

**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.)

Proposed development is to renovate existing ground floor premises previously trading as
a public house into a cafe shop with working kitchen and internal seating.
Proposed floor area of proposed works/uses: 105 sqm

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

<i>Please tick appropriate box to show applicant's legal interest in the land or structure</i>	A. Owner <input checked="" type="checkbox"/>	B. Occupier
	C. Other	
<i>Where legal interest is 'Other', please expand further on your interest in the land or structure</i>		
<i>If you are not the legal owner, please state the name and address of the owner</i>	Name: Address:	

Signature of Applicant(s)  Date: 22.02.2024.

**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.**

## 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:**

<b>Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary</b>	<b><u>OR</u></b>	<b>Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary</b>
<b>Enquires:</b>		
<b>Telephone 0818 06 5000</b>		
<b>E-Mail <a href="mailto:planning@tipperarycoco.ie">planning@tipperarycoco.ie</a></b>		

**FOR OFFICE USE ONLY**

**DATE STAMP**

Fee Recd. € 80.00

Receipt No NENAMI/0/117937

Date 26/02/24

Received by M.L

# Lana Registry Compliant Map



Tailte  
Éireann

**CENTRE COORDINATES:**  
ITM 613031,658769

**PUBLISHED:** 11/08/2023  
**ORDER NO.:** 50351133\_1

**MAP SERIES:** 1:1,000  
**MAP SHEETS:** 4696-07  
4696-12

**COMPILED AND PUBLISHED BY:**  
National Mapping Division of  
Tailte Éireann,  
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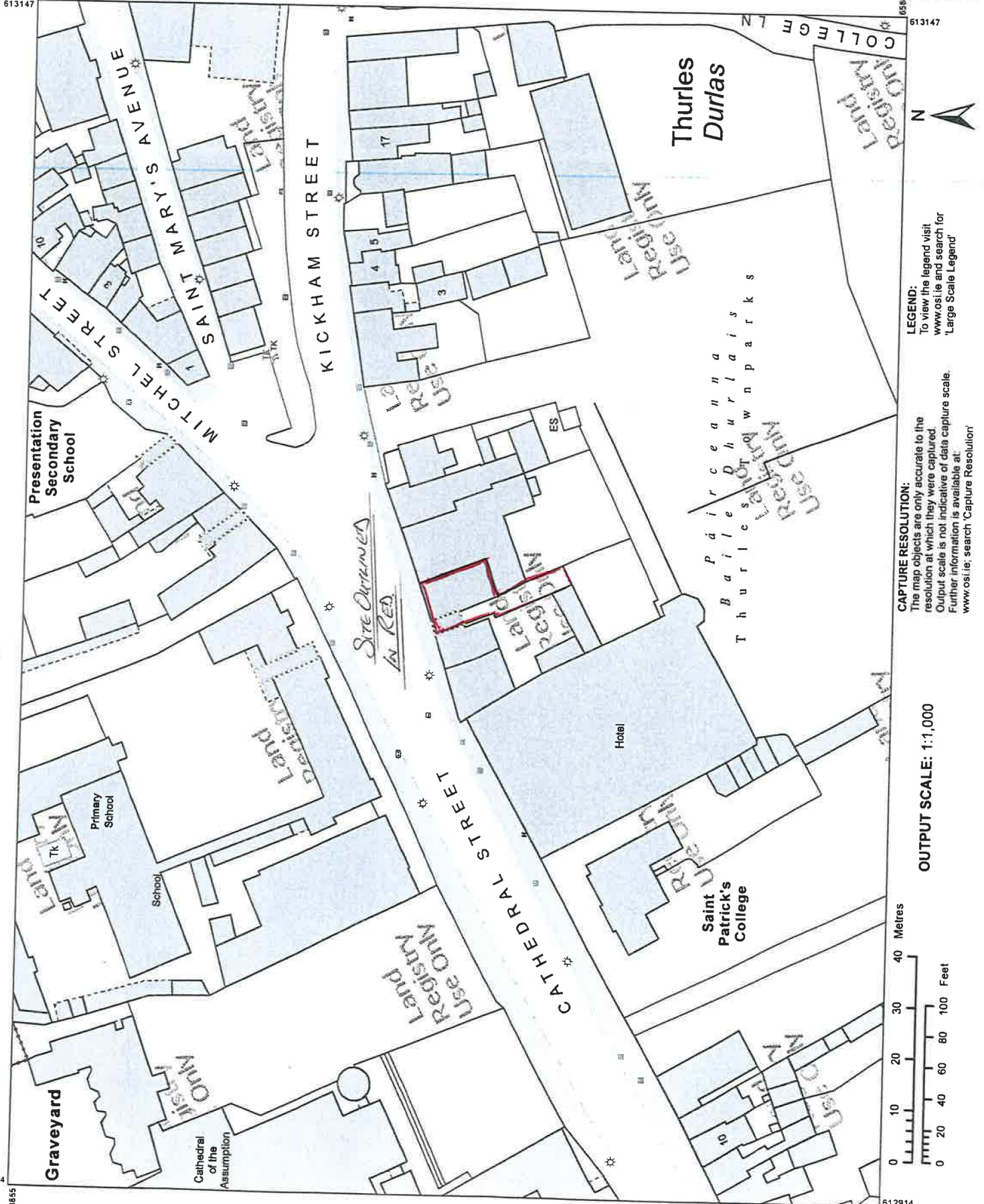
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**OUTPUT SCALE: 1:1,000**





