

005 (3)

Kerdiffstown,  
Sallins,  
Naas,  
Co. Kildare.  
27<sup>th</sup> February 2006.

Re: Waste Licence Register No: 47-2

**Objection by Hannah Foley and Michael Butler, Kerdiffstown, Sallins, Naas, Co. Kildare to the Proposed Decision to grant a Waste Licence Review to Neiphin Trading Ltd. Tallaght, Dublin 24.**

To: Dr. Mary Kelly,  
Director General,  
Environmental Protection Agency,  
Johnstown Castle Estate,  
Co. Wexford.

Dear Dr. Kelly,

We strenuously object to the proposed decision of the EPA to grant Waste Licence Register No: 47-2 to Neiphin Trading Ltd. in respect of its facility at Kerdiffstown, Sallins, Naas, Co Kildare on the following grounds:

1. The failure of Neiphin Trading Ltd. to respect / submit itself to the Planning Laws, the conditions of its current licence and the lawful directions of EPA officials.
2. The breach of duty by the EPA to the citizens of Ireland, and specifically members of the Foley and Butler families, by its failure to conduct a thorough investigation, and familiarize itself with the issues involved, in advance of its decision to grant this licence. Also, the breach of duty by the EPA in its failure to act decisively as a responsible regulatory authority on known licensing breaches.
3. The inclusion of Composting and, the processing of Household Recyclables including Putrescible Wastes, on this licence.
4. The damage to our environment through gas emissions, noise, odours, and litter through vastly increased activity at this site.
5. The lack of independent monitoring of gas emissions, noise, odours and litter.
6. The excessive opening hours of the Facility.
7. The requirement under Condition 6.21.8 to use lighting during the hours of darkness.
8. The raising of the berm opposite our house by two metres.

and

in general, the total unsuitability of such a large-scale operation in such close proximity to the Foley and Butler family homes.

1. Failure of Neiphin Trading Ltd. to respect / submit itself to the Planning Laws, the conditions of its current licence and the lawful directions of EPA officials

The Waste Management Facility at Kerdiffstown currently operates under Waste Licence 47-1 from the EPA. Condition 1.3 of Waste Licence 47-1 states:

*"This licence is for the purposes of waste licensing under the Waste Management Act, 1996 only and nothing in this licence shall be construed as negating the licensee's statutory obligations or requirements under any other enactments or regulations."*

Neiphin Trading Ltd. has breached this condition of its licence by erecting *at least* one large shed without first seeking the approval of Kildare Co. Council. The shed we refer to is the one labelled "Existing Waste Quarantine Building" (Figure 3, page 4 Inspector's Report, Dr. J Derham). No planning permission exists for this building.

Just 10 (*ten*) metres separate our garden from Neiphin Trading Ltd's property. This unauthorised building is just 75 metres from our garden and less than 100 metres from our house. Its scale and size (approx. 30m wide by 90 metres long) is such that it completely dwarfs our house (photo enclosed). We have referred this matter to the Conservation and Compliance section of Kildare Co. Council's Planning Department. (Ref. UD 3831) We enclose copies of letters we sent to Kildare Co. Council on this matter and KCC's replies to us. You will note that Neiphin Trading Ltd was served with an Enforcement Order (dated 10<sup>th</sup> May 2005) requiring them to cease all work on the building *and* to remove the building within one month – an order the company has ignored. We believe that other buildings on the site have also been erected without planning permission.

Waste Licence 47-1 set a height limit of 100 metres for the finished landfill. Neiphin Trading Ltd is seeking a finished height of 108 metres to agree with its planning approval. Dr. J Derham states: *"Current levels are in excess of planning"* (p.5 Inspectors Report). Neiphin Trading Ltd has a history of acting without approval from the relevant agencies. As Dr. Derham states in his report:

*"The rapid expansion of the site waste recovery/processing infrastructure has not always been preceded by submission of the appropriate documentation to the Agency for approval"* (p.6 Inspector's Report).

