

4. Development Details:

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

Does extending our opening hours	
by 45 mins a day constitute Development.	
Proposed floor area of proposed works/uses: sqm	

5. Legal Interest of Applicant in the Land or Structure:

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Occupier ✓
	C. Other	
Where legal interest is 'Other', please expand further on your interest in the land or structure		
If you are not the legal owner, please state the name and address of the owner	Name: Fe- liam Everard Address: Rocklow Road Fethard Co. Tipperary.	

Signature of Applicant(s) Helena O'Sc

Date: 22/1/24.

Note: If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.

F. Y. I.

DECLARATION ON DEVELOPMENT &

FR. Liam had signed this form as I couldn't find the Tipp one first. A. O'Shea.

SECTION 5 APPLICATION FORM

NAME OF APPLICANT: Acorn childcare Ltd, T/A Fethard Community playgroup

ADDRESS OF APPLICANT: Rocklow Road, Fethard Co. Tipperary.
E91 V382

EMAIL ADDRESS: Fethardcommunityplaygroup@gmail.com

TELEPHONE NO. Day: 0526132316 Mobile: Helen O'Shea 086-1658823

NAME OF AGENT AND AGENT'S ADDRESS: Fethard Community playgroup

TELEPHONE NO. Day: ↑ Mobile: _____

ADDRESS FOR CORRESPONDENCE (if different from above)

LOCATION OF SUBJECT SITE: _____

Is this a Protected Structure or within the curtilage of a Protected Structure?

Yes No

Please provide details of works (where applicable) or proposed development. (Note: only works listed and described under this section will be assessed under this Section 5 application). Use additional sheets if required.

Does extending the opening hours by 45 mins constitute Development

our normal hours 9-12 12:30-3:30
Change of hours are new hours 9-4pm

List of plans, drawings etc. submitted with this application

Please state Applicant's interest in this site: _____

If applicant is not owner of site, please provide name & address of owner:

FR. Liam Everard, P.P. Rocklow Road

Fethard. 052 6131580 / 087 673 5940

Are you aware of any enforcement proceedings connected to this site? If so please supply details:

NO

Where there previous planning application/s on this site?

Yes No

If so please supply details:

Signed: Melina Osk Date: 22/1/24

Liam Everard

22/01/24.

NOTES

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.



GUIDANCE NOTES

- (1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.
- (2) This application should be accompanied by **TWO COPIES** of the following documentation
 - OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
 - Floor Plans & Elevations at a scale of not less than 1:200
 - Site layout plan indicating position of proposed development relative to premises and adjoining properties
 - Other details e.g. brochures, photographs if appropriate.

(All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)

- (3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

This application form and relevant fee should be submitted to:

**Planning Section,
Tipperary County Council,
Civic Offices,
Limerick Road,
Nenagh,
Co. Tipperary**

OR

**Planning Section,
Tipperary County Council,
Civic Offices,
Emmet Street,
Clonmel,
Co. Tipperary**

Enquires:

Telephone 0818 06 5000

E-Mail planning@tipperarycoco.ie

FOR OFFICE USE ONLY

DATE STAMP

Fee Recd. € _____

Receipt No _____

Date _____

Received by _____



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
Cluain Meala,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary
E91 N512

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
An tAonach,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary
E45 A099

t 0818 06 5000
e customerservice
@tipperarycoco.ie
tipperarycoco.ie

Our Ref: S5/24/09

Date: 26th January 2024

Civic Offices, Clonmel

**Acorn Childcare Ltd
T/A Fethard Community Play Group
Rocklow Road
Fethard
Co. Tipperary.**

Re: Application for a Section 5 Declaration – Does extending the opening hours by 45 minutes a day constitute development at Fethard Community Play Group, Rocklow Road, Fethard, Co. Tipperary.

Dear Sir/Madam

I acknowledge receipt of your application for a Section 5 Declaration received on 26th January, 2024, in connection with the above.

I wish to advise that you will be notified of a decision on your application in due course.

Yours faithfully

for **Director of Services**

TIPPERARY COUNTY COUNCIL

Application for Declaration under Section 5

Planning & Development Act 2000, as amended
Planning & Development Regulations 2001, as amended

Planning Reference: S5/24/09

Applicant: Acorn Childcare Ltd T/A Fethard Community Play Group

Development Address: Rocklow Road, Fethard, Co. Tipperary.

Proposed Development: Does extending opening hours by 45 minutes a day constitute development.

1. GENERAL

On the 26th January 2024, a request was made for a declaration under Section 5 of the Planning and Development Act 2000, as amended, by Acorn Childcare Ltd T/A Fethard Community Play Group as to whether or not the following constitutes development and if so, whether same constitutes exempted development at Rocklow Road, Fethard, Co. Tipperary;

Does extending opening hours by 45 minutes a day constitute development

The application is accompanied by:

- Section 5 Declaration Application Form.





2. **STATUTORY PROVISIONS**

The following statutory provisions are relevant to this referral case;

Planning and Development Act 2000, as amended

Section 2 (1) of the Planning and Development Act, 2000, as amended, defines “works” as:-

“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 Planning and Development Act 2000, as amended, defined “development” as follows:-

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

Section 4 (2)(a) of the Planning and Development Act 2000, as amended, states as follows:-

(2)(a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever

described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

Section 4 (4) of the Planning and Development Act 2000, as amended, states as follows:-

4. (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 5 of the Planning and Development Regulations 2001, as amended, states;

'School' has the meaning assigned to it by the Education Act 1998.

"school" means an establishment which—

- (a) provides primary education to its students and which may also provide early childhood education, or*
- (b) provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training, but does not include a school or institution established in accordance with the Children Acts, 1908 to 1989, or a school or institution established or maintained by a health board in accordance with the Health Acts, 1947 to 1996, or the Child Care Act, 1991;*

Article 6. (1) of the Planning and Development Regulations 2001, as amended, states;

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) of the Planning and Development Regulations 2001, as amended, states;

Restrictions on exemption.

