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CONTAE AN CHLÁIR | COUNTY COUNCIL

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**Michael King, c/o Owen F. Kennedy
Joyce, Mackie & Loughheed
4 St. Vincent's Ave.
Woodquay
Galway
H91 KH58**

RL 5660 3348 4IE

09th August, 2022

Section 5 referral Reference R22-43 – Michael King, c/o Owen F. Kennedy

Is the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 27th June 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above, and the further information received by the Planning Authority on 21st July 2021.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas

**Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2**

**Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2**



**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R22-43



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R22-43

Is the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

AND WHEREAS, Michael King, c/o Owen F. Kennedy has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2 & 3 of the Planning and Development Act, 2000, as amended,
- (b) The Planning history on site for P19/31 as amended by An Bord Pleanála ABP ref. 30575-19 and the description of the proposed development as per the public notice for works at Ballybreen which includes for 'All associated site development and site excavation works above and below ground for the percolation area'.
- (c) The information furnished by the applicant and Irish Water (02/08/2022).

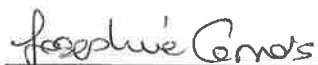
And whereas Clare County Council has concluded:

- (a) the removal of all soils and subsoils within the plot area constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended,
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (c) the said development falls within the terms and conditions of planning reference P19/31 as amended by An Bord Pleanála decision Ref. 30575-19.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the removal of all soils and subsoils within the plot area in question at Ballybreen, Kilfenora, Co. Clare, is development which is exempted

development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations, and which has the benefit of planning permission.

A handwritten signature in dark ink, appearing to read 'Josephine Connors', is written over a horizontal line.

Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate

09th August, 2022

CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED
DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No: 80257

Reference Number: R22-43

Date Referral Received: 27th June 2022

Further Information Requested: 20th July 2022

Further Information Received (Applicant): 21st July 2022

Further Information Received (Irish Water): 2nd August 2022

Name of Applicant: Michael King, c/o Owen F. Kennedy

Location of works in question: Ballybreen, Kilfenora, Co. Clare

Section 5 referral Reference R22-43 – Michael King, c/o Owen F. Kennedy

Is the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2 & 3 of the Planning and Development Act, 2000, as amended,
- (b) The Planning history on site for P19/31 as amended by An Bord Pleanála ABP ref. 30575-19 and the description of the proposed development as per the public notice for works at Ballybreen which includes for 'All associated site development and site excavation works above and below ground for the percolation area'.
- (c) The information furnished by the applicant and Irish Water (02/08/2022).

AND WHEREAS Clare County Council has concluded:

- (a) the removal of all soils and subsoils within the plot area constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended,
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (c) the said development falls within the terms and conditions of planning reference P19/31 as amended by An Bord Pleanála decision Ref. 30575-19.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the removal of all soils and subsoils within the plot area in question at Ballybreen, Kilfenora, Co. Clare, is development which is exempted development and which has the benefit of planning permission.

Signed: 
GARETH RUANE
SENIOR EXECUTIVE PLANNER 

Date: 09th August, 2022

**CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT**

FILE REF:	R22-43
APPLICANT(S):	Michael King C/O Owen Kennedy
REFERENCE:	Whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora Co. Clare is or is not development and is or is not exempted development.
LOCATION:	Ballybreen, Kilfenora, County Clare
DUE DATE:	8 th August 22

Further information was requested from the applicant as follows on the 20th July 22:

It is noted that the subject declaration is in relation to the following:

Whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare is or is not development and is or is not exempted development

However limited details have been submitted with the application in relation to this development, and in this respect a full determination cannot be made. In accordance with Section 5 (2) (b) of the Planning and Development Act 2000 as amended, and in order for the Planning Authority to further consider and assess the subject declaration, you are invited to submit the following:

1. Please submit full details in relation to the quantity (cubic metres) of soil and sub soil removed.
2. (a) Please be advised that the drawings submitted do not appear to be to scale and the notation thereon are not easily legible, in particular the cross sections AA and BB of the proposed percolation area. The cross section AA and BB are not accompanied by a legible site layout plan showing where the cross sections have been taken. Please arrange to submit legible drawings in this regard.

(b) Please be advised that under p 19/ 31 as amended by ABP ref. 30575-19 the description of the proposed development as per the public notice for works at Ballybreen includes for '**All associated site development and site excavation works above and below ground for the percolation area**'. Having regard to the foregoing please clarify if the removal of soil and subsoil referred to in your query relates to the area coinciding with the approved percolation area or if removal has occurred in areas outside of the intended percolation area.

(c) In order to determine the full nature and extent of soil and sub soil removal, please submit topographical survey of the site (pre-development levels) and details of proposed finished levels of the site in layout form and in a series of cross sections through the site.

3. (a) Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full Appropriate Assessment screening.

(b) Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full EIA screening for sub threshold development as per the criteria set out in Schedule 7 A of the Planning and Development Regulations 2001 as amended.

In accordance with Section 5 (2) (c) of the Planning & Development Act, 2000, as amended, the Planning Authority has also sought information from Irish Water, in order to enable the Planning Authority to issue the declaration on the questions as submitted.

Further information was requested from Irish Water on the 20th July 22 as follows:

I refer to section 5 (1) (c) of the Planning and Development Act 2000 as amended wherein a Planning Authority may also request persons in addition to those referred to (paragraph (b) i.e. the applicant) to submit information in order to enable the Authority to issue a declaration on the question. In this regard the Planning Authority refers this Section 5 query to Irish Water and requests the following information:

Clare County Council (the Planning Authority) notes that under P19/31, as amended by ABP ref. 30575-19, the description of the proposed development as per the public notice for works at Ballybreen includes for '**All associated site development and site excavation works above and below ground for the percolation area**'.

Please be advised that a Section 5 referral was received by the Planning Authority on the 27th June 2022, details of which are enclosed, asking whether the removal of all soil and subsoil within the plot area outlined in the submitted maps at Ballybreen, Kilfenora, Co. Clare is considered to be development and if so, is it exempted development. In order to enable the Planning Authority to issue a declaration to the applicant on the question please arrange to submit design details of the 'as constructed' works at Ballybreen demonstrating the full nature and extent of the works, and whether they comply with the conditions of ABP 30575-19. The response should be certified by a suitably qualified person.

Summary of Applicant's Response

The applicant responded on the 21st July and the 25th July 22.

It is noted that correspondence on the 21st July 22 is not signed.

Summary of Response 21st July:

The drawings furnished to the Planning Authority are copies of paper drawings provided by Irish Water in its application to Clare co. Council. If Clare Co Council had concerns about the suitability of the soil they were not expressed to Irish Water.

2 (b) The query is in specific reference to the percolation area mentioned in the application.

2 (c) How can a topographical survey be under taken after the top soil has been removed?

3 (a) All pertinent particulars as lodged by Irish Water are already with the Planning Authority to conduct an AA screening.

(b) All evidence furnished at the oral hearing is with the Planning Authority. A full EIA can be conducted by the Planning Authority.

The applicant requested a copy of the letter the Planning Authority sent to I.W.

Summary of Response 25th July 22.

- The Planning Authority is in receipt of all pertinent information.
- Particular attention was given to the aspect of the development concerning percolation of effluent to the ground at the oral hearing.

- That I.W. would ignore its own plans as lodged would be a very serious issue for the county. Because of the possible issues relative to public health and potential adverse effect on ground water.
- It is not clear why drawings would not be to scale. Originals are available on the planning file.
- How is the quantity of soil removed to be calculated?
- The precise location where soils are removed to may be unsuitable.
- It is not clear why I.W. would ignore its own plans and the evidence provided on its behalf.

Summary of I.W. response 2nd August 22.

I.W.s view is that the removal of the soil and sub soil is development and is authorised by pl 19/ 31 as amended by ABP ref. 305756-19 as the description of the development includes all associated site development and site excavation work above and below ground for the percolation area. The submission of as constructed drawings is not required in order for the Planning Authority to determine whether or not the works in question constitute development or exempted development. The issue of compliance with conditions is a separate matter to whether or not unauthorised development has taken place and falls outside the section 5 referral process. The issue of alleged unauthorised development at Kilfenora waste water treatment plant site is already the subject of section 160 court proceedings currently under the Circuit court record.

Assessment

I would concur with the response received from Irish Water and I note that the issue of alleged unauthorised development is currently before the courts. The applicant's concerns may be more properly addressed through Enforcement Proceedings under sections 152 to 155 of the Act rather than Section 5.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora Co. Clare is or is not development and is or is not exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2^{and} 3 of the Planning and Development Act, 2000, as amended,
- (b) The Planning history on site pl 19/ 31 as amended by An Bord Pleanála ABP ref. 30575-19 and the description of the proposed development as per the public notice for works at Ballybreen which includes for 'All associated site development and site excavation works above and below ground for the percolation area'.
- (c) The information furnished by Irish Water (02/ 08/ 2022) ^{the applicant and}.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) the removal of all soils and subsoils within the plot area constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended,
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (d) the said development falls within the terms and conditions of ^{pl. ref} pl 19/31 as amended by An Bord Pleanála decision ref. 30575-19 ,

Now therefore Clare County Council (Planning Authority), hereby decides ^{that} the removal of all soils and subsoils within the plot area in question is development which has the benefit of planning permission. ^{which is exempted development and}

Ellen Coey

Executive Planner

Date: 5/08/22

John

Senior Executive Planner

Date: 08/08/22.

Tadhg Holmes

From: Tadhg Holmes
Sent: Wednesday 3 August 2022 16:45
To: 'owen@jmlgalway.com'
Subject: RE: Kilfenora Water treatments and associated development. Land Owner MI. King
Attachments: R22-43 FI Response from Irish Water.pdf

A Chara

I acknowledge receipt of your email.

I refer to your query regarding the response of the Planning Authority to the Section 5 application. I also refer to my letter of acknowledgement to you on the 21st July 2022, which included the following information:

Please note the final line (**in bold**) of Section 5(2)(b) of the Planning and Development Act, 2000, as amended, which states:

*(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 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.***

Please be advised that the response of the Planning Authority will issue in the post to you before the expiry of the 3-week period as laid out in the legislation quoted above.

Please also find attached the response of Irish Water to the Further Information request from the Planning Authority, which was received by the Planning Authority on the 2nd August 2022.

