

PLANNING & DEVELOPMENT ACT, 2000 (as amended)

Application for a Section 5 Declaration
Development / Exempted Development

RD 174 744
€ 80.00 CHEQUE

1. Applicant's address/contact details:

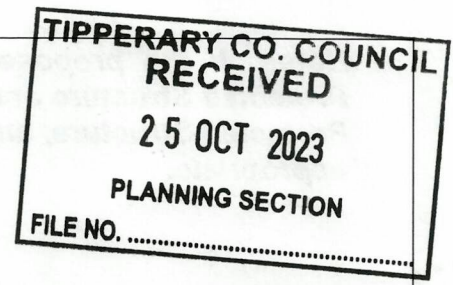
Applicant	Shay Ryan
Address	Moyglass Felthard Co Tipperary
Telephone No.	
E-mail	

2. Agent's (if any) address:

Agent	Tim Bourke
Address	Tim Bourke and Associates Ltd Kilbarruff, Cashel, Co Tipperary
Telephone No.	086 2568114
E-mail	
Please advise where all correspondence in relation to this application is to be sent;	
Applicant []	Agent [<input checked="" type="checkbox"/>]

3. Location of Proposed Development:

Postal Address or Townland or Location (as may best identify the land or structure in question)	Moyglass Felthard Co Tipperary
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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.)

Construction of BARN For	
Storage of Hay/Feed. and all	
associated works	
Proposed floor area of proposed works/uses:	sqm 129.8

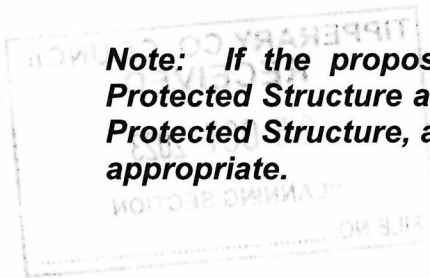
5. Legal Interest of Applicant in the Land or Structure:

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	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: Address:	

Signature of Applicant(s) Garry

Date: 1/10/2023

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:

Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary	<u>OR</u>	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

Fee Recd. € <u> </u> 	<u>DATE STAMP</u>
Receipt No <u> </u>	
Date <u> </u>	
Receipted by <u> </u>	

Tipperary County Council.

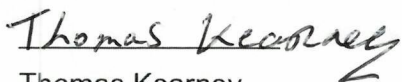
Crannagh

Moyglass

12/09/23

To whom it concerns,

I Thomas Kearney have no objection in Shay Ryan erecting a shed within 100 meters off my property.


Thomas Kearney



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,
Oifigí Cathartha,
An tAonach,
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Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary
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t 0818 06 5000
e customerservice
@tipperarycoco.ie
tipperarycoco.ie

Our Ref: S5/23/125

Date: 27th October 2023

Civic Offices, Clonmel

Shay Ryan
C/o Tim Bourke
Tim Bourke & Associates Ltd
Killastafford
Cashel
Co. Tipperary

Re: Application for a Section 5 Declaration – the construction of a barn for storage of hay/feed and associated works at Moyglass, Fethard, Co. Tipperary.

Dear Sir/Madam,

I acknowledge receipt of your application for a Section 5 Declaration received on 25th October 2023 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: S5/23/125

Applicant: Shay Ryan

Development Address: Moyglass, Fethard, Co. Tipperary

Proposed Development: The construction of a barn for storage of hay/ feed and associated works (129.8sq.m)

1. GENERAL

On the 25th October 2023, a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended, by Shay Ryan c/o Tim Bourke as to whether or not the following constitutes development and if so, whether same constitutes exempted development at Moyglass, Fethard, Co. Tipperary

The construction of a barn for storage of hay/ feed and associated works (129.8sq.m)

- Section 5 Declaration Application Form,
- Site Location Map,
- Site Layout Plan,
- Elevation and plan drawings,
- Letter of consent from third part landowner.

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

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

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

Exempted Development.

6. *(3) Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.*

Schedule 2, Part 3 'Exempted Development - Rural:

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Agricultural Structures</i></p> <p>CLASS 9 <i>Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.</i></p>	<ol style="list-style-type: none"> <i>1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.</i> <i>2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.</i> <i>3. No such structure shall be situated within 10 metres of any public road.</i> <i>4. No such structure within 100 metres of any public road shall exceed 8 metres in height.</i> <i>5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other</i>

	<p><i>residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.</i></p> <p><i>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</i></p>
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Article 9 of the Planning and Development Regulations 2001, as amended sets out restrictions on exemptions and states:

9. (1) 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—

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

(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.