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.*

Article (10) of the Planning and Development Regulations 2001, as amended states:

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

Part 1 of Schedule 2 includes an exemption under Class 20C for;

<p>CLASS 20C</p> <p>Temporary use as a school of any structure formerly used as a school, hall, club, art gallery, museum, library, reading room, gymnasium, or other public building, or any structure normally used for religious instruction</p>	<ol style="list-style-type: none"> 1. The use shall be discontinued after a period not exceeding 2 years. 2. Such structure shall comply with the Department of Education and Science Primary and Post Primary Technical Guidance Documents for the time being in force.
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Part 4 (Exempted development – classes of use) of the same schedule includes for a creche and day nursery under Class 8.

3. **ASSESSMENT**

a. **Site Location**

The site comprises of an existing childcare facility. I note that no maps or drawings of the subject site has been submitted with the Section 5 declaration application. I note following a review of google maps, planning history and local knowledge that the subject site is located on the grounds of the former primary school which has since amalgated with the school on lands to the north - Holy Trinity National School. It is unclear at what stage the childcare facility commenced operating from the site and what exemption same avails of.

b. **Relevant Planning History**

There is a number of permission granted to the Primary School to the north and Secondary School to the east.

- 15/600890** Permission GRANTED to Holy Trinity National School for the construction of an extension to the existing on-site staff carpark, relocation of entrance, alterations to roadside boundary and all associated site works
- 10/271** Permission GRANTED to Holy Trinity National School for a single storey extension and alterations to existing school building including internal layout alterations and alterations to elevations and all associated site works including temporary site entrance for duration of construction works.
- 95643** Permission GRANTED to Patrician Presentation (Secondary School) for erection of two additional classrooms (1996).
- P312955** Permission GRANTED Br. Felim & Sr. Carmel (Patrician Secondary School) for an extension existing school (1990).
- P313226** Permission GRANTED to Sister Carmel & Brother Felini (Patrician Secondary School) for an extension to existing school (1990).
- P36132** Permission GRANTED to Rev. Superior for a Recreation Hall (1979).
- P33875** Permission GRANTED to Noel Carroll for the erection of a new primary school (1976).
- P3930** Permission GRANTED to C Lee for an extension to monastery primary school (1969).
- P3807** Permission GRANTED to B Delaney for a concrete seat extension (1969).
- P359** Permission GRANTED to Patrician Brother for erection of extension on school (1965).

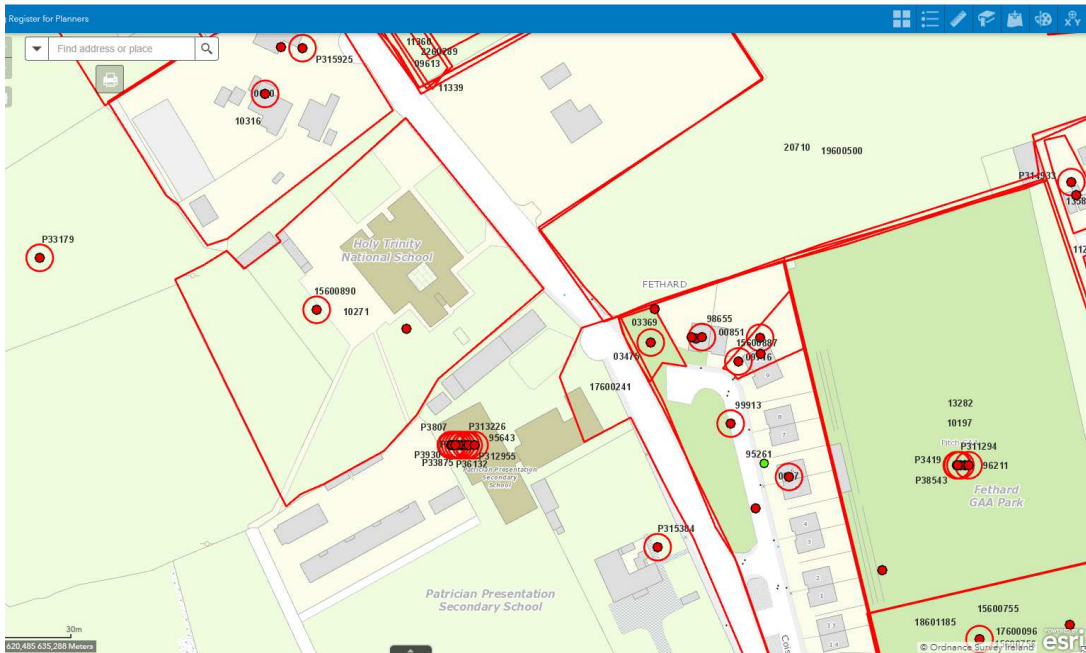


Figure 1 Planning Register

c. Assessment

The question posed under the Section 5 Declaration application is as to whether **extending opening hours by 45 minutes a day constitutes development** and is or is not exempted development.

A) “Is or is not Development”

I note no physical works to the building are proposed. The Declaration relates to operational hours only.

B) “Is or is not Exempted Development”

The planning history for the use of the building remains unclear. The development description of the planning history on the adjoining lands makes no reference to a childcare facility.

It is noteworthy that the lands are not registered on the Land Registry but still appear under the ownership of the Parish. Acorn Childcare Ltd was registered as new company on the Company Registration Office (CRO) under reference 457687 since 21/05/2008 which suggest same may have only been in operation since that time.

Further information should be requested to confirm the planning status of the building/use of the building and length of time same has been in operation.

C) Restrictions under Article 9

Unclear at this stage. Further information to be requested regarding the planning status of the building.

D) Requirement for Appropriate Assessment and Environmental Impact Assessment

AA

Screening for AA is not required in respect of the proposal which is not considered to constitute development.

EIA

Screening for EIA is not required in respect of the proposal which is not considered to constitute development.

