



Comhairle Contae Chill Mhantáin  
Wicklow County Council

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

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

23 September 2024

Kim Dreyer Architect  
Ballylusk  
Ashford  
Co. Wicklow

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) – EX79/2024

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.

Please note that the Section 5 Declaration does not infer any rights to use the private laneway for traffic.

Is mise, le meas,

  
ADMINISTRATIVE OFFICER  
PLANNING ECONOMIC & RURAL DEVELOPMENT





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

Applicant: Eileen Murphy

Location: Killiskey Duff Farm, Ballyduff Upper, Ashford, Co. Wicklow

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1165

Section 5 Declaration as to whether “new agricultural entrance” at Killiskey Duff Farm, Ballyduff Upper, Ashford, Co. Wicklow” constitutes exempted development within the meaning of the Planning and Development Act, 2000(as amended).

### Having regard to:

- i. The details submitted with the Section 5 Declaration Application.
- ii. Site Inspection on the 10<sup>th</sup> September 2024
- iii. Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- iv. Articles 6, 9 and Schedule 2: Part 1 of the Planning and Development Regulations 2001 (as amended).

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

1. The removal of existing boundary and erection of entrance/ gateway, would come within the definition of development as set out under Section 3 of the Planning and Development Act 2000(as amended).
2. The construction of the entrance / gateway would come within the provisions/ description set out under Class 9 : Part 1 : Schedule 2 Planning and Development Regulations 2001(as amended).
3. None of the restrictions set out within Article 9 would apply to this proposal.

The Planning Authority considers that “new agricultural entrance” at Killiskey Duff Farm, Ballyduff Upper, Ashford, Co. Wicklow is development and is exempted development

Signed:

ADMINISTRATIVE OFFICER  
PLANNING ECONOMIC & RURAL DEVELOPMENT

Dated 2<sup>nd</sup> September 2024



WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)  
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1165

Reference Number: EX79/2024  
Name of Applicant: Eileen Murphy  
Nature of Application: Section 5 Declaration request as to whether or not: -  
"new agricultural entrance" is or is not development and is or is  
not exempted development.  
Location of Subject Site: Killiskey Duff Farm, Ballyduff Upper, Ashford, Co. Wicklow  
Report from & Edel Bermingham, SEP

With respect to the query under section 5 of the Planning & Development Act 2000 as to whether "new agricultural entrance" at Killiskey Duff Farm, Ballyduff Upper, Ashford, Co. Wicklow is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Having regard to:

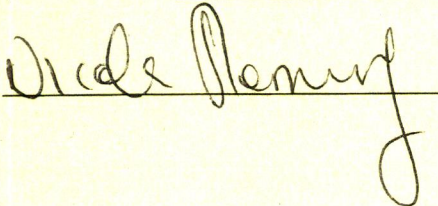
- i. The details submitted with the Section 5 Declaration Application.
- ii. Site Inspection on the 10<sup>th</sup> September 2024
- iii. Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- iv. Articles 6, 9 and Schedule 2: Part 1 of the Planning and Development Regulations 2001 (as amended).

Main Reason with respect to Section 5 Declaration:

1. The removal of existing boundary and erection of entrance/ gateway, would come within the definition of development as set out under Section 3 of the Planning and Development Act 2000(as amended).
2. The construction of the entrance / gateway would come within the provisions/ description set out under Class 9 : Part 1 : Schedule 2 Planning and Development Regulations 2001(as amended).
3. None of the restrictions set out within Article 9 would apply to this proposal.

Recommendation:

The Planning Authority considers that "new agricultural entrance" at Killiskey Duff Farm, Ballyduff Upper, Ashford, Co. Wicklow is development and is exempted development as recommended in the report by the SEP.