3. ASSESSMENT

i. Site Location

The site comprises of agricultural lands at Moyglass, Fethard, Co. Tipperary.

ii. Relevant Planning History

21/1622 Permission GRANTED demolish an existing derelict dwelling, construct a new bungalow, septic tank with percolation area, new entrance and all associated site works.

22/60502 Permission GRANTED (a) change of use of existing building from livestock barn to bloodstock and livestock housing, (b) alterations to the side elevations of existing building and all associated works.

TUD-22-035 Case closed.

iii. Assessment

The question posed under the Section 5 Declaration application form is whether the development of a barn for the storage of hay/feed is development and is exempted development.

A) “Is or is not Development”

It is considered the above listed proposals constitute “works” as understood by the Planning and Development Act 2000, as amended. The above listed proposals therefore constitute “development” within the meaning of the Planning and Development Act 2000, as amended.

B) “Is or is not Exempted Development”

I consider that the class relevant to the proposal is Class 9. The 7 no. limitations under class are assessed hereunder;

- The structure will be used for agricultural purposes.
- The proposed structure does not exceed 300sq.m. However I note there is a farmyard to the south is within 100m and it is unclear if the cumulative floor area exceeds 900sq.m Further information should be requested.

- The structure is in excess of 10 metres of any public road. The public road terminates c. 80m to the south-west (cul-de sac).
- The structure is in less than 100 metres of any public road but below 8m in height.
- The structure is within of 100 metres of 1 no. house and letter of consent from a Mr. Thomas Kearney has been provided. Following a review of land registry, it is detailed that the landowner of the dwelling south of the site (within the 100m) is in the ownership of Pat Lyons and Eleanor Lyons. Further information should be requested to clarify same.

Land Registry
County Tipperary **Folio 17581**

Part 2 - Ownership

		Title ABSOLUTE		
No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965			
1	09 JUN 1997 T. 4767/97	CHARLES PURTILL of GALBERTSTOWN, THURLES, COUNTY TIPPERARY is full owner.	Cancelled	D2004PS027889V 13-DEC-2004
2	13-DEC-2004 D2004PS027889V	CHARLES PURTILL of Galbertstown, Thurles, County Tipperary and NUALA PURTILL of Galbertstown, Thurles, County Tipperary are full owners.	Cancelled	D2012LR092261T 15-AUG-2012
3	15-AUG-2012 D2012LR092261T	PAT LYONS of Rathmanna, Thurles, County Tipperary and ELEANOR LYONS of Rathmanna, Thurles, County Tipperary are full owners.		

Figure 1 Land Registry (www.landdirect.ie)

