

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)  
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1038

Reference Number: EX66/2024  
Name of Applicant: Huw O'Toole  
Nature of Application: Section 5 Referral as to whether "Allotment Garden" is or is not development and is or is not exempted development.  
Location of Subject Site: Jacksmill Forest Gardens, Timmore Lane, Timmore, Co Wicklow  
Report from: Andrew Spencer (A/EP), Edel Bermingham (SEP)

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "Allotment Garden" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

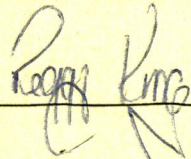
Having regard to:

- (a) Section 2(1) of the Planning and Development Act, 2000;
- (b) Section 2(1) of the Planning and Development Act, 2000, as amended by Section 4 of the Planning and Development (Amendment) Act, 2010;
- (c) Section 3(1) of the Planning and Development Act, 2000; an

Main Considerations with respect to Section 5 Declaration:

- (a) the established use of the lands is for agriculture;
  - (b) the use of the lands for allotments comes within the meaning of agriculture and does not constitute a change of use as defined in Section 3(1) of the Planning and Development Act, 2000 as amended.
- Recommendation**

The Planning Authority considers that "Allotment" is not development and is exempted development as recommended in the planning reports.

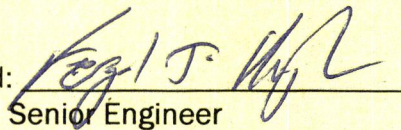
Signed  \_\_\_\_\_ Dated 13<sup>th</sup> day of August 2024

ORDER:

I HEREBY DECLARE:

That "Allotment Garden" is not development and is exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed:

  
Senior Engineer

Dated <sup>12</sup> 13 day of August 2024

Planning, Economic & Rural Development



Comhairle Contae Chill Mhantáin  
Wicklow County Council

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

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

Applicant: Huw O'Toole

Location: Jacksmill Forest Gardens, Tiommore Lane, Timmore, Co Wicklow

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1038

A question has arisen as to whether "Allotment Garden" is or is not exempted development.

Having regard to:

- (a) Section 2(1) of the Planning and Development Act, 2000;
- (b) Section 2(1) of the Planning and Development Act, 2000, as amended by Section 4 of the Planning and Development (Amendment) Act, 2010;
- (c) Section 3(1) of the Planning and Development Act, 2000; and

Main Reasons with respect to Section 5 Declaration:

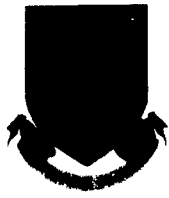
- (a) the established use of the lands is for agriculture;
- (b) the use of the lands for allotments comes within the meaning of agriculture and does not constitute a change of use as defined in Section 3(1) of the Planning and Development Act, 2000 as amended.

**The Planning Authority considers that "Allotment Garden" is development and is exempted development.**

Signed:   
ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT

Dated: 13<sup>th</sup> day of August 2024





**COMHAIRLE CONTAE CHILL Mhantáin**  
**Wicklow County Council**

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

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Huw O'Toole  
Kiltimon  
Newcastle  
Greystones  
Co Wicklow A63 WY63

13<sup>th</sup> August 2024

**RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) –EX66/2024 –Huw O'Toole - Jacksmill Forest Gardens, Timmore Lane, Timmore, Co Wicklow**

A Chara,

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.**

*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 Stúirthóir Seirbhíse, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe  
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development.





WICKLOW COUNTY COUNCIL  
PLANNING DEPARTMENT

Section 5 – Application for declaration of Exemption Certificate

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**REF:** EX 66/2024  
**NAME:** HUW O'TOOLE  
**DEVELOPMENT:** CLARIFICATION THAT LAND USE DEVELOPMENT (ALLOTMENT) IS WITHIN PLANNING GUIDELINES  
**LOCATION:** JACKSMILL FOREST GARDENS TIMMORE LANE  
TIMMORE CO. WICKLOW.

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**The Site:** The proposed site is located off the R772 and off Timmore Lane, approximately 2.5 Kilometres to the west of the Village of Newcastle and 3km south of the Village of Newtown Mount Kennedy in County Wicklow. The lands are laid out in 2 main fields with peripheral hedgerows and one internal hedgerow. The east of the site is currently used for allotments (Tirmor Allotments) with a number of existing sheds/ ancillary structures on site.

**Planning History (subject site):**

PRR22464 - for the installation and use of 2 no. underground Rainwater Harvesting storage vessels of up to 150,000 litres capacity for use by Tirmor allotment users. Grant.

PRR22463 - installation and use of 3 no. dry composting toilets for use by Tirmor allotment users. Grant.

PRR22306 - the creation of parking spaces including dished entrance from Timmore Lane for Tirmor allotment users. Grant.