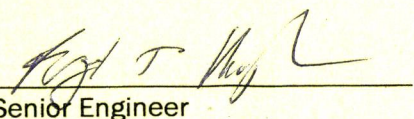
Signed 

Dated 18<sup>th</sup> day of September 2024

ORDER:

I HEREBY DECLARE:

That "new agricultural entrance" at Killiskey Duff Farm, Ballyduff Upper, Ashford, Co. Wicklow is development and is exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed:   
Senior Engineer  
Planning, Economic & Rural Development

Dated 22<sup>nd</sup> day of September 2024

## **Section 5 Application : EX 79/2024**

Date : 11<sup>th</sup> September 2024

Applicant : Eileen Murphy.

Address : Killiskey Duff Farm, Ballyduff Upper, Ashford, Co. Wicklow

Exemption Whether or not :

New Agriculture Entrance

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

Site Inspection : 10/9/2024..

**Planning History : None**

**Designations : N/A**

### **Relevant Legislation**

Planning and Development Act 2000 ( as amended)

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*;

“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, except where the context otherwise requires, “development”

means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or

Section 4 :

4.—(1) The following shall be exempted developments for the purposes of this Act—

(3) A reference in this Act to exempted development shall be construed as a reference to development which is—

(a) any of the developments specified in *subsection (1)*, or

(b) development which, having regard to any regulations under *subsection (2)*, is exempted development for the purposes of this Act.

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.

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

Article 6

(1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) Note see Regulations for full Article

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—

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of a traffic hazard or obstruction of road users.

(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.

Schedule 2 : Part 1

CLASS 9

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

The height of any such structure shall not exceed 2 metres.

## **An Bord Pleanála Declaration.**

### **RL09.303326**

An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the relocation of an existing gate and gate posts to an existing agricultural entrance within the townland of Mylerstown, Two Mile House, Naas, County Kildare is development and is exempted development.

- (a) the development comes within the scope of sections 2(1) and 3(1), of the Planning and Development Act 2000, as amended, and constitutes development,
- (b) the development comes within the scope of Article 6(1), of the Planning and Development Regulations 2001, as amended, and also Class 9 of Part 1 of Schedule 2 to those Regulations, and development does not come within the scope of the restrictions on exemption as set out under Article 9(1)(a)(i), (ii), (iii), and (viiB) of the Planning and Development Regulations, 2001, as amended:

### **Assessment :**

The declaration queries whether the construction of a new agricultural entrance is or is not exempted development.

The gate is indicated to be required to access agricultural lands. The gate will discharge onto a private laneway, which is accessed from the L-1063-0.

The first question to be asked is whether the opening of an entrance would be development. In this regard the works would involve the removal of existing boundary and erection of gateway, and would come within the definition of works as set out in Section 2 of the Planning and Development Act 2000(as amended), and would therefore be development having regard to the provisions of Section 3 of the Planning and Development Act 2000(as amended).

The erection/ construction of gate/ gateway would come within the description of exempted development set out under Class 9 : Part 1 : Schedule 2 Planning and Development Regulations 2001(as amended). Whilst no details of the height of the gateway is submitted given it is a for agricultural purposes, it is reasonable to assume it would not breach the 2m limitation associated with Class 9.

This exemption would be further limited by the restriction set out under Article 9.

In this regard the following is noted –

- Access is onto a private laneway.
- The access would not it is considered give rise to a traffic hazard or obstruction of road users.
- The works are not located within or adjoining , or connected to any Natura 2000 site.

It is therefore concluded that none of the restrictions set out within Article 9 would apply to this proposal.

**Recommendation:**

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

New Agriculture Entrance at Killiskey Duff Farm, Ballyduff Upper, Ashford Co. Wicklow

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

The Planning Authority consider that the New Agriculture Entrance is development and is exempted development,

Main Considerations with respect to Section 5 Declaration :

- i. The details submitted with the Section 5 Declaration Application.
- ii. Site Inspection on the 10<sup>th</sup> September 2024
- iii. Section 2, 3 and 4 of the Planning and Development Act 2000 ( as amended)
- iv. Articles 6, 9 and Schedule 2: Part 1 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration :

- The removal of existing boundary and erection of entrance/ gateway, would come within the definition of development as set out under Section 3 of the Planning and Development Act 2000(as amended).
- The construction of the entrance / gateway would come within the provisions/ description set out under Class 9 : Part 1 : Schedule 2 Planning and Development Regulations 2001(as amended).
- None of the restrictions set out within Article 9 would apply to this proposal.