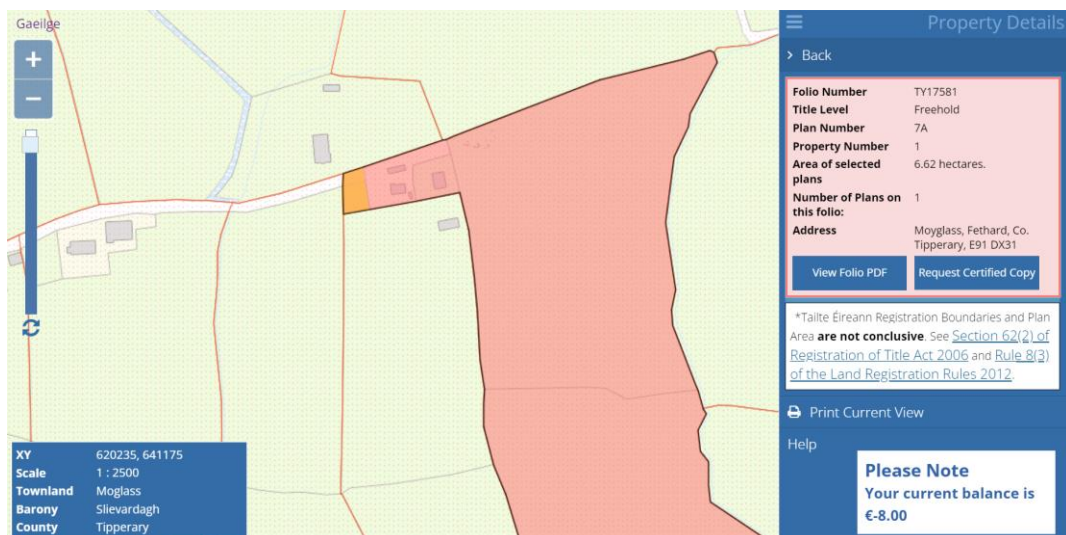


Figure 2 Land Registry Map

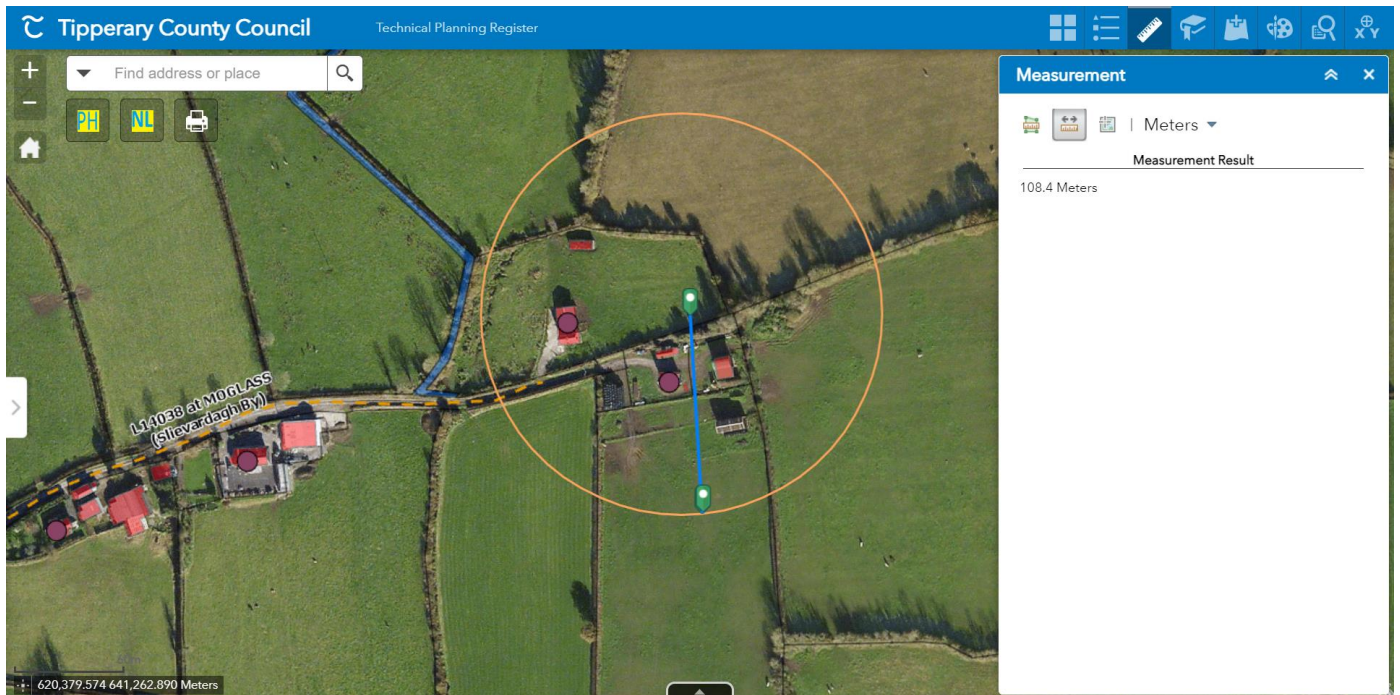


Figure 3 Dwelling within 100m of site

- There is no un painted metal sheeting proposed.

C) Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

AA

The proposal has been screened as to the requirements for Appropriate Assessment under the EU Habitats Directive. See also Appropriate Assessment screening report attached.

EIA

The proposed development is not a type of development included for under Schedule 5 of the Planning and Development Regulations 2001, as amended. EIA is not required in respect of the development. See all EIA Pre-Screening report attached.

D) Is the exemption restricted under Article 9 of the Regulations

I have reviewed the restrictions on exemption set out under Article 9 and I note no restrictions that would apply. The development is served by an existing entrance onto the L-7514 Local Road. I do not consider the development would endanger public safety by reason of traffic hazard or obstruction of road users.

4. RECOMMENDATION

Further information should be requested under Section 5(2) of the Planning and Development Act 2000, as amended, as set out below;

1. The applicant is advised that Condition and Limitation No. 2 attached to Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, requires that;

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate

The submitted application form details that the floor area of the structure is 129.8sq.m and noting that there is a farm complex to the south, it is unclear if the cumulative floor area of the proposed Class 9 structure on the site and existing Class 9 structures on the adjoining site exceeds 900sq.m. The applicant is requested to submit a revised site plan to confirm same.

2. The applicant is advised that Condition and Limitation No..5 attached to Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, requires that;

5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

The Planning Authority also note that the proposed structure is within of 100 metres of 1 no. house and letter of consent from a Mr. Thomas Kearney has been provided. Following a review of land registry, it is detailed that the landowner of the dwelling south of the site (within the 100m) is in the ownership of Pat Lyons and Eleanor Lyons. The applicant is requested to clarify same.

