal of trees and other vegetation from the site and (b) infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the in the hole to discharge to natural drainage network, is or is not development and/or is or is not exempted development'.

4.0 Policy Context

4.1. Development Plan

- 4.1.1. Wexford Town and Environs Development Plan, 2009 – 2015, is the operational Development Plan.

- 4.1.2. In accordance with the Town Plan the referral site is zoned 'Medium Residential'. The objective for this land-use zoning is '*to protect and enhance the residential amenity of existing and developed communities*'.

5.0 The Referral

- 5.1. The following is the summary of the referral submission;

- It is considered that the works involving the removal of trees and other vegetation was part of the works involving the infill of a former marl hole.
- Contending that Section 4(1) (i) relates to the exemption of removal of trees and vegetation is flawed.
- Section 4 (1) (i) relates to commercial forestry and woodland development.
- No Screening for Appropriate Assessment has been submitted with the Section 5 application.
- The Planning Authority did not include a Appropriate Assessment Screening.
- The Planner's report referred to an Appropriate Assessment Screening however this maybe related to an Appropriate Assessment Screening for the planning application which was the subject of an appeal.
- The submission also includes a copy of the recommendations from the Senior Executive Scientist in respect of that adjacent planning application. The report confirms that mitigation measures are necessary to avoid impacts on the EU habitat sites.
- It is submitted that the fact that mitigation measures are required prevents the Planning Authority screening out Appropriate Assessment.
- The justification that the Local Authority used to screen out the Appropriate Assessment is distance notwithstanding that the referral site and the designated site are hydrologically linked.
- It is contended that impacts on the EU designated sites cannot be ruled out.

- It is submitted that the Local Authority was incorrect in its determination based on its view that impacts would in fact occur if deleterious material entered the EU site and the absence of any scientific evidence to confirm this.
- It is submitted that as the Local Authority does not know the type of material which was used to fill the threat is a further serious threat to the EU designated site.

5.2. **Planning Authority Response**

None

5.3. **Respondent**

The following is the summary of a response submitted by Simon Clear & Associates, on behalf of the site owner.

- The subject referral is not related to the adjoining housing development (appeal 302310).
- The referrer is involved in 3 no. separate processes. This current referral, the planning appeal and enforcement.
- It is submitted that the referrer has attempted to conflate these issues.
- The Section 5 application as administered by the Planning Authority is fundamentally flawed as the Planning Authority failed to notify the owner of the declaration decision ref. EX00729.
- It is requested that the referral is dismissed as the correct and legal procedures have not been followed.

5.4. **Observations**

None

6.0 Evaluation

6.1. The Facts of the Case

The facts of the matter include the following;

- **15th October 2018** a Section 5 declaration was sought by a third party, Michael Brennan, asking the question whether (a) a change of use from the removal of trees and other vegetation from the site, and (b) infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the hole to discharge to natural drainage network is or is not development and whether is or is not exempted development.
- On the **9th of November 2018** Wexford County Council determined that Part (a) of the question is exempted development whereas Part (b) of the question is not exempted development.
- On the **28th of November 2018** a third party referral was received by Michael Brennan in accordance with the provisions of Section 5(3)(a) of the 2000 Act.

6.2. Statutory Provisions

I consider the following statutory provisions relevant to this referral case:

Planning and Development Act, 2000 (as amended)

Section 2 (1) states: - 'development' has the meaning assigned to it by Section 3, and 'develop' shall be construed accordingly;

Section 3 (1) states: -

"In this Act, "development" means, except where the context otherwise requires, the carrying out of works on, in, over or under land, or the making of any material change of use of any structures or other land."

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001.

Planning and Development Regulations, 2001 (as amended)

Article 6(1) of the Regulations states as follows: - "(a) Subject to article 9, development consisting of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 8 relates to exemptions for field drainage.

- Article 8B relates to field drainage for agriculture, other than reclamation of wetlands.
- Article 8C relates to land reclamation works, other than reclamation of wetlands, consisting of recontouring of land, including infilling of soil (but not waste material),

Class 11 of Part 3, of Schedule 2 refers to 'development consisting of the carrying out of drainage and/or reclamation of wetlands'. The following conditions apply.