Kind regards

Tadhg

Tadhg Holmes
Clerical Officer

Planning Department, Economic Development Directorate
Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2
T: 065 6846212 | **E:** tholmes@clarecoco.ie | **W:** www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

From: Owen Kennedy <owen@jmlgalway.com>
Sent: Wednesday 3 August 2022 14:18
To: Planning Office <planoff@clarecoco.ie>
Subject: Kilfenora Water treatments and associated development. Land Owner MI. King

Dear Sirs, I refer to earlier correspondence in relation to the above mentioned issue. I was expecting that Would have a details answer to my query in regard to the above named and the lands owned by him and which form part of the development commenced by Irish water. I also expected to receive a copy of any correspondence issued by Irish Water subsequent to you requesting answers from it in respect to my query. Can I hear from you and oblige.

Yours etc., Owen Kennedy

=====

Owen Kennedy



**4 Saint Vincent's Avenue,
Woodquay,
Galway
H91 KH58**

Phone: 00353 (0)91 562278

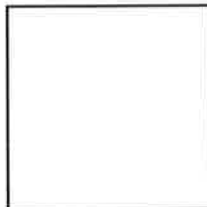
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Joyce, Mackie & Loughheed

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Without Prejudice

Anne O'Gorman
Planning Department
Economic Development Directorate
Áras Contae an Chláir
New Road
Ennis
Co. Clare
V95 DXP2



Uisce Éireann
Teach Colvill
24-26 Sráid Thalbóid
Baile Átha Cliath 1
D01 NP86
Éire

Irish Water
Colvill House
24-26 Talbot Street
Dublin 1
D01 NP86
Ireland

T: +353 1 89 25000
F: +353 1 89 25001
www.water.ie

2 August 2022

Re: Section 5 Referral R22-43

Dear Ms O'Gorman,

I refer to your letter of 20 July in relation to the *"the removal of all soils and subsoils within the plot area...at Kilfenora, Co. Clare"* and the request made under Section 5 of the Planning and Development Act 2000 (as amended) (the **PDA**), as to whether this constitutes development or exempted development.

Irish Water's view is that the removal of soils and subsoils is "development". Irish Water does not purport to rely on any provision of PDA or the Planning Regulations 2001 in order to claim that it is "exempted development". The removal of any soil and subsoil at the site is authorised by Planning Permission P19/31, as amended by ABP ref. 305756-19. As noted in your letter to us, the description of the proposed development includes *"all associated site development and site excavation works above and below ground for the percolation area."*

The submission of *"design details of the 'as constructed' works at Ballybreen demonstrating the full nature and extent of the works, and whether they comply with the conditions of ABP 30575[6]-19"* is not required in order for the Planning Authority to determine whether or not the works in question constitute development or exempted development. With regard to any issue of compliance with the planning permission raised, that is a separate matter concerned as to whether or not unauthorised development has taken place and falls outside of the Section 5 Referral process. We also note that the issue of alleged unauthorised development at Kilfenora Waste Water Treatment Plant site is already the subject of s.160 court proceedings currently, under Circuit Court Record No. 2022/00005.

We await your determination as to whether the removal of soils and subsoils at the site constitutes development or exempted development. Please do not hesitate to contact us if we can be of further assistance.

Yours sincerely,



Esther White
Irish Water

Tadhg Holmes

From: Tadhg Holmes
Sent: Monday 25 July 2022 15:01
To: 'info@jmlgalway.com'
Subject: RE: Section 5 - R2-43 Michael King

A Chara

I acknowledge receipt of your email and the attachment. It will be referred to the relevant planner and we will revert to you in due course.

Kind regards

Tadhg

Tadhg Holmes
Clerical Officer
Planning Department, Economic Development Directorate
Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2
T: 065 6846212 | E: tholmes@clarecoco.ie | W: www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

From: Joyce, Mackie & Loughed <info@jmlgalway.com>
Sent: Monday 25 July 2022 14:49
To: Planning Office <planoff@clarecoco.ie>
Subject: Section 5 - R2-43 Michael King

To Whom It May Concern,

Please see attached correspondence.

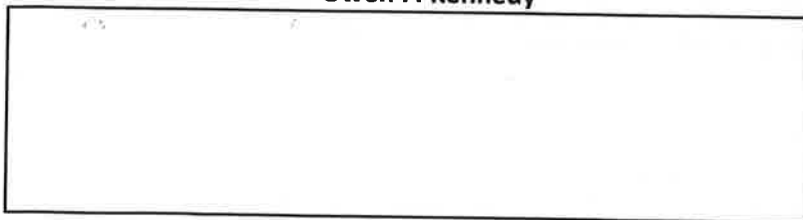
Regards,
David Kennedy

=====

O. David Kennedy MIPAV CV TRV Commissioner for Oaths

&

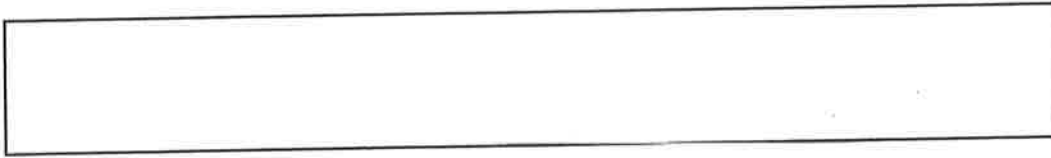
Owen F. Kennedy



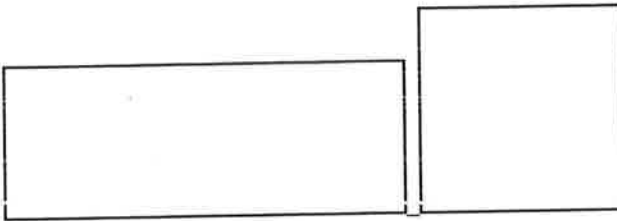
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Joyce, Mackie & Loughed

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Joyce, Mackie & Loughheed

AUCTIONEERS & VALUERS

I.P.A.V.
MEMBER
FIRM

O. David Kennedy M.I.P.A.V.
(Commissioner for Oaths)
Owen F. Kennedy

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H91 KH58
Tel: 091 562278
Email: info@jmlgalway.com
Web: jmlgalway.com

Our ref: 1318/OFK

Your ref: TH



2nd July 2022.

Clare Co. Co.,
Planning Department,
Economic Development Directorate,
Aras Contae An Chlair,
New Road, Ennis,
Co. Clare.

Re:- Section 5 Referral Reference R22-43 Lands of Michael King

Dear Sir,

We refer to the above-mentioned matter and acknowledge receipt of your letter of the 21st instant together with copy letter addressed to Irish Water of the 20th instant. We must compliment you, on the alacrity of your response.

I have no doubt you are entitled to request information as entitled by the relevant section of the 2000 Planning & Development Act. However it must also acknowledge that the planning authority was in receipt of all pertinent information as the date of the lodgement of the application by the applicant. In this instance an Oran Hearing was directed by ABP and that very detailed information was provided by numerous experts supporting the application and the detailed information furnished verbally and written by the applicants to the hearing is all available to the planning office and the decision by ABP was based on all information provided to the hearing.

Irish Water presented oral and written evidence to the said hearing as to what it intended to carry out in regard to the development and produced its evidence as to the cause of and the effect on the measures considered as right and proper and in keeping with the evidence made available and under oath by Irish Water and its representatives. ABP considered all matter touched upon and made its decision in accordance with the plans and evidence introduced. The issue of the treatment of the waste water in the treatment plant itself and the second method of treatment and the final disposal of the treated effluent was a serious issue with which the hearing was concerned and since the disposal of the treated effluent was to enter the ground particular attention was paid to this aspect of the entire matter.

That Irish Water a semi state body would ignore its own plans as lodged with the planning authority for the county and also presented to a public oral hearing presented organised by another semi state body under oath would later ignore its own plans, evidence upon which it relied should be a very serious issue for the county concerned because of the possible issues relative to public health and the potential of having a very adverse effect on

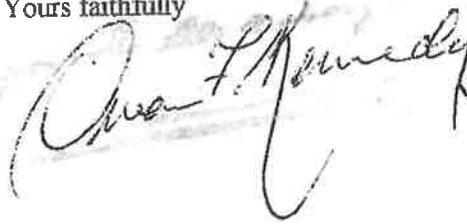
ground water in the area and down from the location where private springs are the sole provision for some families.

It was mentioned in your letter of the 20th instant that some of the details set out on the maps and or drawings as lodged with by me were somewhat unsatisfactory, however as you previously confirmed your satisfaction with them I cannot understand your most recent reference to their quality. As these drawings etc have been copies from originals I cannot understand why they would not now be to scale. Also if inspected initially why these issues were not brought to my attention at that stage? Originals are readily available on your files as is all supporting evidence/argument lodged in support of the application subsequently lodged with you. It is my understanding that Clare Co. Co. would have examined and considered any implication of the supporting evidence and any derivation therefrom should be a concern of the Council not alone from the planning aspect but the public health issue that might arise. Another issue to which you refer is the volume or quantity of the soils that were removed, in view of their removal how might such a calculation be implemented? You might request from Irish water the relevant details of this figure and also request the precise location to where they were remove, they may be totally unsuitable for their removal location.

To deviate from my aspect of this issue perhaps we might await the response from Irish Water may provide evidence or suggestion of a solution. However I cannot understand why an applicant would engage authorities to supplement and support its planning application on such a sensitive issue and later ignore its own plans and the evidence provide don its behalf.

Kindly keep me advised of the repose requested from I.W. as it was requested to respond within two weeks as and from the 20th instant.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Sean P. Kennedy', with a stylized flourish at the end.



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Michael King, c/o Owen F. Kennedy
Joyce, Mackie & Loughheed
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21/07/2022

Section 5 referral Reference R22-43 – Michael King, c/o Owen F. Kennedy

Is the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 27th June 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above. I acknowledge receipt on 21st July 2022 of your response to the further information request issued by the Planning Authority on 20th July 2022.

In your letter, you queried our request for further information. Please be advised that Section 5(2)(b) of the Planning and Development Act, 2000, as amended, which states:

(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 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.

Please find attached a copy of the correspondence issued to Irish Water on 20th July 2022, as requested.

Please note that the Planning Authority is considering the further information submitted and a reply will issue to you in due course.

Mise, le meas


Tadhg Holmes
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

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COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Irish Water
Colvill House
24-26 Talbot Street
Dublin 1
Dublin**

20/07/2022

Section 5 referral Reference R22-43 – Michael King, c/o Owen F. Kennedy

Is the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to section 5 (1) (c) of the Planning and Development Act 2000 as amended wherein a Planning Authority may also request persons in addition to those referred to (paragraph (b) i.e. the applicant) to submit information in order to enable the Authority to issue a declaration on the question. In this regard the Planning Authority refers this Section 5 query to Irish Water and requests the following information:

Clare County Council (the Planning Authority) notes that under P19/31, as amended by ABP ref. 30575-19, the description of the proposed development as per the public notice for works at Ballybreen includes for **'All associated site development and site excavation works above and below ground for the percolation area'**.

