

# Comhairle Contae Chill Mhantáin Wicklow County Council

**Forbairt Pleanála agus Comhshaol  
Planning Development and Environment**

Áras An Chontae / County Buildings  
Cill Mhantáin / Wicklow  
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Suíomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

**Frank Mc Sharv**

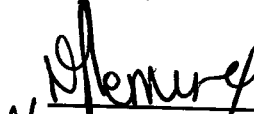
June 2023

**RE: Declaration in accordance with Section 5 of the Planning & Development Acts  
2000 (As Amended) – EX35/2023**

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000.

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

  
ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT.





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

**Applicant: Frank Mc Sharry**

**Location: Three Mile Water, Brittas Bay, Co. Wicklow**

**CHIEF EXECUTIVE ORDER NO. CE/PDE/1098/2023**

A question has arisen as to whether "the movement of 20-30 loads of topsoil to carry out land improvement works at Three mile water farm, Three Mile Water, Brittas Bay, Co. Wicklow" is or is not exempted development.

**Having regard to:**

- (a) Declaration application details.
- (b) An Bord Pleanála References RL2987 and RL3034
- (c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)
- (d) Article 8 of the Planning and Development Regulations 2001(as amended)

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

- i. The carrying out of land improvement works by the movement of soil onto lands constitutes development by reference to section 3(1) of the Planning and Development Act 2000,
- ii. The bringing in of topsoil from outside of the farm holding would it is considered not come within the provisions of Article 8C of the Planning and Development Regulations 2001 (as amended), as this exemption only allows for infilling of soil (but not waste material) for the purposes of re-contouring of land where soil is sourced from within the farm holding itself and not from sources outside the farm.
- iii. The areas identified for land improvement works are located adjoining Three-mile water stream and a watercourse, and these watercourses are connected to the Magherabeg Dunes SAC, given the information submitted with the Section 5 Declaration application impacts on the Magherabeg Dunes SAC cannot be ruled out, and therefore in the absence of such information a Stage 2 Appropriate Assessment would be required.

*Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas.*

*This document is available in alternative formats on request*

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Forbairt Pleanála agus Comhshaol.  
All correspondence should be addressed to the Director of Services, Planning Development & Environment





# Comhairle Contae Chill Mhantáin Wicklow County Council

## Forbairt Pleanála agus Comhshaol Planning Development and Environment

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**The Planning Authority considers that "the movement of 20-30 loads of topsoil to carry out land improvement works at Three mile water farm, Three Mile Water, Brittas Bay, Co. Wicklow" is development and is not exempted development.**

Signed:

ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 23<sup>rd</sup> June 2023



**WICKLOW COUNTY COUNCIL**

**PLANNING & DEVELOPMENT ACTS 2000 (As Amended)  
SECTION 5**

**CHIEF EXECUTIVE ORDER NO. CE/PDE/1098/2023**

**Reference Number: EX 35/2023**

**Name of Applicant: Frank Mc Sharry**

**Nature of Application: Section 5 Referral as to whether "the movement of 20-30 loads of topsoil to carry out land improvement works at Three mile water farm," is or is not exempted development**

**Location of Subject Site: Three Mile Water, Brittas Bay , Co. Wicklow.**

**Report from Edel Bermingham, SEP**

**With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "the movement of 20-30 loads of topsoil to carry out land improvement works at Three mile water farm, Three Mile Water, Brittas Bay , Co. Wicklow" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)**

**Having regard to:**

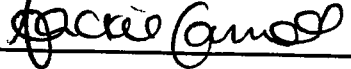
- (a) Declaration application details.**
- (b) An Bord Pleanála References RL2987 and RL3034**
- (c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)**
- (d) Article 8 of the Planning and Development Regulations 2001(as amended)**

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

- i. The carrying out of land improvement works by the movement of soil onto lands constitutes development by reference to section 3(1) of the Planning and Development Act 2000,**
- ii. The bringing in of topsoil from outside of the farm holding would it is considered not come within the provisions of Article 8C of the Planning and Development Regulations 2001 (as amended), as this exemption only allows for infilling of soil (but not waste material) for the purposes of re-contouring of land where soil is sourced from within the farm holding itself and not from sources outside the farm.**
- iii. The areas identified for land improvement works are located adjoining Three-mile water stream and a watercourse , and these watercourses are connected to the Magherabeg Dunes SAC , given the information submitted with the Section 5 Declaration application impacts on the Magherabeg Dunes SAC cannot be ruled out, and therefore in the absence of such information a Stage 2 Appropriate Assessment would be required.**

### Recommendation

The Planning Authority considers that "the movement of 20-30 loads of topsoil to carry out land improvement works at Three mile water farm, Three Mile Water, Brittas Bay, Co. Wicklow" is development and is not exempted development as recommended in the planning report.