**Section 5 History:**

EX08/2022 - Provision of composting toilets and 2 no. rainwater harvesting tanks.

Outcome:

*'The provision of composting toilets and 2 no. rainwater harvesting tanks at Timmore Lane, Newcastle, Co. Wicklow', is development and is not exempted development.*

Main Considerations with respect to Section 5 Declaration:

- a) The details submitted with the Section 5 Declaration (EX08/2022) on the 4<sup>th</sup> of February 2022.
- b) Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).
- c) Article 6(1) of the Planning and Development Regulations, 2001, (as amended).
- d) Article 9 of the Planning and Development Regulations, 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- 1) The provision of composting toilets and 2 no. rainwater harvesting tanks at Timmore Lane, Newcastle, Co. Wicklow would be development having regard to Section 3 of the Planning and Development Act 2000 (as amended).
- 2) The works would not fall under the remit of 4(1)(h) of the Planning and Development Act 2000 (as amended), and there are no exemptions for composting toilets or rainwater harvesting tanks within the Planning and Development Act 2000 (as amended), and the Planning and Development Regulations, 2001, (as amended), and therefore the works would not be exempted development

**Section 5 precedent:**

Case Referral No. 17.RL2674

An Board Pleanala was requested to consider under RL2674 whether (a) the current use of

land as allotments; (b) the construction and use of a hard-standing as a car park; (c) the use of the entrance as access to the car park; and (d) the erection of advertising in connection with the allotments, all at Rathdrinagh, Lower Duleek, County Meath, is or is not development or is or is not exempted development. The Board decided in March 2010 that the use of the lands as allotments is not development; the car park is development and is not exempted development; the use of the entrance as access to the car park is development and is not exempted development; and the advertising signage is development and is not exempted development.

Case Referral No. PL06D.RL2863.

An Board Pleanala was requested to consider under RL2863 whether the subdivision of land for use as 80 no. allotments is or is not development or is or is not exempted development at Mutton Lane and Cloragh Road, Tibbradden, Rathfarnham, Dublin 16. The Board decided in August 2011 that the subdivision of agricultural land for use as 80 no. allotments is not development.

**Question:**

The applicant seeks clarification as to whether the land use (allotments) is exempted development within planning legislation.

**Relevant Legislative Context:**

**Planning and Development Act, 2000 (as amended):**

**Section 2 Interpretation:**

"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.

"allotment" means an area of land comprising not more than 1,000 square metres let or available for letting to and cultivation by one or more than one person who is a member of the local community and lives adjacent or near to the allotment, for the purpose of the production of vegetables or fruit mainly for consumption by the person or a member of his or her family;

**Section 2(1)** of the Act states the following in respect of the following:

"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(1)** of the Act states the following in respect of 'development':

*"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."*

**Planning and Development Regulations, 2001 (as amended):**

Schedule 2 deals with exempted development. Neither Part 1 (Exempted Development – General) nor Part 3 (Exempted Development – Rural) makes any reference to allotments.

**Assessment:**

*Establishment of use:*

Section 2(1) of the Planning and Development (Amendment) Act (as amended) includes a definition of allotments as "...an area of land comprising not more than 1,000 square metres let or available for letting to and cultivation by one or more than one person who is a member of the local community and lives adjacent or near to the allotment, for the purpose of the production of vegetables or fruit mainly for consumption by the person or a member of his or her family." Given this description I consider that the proposed development does not strictly fall under the above definition, as the area of land being used as the subject allotments

amounts to in excess of 6,000sqm, whereas the above definition refers to an area of land comprising no more than 1,000sqm. This being the case I consider that the land use falls back in under the interpretation of 'agriculture' under Section 2(1) of the Act as including '*...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.*' Therefore, it is considered that the principal use of the land has not changed and that the definition of agriculture in the Planning Act accords with the activity on the original site.

It is noted that the Board was requested to consider under referral case RL2674 whether or not the use of lands as allotments constituted development. The Board concluded that the use of agricultural lands as allotments is not development but that, in that case, the associated car park, entrance and advertising was development and not exempted development. The applicant in this case has received planning permission for developments ancillary to the allotments which have included parking spaces and dished entrance (PRR22306), 3 composting toilets (PRR22463) and 2 no. underground rainwater harvesting tanks (PRR22464).

**Development:**

**Section 3(1)** of the Act states the following in respect of 'development':

*"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."* Having regard to the establishment of use as agricultural as referred to above it is considered that no material change of use has taken place respecting the subject land.

**Recommendation:**

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

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

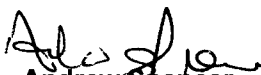
The Planning Authority considers that the use of land as allotments is not development.