Please be advised that a Section 5 referral was received by the Planning Authority on the 27th June 2022, details of which are enclosed, asking whether the removal of all soil and subsoil within the plot area outlined in the submitted maps at Ballybreen, Kilfenora, Co. Clare is considered to be development and if so, is it exempted development. In order to enable the Planning Authority to issue a declaration to the applicant on the question please arrange to submit design details of the 'as constructed' works at Ballybreen demonstrating the full nature and extent of the works, and whether they comply with the conditions of ABP 30575-19. The response should be certified by a suitably qualified person.

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



Please submit your response to the Planning Authority in written/typed format, also quoting your reference number R22-43, to the postage address at the bottom of this correspondence. Alternatively, please email your response to planoff@clarecoco.ie, also quoting reference R22-43.

Please respond to this letter within 2 weeks of the date of this correspondence.

Mise, le meas



Anne O'Gorman
Staff Officer

Planning Department
Economic Development Directorate



ESTABLISHED 1904

Joyce, Mackie & Loughheed

AUCTIONEERS & VALUERS

L.P.A.V.
MEMBER
FIRM

O. David Kennedy M.I.P.A.V.
(Commissioner for Oaths)
Owen F. Kennedy

4 St. Vincent's Ave.,
Woodquay, Galway.
H91 KH58
Tel: 091 562278

Email: info@jmlgalway.com
Web: jmlgalway.com

Our ref: 1318/OFK

Your ref: R22-43.

21st July 2022.

Clare Co. Co.,
Planning Dept.,
Economic Development Directorate,
Aras Contae an Clair,
New Road, Ennis,
Co. Clare.

Re:- Section 5 Referral Ref. R22-43 Land Owner Michael King.
Developer Irish Water.

Dear Sirs,



This will acknowledge receipt of your letter of the 20th instant in regard to the above-mentioned matter.

I refer to your fourth paragraph. Your earlier correspondence confirmed that when I lodged the appropriate fee with you my query would be responded to with certification as to the position inquired into. Am I correct or otherwise? In the event I correct kindly produce your decision as confirmed by you would be the case.

In the event I am incorrect why was not the present situation as outlined in your letter of the 20th instant to me initially?

Irish Water applied for various works in and close to the village of Kilfenora are those or rather copies of the particulars lodged by Irish Water with Clare Co. Co. Intended works include improvement to the waste water treatment facility pumping the treated sewerage and a proposed percolation area on the lands of our client Ml. King.

Kindly note the drawings and whatever particulars available to me (as furnished you) are copies of the papers drawings provided by Irish Water in its application to Clare County Council. I expect that should Clare Co. Co. have required evidence and particulars of the details as mentioned under paragraph Number 2., on said letter it would in considering the application requested that such details be provided. As yet all Clare Co. Co. did issue a planning permit in regard to the entire proposed operation and in particular the subject lands which was intended to be used for secondary treatment in the outlined percolation area. The percolation area, its soils and subsoil's would have had to be assessed to ensure suitability for the expressed intention of the applicants.

In the event consideration and probable examination of the soils etc in the subject plot have been passed as appropriate for the intended purpose in the absence of such considerations how could a decision be made to permit the development of this facility on these lands (Kings) if or when they were unsuitable, had not sufficient depth. Whatever concerns if any might have been

held by Clare Co. Co. were not expressed to Irish Water. If this is so kindly confirm. Since Clare Co. Co. has its planning file available to it, thus enabling it refer to it is or when queries are raised.

In relation to paragraph 2, b (second page) of your letter and the matters covered by the following quoted detail, "All associated site development and site excavation works above and below ground for the percolation acre". My query is specifically in reference to this percolation area as mentioned in the application made by Irish Water and as such is very precise in the fact it relates only to the percolation area. This plot is the subject of a C.P.O. and Irish Water would have had to comply with the areas of lands within the confined of the C.P.O. Since this paragraph confirms the approved percolation area as suitable I must expect Your planning office has taken into consideration all pertinent matters to the plot in question and the soils, sub soils, their suitability and their depth was all in accordance with the essential requirements of the Council

In regard to paragraph 2, (C) of your letter. You might explain to me as to how a topographical survey might be conducted after the top soils have been removed? It would be expected that in the event such surveys were regarded as of interest the applicants, would have been requested by your planning office to submit one. How can you request a survey to-day when the evidence has been removed elsewhere. The transport of these soils probably should have been a consideration taken by Clare Co. Co. and deposited elsewhere, not that the site to which they were transported is of concern to me, but I would be glad to hear from you on this issue also.

Paragraph No. 3 (a) of your letter. Kindly note all pertinent particulars as lodged by Irish Water are already with you. I would also expect the assessment of the suitability of the soils and sub soils are also available to you and as I mentioned earlier I would expect to believe Clare Co. Co. took into consideration all pertinent evidence when considering the application., particularly so where possible contamination of ground waters may be at risk.

In view of the removal of the soils I also expect that Clare Co. Co. would make immediate contact with the applicants when attention is brought to it on such a serious matter and demand its reasons or whatever influenced Irish Water to depart of the planning permit as issued by the Council. I expect the material as lodged with you is sufficient to enable you conduct an appropriate assessment screening.

Subparagraph (b). Again all of the documentation lodged with the planning application is with you to include all evidence furnished the oral hearing conducted by ABP is readily currently available to you.

While I am not aware, of participation in the Oral Hearing Process by Clare Co. Co., I would expect the hearing was attended by a representative of the Council, but from the various documents made available for me to read, considerable evidence was made available by and presented at the hearing by professional representatives of Irish Water with expert knowledge of the pertinent conditions are suitable requirements to permit the development proceed. Consequently I believe a full EIA can be conducted by you by immediate reference to the planning file and the oral hearing file.

Finally I note you have made contact with Irish water in regard to this matter, may I request a copy of whatever you have requested or demanded from Irish Water. I, on behalf of my client must be in a position to fully advise my client as to my understanding of this matter However the issued is not restricted to my client along as there is a greater and more widespread concern, that being why the top soils have been removed, what might replace them, if tests have been carried

out on replacement materials to ensure they are suitable for purpose and not a cause of contamination of groundwater in the immediate area or down- stream or flow from this location.

I also expect Clare Co. Co. would hold the same concerns as I and my client does to the replacement of the top soils without assessment, information and confirmation as to their suitability not alone from Irish Waters perspective but Clare Co. Co's as the appropriate local authority with associated legal obligations for the community as a whole and Kilfenora in particular. The public Record of Irish Water in regard to its obligations and the safety of the population it serves as a whole could not be a matter of pride.

Kindly acknowledge receipt and oblige.

Yours faithfully,



COMHAIRLE
CONTAE AN CHLÁIR

CLARE
COUNTY COUNCIL

Registered Post

Irish Water
Colvill House
24-26 Talbot Street
Dublin 1
Dublin

RL 5660 3339 61E

20/07/2022

Section 5 referral Reference R22-43 – Michael King, c/o Owen F. Kennedy

Is the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to section 5 (1) (c) of the Planning and Development Act 2000 as amended wherein a Planning Authority may also request persons in addition to those referred to (paragraph (b) i.e. the applicant) to submit information in order to enable the Authority to issue a declaration on the question. In this regard the Planning Authority refers this Section 5 query to Irish Water and requests the following information:

Clare County Council (the Planning Authority) notes that under P19/31, as amended by ABP ref. 30575-19, the description of the proposed development as per the public notice for works at Ballybreen includes for **'All associated site development and site excavation works above and below ground for the percolation area'**.

Please be advised that a Section 5 referral was received by the Planning Authority on the 27th June 2022, details of which are enclosed, asking whether the removal of all soil and subsoil within the plot area outlined in the submitted maps at Ballybreen, Kilfenora, Co. Clare is considered to be development and if so, is it exempted development. In order to enable the Planning Authority to issue a declaration to the applicant on the question please arrange to submit design details of the 'as constructed' works at Ballybreen demonstrating the full nature and extent of the works, and whether they comply with the conditions of ABP 30575-19. The response should be certified by a suitably qualified person.

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



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Please respond to this letter within 2 weeks of the date of this correspondence.

Mise, le meas

A handwritten signature in dark ink, appearing to read 'Anne O'Gorman', followed by a horizontal line.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate



Registered Post

COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Michael King, c/o Owen F. Kennedy
Joyce, Mackie & Loughheed
4 St. Vincent's Ave.
Woodquay
Galway
H91 KH58**

RL 56603338 21E

20/07/2022

Section 5 referral Reference R22-43 – Michael King, c/o Owen F. Kennedy

Is the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 27th June 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

It is noted that the subject declaration is in relation to the following:

Whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare is or is not development and is or is not exempted development

However limited details have been submitted with the application in relation to this development, and in this respect a full determination cannot be made. In accordance with Section 5 (2) (b) of the Planning and Development Act 2000 as amended, and in order for the Planning Authority to further consider and assess the subject declaration, you are invited to submit the following:

1. Please submit full details in relation to the quantity (cubic metres) of soil and sub soil removed.
2. (a) Please be advised that the drawings submitted do not appear to be to scale and the notation thereon are not easily legible, in particular the cross sections AA and BB of the proposed percolation area. The cross section AA and BB are not accompanied by a legible site layout plan showing where the cross sections have been taken. Please arrange to submit legible drawings in this regard.

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Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department
Economic Development Directorate**
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



(b) Please be advised that under p 19/ 31 as amended by ABP ref. 30575-19 the description of the proposed development as per the public notice for works at Ballybreen includes for **'All associated site development and site excavation works above and below ground for the percolation area'**. Having regard to the foregoing please clarify if the removal of soil and subsoil referred to in your query relates to the area coinciding with the approved percolation area or if removal has occurred in areas outside of the intended percolation area.

(c) In order to determine the full nature and extent of soil and sub soil removal, please submit topographical survey of the site (pre-development levels) and details of proposed finished levels of the site in layout form and in a series of cross sections through the site.

3. (a) Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full Appropriate Assessment screening.
- (b) Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full EIA screening for sub threshold development as per the criteria set out in Schedule 7 A of the Planning and Development Regulations 2001 as amended.

In accordance with Section 5 (2) (c) of the Planning & Development Act, 2000, as amended, the Planning Authority has also sought information from Irish Water, in order to enable the Planning Authority to issue the declaration on the questions as submitted.