Dr. Derham also notes:

*"Indeed on my visit to the site in September 2004, I had instructed that there should be no further placement of waste on virgin ground in the very northwest of the site (active during my visit). I was disappointed during my most recent visit to find that this request was not complied with" (p. 5 Inspector's Report).*

and:

*"Despite numerous instructions by the enforcement section of the Agency, the licensee continued to place part processed waste (shredded material – paper, plastics and waste soil/fines from on site shredders) in a manner of landfilling in unlined areas of the facility in the northwest section of the facility" (p.6 Inspector's Report).*

and:

*"To date three notifications of non-compliance have been issued to the licensee with a further notification issued on foot of the most recent audit (19/09/05)" (p.6 Inspector's Report).*

and:

*"Other recent non-compliances at the facility include inadequate provisions for collection of trade effluent (unlined/non-hardstanding areas), use of waste contractors/hauliers without having appropriate waste collection permits on site (as per Agency agreement), not carrying out provisions for landfill gas controls/monitoring as directed by the Agency, storage of drums in unbunded areas, inadequate waste records being maintained on site, not carrying out topographical surveys and providing details as required under the terms of the licence, not being able to demonstrate integrity of leachate tank, and inadequate drainage controls for onsite wheelwash" (p.7 Inspector's Report)*

These breaches of Waste Licence 47-1 are serious matters. Neiphin Trading Ltd. has also breached Condition 7.7 of its current licence through lack of Bird Control at the site.

The two houses to the right of the entrance gates form part of the proposed extension to the facility. In granting planning permission to Neiphin Trading Ltd. Kildare County Council has imposed a condition on the company that these houses are not used as "habitable dwellings". Both houses are currently occupied as "habitable dwellings".

Neiphin Trading Ltd. has shown a blatant contempt for the planning laws of this country, for the conditions of its Waste Management Licence, and for the lawful directions of EPA officials. The laws of the land, including the directions of State Agencies, apply to all of us. An exception cannot be made for Neiphin Trading Ltd. The principles of natural justice would dictate that the EPA

should force this company to comply with all the terms of its current licence, but especially Condition 1.3, before the EPA considers any extension to its activities. Dr. Derham states that *"the enforcement issues also impact on EPA confidence in the operators' ability to run the facility in a manner that does not cause nuisance or impact on amenity, and to earnestly address the illegally placed waste piles"* (p.7 Inspector's Report). If the EPA has doubts about Neiphin Trading Ltd's ability to run this facility with its current level of activity why is the Agency proposing to grant a Waste Licence for vastly increased levels of activity – especially for sensitive types of waste such as composting and household wastes?

Therefore, we wholeheartedly object to the Proposed Decision to grant Waste Licence 47-2.

2. The breach of duty by the EPA to the citizens of Ireland, and specifically members of the Foley and Butler families, by its failure to conduct a thorough investigation, and familiarize itself with the issues involved, in advance of its decision to grant this licence. Also, the breach of duty by the EPA in its failure to act decisively as a responsible regulatory authority on known licensing breaches.

We in Ireland are privileged to live in a country with a democratically elected government. Many creeds and generations of Irish men and women died so that Irish citizens would be able to elect their own government. Every parish can list its own links to the past. John Devoy, the Fenian leader, was born at Greenhills less than a kilometre from this Waste Management Facility.

The government and agencies of the State, including the EPA and Kildare County Council, derive their authority directly from the citizens of the State. They wield power for, and on behalf of, the ordinary people who live in this country. This is a tremendous responsibility and a matter of honour. It should not be necessary for the citizens of the State to specifically seek the services of agencies such as the EPA to defend their rights. This should happen automatically because the agencies are pro-active in pursuit of their duties and responsibilities.

We are fair, honourable and reasonable people. As true democrats we trust in the democratic process and in the institutions of the State. We have not written to the EPA previously because we knew that the EPA was charged with guarding our environment, a rich heritage and a valuable asset to all citizens of the State.

It is clear from Dr. Derham's report that the EPA is aware of planning breaches at the site (p.5, p.11). The EPA is in dereliction of its duties to the ordinary people of Ireland – its employers – by not investigating this matter more thoroughly before issuing Waste Licence 47-2. There is no evidence in the report that any contact was made with Kildare County Council's Planning Department.

The EPA proposes to allow the facility to handle compost and household waste (including putrescible wastes). This is a seismic change in the type of waste the facility is allowed to handle. As such an Environmental Impact Statement should have been commissioned. We believe that this is a clear breach of duty by the EPA to us, and to local residents for miles around, as the impact of these changes on our environment should have been specifically tested.

