



Tipperary County Council
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28 MAY 2024
C S D
Civic Offices, Clonmel

PLANNING & DEVELOPMENT ACT, 2000 (as amended)

Application for a Section 5 Declaration
Development / Exempted Development

1. Applicant's address/contact details:

Applicant	Dolph Mc Grath
Address	Patrickswell, Clonmel
Telephone No.	[REDACTED]
E-mail	[REDACTED]

2. Agent's (if any) address:

Agent	Will McGarry
Address	15 Mary St Clonmel
Telephone No.	[REDACTED]
E-mail	info@wma.ie
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)	Patrickswell, Clonmel, Co Tipperary
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Receipt No 181 799
Issued 28 05 2024
€80.00 Cheque

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Civic Offices, Clonmel

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.)

THAT THE RECONSTRUCTION/REBUILDING OF THE EXISTING
CLASS 9 SHED IS AN EXEMPT DEVELOPMENT.
THE SHED IS MARKED (A) ON THE ATTACHED PLAN
AND MEASURES CIRCA 45ML. SHEDS (A) + (B) MEASURE
40M ² + 24 ML RESPECTIVELY.
Proposed floor area of proposed works/uses: 45 sqm

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

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

Date: 20-5-24

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

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 (not required)
 - 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:

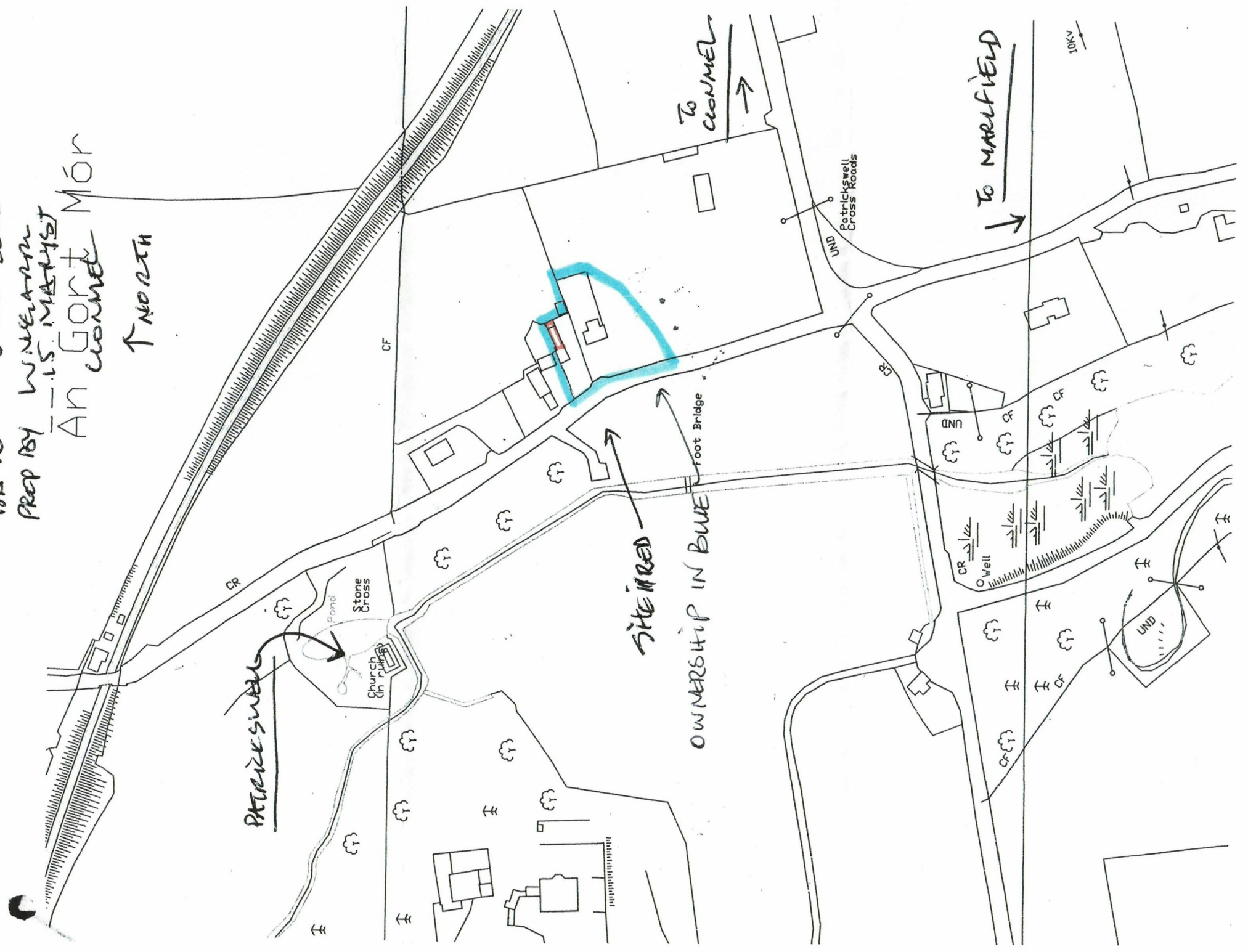
Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary	<u>OR</u>	Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary
Enquires:		
Telephone 0818 06 5000		
E-Mail planning@tipperarycoco.ie		