4. RECOMMENDATION

The following further information to be requested under Section 5 (2) (b) of the Planning and Development Act 2000, as amended.

1. The Planning Authority note that the childcare facility is located on the site of the former Primary School building and west of the Presentation Secondary School. The applicant has not included appropriate site location maps and plans for the subject building and are requested to submit same.
2. The applicant is advised that the Planning Authority note that there is no record of a grant of planning permission or a Section 5 Declaration for the childcare facility on these lands and the Planning Authority are required to confirm the planning status of the existing use prior to making a determination on the submitted Section 5 Declaration.

Therefore, the applicant is requested to submit, for the consideration of the Planning Authority;

- details of the chronology of development of the site i.e. years when same was occupied as a primary school and details of when the childcare use commenced,
- details regarding the use of the balance of the site after the childcare use commenced,
- If the event a planning permission/section 5 was obtained details of same.

The applicant is requested to respond.

District Planner



Date: 19/02/2024

Senior Executive Planner



Date: 21.02.2024

HABITATS DIRECTIVE APPROPRIATE ASSESSMENT (AA) SCREENING REPORT

STEP 1. Description of the project/proposal and local site characteristics:

(a) File Reference No:	S5/24/09
(b) Brief description of the project or plan:	Does extending opening hours by 45 minutes a day constitute development.
(c) Brief description of site characteristics:	Existing building used as a creche.
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	None

STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.

European Site (code)	List of Qualifying Interest/Special Conservation Interest ¹	Distance from proposed development ² (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
002137 Lower River Suir	https://www.npws.ie/protected-sites/sac/002137	Within 10km	None	No
002162 River Barrow and River Nore SAC	https://www.npws.ie/protected-sites/sac/002162	Within 15km	None	No

STEP 3. Assessment of Likely Significant Effects

(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:

Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
Construction phase e.g. <ul style="list-style-type: none"> • Vegetation clearance • Demolition • Surface water runoff from soil excavation/infill/landscaping (including borrow pits) • Dust, noise, vibration • Lighting disturbance • Impact on groundwater/dewatering • Storage of excavated/construction materials • Access to site • Pests 	No potential impacts
Operational phase e.g. <ul style="list-style-type: none"> • Direct emission to air and water • Surface water runoff containing contaminant or sediment • Lighting disturbance • Noise/vibration 	No potential impacts

- Changes to water/groundwater due to drainage or abstraction
- Presence of people, vehicles and activities
- Physical presence of structures (e.g. collision risks)
- Potential for accidents or incidents

In-combination/Other No potential impacts

(b) Describe any likely changes to the European site:

Examples of the type of changes to give consideration to include:

- Reduction or fragmentation of habitat area
- Disturbance to QI species
- Habitat or species fragmentation
- Reduction or fragmentation in species density
- Changes in key indicators of conservation status value (water or air quality etc.)
- Changes to areas of sensitivity or threats to QI
- Interference with the key relationships that define the structure or ecological function of the site

No potential impacts

(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?

Yes No

STEP 4. Screening Determination Statement

The assessment of significance of effects:

Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

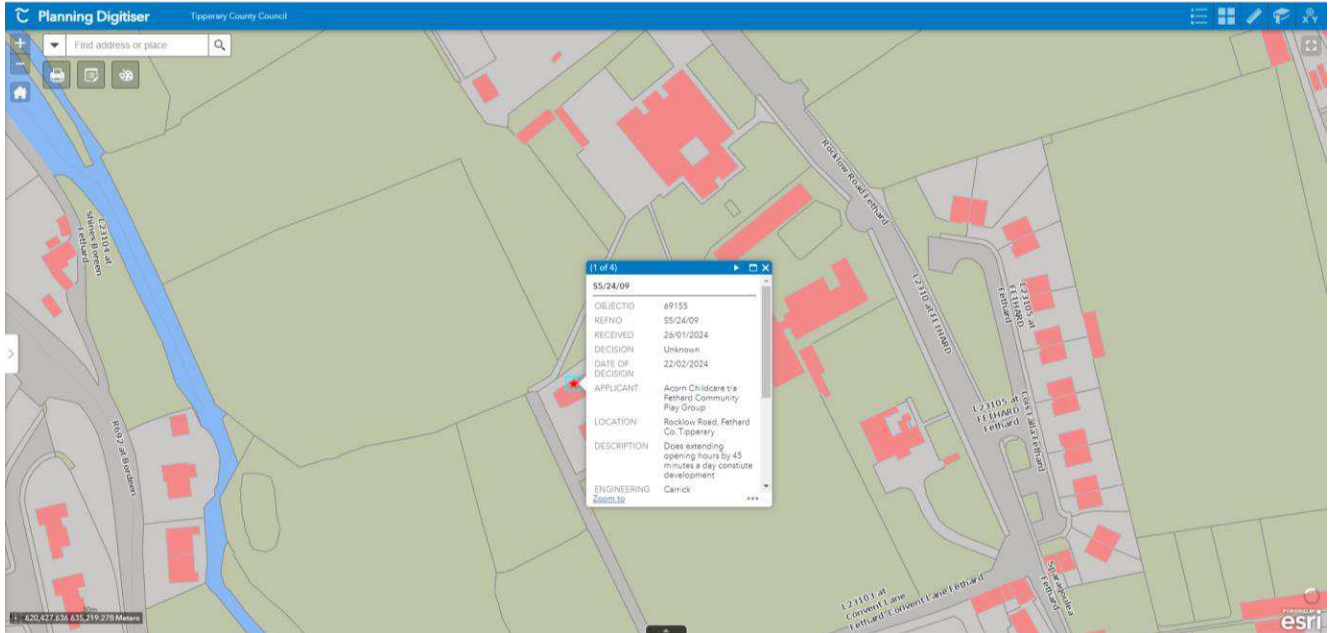
The proposed development is not likely to have significant effects.