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


- (a) Section 2(1) of the Planning and Development Act, 2000;
- (b) Section 2(1) of the Planning and Development Act, 2000, as amended by Section 4 of the Planning and Development (Amendment) Act, 2010;
- (c) Section 3(1) of the Planning and Development Act, 2000; and

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

- (a) the established use of the lands is for agriculture;
- (b) the use of the lands for allotments comes within the meaning of agriculture and does not constitute a change of use as defined in Section 3(1) of the Planning and Development Act, 2000 as amended.

  
Andrew Spencer  
A/Executive Planner.  
08/08/2024.

  
Paul Suby  
08/08/2024

*Issue declaration as recommended*  
  
Paul J. Murphy  
13/08/24



**Comhairle Contae Chill Mhantáin  
Wicklow County Council**

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe  
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Suíomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

**MEMORANDUM**

**WICKLOW COUNTY COUNCIL**

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**TO: Andrew Spencer  
Assistant 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).  
EX66/2024**

I enclose herewith application for Section 5 Declaration received completed on 18/07/2024

The due date on this declaration is 14<sup>th</sup> August 2024.



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**Staff Officer  
Planning, Economic & Rural Development**







**COMHAIRLE CONTAE CHILL Mhantáin**  
**Wicklow County Council**

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

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23<sup>rd</sup> July 2024

**Huw O'Toole**  
**Kiltimon**  
**Newcastle**  
**Greystones**  
**Co. Wicklow**  
**A63 WY63**

**RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX66/2024 – Jackmill Forest Gardens, Timmore Lane, Timmore, Co. Wicklow**

A Chara

I wish to acknowledge receipt on 18/07/2024 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 14/08/2024.

Mise, le meas

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



Wicklow County Council  
County Buildings  
Wicklow  
0404-20100

18/07/2024 10 43 26

Receipt No L1/0/332049

HUGH O'TOOLE  
TIMMORE  
NEWCASTLE

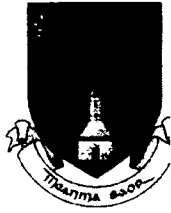
EXEMPTION CERTIFICATES	80 00
GOODS	80 00
VAT Exempt/Non vatable	

Total 80 00 EUR

Tendered  
Credit Card 80 00

Change 0 00

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Date Received 18.07.2024

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: HUW OTOOLE \_\_\_\_\_

Address of applicant:  
KILTIMON, NEWCASTLE, GREYSTONES, CO. WICKLOW A63WY63

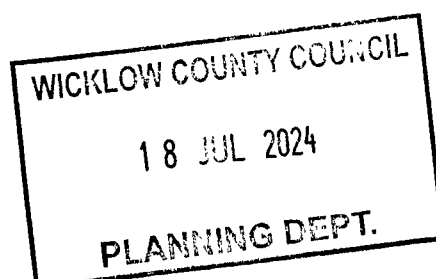
Note Phone number and email to be filled in on separate page.

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

(b) Name of Agent (where applicable) N/A \_\_\_\_\_

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 \_\_\_\_\_  
JACKSMILL FOREST GARDENS TIOMMORE LANE TIMMORE CO.  
WICKLOW
  
- ii. Are you the owner and/or occupier of these lands at the location under i. above ?  
Yes.
  
- iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier \_\_\_\_\_  
\_\_\_\_\_  
N/A  
\_\_\_\_\_

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 \_\_\_\_\_

WE HAVE OPERATED AN ALLOTMENT GARDEN ON THIS SITE SINCE 2019.  
WE SEEK CLARIFICATION THAT THE LAND USE DEVELOPMENT IS WITHIN  
PLANNING GUIDELINES AS WE ARE MAKING AN APPLICATION TO LEADER  
FUNDING TO CONSTRUCT PARKING WITH AN INTERNAL ACCESS ROAD,  
COMPOSTING TOILETS AND RAINWATER HARVESTING AS PER PLANNING  
APPLICATIONS 22/464, 22/463, 22/306.

The query is to ask specifically that the allotment gardens including access point ( previously queried with local engineer for the Greystones district) are within planning guidelines.

- v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_

2024.18.07 SECTION 5 1:2500 SITE LOCATION PLAN

viii. Fee of € 80 Attached ? PHONE THROUGH LATER TO REVENUE

Signed : HUW OTOOLE

Dated :