Please submit your response to the Planning Authority in written/typed format, also quoting your reference number R22-43, to the postage address at the bottom of this correspondence. Alternatively, please email your response to planoff@clarecoco.ie, also quoting reference R22-43.

Mise, le meas


Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF: R22-43
APPLICANT(S): Michael King C/O Owen Kennedy
REFERENCE: Whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora Co. Clare is or is not development and is or is not exempted development.
LOCATION: Ballybreen, Kilfenora, County Clare
DUE DATE: 21st July 22

Planning History on Site

19/ 31 I.W. Permission granted by CCC for development which will consist of 1. Provision of the following in the townland of Kilcarragh: The construction of a new 330 PE wastewater treatment plant and demolition of the existing treatment works. The development will consist of inlet works, a storm water storage tank, treatment works including tertiary filtration and UV disinfection, sludge treatment, a control kiosk, flood protection bund, site lighting, a 2.4m high security fence and a scheme identification sign. All associated site development and site excavation works above and below ground for the wastewater treatment plant. 2. **Provision of the following in the townland of Ballybreen:** The construction of a percolation area, including a treated effluent pumping station, a control kiosk, an internal road, site lighting, a 1.2m high fence and a scheme identification sign. **All associated site development and site excavation works above and below ground for the percolation area.** A Natura Impact Statement has been prepared in respect of this planning application

ABP 30575-19 upheld the decision of Clare Co Council but modified conditions.

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Background to Referral

The applicant is seeking a Section 5 Declaration as to whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora County Clare is or is not development and is or is not exempted development.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

S.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.

‘Works’ are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

“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.

Section 4 (1) (g) states the following shall be exempted developments for the purposes of the act developments consisting of the varying out by any local authority or statutory under taken of any works for the purpose of inspection, repairing, renewing, altering or removing any sewer, mains, pipes, cables, over head wires or other apparatus including the excavation of any street, or other land for that purpose. This section is relevant to the subject application, as while not stated in the subject declaration application, such works would be under the remit of a statutory body, namely Irish Water.

Section 4(4) of the Act states that notwithstanding paragraphs (a), (i) (ia) and (l) of subsection 1 and any regulations under subsection 2 , development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required (i.e. amended by the Environment (Miscellaneous Provisions) Act 2011).

Planning and Development Regulations 2001, as amended

Class 58 – Development by Irish Water

Development by Irish Water, for the purpose of the provision of water services, consisting of one or more of the following:

(a) the inspection, maintenance, repair, renewal or removal of pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes, kiosks ,intakes, overhead wires, meters and other apparatus, including the excavation of any street or other land for that purpose;

(b) the installation of either or both—

(i) underground pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes and meters, and,

(ii) above ground kiosks, meters and over head wires including the excavation of any street or other land for that purpose;

Conditions and limitation:

The volume above ground level of any such other apparatus and overhead kiosk, meter or other apparatus shall not exceed 13 cubic metres in rural areas (being areas as defined in Article 6(3)) or 2 cubic metres in order areas measured externally.

(c) The construction or erection of either or both.

(i) below ground pumping or booster stations and, where appropriate, above ground kiosks, and

(ii) below ground holding tanks or reservoirs

Conditions and limitations

- 1. The volume above ground level of any (ii) below ground holding tanks or such kiosk, meter or other apparatus shall not exceed 500 cubic metres measured externally*

The volume above ground level of any such kiosk, metre or other apparatus shall not exceed 13 cubic metres in rural areas (being areas as defined in Article 6(3)) or 2 cubic metres in other areas, measured externally.

(d) the provision of telemetry and telecommunications apparatus in the form of a free-standing pole or antenna to the top or side of an existing building or structure within an existing water services site (being a site of not less than 0.1 hectare used for the provision of water services);

Condition and limitation

Any such pole or antenna shall not exceed 10 metres in height or 0.60 metres in diameter.

(e) the provision of structures for sampling, testing or odour abatement within the curtilage of existing water services sites; (f) the carrying out of remedial works in respect of existing water services infrastructure in order to comply with conditions of licences and certificates issued under the Waste Water Discharge (Authorisation) Regulations 2007 (S.I. No. 684 of 2007)

Condition and limitation

The capacity of any such structure shall not exceed 50 cubic meters and the height of any such structure shall not exceed the current height of existing structures on the site.

(g) the upgrade of existing water or waste water structures, or both, within existing site boundaries or the alteration or repair of any structure or its replacement with a similar structure.

(h) the installation of plant or equipment within the curtilage of an existing water services site only in so far as is necessary to avert serious risks to public health or critical failure of infrastructure;

(i) the carrying out of any emergency work on an asset owned by Irish Water in order to ensure the continued supply of essential water and waste water services;

Condition and limitation

The upgrading of any such structure shall not increase the existing floor area by more than 10% and the height of the upgraded structure shall not exceed the current height of existing structures.

(j) such fencing, gates, CCTV equipment and signage as are required to prevent unauthorised access to sites owned by Irish Water and ensure public safety or health and safety within the site;

Condition and limitation

The height of any such fencing shall not exceed 2.5 metres and the type of such fencing shall be consistent with existing development in the vicinity.

(k) test drilling for public water supplies.

Article 9

Article 9 – Restrictions on Exemption

Under Article 9 (1) of the same Regulations, 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 compromise 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,

(iv) 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,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(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.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora County Clare is or is not development and is or is not exempted development.

Particulars of Proposal

The particulars of the proposal and site are set out below:

- Cover letter
- Completed application form
- Nicholas O' Dwyer / Irish water Drawing showing subject site outlined in red Size A4 (scale not legible)

- EPS drawing proposed percolation site. Scale, notations and cross sections AA, and BB all indecipherable. Size A4
- Nicholas O Dwyer / Irish water Drawing. Sightlines. Notations illegible. Proposed sight distance shown in a red line.

The Requirement For Appropriate Assessment

I note in this regard that the application approved under 19/ 31 ABP 30575-19 was accompanied by an NIS report (Stage 2) AA which related to the overall development . No details have been submitted under the subject application to allow for an AA screening to be carried out in respect of soil removal. Further information will be requested in this regard.

The requirement for EIA

Mandatory Requirement- In assessing this application I have had regard to the provisions of EU Directive 2014/52/EU (which amends EU Directive 2011/92/EU), and which has been transposed into Irish legislation by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (SI No. 296 of 2018). The subject development does not fall within the mandatory requirements for EIA as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended because the projects listed do not include to reference to removal of soil / sub soil from a site or any thresholds in relation to such removal.

Subthreshold Requirement- I consider that the proposal may constitutes a sub-threshold development and note the requirements of Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended. I further note that the requirement for a sub-threshold EIA was screened out under pl 19/ 31, however I consider it prudent to carry out a sub-threshold screening in respect of the subject Section 5 declaration as per the criteria set out in Schedule 7 A of the Planning and Development Regulations (Information to be provided by the applicant or developer for the purposes of screening sub threshold development for environmental impact assessment). The subject application is deficient in respect of information contained therein to allow for a full EIA screening assessment to be carried out.

I consider that potential for in combination and cumulative effects requires to be further screened by the applicant because it is not clear where soil is being removed to and the nature of the receiving environment. Further information will be requested in this regard.

Section 4(4) of the Act states 'Notwithstanding paragraphs (a), (i) (ia) and (l) of subsection 1 and any regulations under subsection 2, development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. **In this regard insufficient information has been submitted with the subject application in order for the Planning Authority to make a conclusive determination in relation to same.**

Considerations

Planning and Development Act 2000, as amended

Is or is not development?

Having regard to section 2 of the Planning and Development Act 2000, as amended, 'works' is defined as 'any act or operation of construction or excavation'. I refer to Section 3 of said Act which defines 'development' as 'The carrying out of any works on, over or under land or the making of any material change in the use of any structures or other land'.

Having regard to the definition of works, it would appear that the removal of soil works constitutes both 'works' and 'development'.

Is or is not exempted Development?

While it is established that the removal of soil and sub soil constitutes works and development the next stage is to enquire if such development can be considered exempted development. Having regard to the planning history on site, and the legislation cited above I do not consider that works referred to by the applicant fall within section 4 (1) (g) of the Act or within the scope of Class 58 of the Regulations which sets out exempted works by Irish Water because the works relate solely to the removal of soil.

Recommendation PART A

I recommend that the following is issued to the applicant by the Planning Authority in this instance:

It is noted that the subject declaration is in relation to the following:

Whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora Co. Clare is or is not development and is or is not exempted development

However limited details have been submitted with the application in relation to this development, and in this respect a full determination cannot be made. In accordance with Section 5 (2) (b) of the Planning and Development Act 2000 as amended, and in order for the Planning Authority to further consider and assess the subject declaration, you are invited to submit the following:

1. Please submit full details in relation to the quantity (cubic metres) of soil and sub soil removed.
2. (a) Please be advised that the drawings submitted do not appear to be to scale and the notation thereon are not easily legible, in particular the cross sections AA and BB of the proposed percolation area. The cross section AA and BB are not accompanied by a legible site layout plan showing where the cross sections have been taken. Please arrange to submit legible drawings in this regard.

(b) Please be advised that under p 19/ 31 as amended by ABP ref. 30575-19 the description of the proposed development as per the public notice for works at Ballybreen includes for ' All associated site development and site excavation works above and below ground for the percolation area' . Having regard to the foregoing please clarify if the removal of soil and subsoil referred to in your query relates to the area coinciding with the approved percolation area or if removal has occurred in areas outside of the intended percolation area.

(c) In order to determine the full nature and extent of soil and sub soil removal , please submit topographical survey of the site (pre development levels) and details of proposed finished levels of the site in layout form and in a series of cross sections through the site .

3. (a) Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full Appropriate Assessment screening .

(b) Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full EIA screening for sub threshold development as per the criteria set out in Schedule 7 A of the Planning and Development Regulations 2001 as amended .

Recommendation PART B

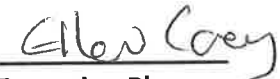
I recommend that the following is issued to Irish Water by the Planning Authority in this instance:

I refer to section 5 (1) (c) of the Planning and Development Act 2000 as amended wherein a Planning Authority may also request persons in addition to those referred to (paragraph b i.e. the applicant) to submit information in order to enable the Authority to issue a declaration on the question. In this regard I recommend referring this Section 5 query to Irish Water and requesting the following information:

The Planning Authority notes that under p 19/ 31 as amended by ABP ref. 30575-19 the description of the proposed development as per the public notice for works at Ballybreen includes for ' All associated site development and site excavation works above and below ground for the percolation area' .