District Planner:



Lauren Butler-Ryan

Date: 20/11/2023

Senior Executive Planner:



Caroline Conway

Date: 20.11.2023

HABITATS DIRECTIVE APPROPRIATE ASSESSMENT (AA) SCREENING REPORT

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

(a) File Reference No:	S5/23/125
(b) Brief description of the project or plan:	The construction of a barn for storage of hay/ heed and associated works (129.8sq.m)
(c) Brief description of site characteristics:	Agricultural lands
(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
0002162 River Barrow & 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.	No potential impacts

- Direct emission to air and water
- Surface water runoff containing contaminant or sediment
- Lighting disturbance
- Noise/vibration
- 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	<input type="checkbox"/>	<input type="checkbox"/> Request NIS

likely.

Refuse planning permission

**Signature and Date of
Recommending Officer:**

L. Butler-Lyon

Date:

20/11/2023

EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/23/125
Development Summary:	The construction of a barn for storage of hay/ heed and associated works (129.8sq.m)
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
<input checked="" type="checkbox"/> No	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
<input type="checkbox"/> Yes the project is of a type listed but is <i>sub-threshold</i> : _____	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

Tipperary County Council Technical Planning Register

Find address or place

PH NL

60m
620,478.689 641,282.949 Meters

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POWERED BY esri

(1 of 2)

Section 5 (OD)

REF NO.: S5/23/125

RECEIVED: 25/10/2023

DECISION: Unknown

DATE OF DECISION: 22/11/2023

APPLICANT: Shay Ryan

LOCATION: Moyglass, Fethard, Co. Tipperary

DESCRIPTION: The construction of a barn for storage of hay/ heed and associated works (129.8sq.m)

[Zoom to](#)



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
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Co. Tipperary
E45 A099

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

Date: 21 November 2023

Our Ref: S5/23/125

Civic Offices, Nenagh

Shay Ryan
C/o Tim Bourke
Tim Bourke & Associates Ltd
Killastafford
Cashel
Co. Tipperary

Re: The construction of a barn for storage of hay/ feed and associated works (129.8sq.m) at Moyglass, Fethard, Co. Tipperary

Dear Mr Bourke,

I refer to an application received from you on 25 October 2023 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 applicant is advised that Condition and Limitation No. 2 attached to Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, requires that;

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate

The submitted application form details that the floor area of the structure is 129.8sq.m and noting that there is a farm complex to the south, it is unclear if the cumulative floor area of the proposed Class 9 structure on the site and existing Class 9 structures on the adjoining site exceeds 900sq.m. The applicant is requested to submit a revised site plan to confirm same

2. The applicant is advised that Condition and Limitation No..5 attached to Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, requires that;

5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

The Planning Authority also note that the proposed structure is within of 100 metres of 1 no. house and letter of consent from a Mr. Thomas Kearney has been provided. Following a review of land registry, it is detailed that the landowner of the dwelling south of the site (within the 100m) is in the ownership of Pat Lyons and Eleanor Lyons. The applicant is requested to clarify same.

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

Yours sincerely



for **Director of Services**



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
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@tipperarycoco.ie

tipperarycoco.ie

Date: 27th May, 2024

Our Ref: S5/23/125

Civic Offices, Nenagh

**Shay Ryan
C/O Tim Bourke
Tim Bourke & Associates Ltd
Killastafford
Cashel
Co. Tipperary**

Re: Application for a Section 5 Declaration re the construction of a barn for storage of hay/feed and associated works at Moyglass, Fethard, Co. Tipperary

Dear Sir/Madam

I acknowledge receipt of Further Information received on 23rd May, 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: S5/23/125

Applicant: Shay Ryan

Development Address: Moyglass, Fethard, Co. Tipperary

Proposed Development: The construction of a barn for storage of hay/ feed and associated works (129.8sq.m)

1. GENERAL

On the 25th October 2023, a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended, by Shay Ryan c/o Tim Bourke as to whether or not the following constitutes development and if so, whether same constitutes exempted development at Moyglass, Fethard, Co. Tipperary

The construction of a barn for storage of hay/ feed and associated works (129.8sq.m)

The application as initially submitted included for the following;

- Section 5 Declaration Application Form,
- Site Location Map,
- Site Layout Plan,
- Elevation and plan drawings,
- Letter of consent from third part landowner.