Signed  Dated 23<sup>rd</sup> day of June 2023

### ORDER:

I HEREBY APPROVE that a declaration to issue stating:

That "the movement of 20-30 loads of topsoil to carry out land improvement works at Three mile water farm, Three Mile Water, Brittas Bay, Co. Wicklow" **is development and is not exempted development** within the meaning of the Planning & Development Acts 2000 (as amended).

Signed:   
A/ Director of Services  
Planning Development & Environment

Dated 23<sup>rd</sup> day of June 2023

## **Section 5 Application : EX 35/2023**

Date : 22<sup>nd</sup> June 2023

Applicant : Frank Mc Sharry.

Address : - - - - -

Exemption Whether or not :

the movement of 20-30 loads of topsoil to carry out land improvement works at Three mile water farm, Three Mile Water, Brittas Bay , Co. Wicklow constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

## **Relevant Legislation**

*Planning and Development Act 2000 (as amended)*

Section 2 of the Planning and Development Act 2000:

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

"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 3 :

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

(2) For the purposes of *subsection (1)* and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris, the use of the land shall be taken as having materially changed.

Section 4(2) provides that the Minister may by regulations provide any class of development to be exempted development. The Regulations which are applicable in this case are the Planning and Development Regulations 2001 (as amended).

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

(4) 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.

***Planning and Development Regulations 2001(as amended).***

Article 8

8 Works specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by, on behalf of, or in partnership with, the Commissioners, with such additions, omissions, variations and deviations or other works incidental thereto, as may be found necessary by the Commissioners or their agent or partner in the course of the works, shall be exempted development

8A Initial afforestation shall be exempted development

8B Works consisting of field drainage for agriculture, other than drainage and/or reclamation of wetlands, shall be exempted development.

8C Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development

8D Works consisting of the removal for the purposes of agriculture of field boundaries including stone walls, clay banks or wire or post fences shall be exempted development.

8E Articles 8B to 8D shall not apply in an area to which a special amenity area order relates.

- 8F. Development consisting of the thinning, felling or replanting of trees, forests or woodlands, or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species, shall be exempted development.
- 8G. Development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands, shall be exempted development

#### Article 9

(1) 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—

(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,

#### Schedule 2 : Part 3 : Rural

##### Land Reclamation

CLASS 11 Development consisting of the carrying out of drainage and/or reclamation of wetlands

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

#### **Natura 2000 sites**

Magherabeg Dunes SAC

#### **Relevant Referrals**

##### **RL2987**

WHEREAS a question has arisen as to whether the importation of inert soils and overburden materials for spreading on agricultural land at Barntick, Clarecastle, County Clare is or is not development or is or is not exempted development:

An Bord Pleanála, concluded that the said importation of inert soils and overburden materials for spreading on agricultural land at Barntick, Clarecastle, County Clare is development and is not exempted development as



- (a) the importation of soils and overburden for spreading on agricultural land constitutes development as defined in Section 3 of the Planning and Development Act 2000, as amended, and
- (b) the soils and overburden materials to be imported to the farm holding constitute 'waste'. The activity does not, therefore, come within the scope of Article 8 (c) of the Planning and Development Regulations, 2001, as amended:

**RL 3034**

**WHEREAS** the question has arisen as to whether works involving the re-contouring of land for the purposes of land reclamation for agricultural purposes, is or is not development and is or is not exempted development

**AND WHEREAS** An Bord Pleanála has concluded that :

- (a) the importation of soil for infilling on lands constitutes "works" as defined in section 2(1) of the Planning and Development Act 2000,
- (b) the infilling of soil constitutes development by reference to section 3(1) of the Planning and Development Act, 2000,
- (c) Article 8C of the Planning and Development Regulations 2001, as amended, does not provide an exemption for the importation of soil to a farm holding for the purposes of re-contouring of land from external sources. The exemption under Article 8C of the Planning and Development Regulations, 2001, as amended, is confined to land reclamation works including infilling of soil (but not waste material) within a farm holding, and
- (d) it is not possible to state beyond reasonable doubt that the infilling of soil on this particular site would not have a significant negative impact on European Sites. The proposed infilling of soil on this site may not be considered to be exempted development by reference to section 17(1)(b) of the Environmental (Miscellaneous Provisions) Act 2011, which amends section 4(4) of the Planning and Development Act, 2000.

