S. 37

File With _____

SECTION 131 FORM

Appeal NO: ABP-323649-25

Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission dated/(received) 07/10/25

from

PA

I recommend that section 131 of the Planning and Development Act, 2000 be/(not be) invoked at this stage for the following reason(s):. No New Planning grounds

E.O.: _____ Date: 20/10/25

To EO: _____

Section 131 not to be invoked at this stage. ☐

Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____ Date: _____

S.A.O: _____ Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/3/4weeks – BP _____

EO: _____ Date: _____

AA: _____ Date: _____

S.

File With _____

CORRESPONDENCE FORM

Appeal No: ABP - 323649-25

M r Dwyer

Please treat correspondence received on 07/10/25 **as follows:**

1. **Update database with new agent for Applicant/Appellant** _____
2. **Acknowledge with BP** RL20
3. Keep copy of Board's Letter ☐

1. **RETURN TO SENDER with BP** _____
2. Keep Envelope: ☐
3. Keep Copy of Board's letter ☐

Amendments/Comments

PA's response to referral

4. **Attach to file**
   (a) R/S ☑ (d) Screening ☐
   (b) GIS Processing ☐ (e) Inspectorate ☐
   (c) Processing ☐

RETURN TO EO ☐

	Plans Date Stamped ☐ Date Stamped Filled in ☐
EO:	**AA:**
Date: 8/10/25	**Date:** 9.10.25

Derek

Daragh Cassells

From: Garrett Byrne <Gbyrne@kildarecoco.ie>
Sent: Tuesday 7 October 2025 14:32
To: Appeals2
Subject: An Coimisiún Pleanála Reference Number ABP-323649-25 - ED Reference Number ED 1257.
Attachments: 26.09.2025 Referral Response - ACP 323649-25 - ED1257.pdf

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Dear Sir/Madam,

Please find attached observation in relation to ABP Reference Number ABP-323649-25 and Kildare County Council Declaration of Exempt Development Reference Number ED1257.

If I can be of any further assistance, please contact me directly.

Kind regards,

Garrett.

Garrett Byrne|Planning Department
Staff Officer Planning
Kildare County Council|Áras Chill Dara |Devoy Park|Naas|
Co. Kildare|W91 X77F
☎ 045 980845
Email:gbyrne@kildarecoco.ie

Tá an ríomhphost seo príobháideach agus ní ceadmhach úsáid an ríomhphoist seo d'éinne ach don té ar seoladh chuige é. D'fhéadfadh go mbeadh eolas ann atá faoi phribhléid agus rúnda de réir an dlí. Munar duit an ríomhphost seo, déan teagmháil leis an seoltóir chomh luath agus is féidir. D'fhéadfadh nach iad tuairimí Chomhairle Contae Chill Dara na tuairimí atá curtha in iúl sa ríomhphost seo. Déanann Comhairle Contae Chill Dara iarracht ríomhphoist a chosaint ó víris. Mar sin féin, moltar duit gach ríomhphost a scanadh, mar ní ghlacann an Chomhairle aon dliteanas i leith damáiste do do chórais. Le haghaidh eolas ar do chearta príbháideachta agus ar conas a bhainistímid sonraí pearsanta, logáil isteach ar https://kildarecoco.ie/YourCouncil/GovernanceandCompliance/DataProtection/ Chun do chuid sonraí pearsanta a nuashonrú cuir ríomhphost chugainn ag customercare@kildarecoco.ie Caithfidh tú deis a thógáil don Chomhairle cé thú féin a chinntiú trí cruthúnas céannachta agus/nó seoladh a sholáthar, sula ndéanaimid aon athruithe.
****

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****

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KILDARE COUNTY COUNCIL

PLANNING DEPARTMENT

ACP Ref: 323649-25

Planning Ref No.: ED1257

Name of Applicant	QK Cold Stores Ltd
Address of Development	Maudlins Industrial Estate, Naas
Development Description	Installation of an Industrial water tank.
Application Type	Request for a DECLARATION under Section 5(1) of the Planning and Development Act 2000 (as amended) to establish whether under Section 5 of the Act the installation of an additional water tank, a structure of the nature of plant for purposes of an industrial process, is or is not development and is or is not exempted development.

Dear Sirs,

We refer to your correspondence and the referral seeking a declaration on *"whether the installation of an additional tank, a structure of the nature of plant for the purposes of an industrial process, is or is not development and is or is not exempt development"*, which was received by the Planning Authority on 15 September 2025.

As already mentioned by the Applicant, Kildare County Council issued a declaration dated 20 August 2025 in which a declaration was made that the above-described development *"is development and is not exempted development"*. Kildare County Council's stance remains unchanged.

We note that the Applicant, in their referral to your offices, in contention with the Planning Authority's decision, has noted that:

> *"...much of the assessment by the Planning Authority focuses on allocating specific and individual uses to individual land registry folios. It is submitted that this is not the appropriate approach to establishing the status of that part of the overall lands controlled by the Arrow group on which the structure is located.*
>
> *In this regard, it is submitted that the 'planning unit' for the assessment of the status of the structure established use of the Arrow Group's agri-food production and manufacturing facility, being an industrial use, at Maudlins*

Industrial Estate. That part of the overall Arrow Group industrial site on which the structure is situated forms part of this planning unit."

In response to this statement, the Planning Authority would like to bring to your attention a declaration (ABP-303810-19) made by the Coimisiún. This case concerned a Section 5 referral regarding whether an agricultural portal frame shed, constructed within the curtilage of a dwelling in County Louth, constituted exempted development. The shed was located within the defined curtilage of a dwelling house granted under PA ref. 15456, sharing access and physical proximity with the residential property. To address the curtilage issue, the applicant proposed revising the folio boundaries to exclude the shed from the residential property and erecting fencing to physically separate it from the dwelling. However, the Inspector concluded that, "*in the absence of planning permission, neither the artificial separation of the landholding into two folios nor the erection of timber fencing to separate the use*" altered the planning status of the shed and same was deemed to be a residential shed.

The relevance of ABP-303810-19 goes beyond curtilage and speaks directly to the issue of underlying land use. In that case, the shed was located on land with an authorised residential use, and despite the applicant's attempt to redefine boundaries and claim agricultural use, the Coimisiún held that the planning status remained residential. The key point is that planning status is determined by what is permitted on the land, not by ownership, operational intent, or proposed boundary changes. In this instance, the parcel of land where the tank is located is not only physically disconnected from the wider industrial site, but it also does not benefit from any planning permission for industrial use. The applicant cannot simply acquire adjoining land, arbitrarily demarcate it on a map, and declare it part of an industrial operation without first securing the necessary planning permission. Any development linked to an unauthorised use cannot be considered exempted.

The Planning Authority has no further comments or observations to make. The Coimisiún is referred to the Planning Authority's original Section 5 Report for further information.

Signed:

Jose Monteiro
Assistant Planner
26/09/2025

Tracy McGibbon
Senior Executive Planner
26/09/2025