FOR OFFICE USE ONLY	
<u>DATE STAMP</u>	
Fee Recd. € _____	
Receipt No _____	
Date _____	
Received by _____	

SITE LOCATION MAP
SCALE 1:2500
DATE JUNE 2013
PREP BY WINEYARD
- 15. MAY 2013

AN GORT MÓR
CONNEL

↑ NORTH



Patrickswell

Site Area

OWNERSHIP IN BLUE

Foot Bridge

Patrickswell Cross Roads

TO CONNELL

TO MARLFIELD

10KV

CF

ER

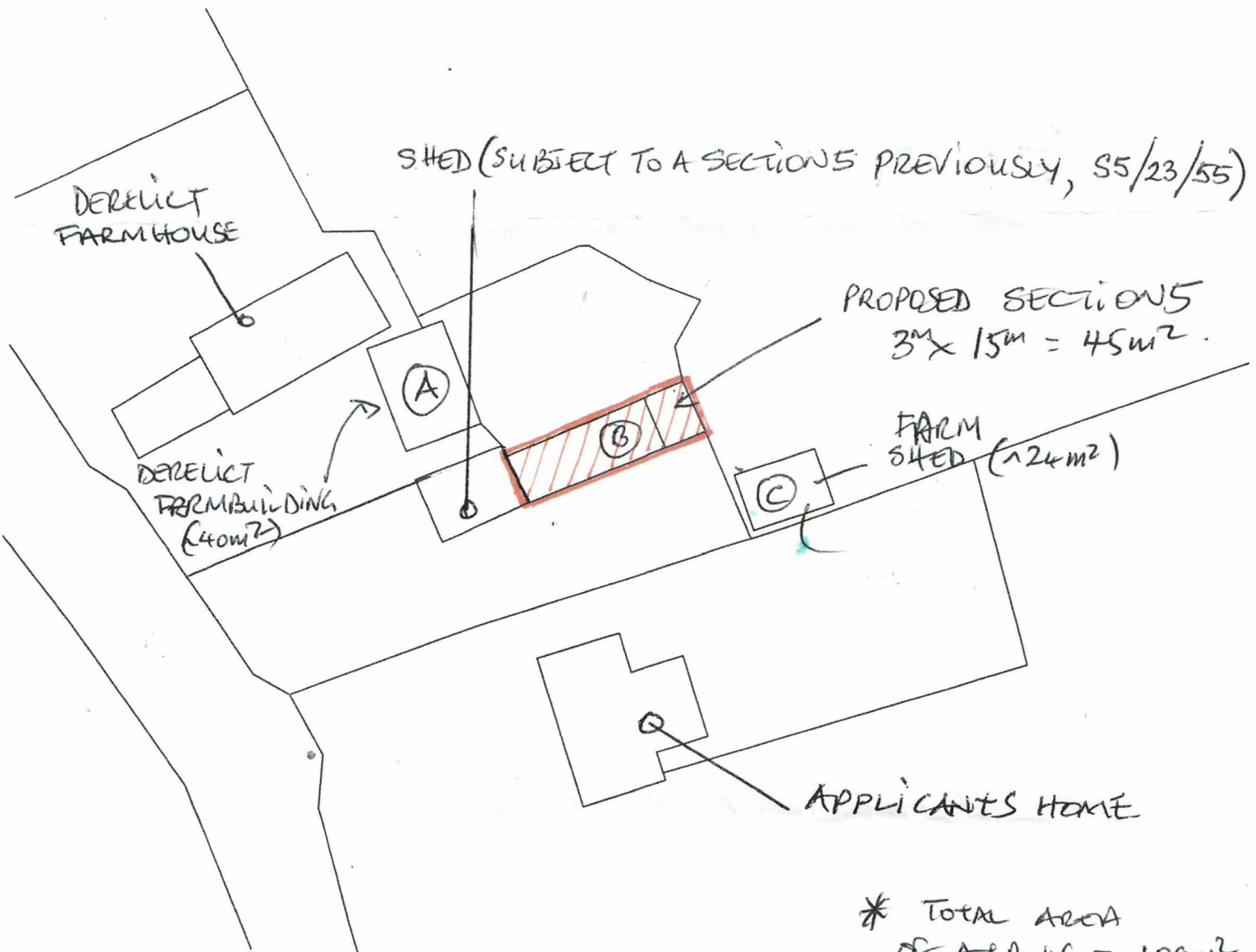
Pond

Stone Cross

Church (in ruins)

UND

THE SHED THE SUBJECT OF THIS SECTION 5 IS SHADED THUS IT COMPLIES WITH SCHEDULE 2, PART 3, EXEMPTED DEVELOPMENT - RURAL, OF THE PLANNING AND DEVELOPMENT REGULATIONS 2001



SITE LAYOUT
 DATE JUNE 23
 PREP BY: W. MCCANN
 15 MARCH 2001

* TOTAL AREA OF A+B+C = 109m² less than 300m² as per class 9 schedule 2, part 3, ptd regs 2001

* BUILDINGS (A) + (C) ARE OUTSIDE APPLICANTS OWNERSHIP



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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

E45 A099

t 0818 06 5000
e customerservice
@tipperarycoco.ie

tipperarycoco.ie

Date: 30th May 2024

Our Ref: S5/24/64

Civic Offices, Clonmel

**Dolph McGrath
C/o Will McGarry
15 Mary Street
Clonmel
Co. Tipperary**

Re: Application for a Section 5 Declaration – that the reconstruction/rebuilding of the existing Class 9 shed is an exempt development at Patrickswell, Clonmel, Co. Tipperary.

Dear Sir/Madam,

I acknowledge receipt of your application for a Section 5 Declaration received on 28th 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 Ref.: S5/24/64

Applicant: Dolph McGrath

Development Address: Patrickswell, Clonmel, Co. Tipperary

Query: If the reconstruction/rebuilding of the existing Class 9 shed (45sq.m.) constitutes development and is or is not exempted development.

1. GENERAL

On the 28th May 2024, a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) by Will McGarry, acting on behalf of Dolph McGrath, as to whether or not the reconstruction/rebuilding of the existing Class 9 shed (45 sq m) constitutes development and is or is not exempted development.

It is considered appropriate to consider the proposal as the demolition of the existing shed (45 sq m) and the construction of a new shed at the same location (45 sq m). The application as submitted does not clarify the intended use of the reconstructed shed however the applicants agent confirmed on the 19th June 2024 that same was to be for the purposes of domestic storage.

2. STATUTORY PROVISIONS

The relevant planning legislation is set out below;

Planning and Development Act 2000, as amended,

Section 3 (1) of the Planning and Development Act 2000, as amended, defines “development” as: -

*In this Act, except where the context otherwise requires, "development" means—
(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,*

Section 2(1) of the same Act 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 4 provides for Exempted Development and Section 4(1) sets out works which shall be exempted development for the purposes of the Planning and Development Act 2000, as amended.