**Submission :**

Indicated that the proposal is for the movement of 20-30 loads of topsoil from Potters Hill Eircode A67DC93 to Three mile water farm. The topsoil is to be deposited in two areas identified on the submitted maps.

**Assessment :**

The declaration queries whether the movement of 20-30 loads of topsoil to carry out land improvement works at Three mile water farm, Three Mile Water, Brittas Bay, Co. Wicklow constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

The first question to be asked is whether the movement of topsoil is or is not development. In this regard soils are being brought onto site, and ground levels will be altered, such operations would come within the definition of work as set out in Section 2 of the Planning and Development Act 2000(as amended), and would fall within the definition of development as set out in Section 3.

Article 8C of the Planning and Development Regulations 2001 (as amended) provides that Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development. The development the subject of the declaration seeks to bring in top soil from outside the farm-holding to deposit on the lands at two separate points. One of the identified adjoins Three-mile water stream (EPA mapping), and the other site also is located adjoining a watercourse. The stream/ watercourses flow into the Magherabeg Dunes SAC, which is located c. 500m to the east.

From Declarations issued by An Bord Pleanála it is evident that the exemption provided for by Article 8C of the Regulations, only applies to soils sourced within the same farm-holding, as this is not the case in this instance the works the subject of this declaration would not be exempted development.

In addition given the proximity of the works to Three mile water stream and a watercourse, and the lack of any clear detail in respect to the infilling and its setback from these watercourses there is a concern that such deposition could lead to suspended solids/ pollutants entering the stream/ watercourse during the course of deposition, which potentially could have impacts on the Magherabeg Dunes SAC, which could require a Stage 2 Appropriate Assessment. Thus the exemptions under the Regulations would not apply to the works given the provisions of Section 4 (4) of the Planning and Development Act 2000(as amended) which provides that :

(4) 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.

**Conclusion :**

Having regard to the assessment above, it is considered that the improvement of the lands by the deposition of topsoil is development and is not exempted development.

**Recommendation :**

With respect to the query under Section 5 of the Planning and Development Act 2000(as amended), as to whether

the movement of 20-30 loads of topsoil to carry out land improvement works at Three Mile Water, Brittas Bay , Co. Wicklow

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

The Planning Authority consider that the movement of 20-30 loads of topsoil to carry out land improvement works **is Development and is Not Exempted Development**

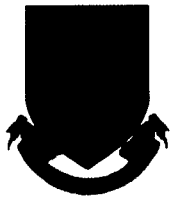
Main Considerations with respect to Section 5 Declaration :

- (a) Declaration application details.
- (b) An Bord Pleanála References RL2987 and RL3034
- (c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)
- (d) Article 8 of the Planning and Development Regulations 2001(as amended)

Main Reasons with respect to Section 5 Declaration :

- i. The carrying out of land improvement works by the movement of soil onto lands constitutes development by reference to section 3(1) of the Planning and Development Act 2000,
- ii. The bringing in of topsoil from outside of the farm holding would it is considered not come within the provisions of Article 8C of the Planning and Development Regulations 2001 (as amended), as this exemption only allows for infilling of soil (but not waste material) for the purposes of re-contouring of land where soil is sourced from within the farm holding itself and not from sources outside the farm.
- iii. The areas identified for land improvement works are located adjoining Three-mile water stream and a watercourse , and these watercourses are connected to the Magherabeg Dunes SAC , given the information submitted with the Section 5 Declaration application impacts on the Magherabeg Dunes SAC cannot be ruled out, and therefore in the absence of such information a Stage 2 Appropriate Assessment would be required.

