



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

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

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

Applicant	William Lowry
Address	Fishmoyne, Borrisoleigh, Co Tipperary
Telephone No.	[REDACTED]
E-mail	[REDACTED]

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

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

**3. Location of Proposed Development:**

Postal Address <u>or</u> Townland <u>or</u> Location (as may best identify the land or structure in question)	Lewagh More, Thurles, 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.

Agricultural entrance onto public roadway
Proposed floor area of proposed works/uses: 0 sqm

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

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

Signature of Applicant(s) William Henry

Date: 7th June 2024

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

**GUIDANCE NOTES**

- (1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.
- (2) This application should be accompanied by **TWO COPIES** of the following documentation
- OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
  - Floor Plans & Elevations at a scale of not less than 1:200
  - Site layout plan indicating position of proposed development relative to premises and adjoining properties
  - Other details e.g. brochures, photographs if appropriate.
- (All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)
- (3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

**This application form and relevant fee should be submitted to:**

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

**FOR OFFICE USE ONLY**

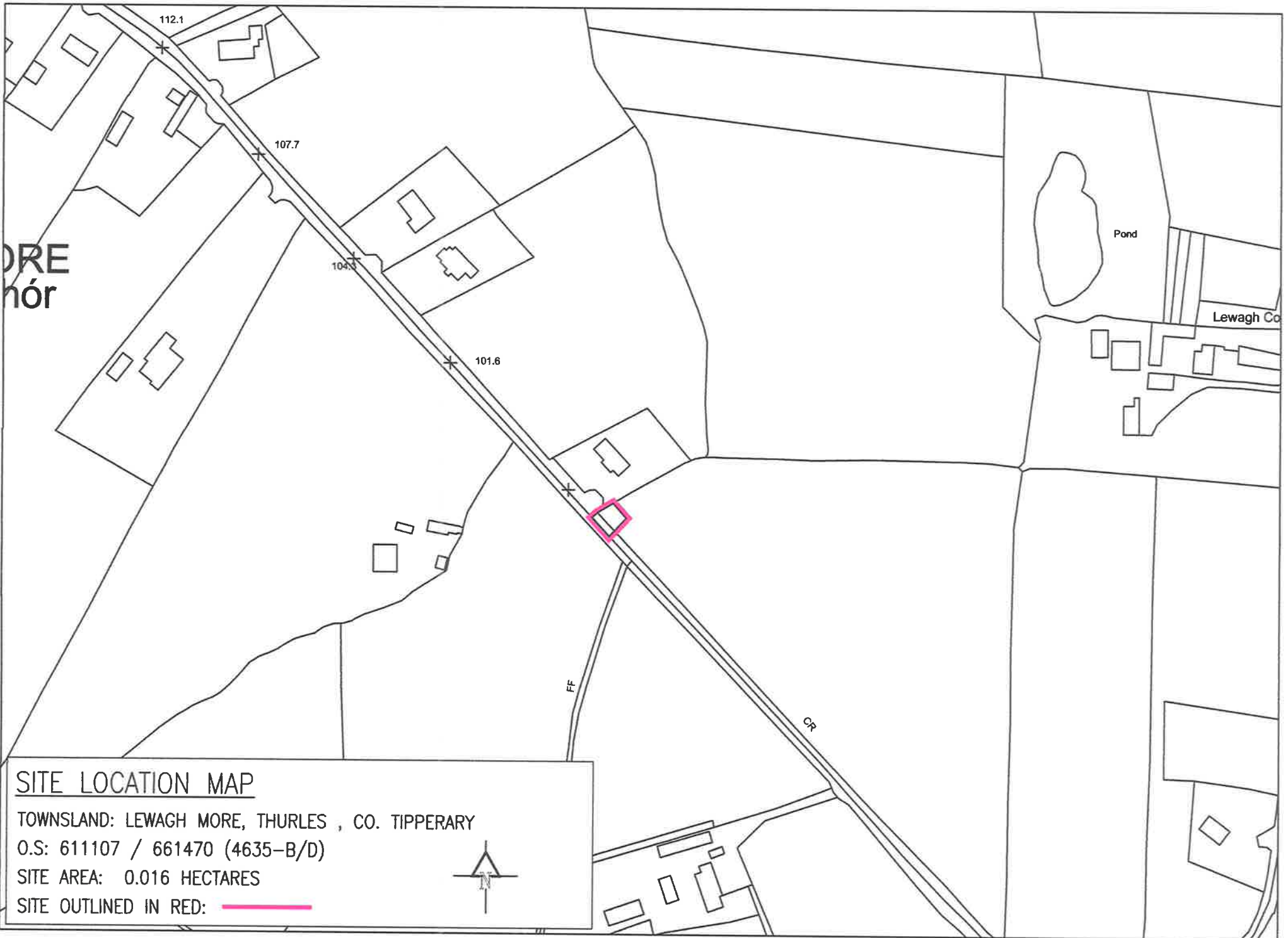
**DATE STAMP**

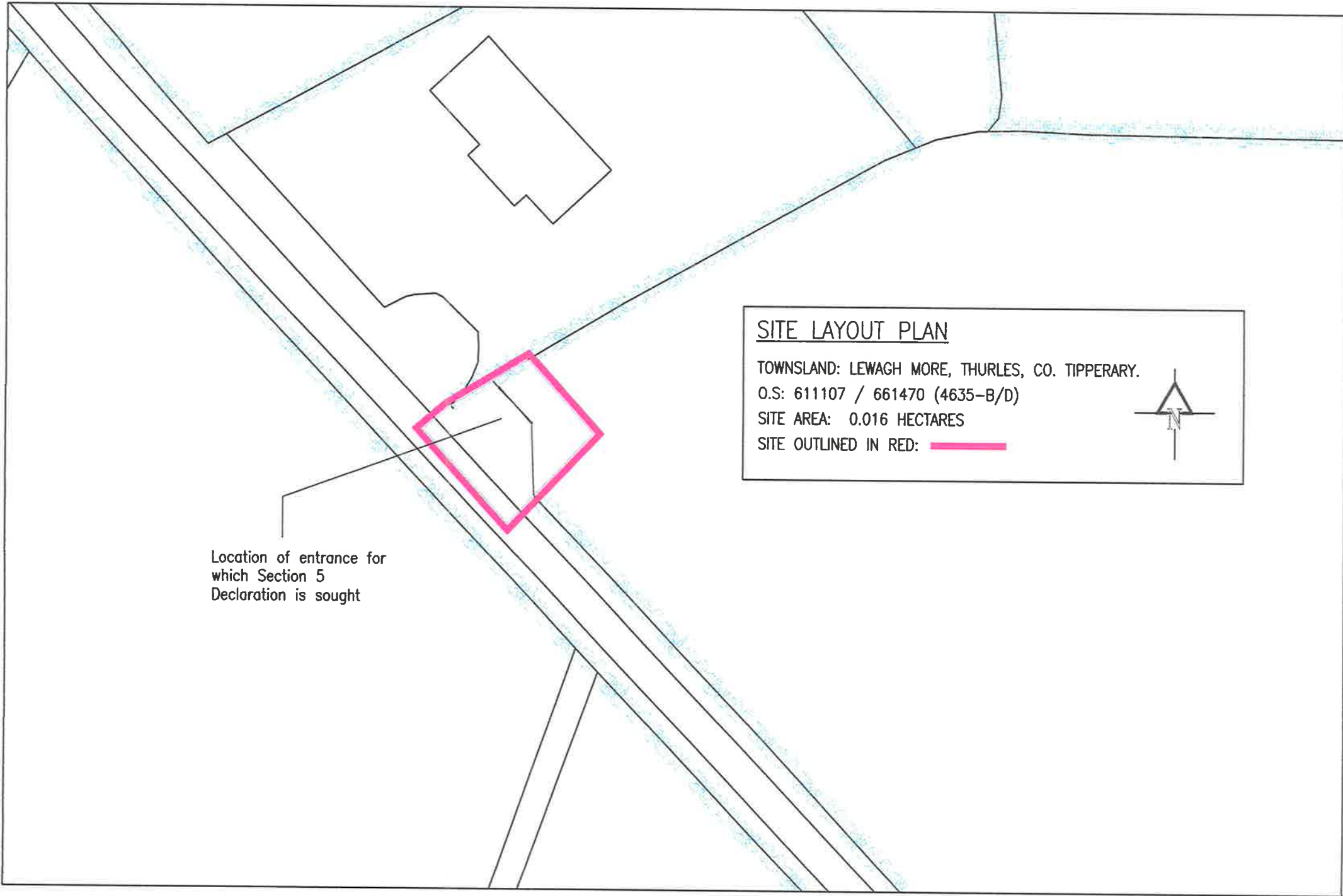
**Fee Recd. €** 80.00


Receipt No NENAM1/0/120566

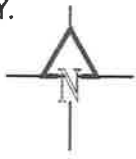
Date 12/6/2024

Received by \_\_\_\_\_

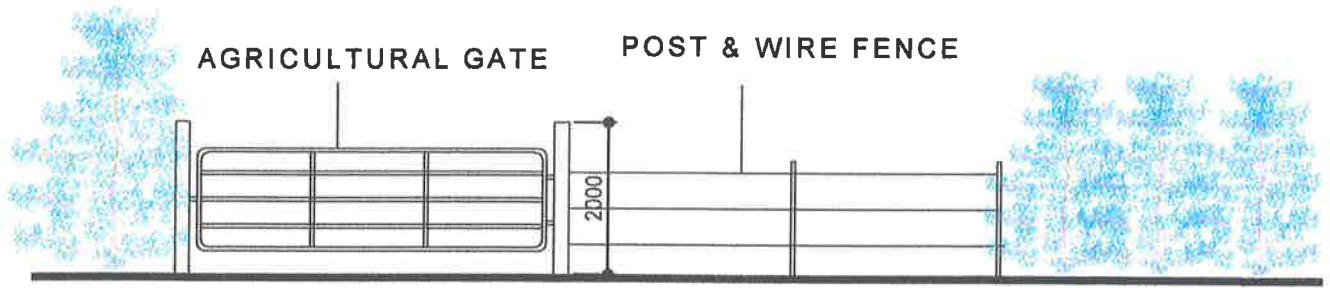




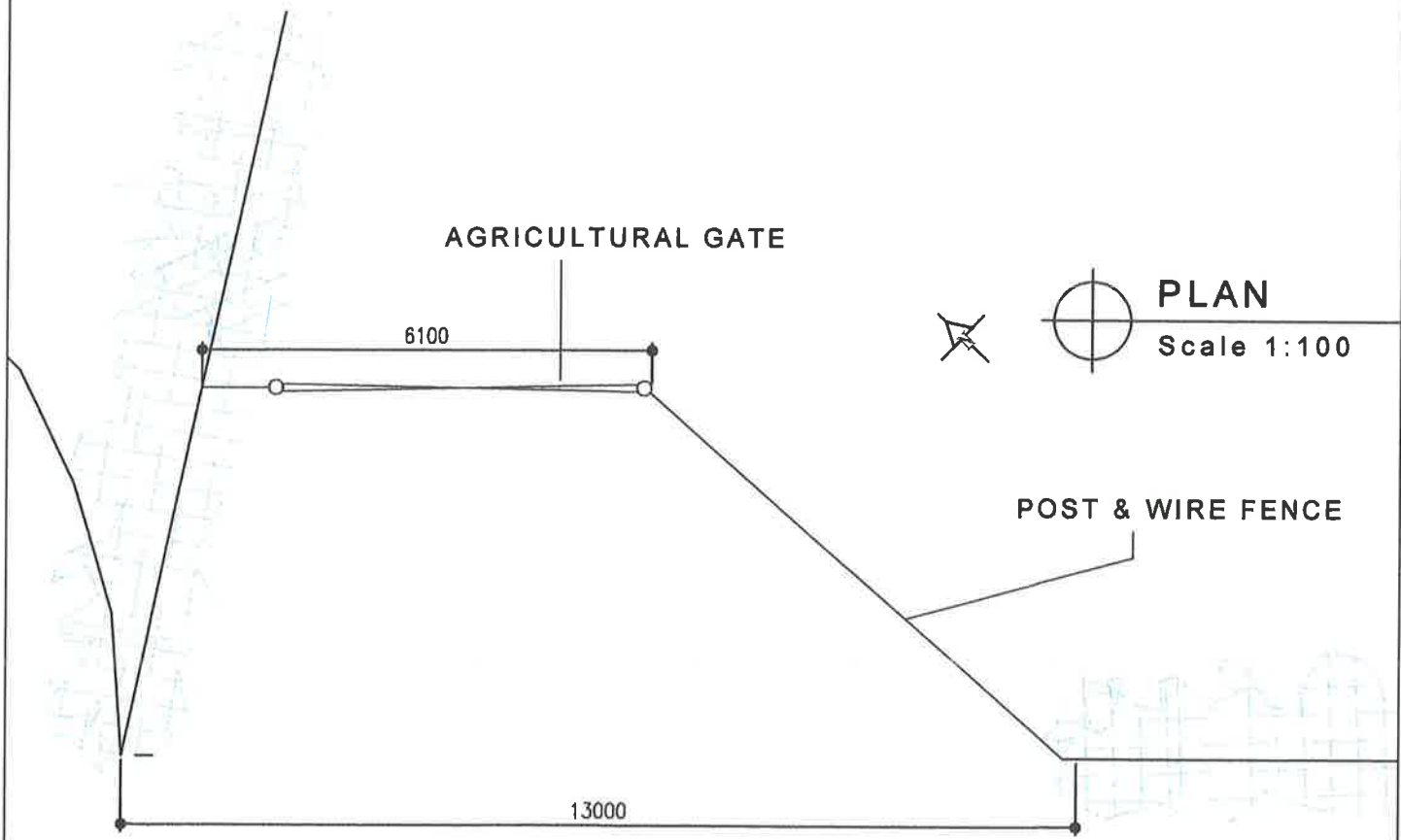
SITE LAYOUT PLAN  
TOWNSLAND: LEWAGH MORE, THURLES, CO. TIPPERARY.  
O.S: 611107 / 661470 (4635-B/D)  
SITE AREA: 0.016 HECTARES  
SITE OUTLINED IN RED: 