Furthermore, we are outraged at the Agency's attitude to issues of non-compliance by Neiphin Trading Ltd. Dr. Derham's report lists numerous breaches. Dr. Derham professes himself to be "*disappointed*" (p.5 Inspector's Report). The EPA is a powerful agency, backed by the Irish Government and Irish law. It is the Regulatory Authority for the Waste Management industry, the guardian of our environment. The EPA is in breach of its authority and its duty to all citizens if it stands idly by while its licensing conditions, and the lawful instructions of its officials, are ignored.

The Inspector states:

*"A firm grasp of material balance and flows on the facility is not easily obtained for the casual or infrequent visitor to the site (such as myself)* (p.6 Inspector's Report). Perhaps the Agency is short of staff to thoroughly investigate all aspects of this facility. Nevertheless, the onus is on the Agency to be au fait with all aspects of the business carried on at the facility and to take decisive action when standards are not met. Waste Licence 47-2 should not be issued in these circumstances.

### 3. The inclusion of Composting and, the processing of Household Recyclables including Putrescible Wastes, on this licence

We vehemently object to the proposed decision to grant a licence to handle compost and household recyclables (including putrescible wastes) at the Neiphin Trading Ltd. facility. We contend that you do not have the authority to sanction the handling of this type of waste at the facility. An Bord Pleanala – the ultimate planning authority – has specifically forbidden the carrying on of incineration, chemical or biological processes on the site. In a judgement dated 2<sup>nd</sup> October 2002 (Ref: PL 09. 128896) An Bord Pleanala states:

*"No incineration or chemical or biological processes shall be carried out within the building or within the confines of the site  
Reason: In the interest of amenity and public health."*



The EPA has no authority to over-ride An Bord Pleanala in matters of Public Health.

Even if the EPA had the authority – which we dispute – to issue such a licence the site in Kerdiffstown is unsuitable for such an activity because of the close proximity to the facility of the Foley and Butler family homes. The proposal to site the facilities for the curing of compost as near as 200 metres from any private residence (Condition 3.28.4) shows scant regard for the occupants of the residence.

Dr. Derham acknowledges that the handling of household recyclables including putrescible wastes "*presents its own environmental challenges*" (p. 8 Inspector's Report). He states that this material has the "*potential to be odorous*" (p.8). The EPA would need to conduct a more detailed examination of this issue, including seeking an independent Environmental Impact Statement, before any licence is issued for the processing of compost or household recyclables on this site.

The handling of these activities is a very specialised task, a very different task to the handling of Construction and Demolition waste. Neiphin Trading Ltd.'s record to date would not suggest that it can manage such an operation successfully.

#### 4. The damage to our environment through gas emissions, noise, odours, and litter through vastly increased activity at this site.

We urge the EPA to consider our position as long-term residents of a rural area now being faced with the possibility of ever increasing levels of gas emissions, noise, odours and litter, should licence 47-2 come into effect.

Just this week-end (Sat. 25<sup>th</sup> Feb.) we observed litter from the facility being blown in to our garden. This problem is particularly acute in early spring. Last Christmas Eve a powerful noxious odour pervaded the atmosphere for several hours. On a daily basis we hear the clanging, churning and movement of machinery, together with the almost incessant noise of vehicles reversing, from very early morning to late at night. Sometimes, we hear similar noises on Sundays too (e.g. Sun 26<sup>th</sup> morning: vehicle reversing noises).

Should the proposed Landfill Gas extraction plant be built the damage to our environment will be catastrophic. Dr. Derham states:

*"Such units can represent a noise and odour nuisance risk. They are also 24 hour noise sources"* (p.12 Inspector's Report). Our house is too close to the facility to be unaffected by this plant.

Furthermore, we are certain that the Composting Facility and the Putrescible Wastes will emit toxic odours into the atmosphere. Dr. Derham finds that the "*high temperature of the composter design will reduce the potential for spores/ bio-aerosols in the exhaust air*" (p. 13 Inspector's Report). A

reduction in the emissions of spores/bio-aerosols, while welcome, does not satisfy our concerns in this regard.