**Please inform Applicant with Section 5 Declaration that the Section 5 Declaration does not infer any rights to use the private laneway for traffic.**

*Seán Cunningham SEP*

11/9/2024

*Issue declaration as recommended  
11/9/24  
22/09/24*

# 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).  
EX79/2024**

I enclose herewith application for Section 5 Declaration received 9<sup>th</sup> September 2024.

The due date on this declaration is 6<sup>th</sup> October 2024.

  
\_\_\_\_\_  
**Staff Officer**  
**Planning Development & Environment**





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

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

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10<sup>th</sup> September 2024


**Eileen Murphy**  
**Killiskey Farm**  
**Ballyduff Upper**  
**Ashford**  
**Co. Wicklow**  
**A67 A7N5**

**RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX79/2024**

A Chara

I wish to acknowledge receipt on 09/09/2024 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 06/10/2024.

Mise, le meas

  
\_\_\_\_\_  
**Nicola Fleming**  
**Staff Officer**  
**Planning, Economic & Rural Development**



Wicklow County Council  
County Buildings  
Wicklow  
0404-20100

09/09/2024 09 19 06

Receipt No L1/0/334296  
\*\*\*\*\* REPRINT \*\*\*\*\*

EILEEN MURPHY  
KILLISKEY FARM  
BALLYDUFF UPPER  
ASHFORD  
CO WICKLOW  
A67A7N5

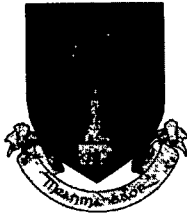
EXEMPTION CERTIFICATES	80 00
GOODS	80 00
VAT Exempt/Non-vatable	

Total 80 00 EUR

Tendered  
Credit Card 80 00

Change 0 00

Issued By Cashier5MW  
From Customer Service Hub  
Vat reg No 0015233H



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County Buildings  
Wicklow  
Co Wicklow  
Telephone 0404 20148  
Fax 0404 69462

Office Use Only

Date Received \_\_\_\_\_

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

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

1. Applicant Details

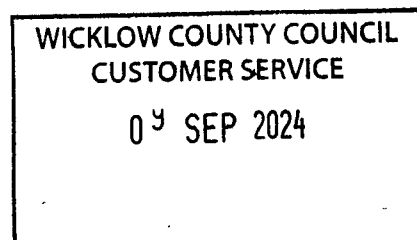
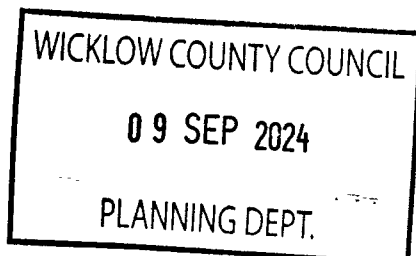
- (a) Name of applicant: EILEEN MURPHY.  
Address of applicant: KILLISKEY FARM, BALLYDUFF UPPER  
ASHFORD, Co. WICKLOW A67 A7 NS

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

2. Agents Details (Where Applicable)

- (b) Name of Agent (where applicable) KIM DRAYER ARCHITECT  
Address of Agent : BALLYLUSIL, ASHFORD  
Co. Wicklow

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



**3. Declaration Details**

i. Location of Development subject of Declaration see Folio maps  
\_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_

IS THIS AGRICULTURAL ENTRANCE on a PRIVATE  
LANEWAY EXEMPT DEVELOPMENT as per  
Schedule 2 part 3 Classed 4 of the  
Planning Regulation. USING FIELD FOR PLANTING  
NATIVE TREES  
*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 \_\_\_\_\_  
Above  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*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 MAP. DRAWING WITH SIGHT LINES

viii. Fee of € 80 Attached ? YES

Signed : Heer Murphy Dated : 09/09/2024

**Additional Notes :**

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

- A. Extension to dwelling - Class 1 Part 1 of Schedule 2
  - Site Location Map
  - Floor area of structure in question - whether proposed or existing.
  - Floor area of all relevant structures e.g. previous extensions.
  - Floor plans and elevations of relevant structures.
  - Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

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

governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000( as amended) there is a certification process with respect to land reclamation works as set out under the European Communities ( Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.