Please be advised that a section 5 referral was received by the Planning Authority on the 27th June 22, details of which are enclosed, asking whether the removal of all soil and subsoil within the plot area outlined in the submitted maps at Ballybreen Kilfenora is considered to be development and if so, is it exempted development. . In order to enable the Planning Authority to issue a declaration to the applicant on the question please arrange to submit design details of the 'as constructed' works at Ballybreen demonstrating the full nature and extent of the works , and whether they comply with the conditions of ABP 30575-19. The response should be certified by a suitably qualified person.

Please request  to respond to this letter within 2 weeks of the date of the correspondence.


Executive Planner
Date: 19/07/22


Senior Planner
Date: 19-07-22.

Clare County Council
Screening for Appropriate Assessment & Determination

1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all developments regardless of location which require an EIS

Table 1: Project Details

Planning File Reference	R 22/43
Applicant Name	Michael King C/O Owen F. Kennedy
Development Location	Ballybreen Kilfenora
Application accompanied by an EIS	
Application accompanied by an NIS	
Description of the project (To include a site location map):	
<p>Section 5 referral</p> <p>Whether the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora is or is not development and is or is not exempted development. (See NIS received as part of 19/ 31 .</p>	

Table 2: Identification of European sites which may be impacted by the proposed development.

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)¹ is recommended. For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in combination effects. Qualifying Interests/Special conservation Interests for each site and the distance relevant to the proposal are listed (Table 2 (a)).

Table 2 (a): European Sites within 15km of Applicant Site

European Sites ²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
Moneen Mountain Sac 00054	Annex I habitats: • *Turloughs [3180] • Alpine and boreal heaths [4060] • Juniperus communis formations on heaths or calcareous grasslands [5130] • Calaminarian grasslands of the Violetalia calaminariae [6130] • Semi-natural dry grasslands and scrubland facies on calcareous grasslands [6210] • Petrifying springs with tufa formation (Cratoneurion) [7220] • *Limestone pavements [8240] Annex II Species • Marsh fritillary Euphydryas aurinia [1065] • Lesser horseshoe bat Rhinolophus hipposideros [1303]	3.9km
Inagh River estuary SAC	Annex I Habitats <input checked="" type="checkbox"/> Salicornia and other annuals colonising mud and sand [1310] <input checked="" type="checkbox"/> Atlantic salt meadows (Glaucopuccinellietalia maritimae) [1330] <input checked="" type="checkbox"/> Mediterranean salt meadows Juncetalia maritima [1410] <input checked="" type="checkbox"/> Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] <input checked="" type="checkbox"/> *Fixed coastal dunes along the shoreline with herbaceous vegetation (grey dunes) [2130]	7.7km

1	Impacts on designated rivers, streams, lakes and	Is the development in the catchment of or immediately upstream of a	Unknown
---	--	---	---------

¹ European Sites that are more than 15km from the proposal may have to be considered. For example in the case of sites with water dependent habitats or species and where a proposal could affect water quality or quantity it may be necessary to consider the full extent of the upstream and/or downstream catchment.

² European Site details are available on <http://webgis.npws.ie/npwsviewer/> or maybe obtained from internal mapping systems.

	fresh water dependant habitats and species.	<i>watercourse that has been designated as a European site?</i>	
2	Impacts on terrestrial habitats & species.	<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	Unknown- The query does not specify where soil is being removed to.
3	Impacts on designated marine habitats & species.	<i>Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs</i>	unknown
4	Impacts on birds in SPAs	<i>Is the development within 1km of a Special Protection Area</i>	no
5	Indirect effects	<i>Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site?</i> <i>Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?</i>	no

Conclusion:

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer is *unknown* or *yes* proceed to Table 3 and refer to the relevant sections of Table 3.

Table 3: Identification of potential impacts.

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species. <i>Please answer the following if the answer to question 1 in table 2 was "yes" or "unknown". Does the development involve any of the following:</i>	
1.1	Removal of or interference with habitat within a European site. This may include any element of a project liable to interfere with breeding, nesting or roosting sites of birds, bats, water based species	NA
1.2	Discharges either directly (via pipe from the development) or indirectly (via sewer) to surfacewater or groundwater What is the likely volume of the discharge?	
1.3	Abstraction from surfacewater or groundwater in or adjacent to a European site, where hydrology is a critical element in the protection of habitat and species at the site? What is the likely volume of the abstraction?	NA
1.4	Is removal of topsoil proposed within 500m of watercourses? What transportation requirements are provided? Does the removal involve reduction in area, population density or fragmentation of area of any habitat or species?	unknown
1.5	Infilling or raising of ground levels within 500m of watercourses? What transportation requirements are provided? Does the infilling or raising involve interference with area, population density or fragmentation of area of any habitat or species?	unknown
1.6	Construction of drainage ditches - (scale?) Where the run off is directed to? Is the drainage run off directed to a European site where species are identified and whose conservation status may be impacted by this drainage?	NA
1.7	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	NA
1.8	Construction within a floodplain or within an area liable to flood (See www.floodmaps.ie , internal flood risk maps, County Development Plan SFRA and www.cframes.ie)	NA
1.9	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	NA

1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	NA
1.11	Development within catchment of a European site of a scale or type which involves the production of an EIS	NA
1.12	Consideration of effects in combination with existing development?	NA
2	Impacts on terrestrial habitats and species. <i>Please answer the following if the answer to question 2 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
2a	Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat. Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?	NA
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	NA
2c	Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?	NA
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	NA
3	Impacts on designated marine habitats and species. <i>Please answer the following if the answer to question 3 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
3a	Removal of or interference with habitat within the European site. This includes timing of the project if there is potential to interfere with nesting or breeding periods, either directly or indirectly (e.g. by noise emission) or any aspect of the life cycle of a protected species. This also includes potential fragmentation, size reduction of habitat, or reduction in species density.	NA
3b	Coastal protection works on intertidal or marine habitats within 5km of a European site supporting coastal or marine habitats or	NA

	species. This includes any works which may give rise to potential changes in hydrology or salinity of these areas.	
3c	Development of piers, slipways, marinas, pontoons or any other infrastructure within 5km of a European site that was designated because it supports marine habitats and/or species.	NA
3d	Dredging within 5km of a European site supporting coastal or marine habitats or species.	NA
3e	Removal of topsoil or infilling within 100m of marine habitats within the designated site.	NA
3f	Land based development within 1km of a European site of a scale or type which involves the production of an EIS.	NA
3g	Marine or intertidal based development within 5km of a European site of a scale or type which involves the production of an EIS.	NA

4	<p align="center">Impacts on birds in SPAs</p> <p align="center"><i>Please answer the following if the answer to question 5 in table 2 was yes.</i></p> <p align="center"><i>Does the development involve any of the following:</i></p>	
4a	Removal of or interference with habitats within an SPA. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4b	Erection of wind turbines within 1km of an SPA.	NA
4c	All construction works within 100m of intertidal areas – Coastal SPAs, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4d	Infilling of coastal habitats within 500m of SPA, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4e	Discharges to coastal SPA, including any element of a discharge liable to give rise to disturbance of this habitat, either by direct, indirect, or in combination effects	NA
4f	Development of cycleways or walking routes within 100m of intertidal areas. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4g	Development within 1km of SPA of a scale or type which involves the production of an EIS. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA

Conclusion:

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer to any of the above is *yes*, or *unknown* effects on the European sites need to be assessed and a Natura Impact Statement will be required

Appropriate Assessment Screening Determination	
Planning File Reference	R22/43
Proposed Development	Section 5 referral
Development Location	Ballybreen Kilfenora
European sites within impact zone	Moneen Mountain SAC Inagh River estuary SAC
Description of the project:	
As above	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
As above	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
Unknown- no details have been submitted to clarify where soil is being removed to and the nature of the receiving environment.	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
Unknown- insufficient details submitted.	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> - County Development Plan (including Flood Maps, SEA & AA) - NPWS website - Documents received as part of the planning application - EPA Code of Practice 	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) ³	no
(b) There is no potential for significant effects to European Sites ³	There is potential for significant effects to European Sites ³

³ Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no material changes may be made to the proposed development after this conclusion has been reached as this would invalidate the findings of the screening exercise.

(c) The potential for significant effects to European Site(s) cannot be ruled out⁴	The potential for significant effects to European Site(s) cannot be ruled out⁴
(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010⁵	F.I. to be requested
Completed By	Ellen Carey
Date	19 th July 22

⁴ In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf Alternatively, where other planning concerns arise the proposal could be refused planning permission.

⁴ In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf Alternatively, where other planning concerns arise the proposal could be refused planning permission.

⁵ The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.

Tadhg Holmes

From: Tadhg Holmes
Sent: Wednesday 29 June 2022 12:34
To: 'owen@jmlgalway.com'
Subject: RE: I.W. Development in Kilfenora Lands of Ml. King C.P.O.

A Chara

I acknowledge receipt of your email. A response to the Section 5 Declaration will issue within four weeks.

Kind regards

Tadhg

Tadhg Holmes
Clerical Officer

Planning Department, Economic Development Directorate
Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2
T: 065 6846212 | **E:** tholmes@clarecoco.ie | **W:** www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

From: Planning Office <planoff@clarecoco.ie>
Sent: Wednesday 29 June 2022 11:39
To: Tadhg Holmes <tholmes@clarecoco.ie>
Subject: FW: I.W. Development in Kilfenora Lands of Ml. King C.P.O.

From: Owen Kennedy <owen@jmlgalway.com>
Sent: Wednesday 29 June 2022 09:26
To: Planning Office <planoff@clarecoco.ie>
Subject: I.W. Development in Kilfenora Lands of Ml. King C.P.O.

Attention of Mr. Tadhg Holmes.

Dear sir, I refer to the above mentioned issue and wish to acknowledge receipt of your letter of the 27th instant together with acknowledgement of the payment of €80.00 the fees required to cover your costs. In regard to you letter and in particular the reference re commencement of the section 5 application I am quite happy for you to continue with the process, thank you.