Location of entrance for  
which Section 5  
Declaration is sought




**Elevation**  
 Scale 1:100



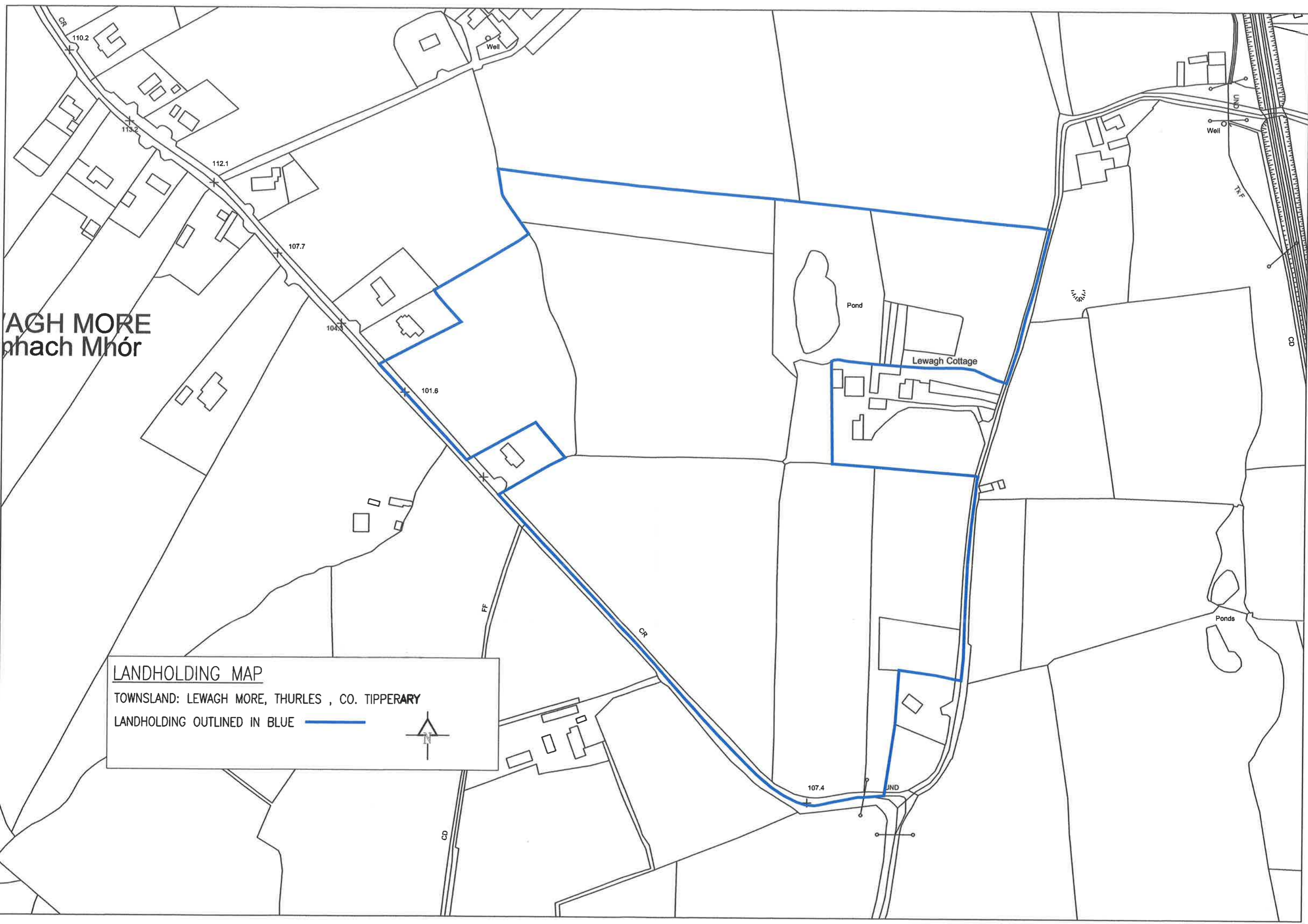
PUBLIC ROADWAY

LEWAGH MORE  
Léach Mhór

LANDHOLDING MAP

TOWNSLAND: LEWAGH MORE, THURLES, CO. TIPPERARY

LANDHOLDING OUTLINED IN BLUE





Comhairle Contae Thiobraid Árann  
Tipperary County Council

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

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

t 0818 06 5000  
e customerservice  
@tipperarycoco.ie  
[tipperarycoco.ie](http://tipperarycoco.ie)

Date: 13<sup>th</sup> June, 2024

Our Ref: S5/24/72

Civic Offices, Nenagh

**William Lowry**  
**Fismoyn**  
**Borrisoleigh**  
**Co. Tipperary**

**Re: Application for a Section 5 Declaration – Construction of an Agricultural entrance onto public roadway at Lewagh More, Thurles, Co Tipperary**

Dear Sir/Madam

I acknowledge receipt of your application for a Section 5 Declaration received on 12<sup>th</sup> June, 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.:** S5/24/72  
**Applicant:** William Lowry  
**Development Address:** Lewagh More, Thurles, Co. Tipperary  
**Proposed Development:** Agricultural entrance onto public roadway

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#### **1. GENERAL**

On the 12/6/2024 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended by William Lowry in respect of the following development at Lewagh More, Thurles, Co. Tipperary.

#### ***Agricultural entrance onto public roadway***



**Farm passageway extending from entrance**



**Entrance opening and farm passage**



**Width of road at 4.1 metres**

**2. PLANNING & DEVELOPMENT ACT 2000, as amended, / PLANNING & DEVELOPMENT REGULATIONS 2001, as amended, - STATUTORY PROVISIONS**

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

**Section 3 (1)** of the **Planning and Development Act 2000, (as amended)** states as follows:- "In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."

