



**Comhairle Contae Thiobraid Árann**  
Tipperary County Council

Tipperary County Council  
**RECEIVED**  
**15 MAY 2024**  
CASH OFFICE  
Civic Offices, Clonmel

Receipt No  
Issued 15 05 2024  
€ 80-00 Card

**PLANNING & DEVELOPMENT ACT, 2000 (as amended)**

**Application for a Section 5 Declaration**  
**Development / Exempted Development**

**1. Applicant's address/contact details:**

<i>Applicant</i>	Brian Kelly
<i>Address</i>	6 Bruach Na hAbhainn, Kilsheelan. Clonmel. E91 WY16.
<i>Telephone No.</i>	[REDACTED]
<i>E-mail</i>	[REDACTED]

**2. Agent's (if any) address:**

<i>Agent</i>	
<i>Address</i>	
<i>Telephone No.</i>	
<i>E-mail</i>	
<i>Please advise where all correspondence in relation to this application is to be sent;</i>	
Applicant [ <input checked="" type="checkbox"/> ]      Agent [ <input type="checkbox"/> ]	

**3. Location of Proposed Development:**

<i>Postal Address or Townland or Location (as may best identify the land or structure in question)</i>	6 Bruach Na hAbhainn, Kilsheelan. Clonmel. E91 WY16.
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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.)

Remove existing damaged and rotten timber boundary adjacent to River Suir Blueway.
Replace with masonry wall to improve appearance and security mirroring wall at Mill House next door.
House next door.
Proposed floor area of proposed works/uses:                      sqm N/A

**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 <input checked="" type="checkbox"/>
	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: 13 May 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.**



**Comhairle Contae Thiobraid Árann**  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann  
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Date: 20<sup>th</sup> May 2024

Our Ref: S5/24/58

Civic Offices, Clonmel

**Brian Kelly**  
**6 Bruach Na hAbhainn**  
**Kilsheelan**  
**Clonmel**  
**Co. Tipperary**

**SCANNED**

**Re: Application for a Section 5 Declaration – Remove existing damaged and rotten timber boundary adjacent to River Suir Blueway and replace with a masonry wall to improve appearance and security mirroring wall at Mill House next door at 6 Bruach Na hAbhainn, Kilsheelan, Clonmel, Co. Tipperary.**

Dear Sir/Madam,

I acknowledge receipt of your application for a Section 5 Declaration received on 15<sup>th</sup> 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

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**Planning Ref.:** S5/24/58

**Applicant:** Brian Kelly

**Development Address:** 6 Bruach Na hAbhainn, Kilsheelan, Clonmel, Co. Tipperary

**Proposed Development:** Remove existing damaged and rotten timber boundary adjacent to River Suir Blueway and replace with a masonry wall.

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### 1. GENERAL

On the 15<sup>th</sup> of May 2024 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended as to whether the following is “development” and constitutes “exempted development”:

- Remove existing damaged and rotten timber boundary adjacent to River Suir Blueway and replace with a masonry wall.

### 2. STATUTORY PROVISION

The following statutory provisions are relevant to this referral case;

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 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.

Article 6 of the **Planning and Development Regulations 2001**, as amended states:

Exempted Development.

6. (1) 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.

Schedule 2, Part 1 'Exempted Development - General:

**Class 5** of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, considers the following works to be exempted development subject to the conditions and limitations set out below;

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

### **Conditions and Limitations**

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

Article 9 (1) (a) of the Planning and Development Regulations 2001, as amended sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act.

### **3. ASSESSMENT**

#### ***a. Site Location***

The site comprises a detached dwelling at 6 Bruach Na hAbhainn, Kilsheelan, Clonmel, Co. Tipperary.

#### ***b. Relevant Planning History***

PL Ref P310246 Grant of permission for 2 dwellings with garages and other ancillary structures

PL Ref P313654 Grant of Outline permission for housing

PI Ref P314579 grant of permission for development to access road to serve 3 No. house sites

PI Ref 96/506 Grant of permission for two-storey dwelling house, septic tank, percolation area and entrance boundary.

PI Ref 17600728 Grant of permission for the construction of a single storey extension to the side of dwelling and all associated works





The wall will have a max height of 1.6 metres and a length of 26 metres.

In unsolicited further information received on the 31<sup>st</sup> of May 2024, the querist confirmed that the wall would be plastered on the public facing side.

The proposal is considered to avail of the exemption set out under Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

C) Restrictions under Article 9

It is noted that no restrictions under Article 9 of the Planning and Development Regulations 2001, as amended that would apply.