Yours faithfully,
Owen Kennedy

Owen Kennedy



4 Saint Vincent's Avenue,
Woodquay,
Galway
H91 KH58

Phone: 00353 (0)91 562278

www.jmlgalway.com



IPAV member firm



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Joyce, Mackie & Loughheed

Auctioneers & Valuers

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Subject to lease/ Lease denied

Without Prejudice

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COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Michael King, c/o Owen F. Kennedy
Joyce, Mackie & Lougheed
4 St. Vincent's Ave.
Woodquay
Galway
H91 KH58**

27/06/2022

Section 5 referral Reference R22-43 – Michael King, c/o Owen F. Kennedy

Is the removal of all soils and subsoils within the plot area (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 27th June 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Tadhg Holmes

**Tadhg Holmes
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2**

**Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2**





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

27th June 2022

Owen F. Kennedy
Joyce, Mackie & Loughed
4 St. Vincent's Ave.
Woodquay
Galway
H91 KH58

Your Client: Michael King
Your Ref: 1318/OFK

A Chara

I acknowledge receipt of your letter on 27th June 2022. I wish to address the points raised in your letter:

1. Please be advised that the submitted maps are considered acceptable by the Planning Authority for the Section 5 application process.
2. From reviewing the second paragraph of your letter, the Planning Authority has come to understand that the question for which a declaration is being sought is:

Is the removal of all soils and subsoil within the plotted areas (outlined in the submitted maps) at Ballybreen, Kilfenora, Co. Clare, considered to be development and if so, is it exempted development?

The Section 5 process will therefore commence on the understanding that this is the question for which the declaration is being sought. Please confirm with the undersigned if you disagree with this understanding of the question being asked.

3. Please be advised that the points that you have raised in the third and fourth paragraphs of your letter (related to replacement soil) fall outside the scope of the Section 5 declaration process and therefore cannot be considered under this process.

Kind regards

Tadhg Holmes

Tadhg Holmes
Planning Section
Economic Development Directorate

An Roinn Pleanála
An Stiúirthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



COMHAIRLE

CONTAE

AN CHLÁIR

Clare County Council
Aras Contae an Chláir
New Road
Ennis
Co Clare

27/06/2022 15:41:42

Receipt No.: L1CASH/0/334533
***** REPRINT *****

MICHAEL KING
C/O OWEN F. KENNEDY
JOYCE MACKIE AND LOUGHEED
4 ST. VINCENTS AVENUE
WOODQUAY
GALWAY
R22-43

SECTION 5 REFERENCES 80.00
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered :
CHEQUES 80.00

Change :

0.00



Joyce, Mackie & Loughheed

AUCTIONEERS & VALUERS

I.P.A.V.
MEMBER
FIRM

O. David Kennedy M.I.P.A.V.
(Commissioner for Oaths)
Owen F. Kennedy

4 St. Vincent's Ave.,
Woodquay, Galway.
H91 KH58

Tel: 091 562278

Email: info@jmlgalway.com

Web: jmlgalway.com

Our ref: 1318/OFK

Your ref:

24th June 2022.

Clare Co. Co.,
Planning Dept.,
New Road,
Ennis, V95 DXP2,
Co. Clare.

Attention of Mr. Tadhg Holmes.

Re :- Above mentioned reference number.

Dear Mr. Holmes,

This will acknowledge receipt of your letter of the 23rd instant in relation to the above mentioned matter. I find the rationale behind your advices somewhat perplexing. The subject matter has been clearly identified, even to the extent Clare Co. Co. examined the application made by Irish Water, so it holds all required maps and drawings as they pertain to the development. However I will rephrase my enquiry to meet with the advice you proffered.

"Is the development that has taken place in the townland of Ballybreen, Kilfenora, the subject of a planning application lodged by Irish Water with the planning authority, viz, Clare Co. Co., on the lands of Michael King, in compliance with the documentation, drawings etc lodged by Irish Water in its application. The development to which I refer is the removal of all soils and subsoil with the plot area outlined in the application maps and drawings submitted and acknowledge with the said plans and drawings as lodged. As the information made available by I.W was to the effect he soils and subsoil's were perfectly suitable for its intended purpose. The application never suggested anywhere the soils would be removed. Since the application as lodged and it accepted by I.W., was entirely satisfied with the situation a sit pertained to the treatment of previously treatment."

Obviously the removal of the soils will result in their replacement, will Clare Co. Co. commission a report to certify they are suitable for the original purpose. I acknowledge the above is of a more protracted nature that the example you have provided, the obvious reason is the removal of the soil is one issue but their replacement is a second issue and Clare Co. Co. must be satisfied the replacement soils are adequate for purpose.

Because of the removal of the soils and their replacement must be to the satisfaction of the planning authority the second aspect of the sample soil provided to you cannot be responded to with clarification or certification as to their suitability cannot be confirmed by the planning office prior to their placement of the lands of the proposed Percolation area.

I enclose herewith a copy of the C.P.O. map as provided by I.W on the scale of 1/2500. I trust these maps are acceptable to you.

Encls 2.

Yours faithfully



X 517739
Y 693917

N

Ringfort
Enclosures

BALLYBREEN Td

PLOT 002

PLOT 003

PLOT 001

50m

20m

10.5m

66m

74m

PERMANENT ACQUISITION	PLOT 001	WIDTH : 80m MAX. AREA : 0.5440 ha LENGTH : 68m MAX.
PERMANENT WAYLEAVE	PLOT 002	WIDTH : 10m MAX. AREA : 0.3040 ha LENGTH : 304 m
TEMPORARY WORKING AREA	PLOT 003	WIDTH : 74m MAX. AREA : 0.1825 ha LENGTH : 60 m

X 517289
Y 693360

0 25 50 100 150 200 m

SCALE 1:2500

PROJECT:

KILFENORA WASTEWATER TREATMENT PLANT UPGRADE



IRISH WATER
Colvill House,
24-26 Talbot Street,
Dublin 1.

LAND ACQUISITION

LAND OWNER OR REPUTED LAND OWNER

Michael King
Ballybreen, Kilfenora,
Co. Clare.

REPRODUCED FROM THE ORDINANCE
SURVEY BY PERMISSION OF THE
GOVERNMENT. LICENCE No. 3-3-34

DRAWING No.	REV
IW/10001393/ACQ/02	4
O.S. REF	SCALE
WAY. REF	1:2500
DATE	14/11/2018
DRG. BY	CHK. BY
A.McI.	R.D.



23rd June 2022

COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Owen F. Kennedy
Joyce, Mackie & Loughheed
4 St. Vincent's Ave.
Woodquay
Galway
H91 KH58

Your Client: Michael King
Your Ref: 1318/OFK

A Chara

I acknowledge receipt of your Section 5 application, as received on 23rd June 2022. However, there are two issues that must be resolved before we can process your application:

1. Please clarify the specific question for which the declaration is sought. The sample question below shows the correct format to use for this question:

"Is the construction of a shed at No. 1, Main Street, Ennis, Co. Clare, considered to be development and if so, is it exempted development?"

The details that you submitted on your application form do not clearly state the question for which the declaration is being sought.

2. Please be advised that, as per point (i) of the Guidance Notes on the Section 5 Declaration application form (attached), the request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.

These maps were not provided with your application.

Please submit your responses to these requests to the address listed at the bottom of this letter. Please note that we have received your application fee of €80 and it will be placed in safe-keeping until such time as you clarify the two issues listed above, or you decide to withdraw your application.

Kind regards

Tadhg Holmes

Tadhg Holmes
Planning Section
Economic Development Directorate

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY

Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:.....			



Joyce, Mackie & Loughheed

AUCTIONEERS & VALUERS

I.P.A.V.
MEMBER
FIRM

O. David Kennedy M.I.P.A.V.
(Commissioner for Oaths)
Owen F. Kennedy

4 St. Vincent's Ave.,
Woodquay, Galway.
H91 KH58

Tel: 091 562278

Email: info@jmlgalway.com

Web: jmlgalway.com

Our ref:

1318/OFK

Your ref:



21st June 2022.

Enforcements Section,
Planning Dept.,
Clare Co. Co.,
New Road,
Ennis, Co. Clare. V95 PXP2.

Re:- I.W. Kilfenora WwTP Upgrade and Associated Works.
Percolation System etc. Townland of Ballybreen, Kilfenora. Your Re
Land Owner ; Mr. Michael King.

Dear Sirs,

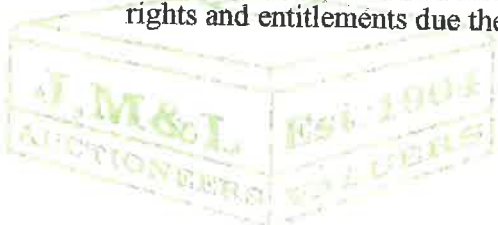
We refer to the above mentioned matter and we acknowledge receipt of your email of the 20th instant in regard to this matter together with the application form (Request for a Declaration on Development & Exempted Development) under Section 5 of the Planning and Development Act 2000.

In your cover e-mail of the 20th instant I am referred to as a complainant. Permit me correct and clarify my position. I act as agent for and on behalf of the land owner Mr. Michael King. I.W sought and was granted a C.P.O. for a part of Mr. King's land at the address mentioned. I.W sought and lodged plans for the construction of a new WwTP including associated works. The plans as lodged by I.W. show that the plot of ground owned by Mr. King was inspected, examined and researched by I.W. and was found by it to be eminently suitable for the required purpose. I.W. defended its beliefs as to the suitability of the soils and sub soils in this plot for its intended purpose during the oral hearing carried out by ABP. This despite the issue being queried by the land owner.

I.W has in the recent past entered upon the subject plot and had all the soils removed there from and we understand carried to Ennis for sale, or storage or whatever purpose. The amount of detail made available to the Oral Hearing was extensive and the benefits thereof was set out on behalf of I.W. by its consultants.

There was no mention in any document or oral evidence furnished or supplied to the said Hearing to even suggest that the soils in this plot were anything but beneficial to its intended purpose and not the slightest indication the soils would be removed.

That I.W and or its agents entered upon privately owned lands, carried out an act in contravention of the planning permission issued by the appropriate authority shows slight respect for the issuing authority and the permission granted particularly in light of the reports and observations presented to the Oral Hearing. We have not taken into consideration the rights and entitlements due the owner, who remains as owner at this time.



I, believe, rightly otherwise that the Planning Office/Department of Clare holds copies of all evidence introduced to the Oran Hearing, but in the event this is not the case we can provide copies of the specific report as prepared for and on behalf of I.W and a copy can be made available to you if required.

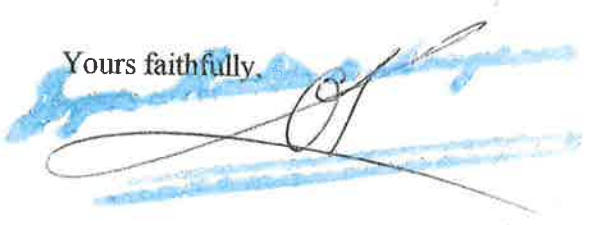
In the cover e-mail paragraph no. 3 it is contended that I will be referred to as a "complainant". I am not making a complaint, I am enquiring on behalf of my client, any. or all persons that might hold an interest in this matter to specifically Clare Co. Co. I believe Clare Co. Co. would not wish to see its authority ignored by entities granted permission based on plans etc lodged with it and later blithely ignored, as in this instance where the issue is of a more widely basis and of general public interest.