Further information was requested under Section 5(2) of the Planning and Development Act 2000, as amended, on 21st November 2023 seeking the following;

1. The applicant is advised that Condition and Limitation No. 2 attached to Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, requires that;

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate

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2. The applicant is advised that Condition and Limitation No.5 attached to Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, requires that;

5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

The Planning Authority also note that the proposed structure is within of 100 metres of 1 no. house and letter of consent from a Mr. Thomas Kearney has been provided. Following a review of land registry, it is detailed that the landowner of the dwelling south of the site (within the 100m) is in the ownership of Pat Lyons and Eleanor Lyons. The applicant is requested to clarify same.

A further information response was received 27th May 2024 to include the following;

- Site Layout Plan,
- Letter of consent from Landowner

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

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

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

Exempted Development.

6. *(3) Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government*

(Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

Schedule 2, Part 3 'Exempted Development - Rural:

Column 1 <i>Description of Development</i>	Column 2 <i>Conditions and Limitations</i>
<p><i>Agricultural Structures</i></p> <p>CLASS 9 <i>Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.</i></p>	<ol style="list-style-type: none"> <i>1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.</i> <i>2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.</i> <i>3. No such structure shall be situated within 10 metres of any public road.</i> <i>4. No such structure within 100 metres of any public road shall exceed 8 metres in height.</i> <i>5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.</i> <i>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</i>

Article 9 of the Planning and Development Regulations 2001, as amended sets out restrictions on exemptions and states:

9. (1) 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—
 - (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.*
 - (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.*

3. **ASSESSMENT**

i. Site Location

The site comprises of agricultural lands at Moyglass, Fethard, Co. Tipperary.

ii. Relevant Planning History

21/1622 Permission GRANTED demolish an existing derelict dwelling, construct a new bungalow, septic tank with percolation area, new entrance and all associated site works.

22/60502 Permission GRANTED (a) change of use of existing building from livestock barn to bloodstock and livestock housing, (b) alterations to the side elevations of existing building and all associated works.

TUD-22-035 Case closed.

iii. Assessment

The question posed under the Section 5 Declaration application form is whether the development of a barn for the storage of hay/feed is development and is exempted development.

A) **“Is or is not Development”**

It is considered the above listed proposals constitute “works” as understood by the Planning and Development Act 2000, as amended. The above listed proposals therefore constitute “development” within the meaning of the Planning and Development Act 2000, as amended.

B) **“Is or is not Exempted Development”**

I consider that the class relevant to the proposal is Class 9. The 7 no. limitations under class are assessed hereunder;

- The structure will be used for agricultural purposes.
- The proposed structure does not exceed 300sq.m. There is a farmyard complex within 100m to the south and the further information response received on 27/05/2024 states that the cumulative floor area for Class 9 structures is 339sq.m. A schedule of the floor area of the structures has been shown on the site layout plan.
- The structure is in excess of 10 metres of any public road. The public road terminates c. 80m to the south-west (cul-de sac).
- The structure is less than 100 metres of any public road but below 8m in height.
- The structure is within of 100 metres of 1 no. house and letter of consent from a Mr. Thomas Kearney has been provided. Following a review of land registry, it is detailed that the landowner of the dwelling south of the site (within the 100m) is in the ownership of Pat Lyons and Eleanor Lyons. The further information response received on 27/05/2024 included letter of consent from Mr. Pat Lyons.

Land Registry

County Tipperary

Folio 17581

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965		
1	09-JUN-1997 P. 4767/97	CHARLES PURTILL of Galbertstown, Thurles, County Tipperary is full owner. Cancelled	D2004PS027889V 13-DEC-2004
2	13-DEC-2004 D2004PS027889V	CHARLES PURTILL of Galbertstown, Thurles, County Tipperary and NUALA PURTILL of Galbertstown, Thurles, County Tipperary are full owners. Cancelled	D2012LR092261T 15-AUG-2012
3	15-AUG-2012 D2012LR092261T	PAT LYONS of Rathmanna, Thurles, County Tipperary and ELEANOR LYONS of Rathmanna, Thurles, County Tipperary are full owners.	

Figure 1 Land Registry (www.landdirect.ie)