5. The lack of independent monitoring of gas emissions, noise, odours and litter.

The units for monitoring emissions on the facility are under the care and control of the facility operators. Some means should be devised where emissions can be monitored by mobile units operated by independent operators.

6. The excessive opening hours of the Facility.

The current and proposed opening hours of the facility are too long and place an unfair burden on local residents. The Inspector's Report recommended that the operational hours be confined to 8am to 6pm Monday to Friday and 8am to 1pm on Saturday. Local residents need to be able to enjoy the amenities of the area, and in particular of their gardens, without the interference of the incessant noise from the facility. All activities at the facility, apart from security, should cease at these times.

6. The requirement under Condition 6.21.8 to use lighting during the hours of darkness.

The use of strong lights at the facility during the hours of darkness represents a type of pollution on the local environment and the practice should cease.

7. The raising of the berm opposite our house by two metres

Our house is already overlooked by a berm with a steep gradient placed parallel to the facility boundary. To raise this berm by two metres would cause our house to be further overlooked and would give rise to security concerns for us. We also fear that this would give rise to a danger of flooding on the public road and in our garden.

Conclusion:

There are too many matters outstanding in relation to:

(a) the licensee's ability/willingness to fulfil the conditions of the licence and, its willingness to obey Ireland's Planning Laws,

*and*

(b) in relation to the EPA's and KCC's ability to regulate this facility

for Waste Licence 47-2 to be granted at this time.

As stated, the Foley and Butler family homes are too close to the Neiphin Trading Ltd Waste Management facility at Kerdiffstown not to be adversely affected by conditions there. The plans submitted to you by the company have not taken this fact into account. We cite the location of the proposed bailer for cardboard and plastics ( Fig 3 p.4 Inspector's Report)

We ask you to overturn the Proposed Decision to grant Waste Licence 47-2 to Neiphin Trading Ltd.

Yours sincerely,

Hannah Foley

Michael Butler

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Cheque for €200 enclosed.<sup>8</sup>



Home of  
P. Hansch Jolley  
and  
Michael Burkler

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Facility owners

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House  
of  
Michael  
Burkler

Kerdiffstown,  
Sallins,  
Naas,  
Co. Kildare.  
9-3-2005.

To: County Manager,  
Kildare County Council,  
St. Mary's,  
Naas.

Dear Sir,

We enclose three photographs of a building under construction at Kerdiffstown, about a kilometre from the N7 at Johnstown.

It is a large structure, approximately 40 metres long, 12 metres wide and 8 metres high, and it completely dwarfs the five bungalows which surround it. In view of Kildare County Council's strict planning guidelines it appears unlikely that such a structure was granted planning permission. Can you confirm for us that this construction work has been sanctioned by Kildare County Council?

Yours sincerely,

*This letter was signed  
by Michael Butler  
& Michael Foley.*

Comhairle  
Chondae  
Chill Dara  
Planning Section  
St. Mary's, Naas.  
Phone (045) 873829  
Fax (045) 873846



Date: 16<sup>th</sup> March 2005

Our Ref: UD3831 (Please quote this reference in future correspondence).

Mr. Michael Butler,  
Kerdiffstown,  
Sallins,  
Co. Kildare.

**RE: Possible Unauthorised Structure at Kerdiffstown, Sallins, Co Kildare.**

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Dear Mr. Butler,

I refer to your correspondence received 11<sup>th</sup> March 2005 in relation to the above possible unauthorised development.

Presently, the planning authority is dealing with cases of unauthorised development on a priority level basis. Your correspondence will remain on file and shall be taken into account when the file is being assessed.

We shall inform you, by letter, if enforcement action is taken in this case. All further correspondence from you in relation to this case must be in **writing** and forwarded to:

**Conservation & Compliance Section,  
Planning Department  
St. Mary's  
Naas  
Co. Kildare.**

Yours sincerely,

PP Tommy Maddock,  
Senior Executive Officer.

Kerdiffstown,  
Sallins,  
Naas,  
Co. Kildare.  
24-3-2005

Re: UD 3831 (building under construction at the Johnstown end of Kerdiffstown)

Tommy Maddock,  
Senior Executive Officer,  
Conservation and Compliance Section,  
Planning Department,  
St. Mary's,  
Naas.