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

The subject site lies adjacent to the Lower River Suir SAC, 8.0 kms from the Comeragh Mountains SAC and 8.5 Kms from the Nier Valley Woodlands SAC

Figure 3 SAC Boundary

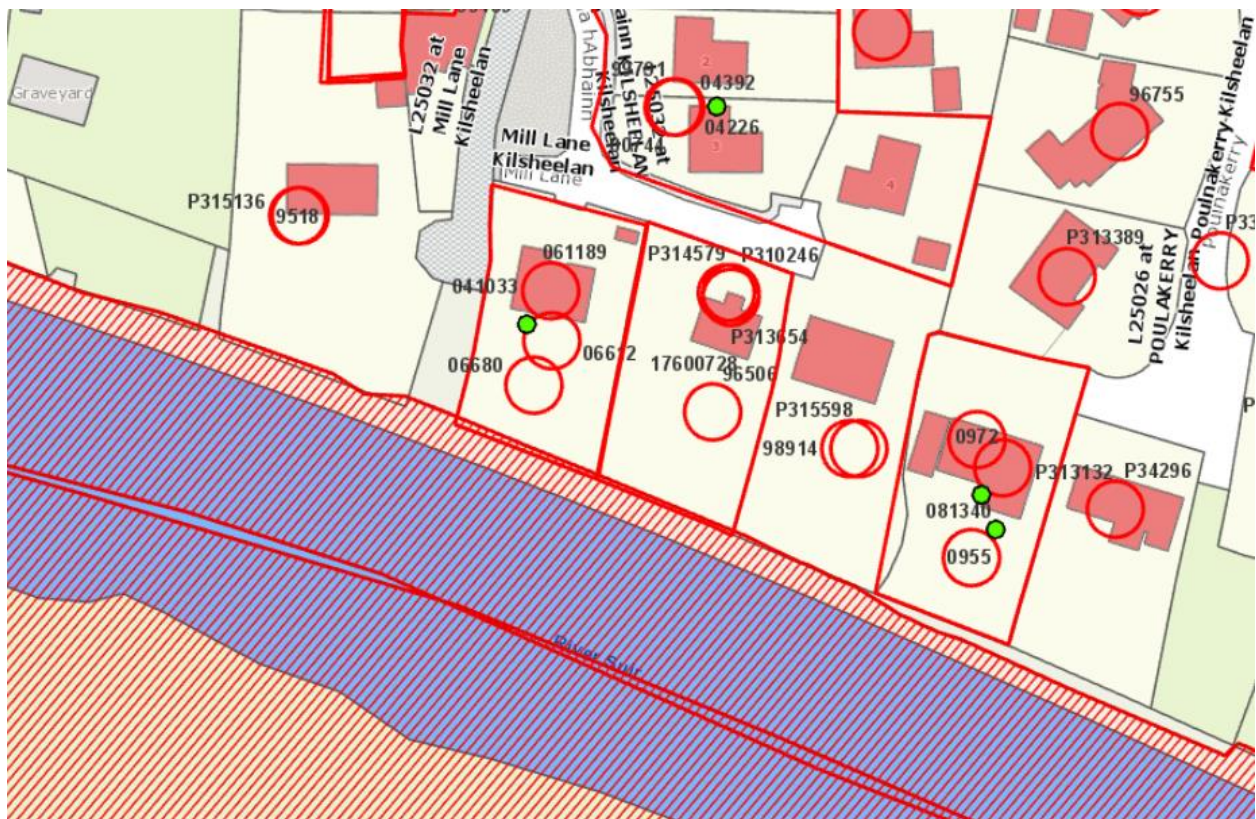




Figure 4 Flood Risk



The proposed development is located within the curtilage of a residential dwelling and comprises of the construction of a boundary wall. It is noted that a small portion of the site is in an area at risk of flooding.

Notwithstanding the proximity to the SAC, subject to normal good construction practices 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 (See screening assessment Appendix 1).

The proposed development has been subject to a preliminary examination to determine the requirement for EIA. EIA is not required in respect of the development. See Appendix 2.

#### **4. RECOMMENDATION**

Having regard to:

- (a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended)
- (b) Class 5 of Part 1 of Schedule 2 Planning & Development Regulations 2001, as amended.
- (c) Articles 6 and 9 of the Planning & Development Regulations 2001, as amended

Tipperary County Council has concluded that the proposal presented on the drawings and details provided with the Declaration application, constitutes “development” within the meaning of the Planning and Development Act 2000, and is “exempted development”.

The development would not be likely to have significant effects on the environment and would not require either an AA or an EIA.