Conclusion:

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
(iii) Significant effects are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission

Signature and Date of Recommending Officer:		Date:	19/02/2024
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EIA Pre-Screening Establishing a development is a 'sub-threshold development'	
File Reference:	S5/24/09
Development Summary:	Does extending opening hours by 45 minutes a day constitute development.
Was a Screening Determination carried out under Section 176A-C?	<input type="checkbox"/> Yes, no further action required <input checked="" type="checkbox"/> No, Proceed to Part A
A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1 , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
<input type="checkbox"/> Yes, specify class _____	EIA is mandatory No Screening required
<input checked="" type="checkbox"/> No	Proceed to Part B
B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2 , of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)	
<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2	No Screening required
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 and meets/exceeds the threshold, specify class (including threshold): _____	EIA is mandatory No Screening required
<input type="checkbox"/> Yes the project is of a type listed but is <i>sub-threshold</i> : _____	Proceed to Part C
C. If Yes , has Schedule 7A information/screening report been submitted?	
<input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant	Screening Determination required
<input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant	Preliminary Examination required





Date: 21st February 2024

Our Ref: S5/24/09

Civic Offices, Nenagh

**Acorn Childcare Ltd,
T/A Fethard Community Play Group,
Rocklow Road,
Fethard,
Co. Tipperary**

**Re: Does extending opening hours by 45 minutes a day constitute
Development at Fethard Community Play Group, Rocklow Road,
Fethard, Co. Tipperary.**

Dear Sir/Madam,

I refer to an application received from you on 26th January, 2024 requesting a Declaration from this Planning Authority as to whether or not certain works constitute development within the meaning of the Planning and Development Act 2000, as amended.

Further information is requested as follows;

1. The Planning Authority note that the childcare facility is located on the site of the former Primary School building and west of the Presentation Secondary School. The applicant has not included appropriate site location maps and plans for the subject building and are requested to submit same.
2. The applicant is advised that the Planning Authority note that there is no record of a grant of planning permission or a Section 5 Declaration for the childcare facility on these lands and the Planning Authority are required to confirm the planning status of the existing use prior to making a determination on the submitted Section 5 Declaration.

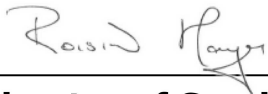
Therefore, the applicant is requested to submit, for the consideration of the Planning Authority;

- details of the chronology of development of the site i.e. years when same was occupied as a primary school and details of when the childcare use commenced,

- details regarding the use of the balance of the site after the childcare use commenced,
- If the event a planning permission/section 5 was obtained details of same.

Further consideration of your request for a declaration cannot be considered until the above information is received.

Yours faithfully,



for **Director of Services**

Acorn Childcare T/A Fethard Community Playgroup

Rocklow Road

Fethard

Co. Tipperary

E91 V382

To Whom Concerns,

Your Ref: S5/24/09

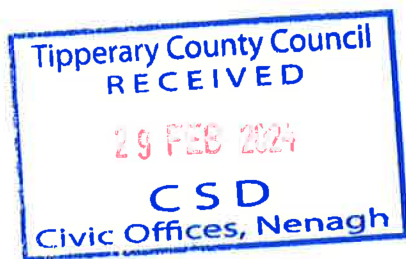
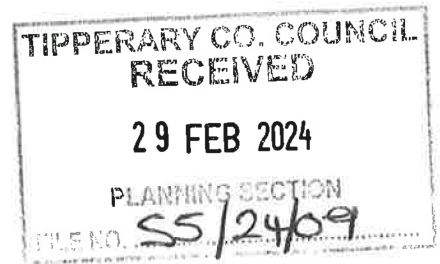
In response to further information requested.

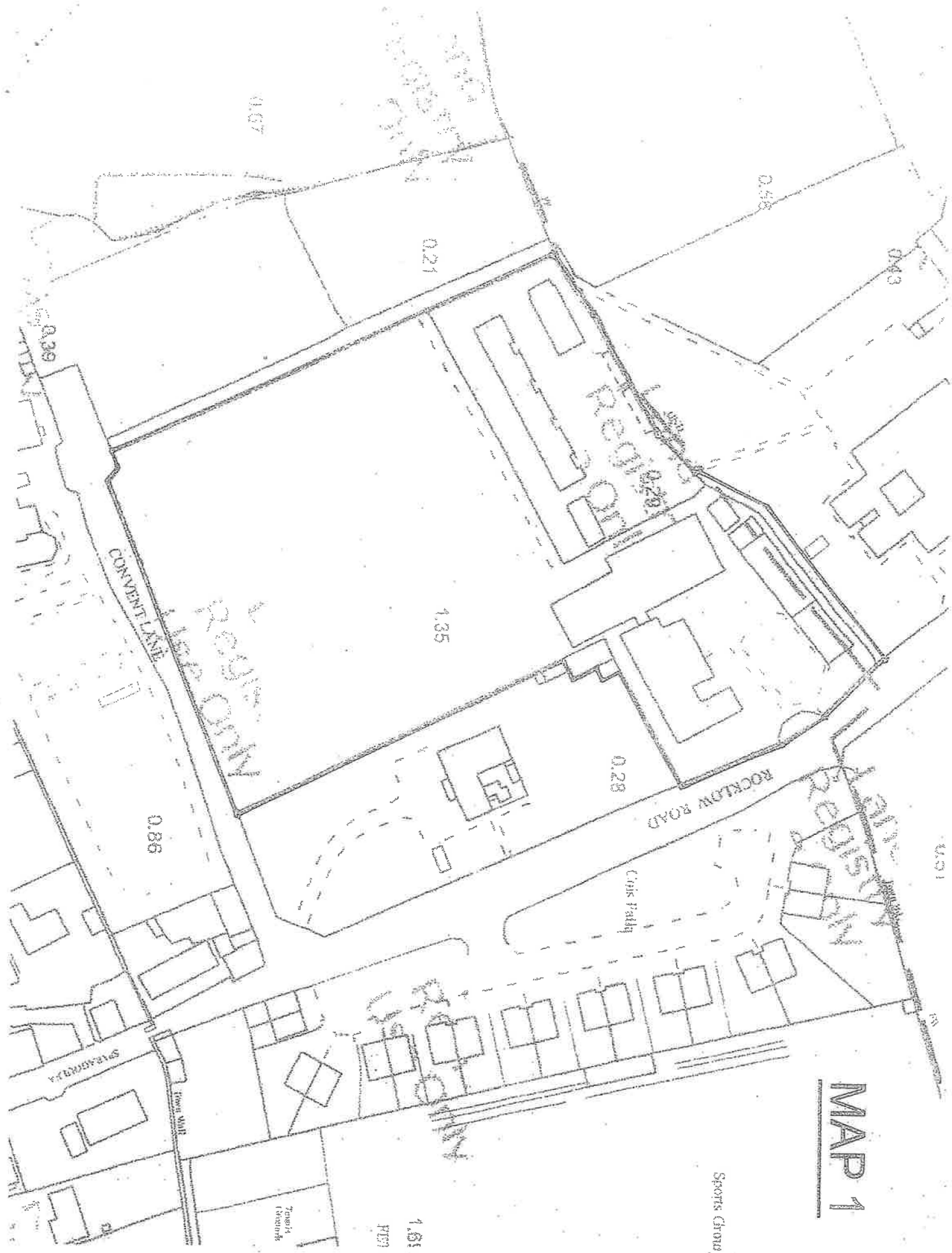
1. Enclosed are the maps of lands.
2. St. Patricks boys school where original occupiers of the school, the two primary schools in Fethard amalgamated in 2012 and the Fethard Community Playgroup had to move from the health center just down the road in 2012.
3. This is a community playgroup much needed in the town.
4. We didn't and don't have to make structural changes to the building.