C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.

Surveyed 1836-1838  
Revised 1908  
Levelled

# Record PLACE Map

DRAWING NUMBER: 553 PL 1



ITM CENTRE PT COORDS

725838,700928

DESCRIPTION

MAP SHEETS

6 Inch  
WW018 WW019

**Authorised  
Internet Map**

Ana thionsa agus ana thionsa ag Suidheachan Ordnáin Éireann. Páirc an Fhionnulaice Balle Átha Cithéil 8, Éire. Compiled and published by Ordnance Survey, Ireland, Phoenix Park, Dublin 8, Ireland.

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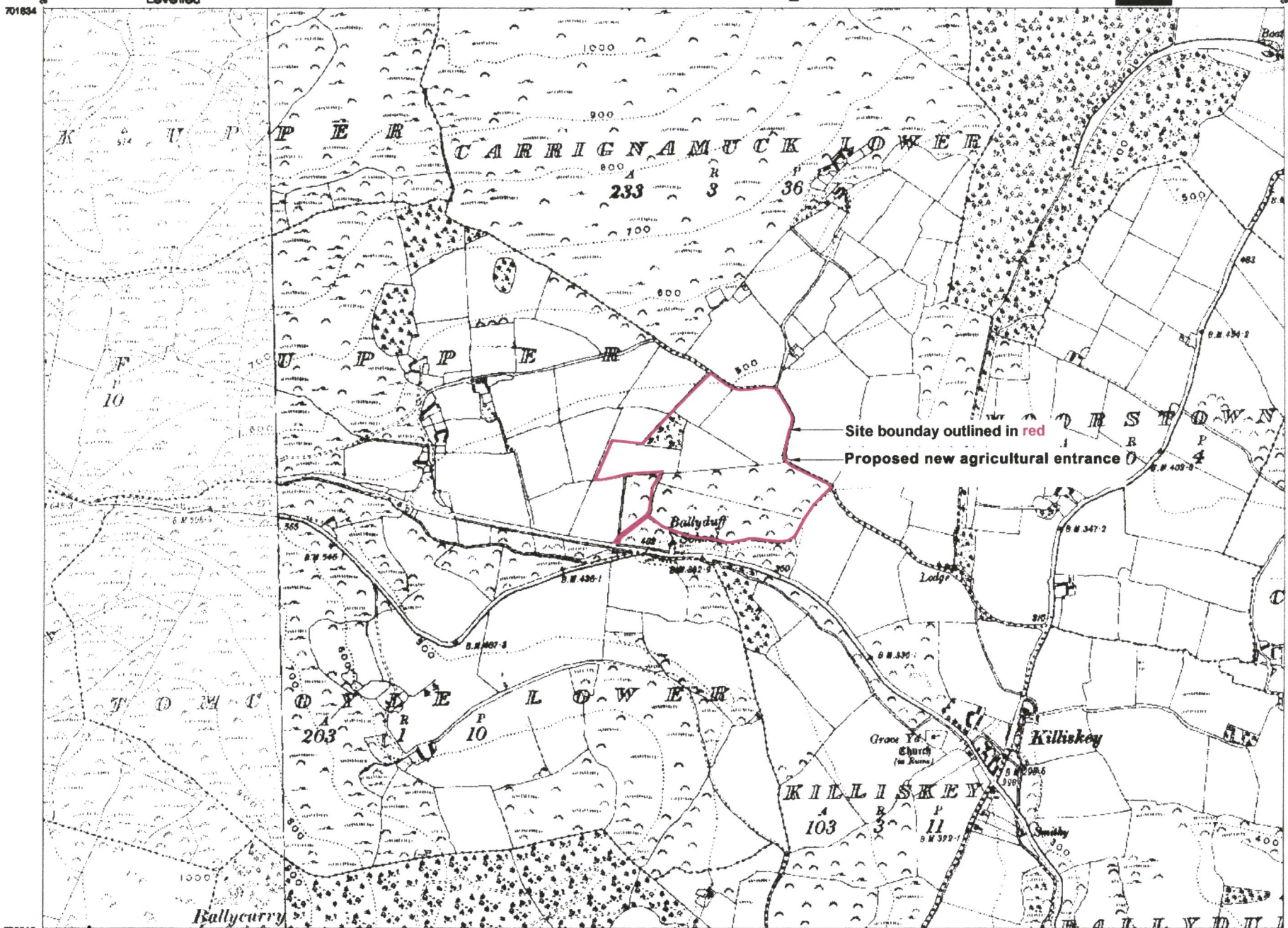
Gach cead ar cois na h-ádh. Ní ceadnóirí aon chuid den thionscail aon chéim, a stairgeach nó a thaircín a ionróir nó aon bhealach gan cead a scríobh nó a úsáid aon chéim.