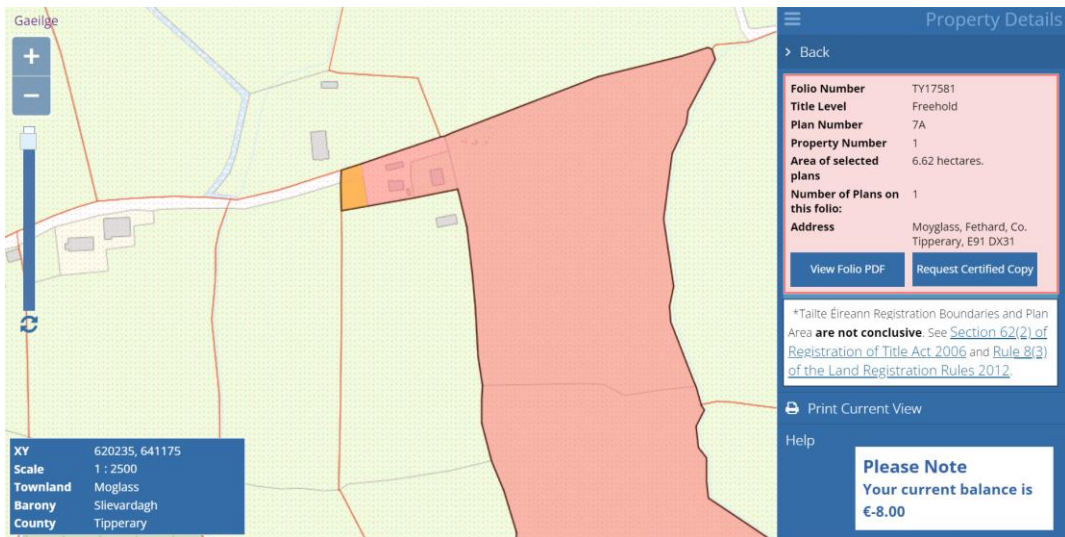


Figure 2 Land Registry Map

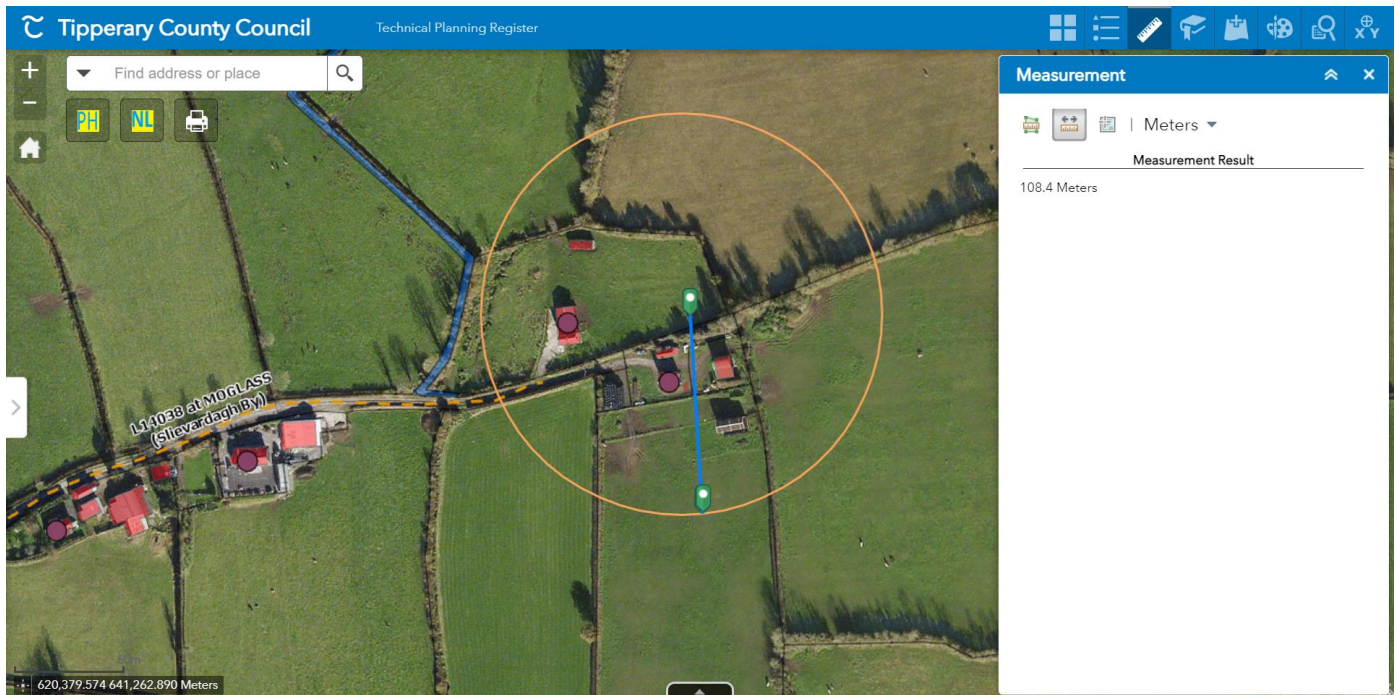


Figure 3 Dwelling within 100m of site

- There is no unpainted metal sheeting proposed.

C) Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

AA

The proposal has been screened as to the requirements for Appropriate Assessment under the EU Habitats Directive. See also Appropriate Assessment screening report attached.