1. The area to be affected shall not exceed 0.1ha.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of

any previous such development within the farm holding shall not exceed the limits set out in 1 above.

6.3. Other Relevant Case(s)

- RL 02RL3540 – This case related to a question whether the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area is or is not exempted development. The Board decided that this would constitute 'works' and therefore 'development' as defined in Section 2 and Section 3 of the Planning and Development Act, 2000. The Board determined that no exemption is available for the development as such the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area is development and not exempted development.

6.4. Assessment

The Local Authority Section 5 Screening Determination is in two parts. Therefore, in the interest of clarity, I will consider the two questions separately.

6.4.1. Is or is not development

Question no. 1 – Whether the removal of trees and vegetation from the site is development.

Section 2 (1) states: - 'development' has the meaning assigned to it by Section 3.

Section 3 (1) states: - *"In this Act, "development" means, except where the context otherwise requires, the carrying out of works on, in, over or under land, or the making of any material change of use of any structures or other land."* Section 2 defines works as *'any act or operation of construction, excavation, demolition, extension, alteration, repair, renewal.....'*

I would note that the subject trees / vegetation is not part of a forest and would appear to be situated on the perimeter of an agricultural field which zoned for residential development. I would consider, having regard to the definitions in Section 2 and Section 3 above, that the removal and clearance of trees and vegetation within an agricultural holding would not be development. As such it is not necessary to consider whether the removal and clearance of trees is exempted development.

Question no. 2 – Whether the infilling of the existing hole (understood to be a former marl hole), with unknown infill material and top soiling of the filled hole. Also carrying out works to allow water held in hole to discharge to the existing natural drainage network is development and is or is not exempted development.

Having regard to Sections 2 and Section 3 of the Act, as amended, referred to in paragraph 6.2 above, drainage works and infilling with soil would constitute development.

6.4.2. Is or is not exempted development

I have reviewed both the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended. I would consider, and having regard to the information available on the file, that the relevant exempted development provisions include;

- Class 11, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- Article 8B & 8C of the Planning and Development Regulations, 2001, as amended.
- Section 4(1) (I) of the Planning and Development Act, 2000, as amended.

Class 11, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended

The critical issues in this exempted development provision relative to the subject development is the size of the site. Class 11 condition no. 1 states '*the area to be affected shall not exceed 0.1 hectares*'. The Local Authority have identified that the size of the referral site is approximately 0.2ha and as such would exceed condition no. 1 of Class 11. Therefore the exemption available under Class 11, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, would not apply to the development the subject of this referral question.

Article 8B & 8C of the Planning and Development Regulations, 2001, as amended.

Article 8B provides that there is an exemption for field drainage for agriculture, other than reclamation of wetlands.

In considering the subject referral question before the Board it is questionable whether the drainage works were actually carried out for agriculture. The referral site formed part of a planning application for a housing development which was the subject of an appeal (appeal ref. 302301). The location of the referral site is notable as it is sandwiched between two housing developments and a proposed housing development, i.e. appeal ref. 302301. It is also notable that the referral site is zoned for residential development in the current Wexford Town and Environs Development Plan, 2009 – 2015, as extended. The exemption under Article 8B applies to drainage for the purpose of agricultural land and in my view it is questionable whether the subject site is agricultural land.

The second issue to arise is whether the referral site is or is not a wetland. In accordance with Article 5 of the Planning and Development Regulations, 2001, as amended, '*wetlands*' are defined as *natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water*'. I would consider based on the

information provided, including photographic evidence, by the referrer and having regard to the aforementioned definition that it is possible to conclude that the referral site is a former wetland. I would acknowledge that the site owner has not responded in relation to this issue however I would note that the Local Authority refers to the referral site as a wetland in the planner's report. I would conclude that the exempted development provision available in accordance with Article 8B of the Planning and Development Regulations, 2001, as amended, would not be available to the referral question Part (B).

Article 8C of the Planning and Development Regulations, 2001, as amended, provides an exemption for land reclamation works, other than reclamation of wetlands, including recontouring and infilling of soil, but not waste material, within a farm holding.