18/7/24

**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.

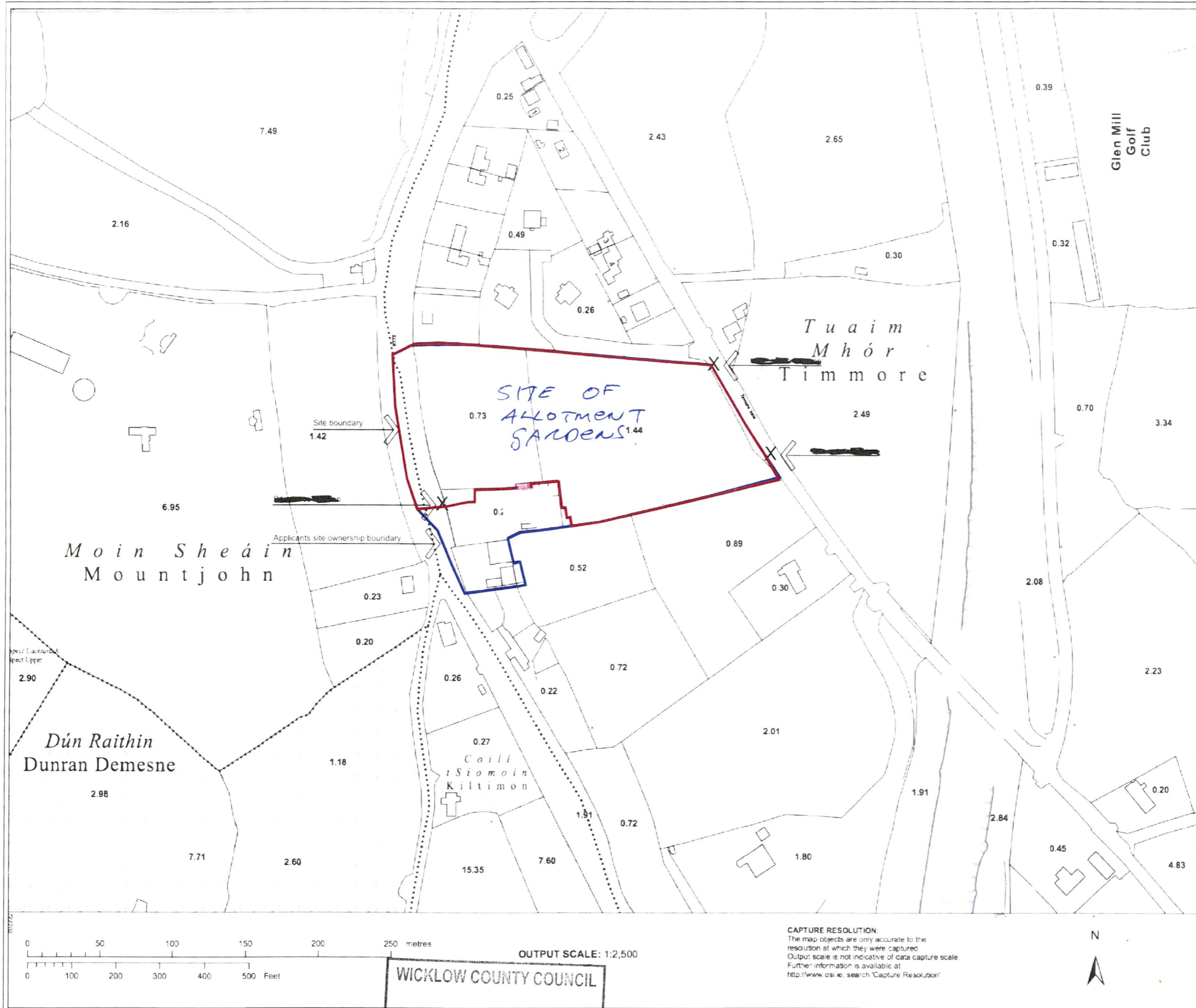
**B. Land Reclamation -**

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.



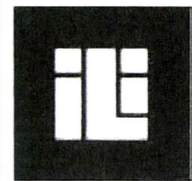
**Map Key**

- Development Site
- Lands owned by the applicant

**CENTRE COORDINATES:**  
ITM 727517 70346E

<b>PUBLISHED:</b> 17/09/2021	<b>ORDER NO.:</b> 50220649_1
<b>MAP SERIES:</b> 1:2,500 1:2,500 1:2,500 1:2,500	<b>MAP SHEETS:</b> 3847-B 3847-D 3848-A 3848-C

**Cathal O'Meara**  
Landscape Architects  
087 9202549  
2 Mc Sweeney St,  
Fermoy, Co. Cork



Chartered member  
of the Irish  
Landscape Institute

Client: Huw O'Toole

Project: Timmor  
Agroforestry Allotments

Drawing: Site location

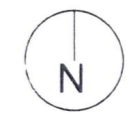
Date: 18/09/2021

Drawn By: Luis Medeiros

Drawn By: Cathal O'Meara

Issue: Planning

Dwg No: 2102-LA-P002



Scale 1:2500, @ A3

WICKLOW COUNTY COUNCIL  
18 JUL 2024  
PLANNING DEPT.

Jacksmill allotment  
Gardens

2024.18.07 section 5  
APPLICATION.