Dear Sir,

We acknowledge receipt of your reply to our letter of 9<sup>th</sup> March. We sought confirmation that construction work taking place on a specified building at Kerdiffstown has been sanctioned by Kildare County Council, but your reply doesn't indicate that this is so.

Since we last wrote to Kildare County Council further building work has been taking place at this site. More than five extra bays have been added to the structure. We enclose two photographs. This is a huge building. It is clearly visible for miles around e.g. from the bridge on the Sallins-Naas road over the M7.

A thorough search of planning files, conducted on our behalf, has failed to reveal any evidence that planning permission has been granted for this building. It is not an agricultural building. It is being built on land owned by a Waste Management company. Can it be an exempted building?

We ask you to halt work on this building immediately, pending an investigation of its status.

Yours sincerely,

This letter was  
signed by Michael  
Parker and Michael  
Soley

Comhairle  
Chondae  
Chill Dara

Planning Section  
St. Mary's, Naas.  
Phone (045) 873829  
Fax (045) 873846



29th March 2005

Our Ref: UD3831/MD

Mr. Michael Butler & Mr. Michael Foley,  
Kerdiffstown,  
Sallins,  
Naas,  
Co. Kildare.


**RE: Possible Unauthorised Structure at Kerdiffstown, Sallins, Co Kildare.**

Dear Sirs,

Thank you for your correspondence received 29th March 2005 in connection with the above matter.

Please be advised that Kildare County Council are currently investigating this matter. We will be in further contact in due course.

Yours faithfully,

  
Tommy Maddock,  
Senior Executive Officer.

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Comhairle  
Chondae  
Chill Dara  
Planning Section  
St. Mary's, Naas.  
Phone (045) 873829  
Fax (045) 873846



Date: 10<sup>th</sup> May 2005

Our Ref: UD3831/JMcC

Mr. Michael Butler & Mr. Michael Foley,  
Kerdiffstown,  
Sallins,  
Naas,  
Co. Kildare.

**RE: Unauthorised Structure at Kerdiffstown, Sallins, Co Kildare.**

Dear Sirs,

We refer to the above matter and to your previous correspondence in this regard. Please be advised that on the 10<sup>th</sup> May 2005 Kildare County Council issued the attached Enforcement Notice on the above development.

Yours faithfully,



PP Tommy Maddock,  
Senior Executive Officer.





**ENFORCEMENT NOTICE  
KILDARE COUNTY COUNCIL  
PLANNING & DEVELOPMENT ACT, 2000 TO 2002**

**SECTION 154 & 155 PLANNING & DEVELOPMENT ACT, 2000 TO 2002**

Whereas the County Council of the County of Kildare (hereinafter called "The Council") is the Planning Authority for the County of Kildare (excluding the Urban Districts in said County) **AND WHEREAS** in the said area of the jurisdiction of the Council is situated on land at:

Kerdiffstown,  
Naas,  
Co. Kildare.

**AND WHEREAS** the said land has been developed without a permission as required by Part III of the Planning & Development Act, 2000 comprising a portal frame building

**AND WHEREAS** having considered only the proper planning and development of its area including the preservation and improvement of the amenities thereof regard being had to the provision of its Development Plan, the Council has decided that it is expedient to serve on you the (developer) of the said development this notice in accordance with the provision of Section 154 of the Planning and Development Act 2000.

**NOW** the Council as Planning Authority as aforesaid, pursuant to Section 154 of the Act requires you to take **NOTICE** that you are required, upon receipt of this notice, to:

- a) **Immediately cease all unauthorised development on this site,**
- b) **Remove the unauthorised portal frame building within one month from the date of this Notice.**

and that if the steps required by Paragraph (a) & (b) are not adhered to the planning authority may enter on the land and take such steps, including the removal, demolition or alteration of any structure and may recover any expenses reasonably incurred by them in that behalf and

to recover to the planning authority the costs and expenses reasonably incurred by the Authority in relation to this investigation, detection and issue of the enforcement notice and any warning letter, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisors, and the planning authority may recover these costs and expenses incurred by it in that behalf and

that if within the specified period , the steps specified in this notice to be taken are not taken, you may be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,500 AND if after a person is convicted as aforesaid that person does not as soon as practicable do everything in his/her power to secure compliance with this Enforcement Notice such person shall be guilty of a further offence and shall be liable on summary conviction to a fine and not exceeding €400 for each day following the date of the foregoing conviction and on which any of the requirements of this Notice remain uncomplished with.