613032.658762



- NOTE:
1. All Dimensions to be in mm U.N.O.
  2. All works to be carried out in compliance with the building regulations 1997/2017 and the Health, Safety & Welfare of Work (Construction) regulations 2008.
  3. Any discrepancies between drawings/details is to be referred to the Designer/Architect for review before carrying out the work.
  4. Centre Coordinates :  
 (TM 613032, 658762)
  5. Published : 10.08.2023
  6. Drawn scale : 1:1000
  7. Designer : JAMES BARRETT
  8. Plan number : 72M
  9. Property address: Coisella Colliera, SI Thurles Co Tipperary E41 AH8

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Note:  
 Contractors are responsible for the verification of all dimensions on site and the Designer is to be informed in written format of any discrepancies prior to commencement of works.  
 Do not scale, use figured dimensions only.  
 This drawing is to be read in conjunction with all relevant drawings & specifications and all other results and documents are to be taken as being mutually explanatory of each other. This drawing may contain Ordnance Survey Ireland map and Raster Data.

James Barrett Beng MIEI,  
 Harbour Design Construction Ltd  
 T: 087 1739679  
 E: jimbarretteng@yahoo.com

Existing building scan

Rev	Date	Description	By
00	11.08.2023	Issue profile of existing layout	JB
Project Name PJ & James Barrett			
Drawing Name Existing building scan			
Drawn by: James Barrett Checked by: J. CONSTRUCTION Scale: INTS Date: 11.08.2023 Job No: 613032.658762 Job Title: JAB Job Date: 21.02.2024 Revision: 00			





613032.658762

**NOTES**

1. All Dimensions to be in mm U.M.C.
2. All works to be carried out in compliance with the building regulations 1997-2017 and the Health, Safety & Welfare of work (construction) regulations 2006.
3. Any discrepancies between drawings/detailed to be referred to the designer/architect for review before carrying out the works.
4. Client: James Barrett
5. Published: 10.08.2023
6. Output scale: 1:1000
7. Folio number: 1Y6006F
8. Plan number: 27A
9. Property address: Corveta Cathedral St, Thurles Co Tipperary E17 1W45



Proposed Ground floor layout  
Cafe/restaurant

OS	11.02.2024	Local register update	AB
Rev	001	Description	By
Project Name	PJ & James Barrett		
Drawn from Proposed ground floor commercial layout			
Client	PJ & James Barrett		
Drawn by	P. J. Barrett		
Checked by	P. J. Barrett		
Project No	CONSTRUCTION		
Drawn Date	21.02.2024		
Checked Date	21.02.2024		
Project No	P. J. Barrett		

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Note:  
Contractors are responsible for the verification of all dimensions on site and the Designer is to be informed in written format of any discrepancies prior to commencement of works. Do not scale, use figured dimensions only. The information shown here shall be read in conjunction with all relevant drawings & specifications and all other consultant information. The drawings are not to be used for any other purpose. This drawing may contain Ordnance Survey Ireland map and raster data.

613032.658762



## TIPPERARY COUNTY COUNCIL

### Application for Declaration under Section 5

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

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**Planning Ref.:** S5/24/27

**Applicant:** James Barrett

**Development Address:** 4 Cathedral Street, Co. Tipperary

**Proposed Development:** *Renovate existing ground floor premises previously trading as a public house into a cafe shop with working kitchen and internal seating*

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#### **1. GENERAL**

On the 26<sup>th</sup> of February 2024, a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended in respect of the following development at 4 Cathedral Street, Thurles, Co. Tipperary:

*Renovate existing ground floor premises previously trading as a public house into a cafe shop with working kitchen and internal seating*

The details submitted with the declaration application show the following works are to be undertaken:

- i) Decayed elements of shopfront (bottom panels) to be removed and replaced with a masonry cavity with decorative plaster to match existing finishes.*
- ii) First floor windows to be replaced. Same to follow adjacent*
- iii) Internally a customer seating area is to be provided with serving area and back of house kitchen/pantry and disabled access toilet. The submitted floor plan shows a back stairs to a first floor level apartment.*

The building on site is listed on the Council record of protected structures (Current RPS Ref 102). Site also within a zone of archaeological interest.