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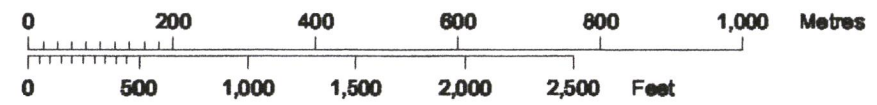
Ní thaispeáin léarsaíl de chuid Ordnáin Shuidheachan na hÉireann bealaí a bhíonn a chéad áil nó aon bhealach gan cead a scríobh nó a úsáid aon chéim. Ordnance Survey maps never show legal property boundaries, nor do they show ownership of physical features.

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© Ordnance Survey Ireland, 2018



Site boundary outlined in red  
Proposed new agricultural entrance

Scale:- 1:10,560  
Scála:- 1:10,560



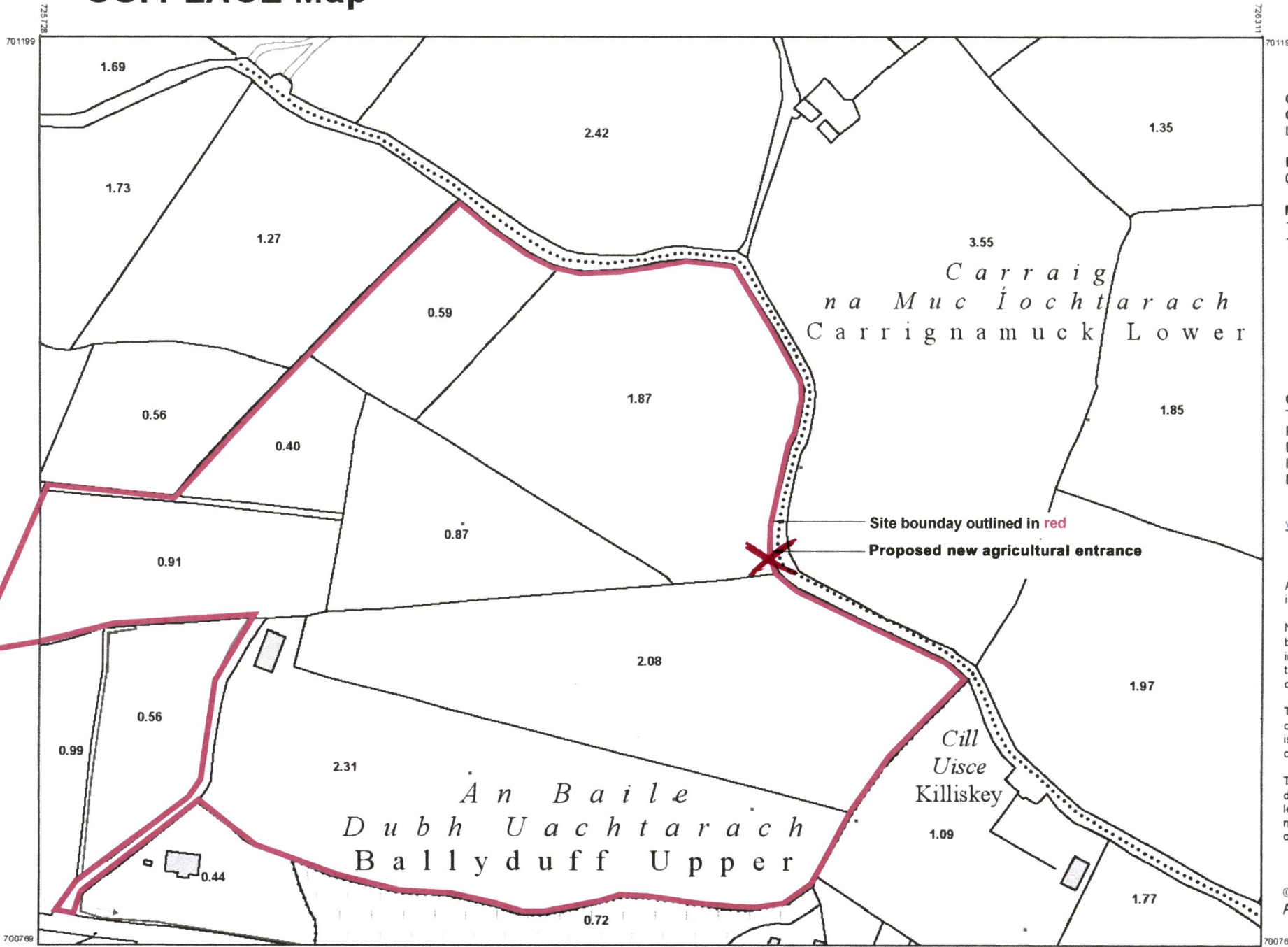
Plot Ref. No. 19772444\_1  
Plot Date 15-FEB-2018

# OSi PLACE Map

DRAWING NUMBER: 553 PL 2



Tailte Éireann



**CENTRE COORDINATES:**  
ITM 726020,700984

**PUBLISHED:** 04/09/2024  
**ORDER NO.:** 50420543\_2

**MAP SERIES:** 1:5,000  
1:2,500  
**MAP SHEETS:** 3905  
3905-B

**COMPILED AND PUBLISHED BY:**  
Tailte Éireann,  
Phoenix Park,  
Dublin 8,  
Ireland.  
D08F6E4

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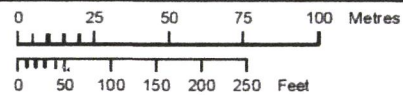
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Site boundary outlined in red  
Proposed new agricultural entrance