Section 4(2)(a) of the same Act states that “the Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

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:-

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

(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 1 – 8 inclusive refer to development within the curtilage of a house.

Class 3 provides for the following exemption;

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

Conditions and Limitations

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.

2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.

4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.

5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.

6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

Class 50 of the same Part includes the following exemption for demolition works;

(a) The demolition of a building, or buildings, within the curtilage of—

(i) a house,

(ii) an industrial building,

(iii) a business premises, or

(iv) a farmyard complex.

Conditions and Limitations

1. No such building or buildings shall abut on another building in separate ownership.

2. The cumulative floor area of any such building, or buildings, shall not exceed:

(a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and

(b) in all other cases, 100 square metres.

3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

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 if the carrying out of works 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

a. Site Location

The existing shed to which the Section 5 relates is located to the east of the L3288 at Patrickswell, Marlfield, Clonmel, Co. Tipperary. The shed is served by an existing entrance off the local road permitted under PI. Ref. No. 19600874. The structure is within the landholding of the applicant who also owns the walled cottage (a Protected Structure) to the south. The structure is located outside of the subject walls and there is no direct connection between the structure and the walled cottage.

There is a second residential property (derelict) immediately north of the subject site. The shed, which is the subject of the current declaration, lies within the curtilage of this property and is one of a number of shed associated with the neighbouring property.



Figure 1: Site Location

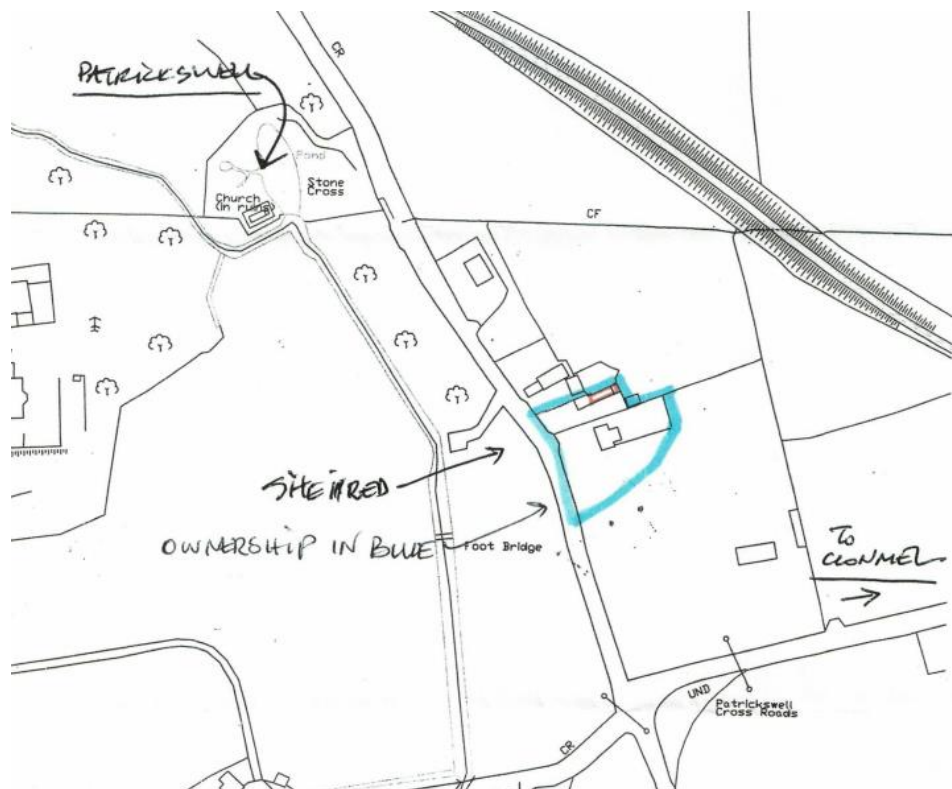


Figure 1: Landholding in blue and subject shed in red

b. Relevant Planning History

Under **PI. Ref. No. 19/600874** retention permission was granted, subject to 3 no. conditions, to retain the as constructed vehicular entrance and together with permission to complete same including all associated site development works.