EIA

The proposed development is not a type of development included for under Schedule 5 of the Planning and Development Regulations 2001, as amended. EIA is not required in respect of the development. See all EIA Pre-Screening report attached.

D) Is the exemption restricted under Article 9 of the Regulations

I have reviewed the restrictions on exemption set out under Article 9 and I note no restrictions that would apply. The development is served by an existing entrance onto the L-7514 Local Road. I do not consider the development would endanger public safety by reason of traffic hazard or obstruction of road users.

4. RECOMMENDATION

WHEREAS a question has arisen as to whether the construction of a barn for storage of hay/ feed and associated works (129.8 sq. m) at Moyglass, 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) Sections 2, 3 and 4 of the Planning and Development Act, 2000 as amended,
- (b) Article 6 and Article 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Schedule 2, Part 3, Class 9 of the Planning and Development Regulations, 2001, as amended.

AND WHEREAS Tipperary County Council has concluded that construction of a barn for storage of hay/ feed and associated works (129.8sq.m) at Moyglass, Fethard, Co. Tipperary constitutes “development” within the meaning of the Planning and Development Act 2000, as amended and is “exempted development”.

NOW THEREFORE Tipperary County Council, in exercise of the powers conferred on it by Section 5 (3) (a) of the 2000 Act, as amended hereby decides construction of a barn for storage of hay/ feed and associated works (129.8 sq. m) at Moyglass, Fethard, Co. Tipperary is development and **IS exempted development.**

The development has been screened as to the requirement for Appropriate Assessment and Environmental Impact Assessment and it has been determined that same are not required.

District Planner:



Date: 06/06/2024

Senior Executive Planner:



Date: 11.06.2024

HABITATS DIRECTIVE APPROPRIATE ASSESSMENT (AA) SCREENING REPORT

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

(a) File Reference No:	S5/23/125
(b) Brief description of the project or plan:	The construction of a barn for storage of hay/ heed and associated works (129.8sq.m)
(c) Brief description of site characteristics:	Agricultural lands
(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
0002162 River Barrow & 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 	No potential impacts

- Surface water runoff containing contaminant or sediment
- Lighting disturbance
- Noise/vibration
- 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:

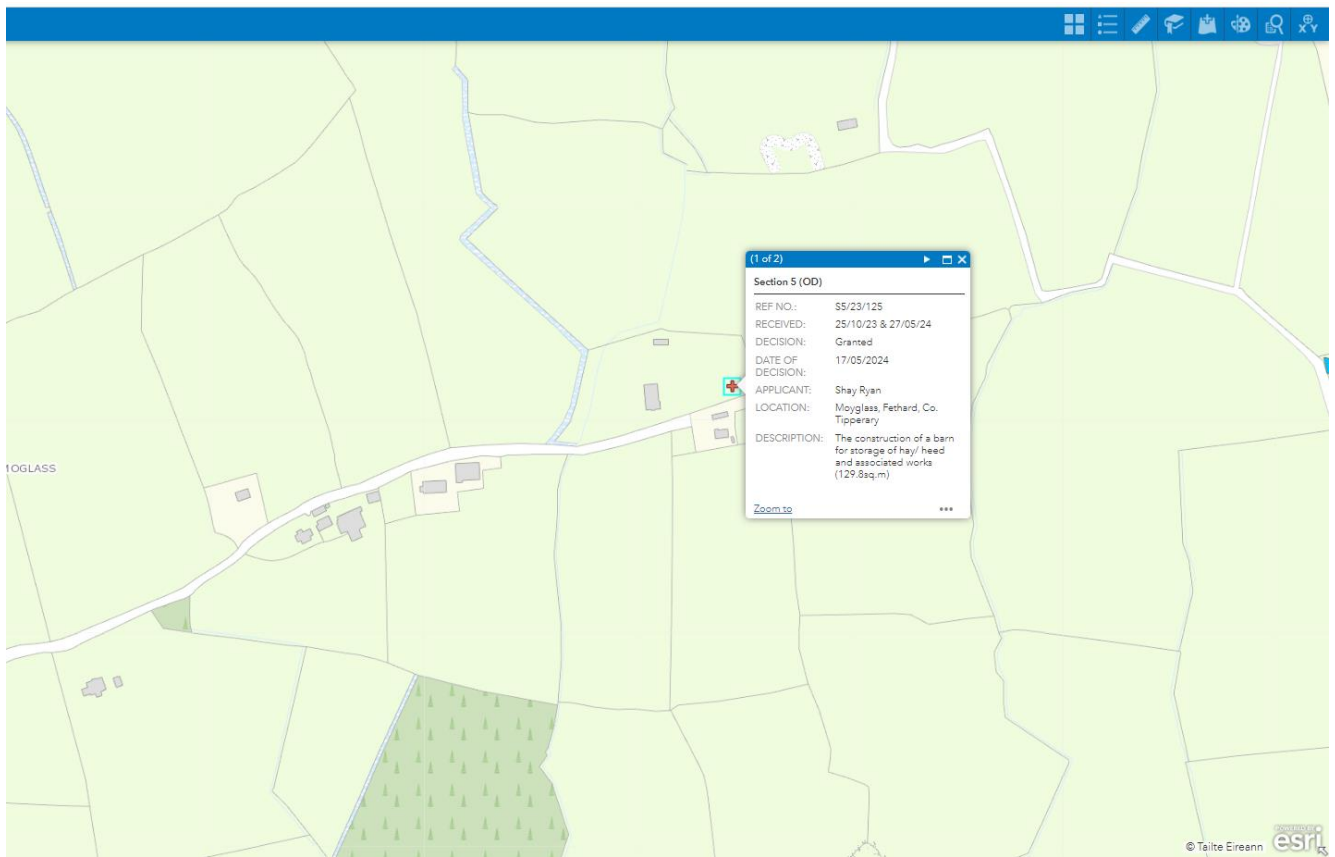
Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