Yours Sincerely

Helena O'Shea

(Manager) 086 1658823





MAP 1

Sports Ground

1.81
P103

Zoo's
(Zoo's)

CONVENT LANE

ROCKLOW ROAD

Cris Field

REGIONS ONLY

REGIONS ONLY

REGIONS ONLY

SPR-FOR-321A

From Mill

0.67

0.21

0.56

0.43

0.39

1.35

0.28

0.86

1.81

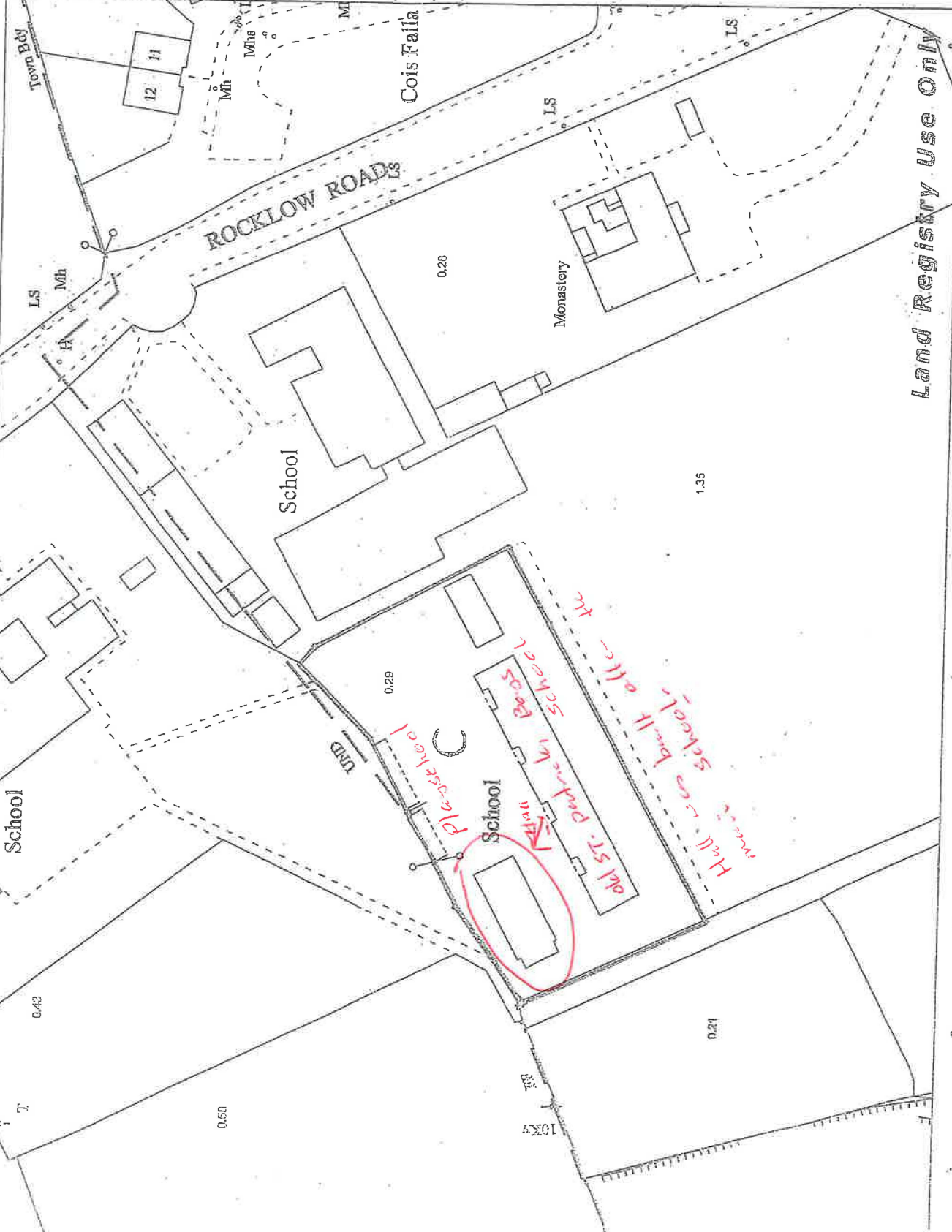
0.21

Surveyed 1969-1987
 Revised 2011
 Levelled 1989

Land Registry Compliant Map



620595



63514

UNREGISTERED COORDS

620478, 635228

DESCRIPTION

MAP 2

MAP SHEETS

1:2500
5185-A

1:1000
5185-06



Authorised
Internet Map

Áirí Níomóid agus áirí níos nua de bhíodh ag Suihléireacht Oideachais Éireann, 2011 agus Suihléireacht Oideachais Éireann, 2011. Tá na sonraí seo áiríodh ag Oideachais Éireann, 2011. Tá na sonraí seo áiríodh ag Oideachais Éireann, 2011. Tá na sonraí seo áiríodh ag Oideachais Éireann, 2011.