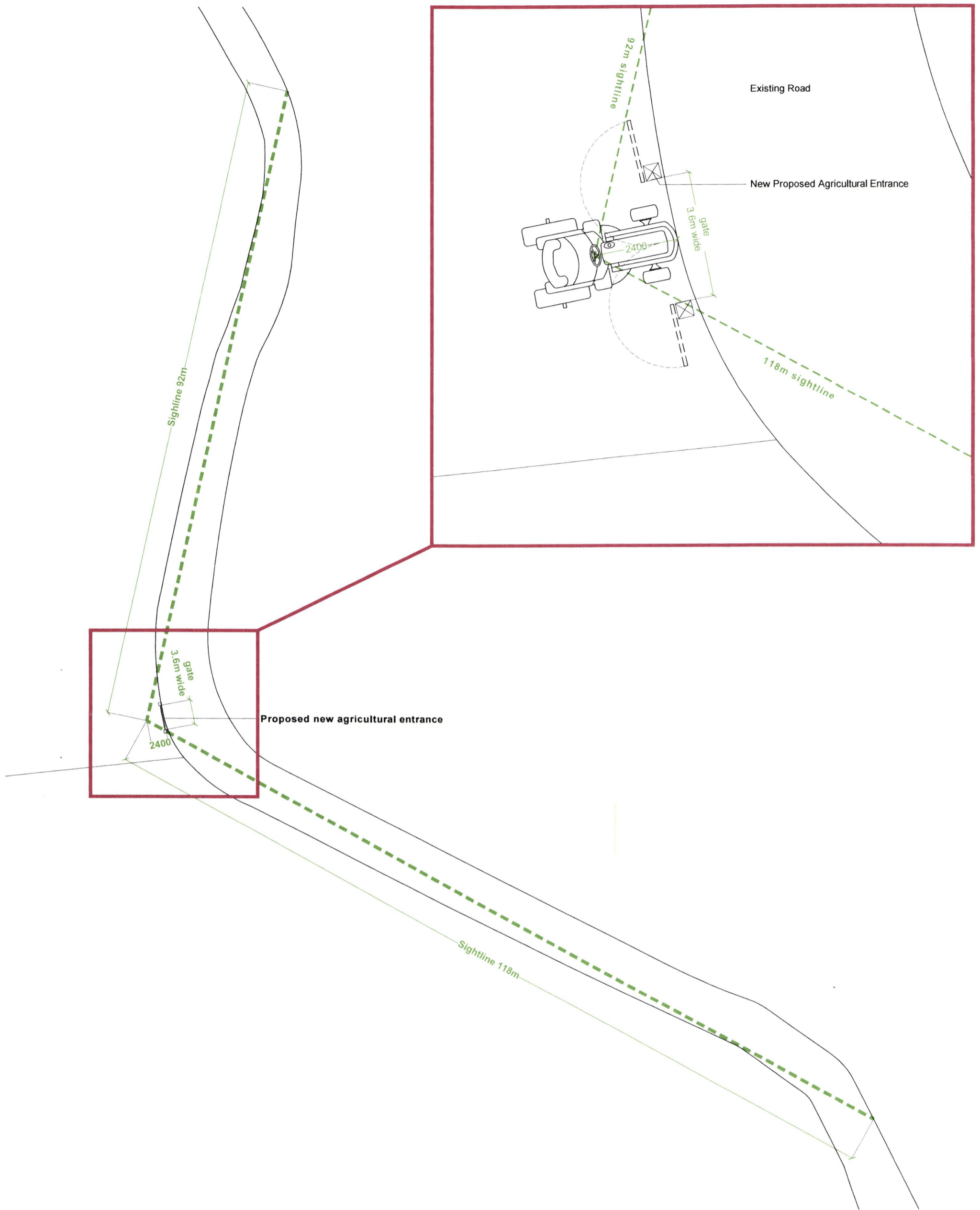
OUTPUT SCALE: 1:2,500

**CAPTURE RESOLUTION:**  
The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Further information is available at [www.tailte.ie](http://www.tailte.ie), search 'Capture Resdution'

**LEGEND:**  
To view the legend visit [www.tailte.ie](http://www.tailte.ie) and search for 'Large Scale Legend'







Proposed new agricultural entrance and Sightlines  
Scale 1:500

REV	DATE	DESCRIPTION	PROJECT TITLE: <b>BALLYDUFF UPPER</b> Simon Wilson			
			DRAWING TITLE: <b>Proposed new agricultural entrance and Sightlines</b>			
			DRAWN BY: EB	DATE: Sep '24	SCALE: 1:500	PAPER: A3
			STAGE: PLANNING	DWG NO: 553 PL 3	REV: -	
			DREYER ASSOCIATES ARCHITECTURE & URBAN DESIGN Ballylusk Ashford Co Wicklow copyright © T.0404 42818 F.0404 42865 Email: KD@DreyerAssociates.com			