#### **2. STATUTORY PROVISIONS**

**Section 2 (1) of the Planning and Development Act 2000**, as amended, states as follows:- “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....’

**Section 3 (1) of the Planning and Development Act 2000, (as amended)** states 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 (1)(h) of the Act** states as follows:-

The following shall be exempted developments for the purposes of this Act



Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

**Section 4(4)** states that 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.

**Article 6(1)** of the **Planning and Development Regulations** states that 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 conditions and limitations specified in Column 2 of said Part 1 opposite the mention of that class in said Column 1.

In relation to this specific case, the following applies:

CLASS 14 of Part 1 of Schedule 2 of the Planning and Development Regulations provides planning exemptions for various use classes changing use to a "shop". It does not provide an exemption for a public house changing to a café.

Article 5(1) of the Regulations as amended by S.I. No. 364 of 2005 substitutes the following for the definition of 'shop' – 'shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public

- a) for the retail sale of goods,
- b) as a post office,
- c) for the sale of tickets or as a travel agency,
- d) for the sales of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8
- e) for hairdressing,
- f) for the display of goods for sale,
- g) for the hiring out of domestic or personal goods or articles,
- h) as a launderette or dry cleaners,
- i) for the reception of goods to be washed, cleaned or repaired

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which Class 2 or 3 of Part 4 of Schedule 2 applies

Article 10 (1) of the Regulations states the following:

'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'.

Part 4 of Schedule 2: Exempted Development - Classes of Use:

- Class 12 is listed as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018

A restaurant or Café is not listed.

### **3. ASSESSMENT**

a. **Site Location** – The site is located at 4 Cathedral Street, Thurles, Co. Tipperary

b. **Relevant Planning History** –

None recorded

c. **Assessment**

#### **A) "Is or is not Development"**

Having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended), it is considered that the proposals constitute *development* as same involve the carrying out of works to the premises and the making of a material change of use of the premises.

#### **B) "Is or is not Exempted Development"**

Under Article 10 (1), development consisting 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, subject to conditions. Part 4 does not refer to Restaurant / Café use, it does identify a public house as Class 12 but the meaning provided for the public house does not include Café or Restaurant.

Class 14 of Schedule 2 Part 1 relates to Exempted Development – Changes provides an exemption for a change of use from use as a public house to use



as a shop. A Café does not come within the definition of a shop as outlined under Article 5.

**C) "Restrictions to exemptions under the Planning and Development Act 2000, as amended or Planning and Development Regulations 2001, as amended"**

Section 57 of the Planning and Development Act 2000, as amended states: *Notwithstanding section 4(1)(a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*

- (a) the structure, or*
- (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.*

External and internal works are to be undertaken. The external works comprise modifications to the shopfront and replacement windows. Internal works are somewhat unclear, the layout plan provided contains various colours on the plan but there is no corresponding legend for same. Based on the information provided I consider both the external and internal works would materially effect the character of the building, which is a protected structure.

I note the site is within a zone of archaeological interest. It is not clear whether the works proposed would impact on archaeology.

**Appropriate Assessment (AA):**

The subject site is located 3km from the Lower River Suir SAC. The proposed development is located within an established urban area with public water supply and drainage services.

Having regard to:

- the small scale and nature of the development,
- the location of the development in a serviced urban area,
- the consequent absence of a pathway to the European site,

It is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

**Environmental Impact Assessment (EIA):**

Mandatory EIA is required under Class 10 (b) (iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended for urban development which would involve an area greater than 2 hectares in the case



of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.

**“Business district” means a district within a city or town in which the predominant land use is retail or commercial use.**

The application site is not within a business district. The proposal is significantly below the mandatory EIA threshold. I have undertaken a preliminary examination of the development that concludes that EIA is not required (See attached).

#### **4. RECOMMENDATION**

A question has arisen as to whether the proposed development at 4 Cathedral Street, Co. Tipperary is or is not exempted development:

*Renovate existing ground floor premises previously trading as a public house into a cafe shop with working kitchen and internal seating.*

Tipperary County Council, in considering this proposal has had regard to:

- Sections 2, 3, 4 and 57 of the Planning and Development Act, 2000, as amended,
- Articles, 6 and 9 of the Planning and Development Regulations 2001, as amended,
- Schedule 2, Part 1 Class 14 of the Planning and Development Regulations 2001 as amended.
- Schedule 2, Part 4 of the Planning and Development Regulations 2001 as amended.
- The declaration application and supporting information.