**Article 6(1)** states that subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act provided that such development complies with conditions and limitations specified in Column 2 of said Part 1

Class 9, Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended sets out an exemption for:

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

This exemption is subject to the following conditions/limitations:

The height of any such structure shall not exceed 2 metres.

Class 11, Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended sets out an exemption for:

The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –  
(a) any fence (not being a hoarding or sheet metal fence), or  
(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

This exemption is subject to the following conditions/limitations:

1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.
2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.

Class 13, Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended sets out an exemption for:

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

This exemption is subject to the following conditions/limitations:

The width of any such private footpath or paving shall not exceed 3 metres.

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—
    - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(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

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

### **3. ASSESSMENT**

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

The subject site is located at Lewagh More, Thurles, Co. Tipperary. It is proposed to create a new entrance off the L-4121. I measured the width of the L4121 at the location of the entrance opening and the width varied from 3.8 metres to 4.1 metres at different points along the opening.

Furthermore, the private road which the entrance provides access to , measures 4.85m to 3.8m (exceeding the 3m limitation).

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

None recorded.

#### **c. Assessment**

Pursuant to Section 5 of the Planning & Development Acts this report will examine whether the proposal

#### ***Agricultural entrance onto public roadway***

##### **A) “Is or is not Development”**

Having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended), it is considered that the Development of an agricultural entrance with gate and fencing constitutes works and development as provided for under Sections 2 and 3 of the Act.

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

The development of the gate and associated post and fencing come within the planning exemptions under Class 9 and Class 11 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended

##### **C) “Restrictions under Article 9 of the Planning and Development Regulations 2001, as amended”**

In relation to Article 9 (1) (a) the road with along the entrance opening varies from just under 4 metres to marginally over 4 metres. I cannot state the road width is less than 4 metres along the entirety of the frontage. I consider the exemption is therefore restricted under article 9 (1) (a) (ii). I note the entrance serves access to a farm roadway that has been formed and extends to the north away from the entrance. The roadway has a width of over 3 metres and is unauthorised development. As the unauthorised development serves and is served by unauthorised development I consider any exemption for same is restricted under Article 9(1) (a) (viii)

D) Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)  
An Appropriate Assessment Screening has been undertaken that determines AA is not required.

The proposal is not a category of development that requires EIA

#### **4. RECOMMENDATION**

**WHEREAS** a question has arisen as to whether the

- Provision of an agricultural entrance,

is 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 & 4 of the Planning and Development Act 2000, as amended,
- (b) Article 6 & 9 of the Planning and Development Regulations 20001, as amended,
- (c) Class13, Schedule 2, Part 1 of the Planning and Development Regulations 2001
- (d) Class11, Schedule 2, Part 1 of the Planning and Development Regulations 2001

**AND WHEREAS** Tipperary County Council has concluded that –

The proposed development of an agricultural entrance **is development and is not exempted development**. The restrictions on exemptions are restricted under Article 9(1) (a) of the Planning and Development Regulations 2001, as amended for reason that:

- The development comprises the formation and laying out of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width. The L4121 outside the entrance is not less than 4 meters across the entirety of the frontage.
- The development consist of or comprise the extension of an unauthorised structure or a structure the use of which is an unauthorised use. The farm roadway which extends from the entrance is an unauthorised structure.

Signed: Jonathan Flood Date: 3/7/2024  
A/Senior Executive Planner

A/ Senior Planner: Archie Denny Date: 09/07/2024



# AA Screening Form

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

(a) File Reference No:	S5/24/72
(b) Brief description of the project or plan:	New agricultural entrance
(c) Brief description of site characteristics:	Rural site at edge of grassland field
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	n/a
(e) Response to consultation:	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
Kilduff, Devilsbit Mountain SAC 000934	<a href="#">Kilduff, Devilsbit Mountain SAC   National Parks &amp; Wildlife Service (npws.ie)</a>	Within 15km	No due to distance and the lack of any relevant ex-situ factors of significance to these species.	No
Lower River Suir SAC 002137	L <a href="#">Lower River Suir SAC   National Parks &amp; Wildlife Service (npws.ie)</a>	Within 15km	No due to distance and the lack of any relevant ex-situ factors of significance to these species.	No

<sup>1</sup> Short paraphrasing and/or cross reference to NPWS is acceptable – it is not necessary to reproduce the full text on the QI/SCI.