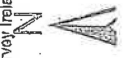
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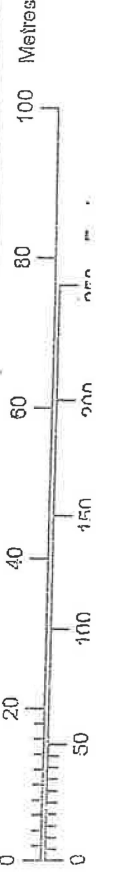
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© Suihléireacht Oideachais Éireann, 2011
 © Ordnance Survey, Ireland, 2011



635142

620595



Scale: 1:1,000
 Scale: 1:1,000

Plot Ref. No. 19610524_2_1
 Plot Date 25-JUL-2011

Land Registry Use Only



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
Cluain Meala,
Co. Thiobraid Árann

Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary

E91 N512

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
An tAonach,
Co. Thiobraid Árann

Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary

E45 A099

t 0818 06 5000
e customerservice
@tipperarycoco.ie

tipperarycoco.ie

Date: 29 February 2024

Our Ref: S5/24/09

Civic Offices, Nenagh

**Acorn Childcare Ltd,
T/A Fethard Community Play Group,
Rocklow Road,
Fethard,
Co. Tipperary**

Re: Application for a Section 5 Declaration re - Does extending opening hours by 45 minutes a day constitute Development at Fethard Community Play Group, Rocklow Road, Fethard, Co. Tipperary.

Dear Sir/Madam,

I acknowledge receipt of Further Information received on 29th February, 2024 in connection with the above.

I wish to advise that you will be notified of a decision on your application in due course.

Yours faithfully,


for **Director of Services**

TIPPERARY COUNTY COUNCIL

Application for Declaration under Section 5
Report No. 2

Planning & Development Act 2000, as amended
Planning & Development Regulations 2001, as amended

Planning Reference: S5/24/09

Applicant: Acorn Childcare Ltd T/A Fethard Community Play Group

Development Address: Rocklow Road, Fethard, Co. Tipperary.

Proposed Development: Does extending opening hours by 45 minutes a day constitute development.

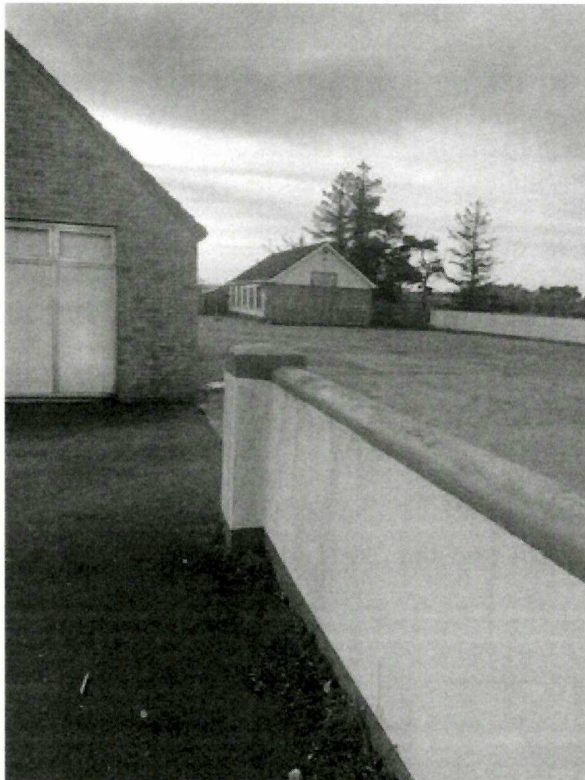
1. GENERAL

On the 26th January 2024, a request was made for a declaration under Section 5 of the Planning and Development Act 2000, as amended, by Acorn Childcare Ltd T/A Fethard Community Play Group as to whether or not the following constitutes development and if so, whether same constitutes exempted development at Rocklow Road, Fethard, Co. Tipperary;

Does extending opening hours by 45 minutes a day constitute development

The application is accompanied by:

- Section 5 Declaration Application Form.





Further information was requested on 21st February under Section 5(2)(b) of the Planning and Development Act 2000, as amended as follows;

1. *The Planning Authority note that the childcare facility is located on the site of the former Primary School building and west of the Presentation Secondary School. The applicant has not included appropriate site location maps and plans for the subject building and are requested to submit same.*
2. *The applicant is advised that the Planning Authority note that there is no record of a grant of planning permission or a Section 5 Declaration for the childcare facility on these lands and the Planning Authority are required to confirm the planning status of the existing use prior to making a determination on the submitted Section 5 Declaration.*

Therefore, the applicant is requested to submit, for the consideration of the Planning Authority;

- *details of the chronology of development of the site i.e. years when same was occupied as a primary school and details of when the childcare use commenced,*
- *details regarding the use of the balance of the site after the childcare use commenced,*
- *If the event a planning permission/section 5 was obtained details of same.*

The applicant is requested to respond.

A response was received on the 29th February 2024 and the Section 5 Declaration application is assessed having regard to same.