In regard to my correspondence in this matter I have no concern as to it being as widely available as possible primarily because of the public aspect.

You indicate that you will revert to me in "due course", kindly explain what this term might mean. Your email refers to my email of the 25th Ult., a long time ago, Kindly acknowledge receipt of this letter, receipt of the fee and an indication as to when I might hear from you and oblige.

ENCL. 1

Yours faithfully,



P07

CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR

Planning Department,
 Economic Development Directorate,
 Clare County Council,
 New Road, Ennis,
 Co. Clare.
 V95DXP2

Telephone No. (065) 6821616
 Fax No. (065) 6892071
 Email: planoff@clarecoco.ie
 Website: www.clarecoco.ie



CLARE COUNTY COUNCIL
 22 JULY 2022
 COMHAIRLE CONTAE AN CHLÁIR
 CLARE COUNTY COUNCIL
 PLANNING SECTION

REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration	OWEN F. KINNARDY 4, ST. VINCENTS AVE., Wood Quay. GALWAY.
(b) Telephone No.:	091 = 562278
(c) Email Address:	OWEN@FHL GALWAY.COM.
(d) Agent's Name and address:	NONE. APPLICANT ACTING FOR & ON behalf of the registered owner Mr. Michael Kinnedy

2. DETAILS REGARDING DECLARATION BEING SOUGHT

- (a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
 Note: only works listed and described under this section will be assessed.

Sample Question: Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?

N/A. The definite specific reason of my request is on my belief I.W. has exceeded the permit granted, for which it held no authority nor did any reason exist for it in light of its plans.

- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

LAISH Water has planning permits for upgrading water facilities in KILFARROW. Included in the permit was consent to carry out percolation facilities on lands in the townland of . I.W. had researched the suitability of the subject plot & the suitability of the soils & subsoils enabling it confirm in its planning application such information. The favourable decision to grant p.p. would be partly based on the information provided I.W. excavated the top & sub soils & had them removed to KILFARROW for disposal. How or why they were removed we wish to know. We wish to know how the soils were lastly treated by I.W. i.e. were they given away? were they disposed of? Why, in light of the assessment conducted by I.W. were they removed? Did their disposal have the imprimatur of Clare Co. Co. & OR consent? How can works undertaken by I.W. under a planning consent not adhere to the information submitted in its application which form the base on which the consent is based & later issued

- (c) List of plans, drawings etc. submitted with this request for a declaration:

(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

1 SITE MAP 2. PROPOSED PERCOLATION TRENCHES.

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT

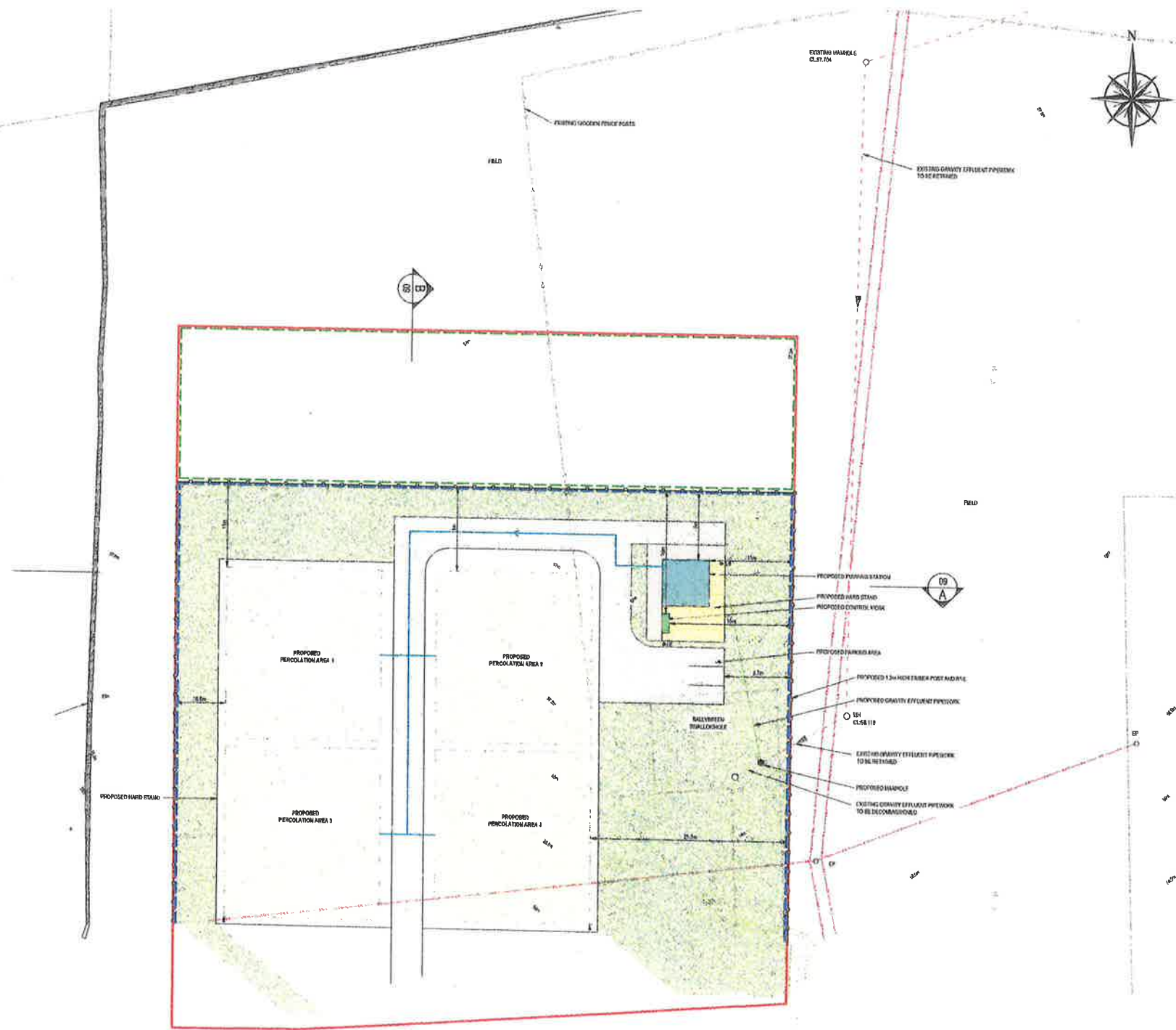
(a) Postal Address of the Property/Site/Building for which the declaration sought:	
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	None. The subject plot is part of a C.P.O. & I act on behalf of the registered owner one Michael King.
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	See (c) above as to the owner name. His address is. He resides close by & may be contacted easily.
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes.
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	None other than this Application
(g) Were there previous planning application/s on this site? If so please supply details:	Planning permission for a private house Request refused
(h) Date on which 'works' in question were completed/are likely to take place:	UNKNOWN! I.W. cannot confirm

SIGNED:

Qua T Kennedy

DATE:

21st June 2022



- NOTES:
1. ALL LEVELS ARE IN METRES TO MALIN HEAD DATUM.
 2. ALL DIMENSIONS ARE IN METERS
 3. INDICATIVE LAYOUT ONLY

LEGEND

PROPOSED SITE BOUNDARY	
PERMANENT WORKS BOUNDARY	
TEMPORARY WORKS BOUNDARY	
PROPOSED PERCOLATION AREA	
EXISTING ESB OVERHEAD LINES	
EXISTING GRAVITY EFFLUENT PIPEWORK TO BE RETAINED	
EXISTING GRAVITY EFFLUENT PIPEWORK TO BE DECOMMISSIONED	
PROPOSED GRAVITY EFFLUENT PIPEWORK	
PROPOSED EFFLUENT RISING MAIN TO PERCOLATION AREA	
PROPOSED MANHOLE	
EXISTING CONTOUR LEVELS	
EXISTING FENCE	
PROPOSED FENCE	
LIGHT BOLLARD	

REV	DATE	DESCRIPTION	D	C	A
B	25.11.2019	GENERAL AMENDMENTS	AMG	RD	JP
A	20.05.2019	GENERAL AMENDMENTS	AMG	RD	JP

PLANNING

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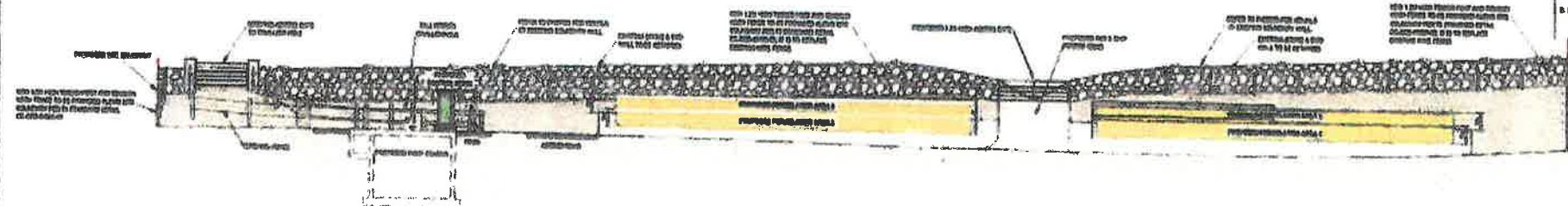


Unit 14, Mulgrew Office Park,
Mulgrew Avenue, Dublin 24
T +353 1 294 9000
+353 1 756 9003
dublin@nicholaso.com
www.nicholaso.com

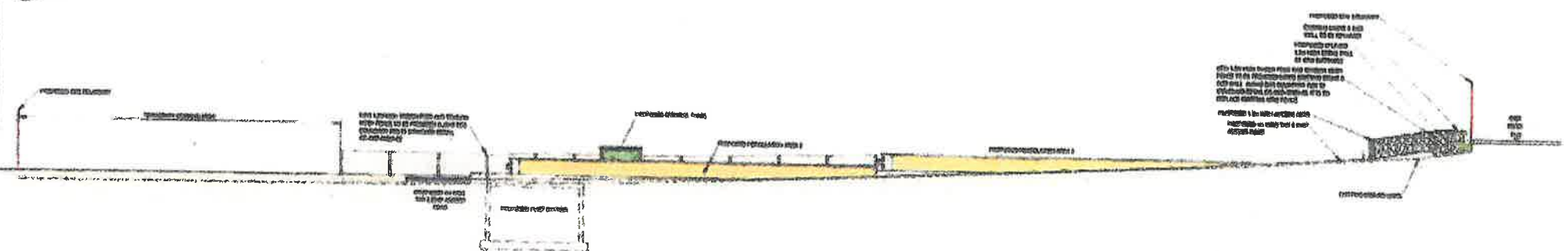
CLIENT		IRISH WATER Cahill House, 24-26 Tynan Street, Dublin 1. Tel: 1800 278 278 Web: www.water.ie
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PROJECT