*Seán Ó Súilleabháin*  
22/02/23



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

**Forbairt Pleanála agus Comhshaol**  
**Planning Development and Environment**

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**MEMORANDUM**

**WICKLOW COUNTY COUNCIL**

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**TO: Edel Bermingham**  
**Senior Executive Planner**

**FROM: Nicola Fleming**  
**Staff Officer**

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**RE:- Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended).  
Ex 35/2023 – movement of 20-30 loads of topsoil from Potters Hill, Ballynagran, Dunganston A67 DC93 to Three Mile Water Farm, Brittas Bay A67 XH94 for Frank McSharry**

I enclose herewith for your attention application for Section 5 Declaration received 6<sup>th</sup> June 2023.

The due date on this declaration is 3<sup>rd</sup> July 2023.

  
**Staff Officer**  
**Planning Development & Environment**





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Frank McSharry

6<sup>th</sup> June 2023

**RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended).**  
**Ex 35/2023 – movement of 20-30 loads of topsoil from Potters Hill, Ballynagran, Dunganston A67 DC93 to Three Mile Water Farm, Brittas Bay A67 XH94**

A Chara

I wish to acknowledge receipt on 6<sup>th</sup> June 2023 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 3<sup>rd</sup> July 2023.

Mise, le meas

**NICOLA FLEMING**

**STAFF OFFICER**

**PLANNING DEVELOPMENT AND ENVIRONMENT**



Wicklow County Council  
County Buildings  
Wicklow  
0404-20100

06/06/2023 11 20 27

Receipt No L1/0/314183

FRANK McSHARRY  
THREE MILE WATER FARM  
BRITTAS BAY  
CO WICKLOW  
A67 XH94

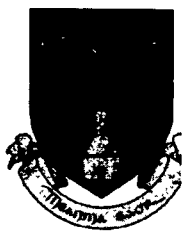
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GOODS	80 00
VAT Exempt/Non-vatable	

Total	80 00 EUR
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Tendered	
Credit Card	80 00

Change	0 00
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Date Received \_\_\_\_\_

Fee Received \_\_\_\_\_

**APPLICATION FORM FOR A  
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &  
DEVELOPMENT ACTS 2000(AS AMENDED) AS TO WHAT IS OR IS NOT  
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

**1. Applicant Details**

(a) Name of applicant: FRANK MCSHARRY

Address of applicant: \_\_\_\_\_

\_\_\_\_\_

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

WICKLOW COUNTY COUNCIL

06 JUN 2023

PLANNING DEPT.

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

(b) Name of Agent (where applicable) \_\_\_\_\_

Address of Agent : \_\_\_\_\_

\_\_\_\_\_

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

### 3. Declaration Details

- i. Location of Development subject of Declaration THREE MILE WATER FARM, THREE MILE WATER, BRITTAS BAY, CO WICKLOW, A67 XH94
- ii. Are you the owner and/or occupier of these lands at the location under i. above ?  
Yes/ No.
- iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration MOVEMENT OF 20-30 LOADS OF TOPSOIL FROM PHILIP WHEATLEY POTTERS HILL, BALLYNAGHAN, DUNGANSTOWN CO WICKLOW, A67 DC93 TO THREE MILE WATER FARM, BRITTAS BAY, CO WICKLOW, A67 XH94

*Additional details may be submitted by way of separate submission.*

- v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration SECTION 5 OF THE PLANNING & DEVELOPMENT ACT (2000) (AS AMENDED)

*Additional details may be submitted by way of separate submission.*



vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure ( or proposed protected structure) ? NO

vii. List of Plans, Drawings submitted with this Declaration Application  
SITE PLAN INCLUDED. PROPERTY IS OUTLINED  
IN PINK. THE AREA OF THREE MILE WATER  
FARM, BRITTAS BAY WHERE THE TOPSOIL  
WILL BE DEPOSITED IS MARKED ON THE  
SITE PLAN WITH TWO RED X

viii. Fee of € 80 Attached ? YES

Signed : Frank M. Sharry Dated : 06/06/2023

**Additional Notes :**

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below :

A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- Site Location Map
- Floor area of structure in question - whether proposed or existing.
- Floor area of all relevant structures e.g. previous extensions.
- Floor plans and elevations of relevant structures.
- Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still

FRANK MCSHARRY  
MOBILE: 086 8217003