2. STATUTORY PROVISIONS

The following statutory provisions are relevant to this referral case;

Planning and Development Act 2000, as amended

Section 2 (1) of the Planning and Development Act, 2000, as amended, defines "works" as:-

"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 Planning and Development Act 2000, as amended, defined "development" as follows:-

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

Section 4 (2)(a) of the Planning and Development Act 2000, as amended, states as follows:-

(2)(a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

Section 4 (4) of the Planning and Development Act 2000, as amended, states as follows:-

4. (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 5 of the Planning and Development Regulations 2001, as amended, states;

'School' has the meaning assigned to it by the Education Act 1998.

"school" means an establishment which—

- (a) provides primary education to its students and which may also provide early childhood education, or*
- (b) provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training, but does not include a school or institution established in accordance with the Children Acts, 1908 to 1989, or a school or institution established or maintained by a health board in accordance with the Health Acts, 1947 to 1996, or the Child Care Act, 1991;*

Article 6. (1) of the Planning and Development Regulations 2001, as amended, states;
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) of the Planning and Development Regulations 2001, as amended, states;

Restrictions on exemption.

Development to which article 6 relates shall not be exempted development for the purposes of the Act—
(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Article (10) of the Planning and Development Regulations 2001, as amended states:

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

Part 1 of Schedule 2 includes an exemption under Class 20C for;

<i>Exempted Development - General</i>	
Column 1 Description of Development	Column 2 Conditions and Limitations
<i>CLASS 20C</i> <i>Temporary use as a school of any structure formerly used as a school, hall, club, art gallery, museum, library, reading room, gymnasium, or other public building, or any structure normally</i>	<i>1. The use shall be discontinued after a period not exceeding 2 years.</i> <i>2. Such structure shall comply with the Department of Education and Science Primary and Post Primary Technical Guidance Documents for the time being in force.</i>

Part 4 (Exempted development – classes of use) of the same schedule includes for a creche and day nursery under Class 8.

3. ASSESSMENT

a. Site Location

The site comprises of an existing childcare facility. I note that no maps or drawings of the subject site has been submitted with the Section 5 declaration application. I note following a review of google maps, planning history and local knowledge that the subject site is located on the grounds of the former primary school which has since amalgamated with the school on lands to the north - Holy Trinity National School.

The further Information response was received on 29th February 2024. The cover letter states that St. Patricks Boys School were the original occupiers of the school building until the 2 no. Primary School amalgamated in 2012 and Fethard Community Playgroup has moved from the Health Centre in 2012.

b. Relevant Planning History

There is a number of permission granted to the Primary School to the north and Secondary School to the east.

- 15/600890** Permission GRANTED to Holy Trinity National School for the construction of an extension to the existing on-site staff carpark, relocation of entrance, alterations to roadside boundary and all associated site works
- 10/271** Permission GRANTED to Holy Trinity National School for a single storey extension and alterations to existing school building including internal layout alterations and alterations to elevations and all associated site works including temporary site entrance for duration of construction works.
- 95643** Permission GRANTED to Patrician Presentation (Secondary School) for erection of two additional classrooms (1996).
- P312955** Permission GRANTED Br. Felim & Sr. Carmel (Patrician Secondary School) for an extension existing school (1990).
- P313226** Permission GRANTED to Sister Carmel & Brother Felini (Patrician Secondary School) for an extension to existing school (1990).
- P36132** Permission GRANTED to Rev. Superior for a Recreation Hall (1979).
- P33875** Permission GRANTED to Noel Carroll for the erection of a new primary school (1976).
- P3930** Permission GRANTED to C Lee for an extension to monastery primary school (1969).
- P3807** Permission GRANTED to B Delaney for a concrete seat extension (1969).
- P359** Permission GRANTED to Patrician Brother for erection of extension on school (1965).

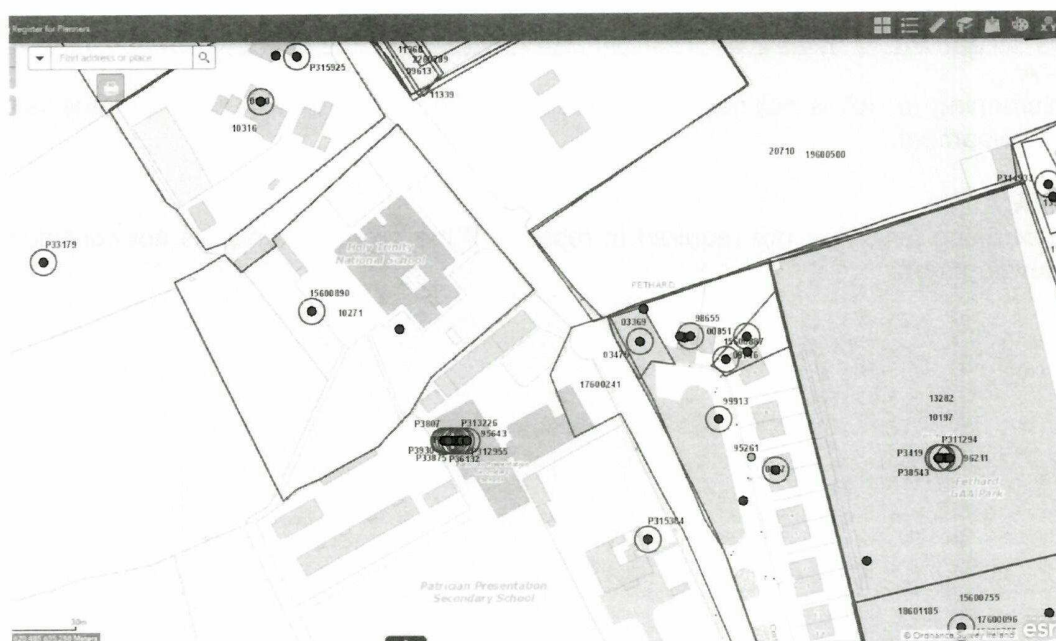


Figure 1 Planning Register

c. Assessment

The question posed under the Section 5 Declaration application is as to whether **extending opening hours by 45 minutes a day constitutes development** and is or is not exempted development.