Signed: Paul Killeen  
District planner

Date: 31/05/24

Signed: C. Conway  
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:

<b>(a) File Reference No:</b>	S5/24/58
<b>(b) Brief description of the project or plan:</b>	Boundary Wall
<b>(c) Brief description of site characteristics:</b>	Brownfield site in urban area.
<b>(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW</b>	n/a
<b>(e) Response to consultation:</b>	n/a

### 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 <sup>1</sup>	Distance from proposed development <sup>2</sup> (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
002137 Lower River Suir	<a href="https://www.npws.ie/protected-sites/sac/002137">https://www.npws.ie/protected-sites/sac/002137</a>	Adjoining site	Site is partly in an area at risk of flooding	Y
0021952 Comeragh Mountains SAC	<a href="https://www.npws.ie/protected-sites/sac/001952">https://www.npws.ie/protected-sites/sac/001952</a>	Within 15km	None	No
000668 Nier Valley Woodlands SAC	<a href="https://www.npws.ie/protected-sites/sac/000668">https://www.npws.ie/protected-sites/sac/000668</a>	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"> <li>• Vegetation clearance</li> </ul>	Subject to normal good construction practices, it is not

<ul style="list-style-type: none"> <li>• Demolition</li> <li>• Surface water runoff from soil excavation/infill/landscaping (including borrow pits)</li> <li>• Dust, noise, vibration</li> <li>• Lighting disturbance</li> <li>• Impact on groundwater/dewatering</li> <li>• Storage of excavated/construction materials</li> <li>• Access to site</li> <li>• Pests</li> </ul>	considered that the works proposed will impact water quality in the SAC.
<p>Operational phase e.g.</p> <ul style="list-style-type: none"> <li>• Direct emission to air and water</li> <li>• Surface water runoff containing contaminant or sediment</li> <li>• Lighting disturbance</li> <li>• Noise/vibration</li> <li>• Changes to water/groundwater due to drainage or abstraction</li> <li>• Presence of people, vehicles and activities</li> <li>• Physical presence of structures (e.g. collision risks)</li> <li>• Potential for accidents or incidents</li> </ul>	No potential impacts
In-combination/Other	No potential impacts

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

<p>Examples of the type of changes to give consideration to include:</p> <ul style="list-style-type: none"> <li>• Reduction or fragmentation of habitat area</li> <li>• Disturbance to QI species</li> <li>• Habitat or species fragmentation</li> <li>• Reduction or fragmentation in species density</li> <li>• Changes in key indicators of conservation status value (water or air quality etc.)</li> <li>• Changes to areas of sensitivity or threats to QI</li> <li>• Interference with the key relationships that define the structure or ecological function of the site</li> </ul>	No potential impacts
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**(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.

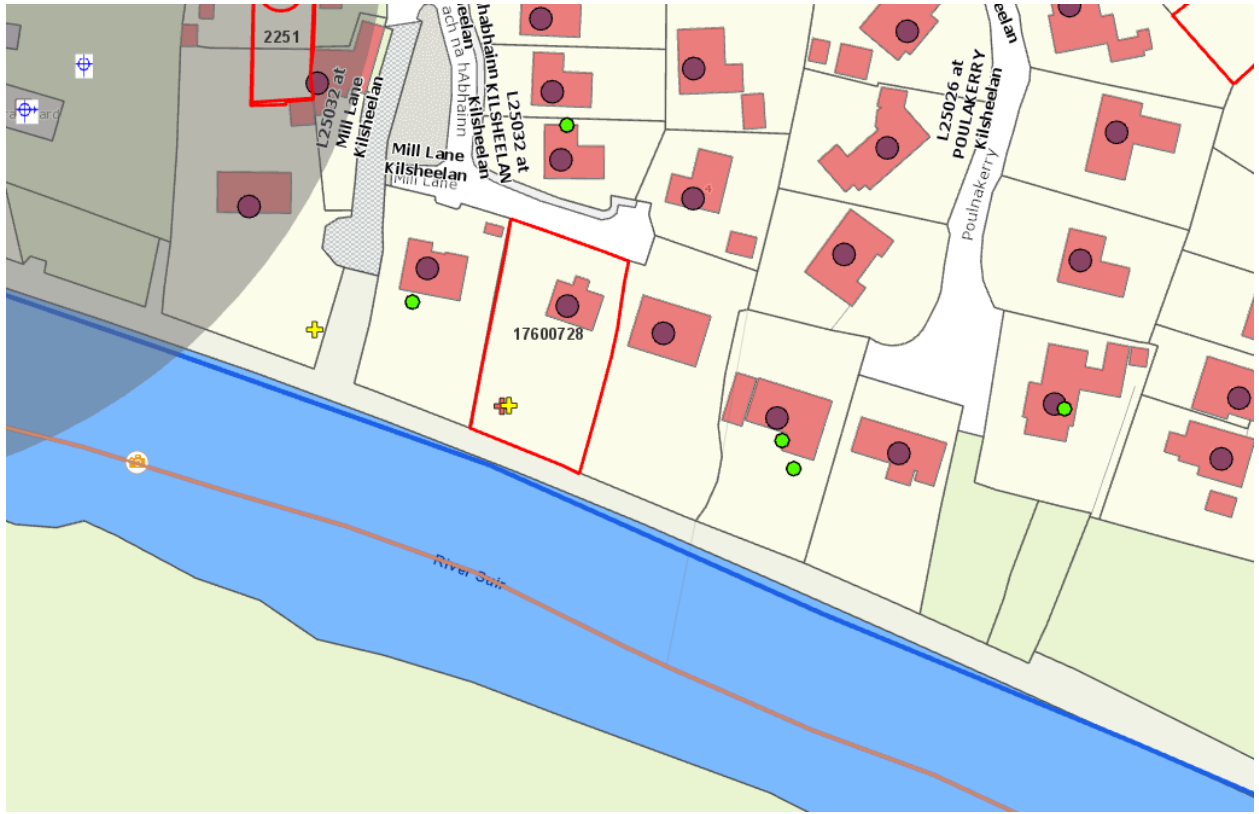
The proposed development is not likely to have significant effects.