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

EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/23/125
Development Summary:	The construction of a barn for storage of hay/ heed and associated works (129.8sq.m)
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



Original

TIPPERARY COUNTY COUNCIL

DELEGATED EMPLOYEE'S ORDER

File Ref: **S5/23/125** **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 Shay Ryan C/O Tim Bourke, Tim Bourke & Associates Ltd, Killastafford, Cashel, Co. Tipperary, re: Construction of a barn for storage of hay/ feed and associated works (129.8sq.m) **at Moyglass, Fethard, Co. Tipperary**, is development and is exempted development.

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

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 as amended,
- b) Article 6 and Article 9 of the Planning and Development Regulations, 2001, as amended,
- c) Schedule 2, Part 3, Class 9 of the Planning and Development Regulations, 2001, as amended.

AND WHEREAS Tipperary County Council has concluded that construction of a barn for storage of hay/ feed and associated works (129.8sq.m) at Moyglass, Fethard, Co. Tipperary constitutes "development" within the meaning of the Planning and Development Act 2000, as amended and is "exempted development".

NOW THEREFORE Tipperary County Council, in exercise of the powers conferred on it by Section 5 (3) (a) of the 2000 Act, as amended hereby decides construction of a barn for storage of hay/ feed and associated works (129.8 sq. m) at Moyglass, Fethard, Co. Tipperary is development and **IS exempted development.**

The development has been screened as to the requirement for Appropriate Assessment and Environmental Impact Assessment and it has been determined that same are not required

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: 11/06/2024



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,
Oifigí Cathartha,
An tAonach,
Co. Thiobraid Árann

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

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e customerservice
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tipperarycoco.ie

Date: 11th June, 2024

Our Ref: S5/23/125

Civic Offices, Nenagh

Shay Ryan
C/O Tim Bourke
Tim Bourke & Associates Ltd
Killastafford
Cashel
Co. Tipperary

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

Dear Mr Ryan,

I refer to your application for a Section 5 Declaration received on 25th October 2023 and Further Information Received on 23rd May, 2024, in relation to the following proposed works:

The construction of a barn for storage of hay/ feed and associated works (129.8sq.m) **at Moyglass, Fethard, Co. Tipperary.**

WHEREAS a question has arisen as to whether the construction of a barn for storage of hay/ feed and associated works (129.8 sq. m) at Moyglass, 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) Sections 2, 3 and 4 of the Planning and Development Act, 2000 as amended,
- b) Article 6 and Article 9 of the Planning and Development Regulations, 2001, as amended,
- c) Schedule 2, Part 3, Class 9 of the Planning and Development Regulations, 2001, as amended.

AND WHEREAS Tipperary County Council has concluded that construction of a barn for storage of hay/ feed and associated works (129.8sq.m) at Moyglass, Fethard, Co. Tipperary constitutes "development" within the meaning of the Planning and Development Act 2000, as amended and is "exempted development".

NOW THEREFORE Tipperary County Council, in exercise of the powers conferred on it by Section 5 (3) (a) of the 2000 Act, as amended hereby decides construction of a barn for storage of hay/ feed and associated works (129.8 sq. m) at Moyglass, Fethard, Co. Tipperary is development and **IS exempted development.**

The development has been screened as to the requirement for Appropriate Assessment and Environmental Impact Assessment and it has been determined that same are not required

NOTE: Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanala, 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

Geraldine Quinn

for **Director of Services**