Tipperary County Council has concluded that the proposal to renovate the existing ground floor of the premises previously trading as a public house into a cafe shop with working kitchen and internal seating is development and is **not exempted development**.

The proposal fails to satisfy planning exemptions for the following reasons:

- The proposal gives rise to a material change of use of the premises from public house to a café for which there is no planning exemption.
- The proposal includes for the undertaking of internal and external works to the premises which is a Protected Structure. The works would materially effect the character of the protected structure. The proposals therefore do not avail of a planning exemption having regard to the provisions of Section 57 of the Planning and Development Act 2000, as amended.

Tipperary County Council, in exercise of the powers conferred on it by section 5(2)(a) of the Planning and Development Act 2000 as amended, it is hereby decided that the proposal to renovate the existing ground floor premises previously trading as a public house into a cafe shop with working kitchen and internal seating **is development and is not exempted development**.

**A/Senior Executive Planner:** *Jonathan Flood* **Date:**19/3/2024

**A/Senior Planner:** *Antoine Dwyer* **Date:**19/3/2024

Preliminary Examination		
Planning Reference:	S5/24/27	
Site location:	4 Cathedral Street, Thurles, Co. Tipperary	
Proposed Development:	As per Planners Report	
Examination		
	Yes / No/ Uncertain	Comment
Is the size of the development exceptional in the context of the existing environment?	No	Development small in scale relative to mandatory EIA threshold
Is the proposed development located on, in, adjoining, or have the potential to impact on a sensitive site or location?	No	Site carries no environmental designations.
Will the development result in the production of any significant waste, or result in emissions or pollutants?	No	No significant operational impacts anticipated to arise from the development
Conclusions		
Based on a preliminary examination of the nature, size or location of the development, is there a real likelihood of significant effects on the environment?		
There is no real likelihood of significant effects on the environment	EIAR not required	√
There is significant and realistic doubt in regard to the likelihood of significant effects on the environment	Screening Determination Required	
	Schedule 7A information required?	
There is a real likelihood of significant effects on the environment	EIAR is required	
Name:	Jonathan Flood	Date: 19/3/2024
Position	A/SEP	





**Original**

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/24/27**      **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 4<sup>th</sup> 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 James Barrett, 16 Pembroke Meadows, Pembroke Woods, Passage West, Co. Cork, re: renovation of existing ground floor premises previously trading as a public house into a café shop with working kitchen and internal seating at 4 Cathedral Street, Thurles, Co. Tipperary is development and is not exempted development.

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

- a) Sections 2, 3, 4 and 57 of the Planning and Development Act, 2000, as amended,
- b) Articles, 6 and 9 of the Planning and Development Regulations 2001, as amended,
- c) Schedule 2, Part 1 Class 14 of the Planning and Development Regulations 2001 as amended.
- d) Schedule 2, Part 4 of the Planning and Development Regulations 2001 as amended.
- e) The declaration application and supporting information.

Tipperary County Council has concluded that that the proposal to renovate the existing ground floor premises previously trading as a public house into a cafe shop with working kitchen and internal seating **is development and is not exempted 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,  
Oifigí Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann

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

E91 N512

Comhairle Contae  
Thiobraid Árann,  
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@tipperarycoco.ie

tipperarycoco.ie

Date: 20<sup>th</sup> March 2024

Our Ref: S5/24/27

Civic Offices, Nenagh

James Barrett,  
16 Pembroke Meadows,  
Pembroke Woods,  
Passage West, Co. Cork

**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 26<sup>th</sup> February, 2024, in relation to the following proposed works:

**renovation of existing ground floor premises previously trading as a public house into a café shop with working kitchen and internal seating at 4 Cathedral Street, Thurles, 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) Sections 2, 3, 4 and 57 of the Planning and Development Act, 2000, as amended,
- b) Articles, 6 and 9 of the Planning and Development Regulations 2001, as amended,
- c) Schedule 2, Part 1 Class 14 of the Planning and Development Regulations 2001 as amended.
- d) Schedule 2, Part 4 of the Planning and Development Regulations 2001 as amended.
- e) The declaration application and supporting information.

**AND WHEREAS** Tipperary County Council has concluded that the proposal to renovate the existing ground floor premises previously trading as a public house into a cafe shop with working kitchen and internal seating **is development and is not exempted 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**