I have concluded above that the subject referral site can be considered a former wetland based on the photographic evidence provided by the referrer and the definition of a wetland in accordance with Article 5 of the Planning and Development Regulations, 2001, as amended. Furthermore the exemption applies for the infilling of soil but not waste material. It is unknown from the information available whether the material used for infill is or is not excavated waste material or whether the material is extracted from the established farm holding. The fact that the material must be used from an existing farm holding implies that there is an established agricultural use which is currently not the case or at least this has not been adequately demonstrated. Furthermore it is unknown infill material used for the infill and therefore it has not been demonstrated whether the infill material is waste or non waste material. I would conclude that the exempted development available in accordance with Article 8C of the Planning and Development Regulations, 2001, as amended, would not be available to the subject development.

Section 4(1)(l) of the Planning and Development Act, 2000, as amended.

Section 4(1)(l) provides that development consisting of the carrying out of any the works referred to in the Land Reclamation Act, 1949 (not comprising the fencing or enclosure of land which has been open to the public, or works consisting of the reclamation of estuarine marsh land and of callows), is exempted development.

The Land Reclamation Act, 1949, does not define the term land reclamation, but as stated previously, the term is referred to and described, in Article 8 of the Planning and Development Regulations, 2001 (as amended).

'Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development'.

The Waste Management (Facility Permit and Registration) Regulations, 2007, as amended, define recovery of natural materials (clay, silt, sand, gravel or stone) as a waste activity. I refer from this, there, therefore, that recovered soil is a waste material, and that the subject development, would not, therefore, comply with this requirement of Article 8C of the Regulations. Furthermore I have concluded earlier in this report that the referral site can be defined as a former wetland.

I consider that the subject development, which involves the infill of unknown waste material to a site which is in part of a former wetland, does not constitute land reclamation. The proposed development, therefore, would not benefit of the exempted development provisions set out in Section 4(1)(l) of the Planning and Development Act, 2000 (as amended).

6.4.3. Appropriate Assessment

The Board will note that Section 4(4) of the Planning and Development Act, 2000, as amended, sets out that development shall not be exempted development if an EIA or

AA is required. As no exemptions are available for the development in question it is not necessary for the Board to examine whether appropriate assessment issues arise.

7.0 RECOMMENDATION

7.1. Conclusions and Recommendations

Accordingly, I would recommend an order along the following lines: -

WHEREAS a question has arisen as to whether (a) removal of trees and other vegetation from the site is development and is exempt development, and (b) the infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the hole to discharge to natural drainage network, is or is not development and/or is or is not exempted development'.

AND WHEREAS the said question was referred to An Bord Pleanála by Michael Breenan:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- a. Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- b. Section 4(1)(l) and 4(4) of the Planning and Development Act, 2000, as amended,
- c. Articles 5, 6 and 8 of the Planning and Development Regulations, 2001, as amended and Class 11 of Part 3 of Schedule 2 of the said Regulations, as amended,
- d. the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended by SI No. 86 of 2008), and

AND WHEREAS An Bord Pleanála has concluded that:

- a. the removal of trees and other vegetation from the site is not development,
- b. the infill development does not come within the scope of the exemption set out under section 4(1)(l) of the Planning and Development Act 2000, as amended,
- c. the infill development does not come within the scope of the exemption set out in Article 8B of the Planning and Development Regulations, 2001, as amended, because the subject site is a former wetland as defined in Article 5 of the Planning and Development Regulations, 2001, as amended,
- d. the infill development does not come within the scope of the exemption set out in Article 8C of the Planning and Development Regulations, 2001, as amended, in respect of Land Reclamation, because the material used for infill is unknown which may give rise to filling with waste material as defined in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended), and the site is a former wetland.
- e. the infill development does not come within the scope of Class 11 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, (Land Reclamation - infilling of wetlands) because of non-compliance with the Conditions and Limitations Column 1 of that Class, as the area in question exceeds the 0.1 hectares, and

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that (a) the said removal of trees and other vegetation from the site is not development, and (b) the said infilling of the existing hole with unknown infill material and top soiling of the filled hole and the carrying out of works to allow water held in the in the hole to discharge to natural

drainage network, at Crosstown, Ardavan, County Wexford is development and is not exempted development.

Kenneth Moloney
Planning Inspector

27th March 2019