Conclusion:			
	Tick as Appropriate:	Recommendation:	
(i) It is clear that there is <b>no likelihood</b> of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.	
(ii) It is <b>uncertain</b> 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) <b>Significant effects</b> are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission	
<b>Signature and Date of Recommending Officer:</b>	Paul Killeen	<b>Date:</b>	31/05/24



EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/24/59
Development Summary:	Boundary Wall
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 <b>Part A</b>
<b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
<input type="checkbox"/> Yes, specify class _____	<b>EIA is mandatory</b>  No Screening required
<input checked="" type="checkbox"/> No	Proceed to <b>Part B</b>
<b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) <b>and</b> 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	<b>No Screening required</b>
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 <b>and</b> meets/exceeds the threshold, specify class (including threshold): _____	<b>EIA is mandatory</b>  No Screening required
<input type="checkbox"/> Yes the project is of a type listed <b>but</b> is <i>sub-threshold</i> : _____	Proceed to <b>Part C</b>
<b>C. If Yes</b> , has Schedule 7A information/screening report been submitted?	
<input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant	<b>Screening Determination required</b>
<input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant	<b>Preliminary Examination required</b>

Figure 5 Site entered on Planning register





Comhairle Contae Thiobraid Árann  
Tipperary County Council

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

Tipperary County Council,  
Civic Offices, Clonmel,  
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Date: 11<sup>th</sup> June, 2024

Our Ref: S5/24/58

Civic Offices, Nenagh

**Brian Kelly**  
**6 Bruach Na hAbhainn**  
**Kilsheelan**  
**Clonmel**  
**Co. Tipperary**

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

Dear Mr Kelly,

I refer to your application for a Section 5 Declaration received on 15<sup>th</sup> May, 2024, in relation to the following proposed works:

Remove existing damaged and rotten timber boundary adjacent to River Suir Blueway and replace with a masonry wall ad 6 Bruach Na hAbhainn, Kilsheelan, Clonmel, 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 and 3 of the Planning and Development Act 2000 (as amended)
- b) Class 5 of Part 1 of Schedule 2 Planning & Development Regulations 001, as amended.
- c) Articles 6 and 9 of the Planning & Development Regulations 2001, as amended

**Original**

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/24/58**      **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 Brian Kelly, 6 Bruach Na hAbhainn, Kilsheelan, Clonmel, Co. Tipperary, re: Remove existing damaged and rotten timber boundary adjacent to River Suir Blueway and replace with a masonry wall ad 6 Bruach Na hAbhainn, Kilsheelan, Clonmel, Co. Tipperary is development and is exempted development.

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

- a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended)
- b) Class 5 of Part 1 of Schedule 2 Planning & Development Regulations 001, as amended.
- c) Articles 6 and 9 of the Planning & Development Regulations 2001, as amended

Tipperary County Council has concluded that the proposal presented on the drawings and details provided with the Declaration application, constitutes "development" within the meaning of the Planning and Development Act 2000, and is "**exempted development**".

The development would not be likely to have significant effects on the environment and would not require either an AA or an EIA.

**Signed:** 

**Date: 11/06/2024**

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



Tipperary County Council has concluded that the proposal presented on the drawings and details provided with the Declaration application, constitutes "development" within the meaning of the Planning and Development Act 2000, and is "**exempted development**".

The development would not be likely to have significant effects on the environment and would not require either an AA or an EIA.

**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

*Geraldine Quinn*

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for **Director of Services**