A) "Is or is not Development"

I note no physical works to the building are proposed. The Declaration relates to operational hours only.

B) "Is or is not Exempted Development"

The development description of the planning history on the adjoining lands makes no reference to a childcare facility/community play facility.

It is noteworthy that the lands are not registered on the Land Registry but still appear under the ownership of the Parish. Acorn Childcare Ltd was registered as new company on the Company Registration Office (CRO) under reference 457687 since 21/05/2008 which suggest same may have only been in operation since that time.

As stated in section 'a' above, it is confirmed that Fethard Community Playgroup has moved from the Health Centre in 2012. Telephone conversation with manager Helena O'Shea on 19/03/2023 who confirmed that this facility is Pre-School facility and is not a childcare or creche facility. She advised the hours need to be extended in order to avail of Early Childhood Care and Education Scheme (ECCE). Having regard to the above I am satisfied that the existing use would not have been considered to be a material change of use and would therefore not have constituted development.

However, the question posed does not relate to the operation/ use of the premises but rather the opening hours. I am satisfied the existing use is not restricted under Article 10(1)(d). I therefore consider that the extension to the opening hours is not development.

C) Restrictions under Articles 9/10

The applicant has confirmed that the building was occupied as a Pre-School facility since 2012 and I note no restriction that would apply.

D) Requirement for Appropriate Assessment and Environmental Impact Assessment

AA

Screening for AA is not required in respect of the proposal which is not considered to constitute development.

EIA

Screening for EIA is not required in respect of the proposal which is not considered to constitute development.

4. RECOMMENDATION

WHEREAS a question has arisen from Acorn Childcare Ltd T/A Fethard Community Play Group as to whether extending opening hours by 45 minutes a day at Rocklow Road, Fethard Co. Tipperary is “development” and is or is not “exempted development”,

AND WHERE AS Tipperary County Council in considering this referral had regard particularly to -

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) The meaning ‘School’ as assigned to it by the Educations Act 1998,
- (d) The character of the building and the planning history on the site

AND WHEREAS Tipperary County Council has concluded that:-

Tipperary County Council has concluded that, having regard to Sections 2 & 3 of the Planning and Development Act 2000, as amended, the proposal set out by the applicant does not constitute development.

District Planner

L. Butler-Lynn

Date: 19/03/2024

Senior Executive Planner

C. Conway

Date: 19.03.2024

Planning Digitiser Tipperary County Council

Find address or place

The map displays an aerial view of a residential area. A pop-up window is centered over a property, displaying the following information:

(1 of 6)	
POSTCODE	88185
APRNO	552489
APRNO2	75012024
APRNO3	Unknown
DATE	22/02/2024
STATUS	Unknown
APPLICANT	John O'Connell Rural Communit Pty Ltd
APPLICANT2	Shannon Road Farm Co. Tipperary
DESCRIPTION	Development including 1000sqm of infill and 1000sqm of development
PROPOSED USE	Residential

esri

Original

TIPPERARY COUNTY COUNCIL

DELEGATED EMPLOYEE'S ORDER

File Ref: **S5/24/09** **Delegated Employee's Order No:** _____

SUBJECT: Section 5 Declaration

I, Sharon Kennedy, Director of Services, Tipperary County Council, by virtue of the powers delegated to me in accordance with the provisions of Section 154 of the Local Government Act 2001, as amended by Schedule 1, Part 1 of the Local Government Reform Act 2014 under Chief Executive's Order No. 37256 dated 4th March, 2024, hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 from Acorn Childcare, T/a Fethard Community Playgroup, Rocklow Road, Fethard, Co. Tipperary, E91 V382, re: extension of opening hours by 45 minutes a day at Fethard Community Playgroup, Rocklow Road, Fethard, Co. Tipperary is not development.

AND WHEREAS Tipperary County Council, in considering this referral, had regard particularly to –

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) The meaning 'School' as assigned to it by the Educations Act 1998,
- (d) The character of the building and the planning history on the site

Tipperary County Council has concluded that, having regard to Sections 2 & 3 of the Planning and Development Act 2000, as amended, the proposal set out by the applicant **does not constitute development.**

Signed:



Sharon Kennedy
Director of Services
Planning and Development (including Town Centre First),
Emergency Services and Emergency Planning and
Tipperary/Cahir/Cashel Municipal District

Date: 20/03/2024



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
Cluain Meala,
Co. Thiobraid Árann

Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary

E91 N512

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
An tAonach,
Co. Thiobraid Árann

Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary

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e customerservice
@tipperarycoco.ie
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Date: 20th March 2024

Our Ref: S5/24/09

Civic Offices, Nenagh

Acorn Childcare,
T/a Fethard Community Playgroup,
Rocklow Road,
Fethard,
Co. Tipperary

Re: Declaration under Section 5 of the Planning and Development Act 2000

Dear sir/madam,

I refer to your application for a Section 5 Declaration received on 26th January, 2024, and 29th February, 2024, in relation to the following proposed works:

extension of opening hours by 45 minutes a day at Fethard Community Playgroup, Rocklow Road, Fethard, Co. Tipperary.

WHEREAS a question has arisen as to whether the proposed development is or is not exempted development:

AND WHEREAS Tipperary County Council, in considering this referral, had regard particularly to –

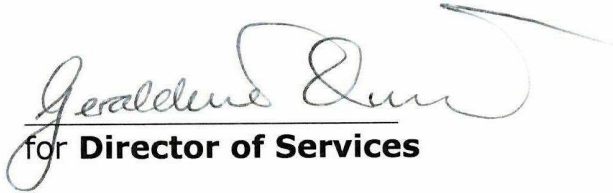
- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) The meaning 'School' as assigned to it by the Educations Act 1998,
- (d) The character of the building and the planning history on the site.

AND WHEREAS Tipperary County Council has concluded that, having regard to Sections 2 & 3 of the Planning and Development Act 2000, as amended, the proposal set out by the applicant does not constitute development.

(2)

NOTE: Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours sincerely


for **Director of Services**