Section 5 23/55: This Section 5 Declaration related to the store immediately to the west of the shed subject to the current application. It was determined under Section 5 23/55 that the use of an existing shed as a home office and the renewal of a damaged wall, roof, new floor and internal plastering is development and is exempted development. It was accepted under this determination that the shed was located within the curtilage of the derelict residential property to the north west.

TUD 19-054 – Unauthorised entrance – case closed as unauthorised development regularized under PI. Ref. No. 19600874.

c. Assessment

A) “Is or is not Development”

Having considered all of the details and documentation on file with regards the question asked the Planning Authority is satisfied that the proposal involve “works” and such works would constitute “development” within the meaning of Section 3 of the Planning and Development Act 2000, as amended.

B) “Is or is not Exempted Development”

As noted above, it is unusual that the existing shed is located outside the established curtilage of the applicant’s home, which is defined by a mature boundary wall. The shed is a long-standing structure. The shed is located within the curtilage of the adjoining property to the north, which is under separate ownership.

The applicant has referred to the structure as an existing Class 9 structure. The intended use of the new structure was confirmed as being for domestic storage on the 19th June 2024.

Therefore, it is considered that the relevant exemptions are those set out under Class 3 and Class 50 of Part 1 of Schedule 2 of the above mentioned Regulations.

With respect to Class 50 I note that the shed for demolition exceeds 40 sq m and therefore does not avail of the exemption. The new or “reconstructed” shed at 45 sq m would also exceed the floor area provided for under Condition and Limitation No 2 attached to Class 3 of Part 1 of Schedule 2 and would not therefore avail of an exemption.

C) Is the exemption restricted under Article 9

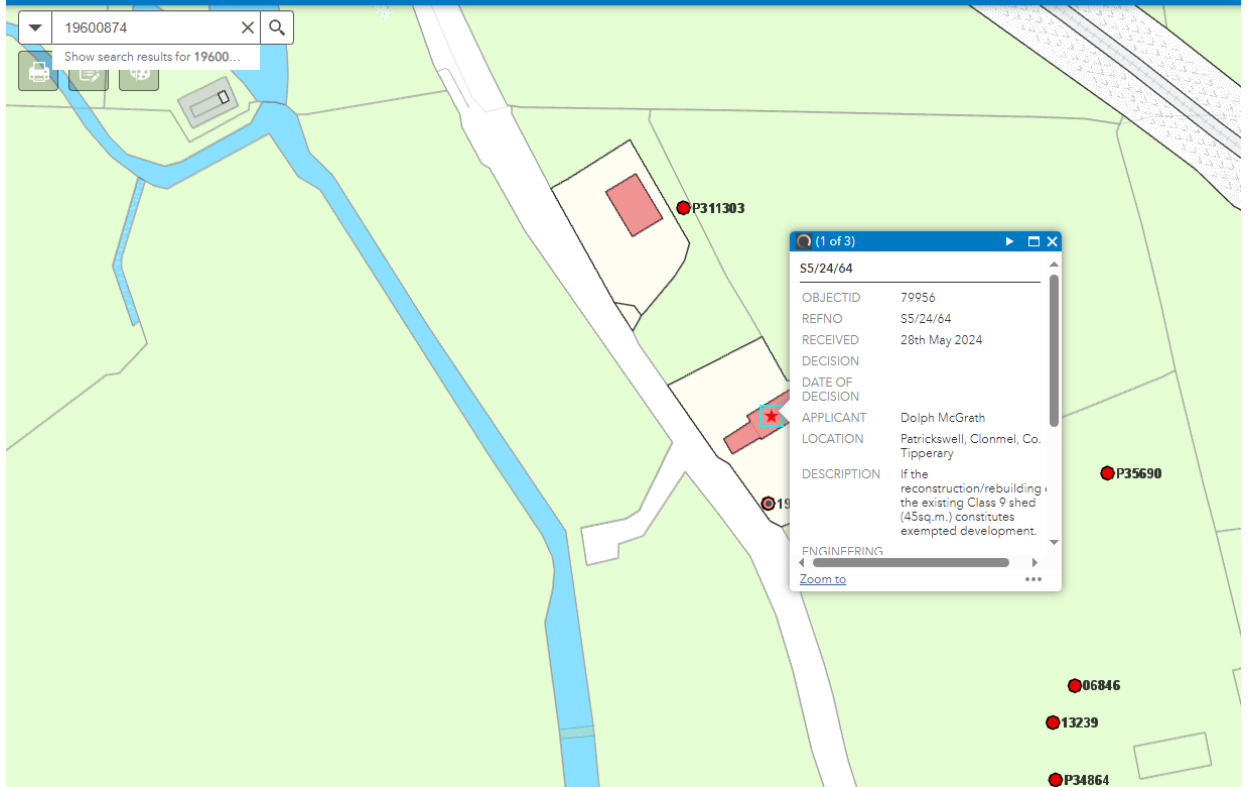
As the proposal is not exempt the restrictions on exemptions are not applicable.