Section 151 of the Planning and Development Act 2000 provides that any person who has carried out or is carrying out unauthorised development shall be guilty of an offence. Section 154 of the Planning and Development Act 2000 provides that any person on whom an enforcement notice is served who fails to comply with the requirements of the notice within the specified period or within such extended time as the planning authority may allow, not exceeding 6 months, shall be guilty of an offence. A person who is guilty of an offence under section 151 and/or 154 shall be liable to a fine or term of imprisonment or both.

**The possible penalties involved where there is an offence are as follows:**

**Fines of up to € 12,697,380.00 on indictment, or 2 years imprisonment, or both.**

**Or**

**Up to € 1904.61 on summary conviction or 6 months imprisonment, or both.**

Dated this 10<sup>th</sup> day of May 2005

Signed : [Signature]

**REGISTERED POST:**

**To :**

Neiphin Trading Ltd.,  
3 Broom Hill Business Complex,  
Broomhill Road,  
Tallaght,  
Dublin 24.

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Kerdiffstown,  
Sallins,  
Naas,  
Co. Kildare.  
17-8-2005

Mr. Tommy Maddock,  
Senior Executive Officer,  
Conservation and Compliance Section,  
Kildare County Council,  
St. Mary's,  
Naas.

Ref: UD3831

Re: Unauthorised Structure at Kerdiffstown, Sallins, Naas

Dear Sir,

Kildare County Council served an Enforcement Order, dated 10<sup>th</sup> May 2005, on the developers of this unauthorised structure requiring them:

- (a) to remove the building by 10<sup>th</sup> June 05 *and*
- (b) to immediately cease all unauthorised development on this site.

Work continued on this building after 10<sup>th</sup> May. The building is still in place. Furthermore, a bank of earth to the rear of the building – which has been gradually built up by the same company - is being raised to **enormous** heights. We enclose two photographs, taken a week apart (3/8/05 and 10/8/05), which show the work in progress.

Can you tell us what action Kildare County Council is planning to take about this building? Also, can a private company alter the land structure of County Kildare in this way?

Yours sincerely,

*This letter was signed  
by Michael Butler &  
Michael Foley.*

Comhairle  
Chondae  
Chill Dara  
Planning Section  
St. Mary's, Naas.  
Phone (045) 873829  
Fax (045) 873846



22nd August 2005

Our Ref: UD3831/MD

Mr. Michael Butler & Mr. Michael Foley,  
Kerdiffstown,  
Sallins,  
Naas,  
Co. Kildare.

**RE: Unauthorised Structure at Kerdiffstown, Sallins, Co Kildare.**

Dear Sirs,

Thank you for your correspondence received 18th August 2005 in connection with the above matter.

Please be advised that the Planning Authority's investigations in this regard are ongoing. We are currently liaising with the Environmental Protection Agency who are the licensing authority in this regard. We will be in further contact in due course.

Yours faithfully,

  
Shirley Farrar,  
A/Senior Executive Officer.

Consent of the Planning Authority is required for any other use.

Comhairle  
Chondae  
Chill Dara

Planning Section  
St. Mary's, Naas.  
Phone (045) 873829  
Fax (045) 873846



27<sup>th</sup> September 2005

Our Ref: UD3831/MD

Mr. Michael Butler & Mr. Michael Foley,  
Kerdiffstown,  
Sallins,  
Naas,  
Co. Kildare.

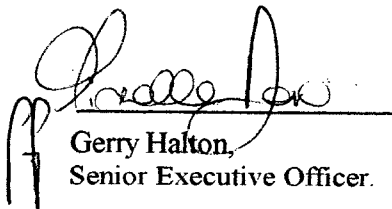
**RE: Unauthorised Structure at Kerdiffstown, Sallins, Co Kildare.**

Dear Sirs,

I refer to our previous correspondence in connection with the above matter.

Please be advised that Kildare County Council have referred this matter for legal proceedings under Section 160 of the Planning and Development Act, 2000.

Yours faithfully,

  
Gerry Halton,  
Senior Executive Officer.

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