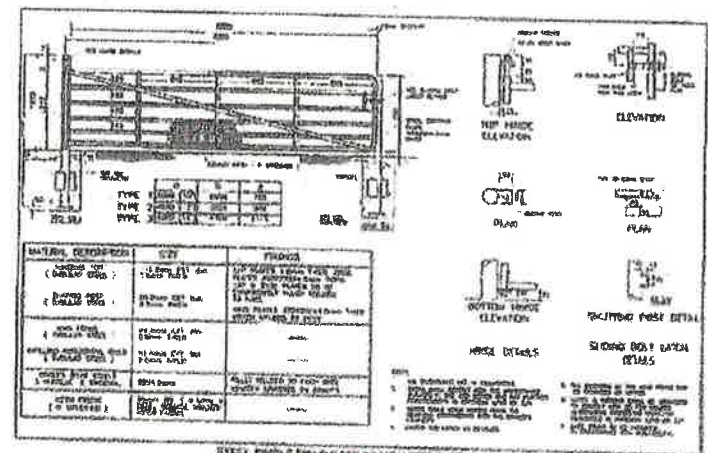
1. ALL LEVELS ARE IN METERS TO UNLESS OTHERWISE NOTED
 2. ALL DIMENSIONS ARE IN METERS
 3. INDICATING LAYOUT ONLY



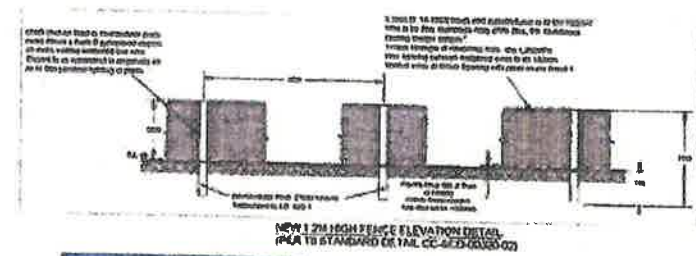
SECTION A-A
 1:100



SECTION B-B
 1:100



STEELE, BRIDLE & FIELD DATE AT NEW SITE ENTRANCE
 (AS PER THE STANDARDS IN TAIL CC-200-000)



EXISTING BOUNDARY WALL & WIRE FENCE
 ADJACENT TO ROAD (RHS) LOOKING S.W.



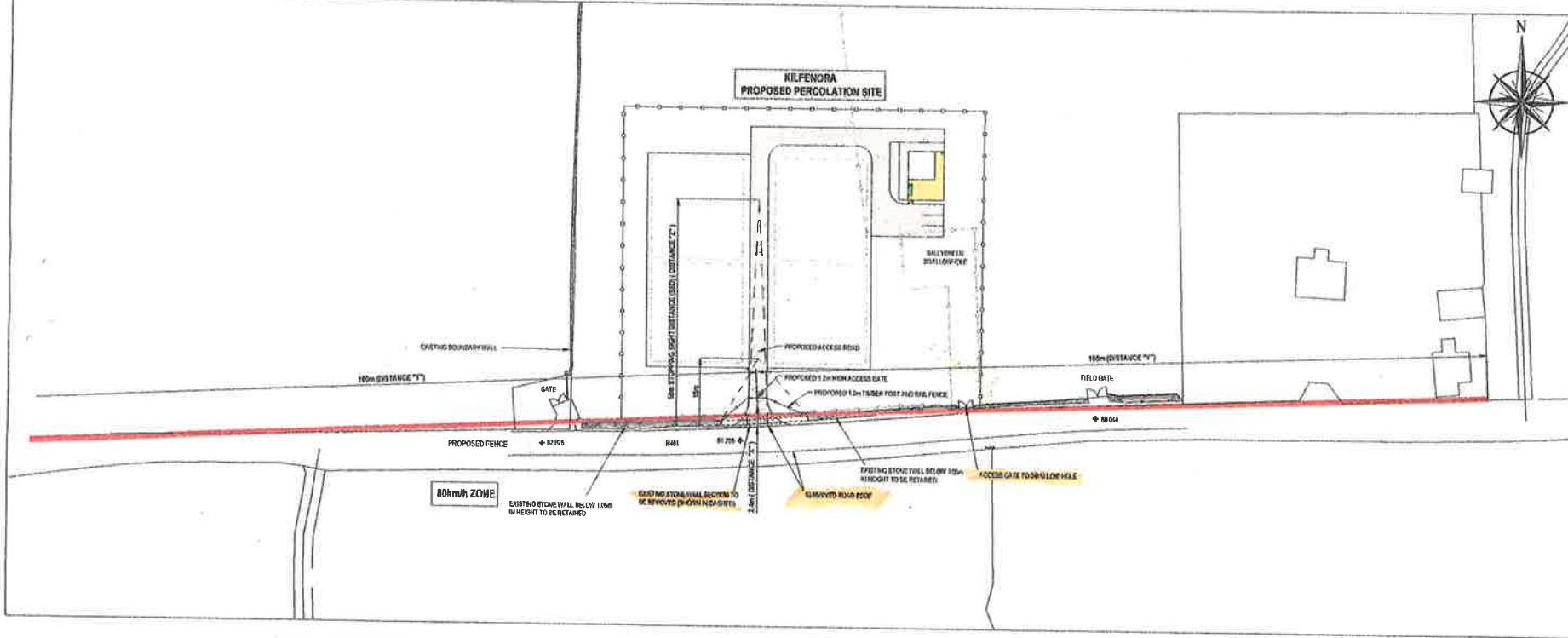
CLOSE UP OF EXISTING BOUNDARY WALL & WIRE FENCE

Irish Water
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 01-603 80000
 www.irishwater.ie

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 100% recycled ink
 100% recycled glue
 100% recycled cover

J. D. Barry and Partners Limited
 Consulting Engineers

100-102, 104-106, 108-110, 112-114, 116-118, 120-122, 124-126, 128-130, 132-134, 136-138, 140-142, 144-146, 148-150, 152-154, 156-158, 160-162, 164-166, 168-170, 172-174, 176-178, 180-182, 184-186, 188-190, 192-194, 196-198, 200-202, 204-206, 208-210, 212-214, 216-218, 220-222, 224-226, 228-230, 232-234, 236-238, 240-242, 244-246, 248-250, 252-254, 256-258, 260-262, 264-266, 268-270, 272-274, 276-278, 280-282, 284-286, 288-290, 292-294, 296-298, 300-302, 304-306, 308-310, 312-314, 316-318, 320-322, 324-326, 328-330, 332-334, 336-338, 340-342, 344-346, 348-350, 352-354, 356-358, 360-362, 364-366, 368-370, 372-374, 376-378, 380-382, 384-386, 388-390, 392-394, 396-398, 400-402, 404-406, 408-410, 412-414, 416-418, 420-422, 424-426, 428-430, 432-434, 436-438, 440-442, 444-446, 448-450, 452-454, 456-458, 460-462, 464-466, 468-470, 472-474, 476-478, 480-482, 484-486, 488-490, 492-494, 496-498, 500-502, 504-506, 508-510, 512-514, 516-518, 520-522, 524-526, 528-530, 532-534, 536-538, 540-542, 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N SITE - SIGHT LINES

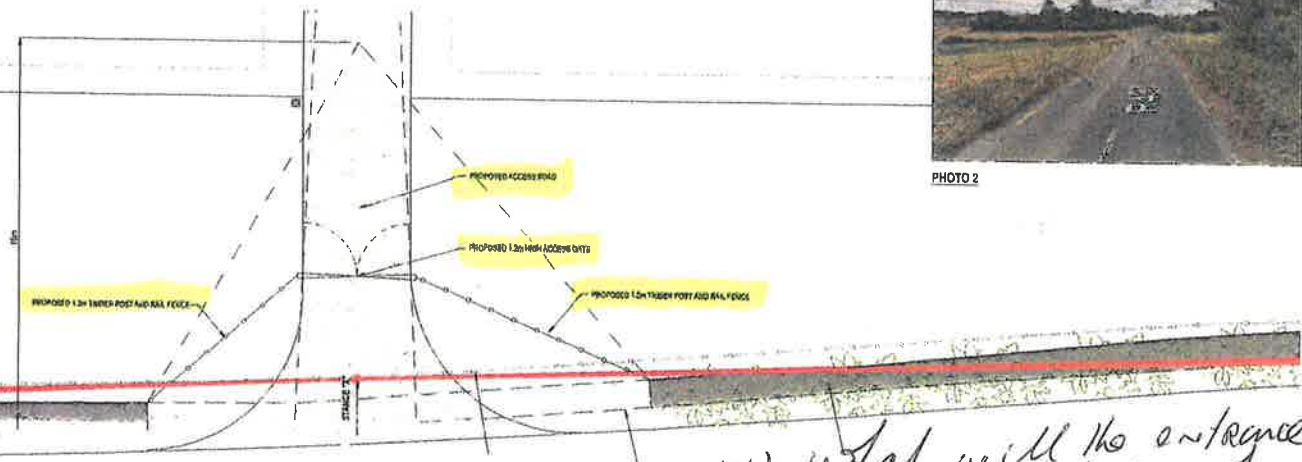


PHOTO 2

on what will the entrance gate hang? what type of gate

- NOTES
1. ALL DIMENSIONS ARE IN METERS.
 2. INDICATIVE LAYOUT ONLY.
 3. SIGHT LINES TO COMPLY WITH ON-GEO-40000 DECA-METRIC DESIGN OF JUNCTIONS (PRIORITY JUNCTIONS, DIRECT ACCESS, ROUNDABOUTS, GRAD SEPARATED AND COMPACT GRADE SEPARATED JUNCTIONS)

- LEGEND
- PROPOSED SIGHT LINES
 - EXISTING FENCE
 - PROPOSED FENCE
 - EXISTING SPOT LEVEL

A	20/05/2019	GENERAL AMENDMENTS	AM	MD	JP
REV	DATE	DESCRIPTION	A	C	A

PLANNING

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