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

The subject site is located c. 1.3 kilometers from the Lower River Suir SAC, 11.7 kms from the Nier Valley woodlands SAC and 13.2 Kms from the Comeragh mountains SAC.

19600874

Show search results for 19600...



EIA Pre-Screening

Establishing a development is a 'sub-threshold development'

File Reference:	S5/24/64	
Development Summary:	If the reconstruction/rebuilding of the existing Class 9 shed (45sq.m.) constitutes exempted development.	
Was a Screening Determination carried out under Section 176A-C?	<input type="checkbox"/> Yes, no further action required <input checked="" type="checkbox"/> No, Proceed to Part A	
A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1 , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)		
<input type="checkbox"/> Yes, specify class _____		EIA is mandatory No Screening required
<input checked="" type="checkbox"/> No		Proceed to Part B
B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2 , of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)		
<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2		No Screening required
		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 required Determination
<input checked="" type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant		Preliminary Examination required



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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

E45 A099

t 0818 06 5000
e customerservice
@tipperarycoco.ie

tipperarycoco.ie

Date: 19th June, 2024

Our Ref: S5/24/64

Civic Offices, Nenagh

Dolph McGrath
C/O Will McGarry
15 Mary Street
Clonmel
Co. Tipperary

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

Dear Mr McGrath,

I refer to your application for a Section 5 Declaration received on 28th May, 2024, in relation to the following proposed works:

If the reconstruction/rebuilding of the existing Class 9 shed (45sq.m.) constitutes development and is or is not exempted development **at Patrickswell, 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, 3 and 4 of the Planning and Development Act, 2000, as amended
- b) Class 3 and 50 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended
- c) The particulars submitted under the application

AND WHEREAS Tipperary County Council has concluded that –

The development is development and is not exempted development as it DOES NOT fall under the exempted development provisions as set out under Section 4 of the Planning and Development Act 2000, as amended.

NOW WHEREAS 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 reconstruction/rebuilding of the existing Class 9 shed (45sq.m.) and the use of the new shed for domestic storage purposes at Patrickswell, Clonmel, Co. Tipperary is **development and IS NOT exempted development.**

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

for **Director of Services**

Original

TIPPERARY COUNTY COUNCIL

DELEGATED EMPLOYEE'S ORDER

File Ref: **S5/24/64** **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 Dolph McGrath, C/O Will McGarry, 15 Mary Street, Clonmel, Co. Tipperary, re: if the reconstruction/rebuilding of the existing Class 9 shed (45sq.m.) constitutes development and is or is not 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) Class 3 and 50 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended
- c) The particulars submitted under the application

AND WHEREAS Tipperary County Council has concluded that –

The development is development and is not exempted development as it DOES NOT fall under the exempted development provisions as set out under Section 4 of the Planning and Development Act 2000, as amended.

NOW WHEREAS 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 reconstruction/rebuilding of the existing Class 9 shed (45sq.m.) and the use of the new shed for domestic storage purposes at Patrickswell, Clonmel, Co. Tipperary is **development and IS NOT exempted development.**

Signed: _____

Date: 19/06/2024

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