<sup>2</sup> If the site or part thereof is within the European site or adjacent to the European site, state here.

## 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.)



<p>Construction phase e.g.</p> <ul style="list-style-type: none"> <li>• Vegetation clearance</li> <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>	<p>The construction phase will not result in significant environmental impacts that could affect European Sites within the wider catchment area.</p>
<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>	<p>No impact. Given the nature and scale of the development, it is considered that there is no real likelihood of any significant effects on European Sites in the wider catchment area.</p>
<p>In-combination/Other</p>	<p>No impacts</p>

<p><b>(b) Describe any likely changes to the European site:</b></p>	
<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>	<p>None. The application site is not located within a European site, therefore there is no risk of habitat loss or fragmentation or any effects on QI species directly or ex-situ.</p> <p>Given the scale of the proposed development and the significant distance between the proposed development site and any European Sites is such that the proposal will not result in any likely changes to the European sites that comprise part of the Natura 2000 network</p>

<p><b>(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?</b></p>	
<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	

<p><b>Step 4. Screening Determination Statement</b></p>	
<p><b>The assessment of significance of effects:</b></p> <p>Describe how the proposed development (alone or in-combination) is/is <b>not likely</b> to have <b>significant</b> effects on European site(s) in view of its conservation objectives.</p>	
<p>On the basis of the information on file, which is considered adequate to undertake a screening determination and having regard to: the nature and scale of the proposed development, the proposed land use and distance from European sites, the lack of direct connections with regard to</p>	

the Source-Pathway-Receptor model, it is concluded that the proposed development, individually or in-combination with other plans or projects, would not be likely to have a significant effect on the above listed European sites or any other European site, in view of the said sites' conservation objectives.

**Conclusion:**

	<b>Tick as Appropriate:</b>	<b>Recommendation:</b>
(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>		
<b>Signature and Date of the Decision Maker:</b>		

# EIA Screening

<b>Establishing if the proposal is a 'sub-threshold development':</b>	
Planning Register Reference:	S5/24/72
Development Summary:	construction of an agricultural entrance
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 <u>  [insert here]  </u>	<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): <u>  [specify class &amp; threshold here]  </u>	<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> : <u>  [insert here]  </u>	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>
<b>Signature and Date of Recommending Officer:</b>	





Comhairle Contae Thiobraid Árann  
Tipperary County Council

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

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

E45 A099

t 0818 06 5000  
e customerservice  
@tipperarycoco.ie

[tipperarycoco.ie](http://tipperarycoco.ie)

Date: 9<sup>th</sup> July, 2024

Our Ref: S5/24/72

Civic Offices, Nenagh

**William Lowry**  
**Fishmoyn**  
**Borrisoleigh**  
**Thurles**  
**Co. Tipperary**

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

Dear Mr Lowry,

I refer to your application for a Section 5 Declaration received on 12<sup>th</sup> June, 2024, in relation to the following proposed works:

**Agricultural entrance onto public roadway at Lewagh More, Thurles, Co. Tipperary**

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

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

- a) Sections 2, 3 & 4 of the Planning and Development Act 2000, as amended,
- b) Article 6 & 9 of the Planning and Development Regulations 20001, as amended,
- c) Class13, Schedule 2, Part 1 of the Planning and Development Regulations 2001
- d) Class11, Schedule 2, Part 1 of the Planning and Development Regulations 2001

**AND WHEREAS** Tipperary County Council has concluded that –

The proposed development of an agricultural entrance **is development and is not exempted development**. The restrictions on exemptions are restricted under Article 9(1) (a) of the Planning and

Development Regulations 2001, as amended for reason that:

- The development comprises the formation and laying out of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width. The L4121 outside the entrance is not less than 4 meters across the entirety of the frontage.
- The development consist of or comprise the extension of an unauthorised structure or a structure the use of which is an unauthorised use. The farm roadway which extends from the entrance is an unauthorised structure.

**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*

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for **Director of Services**

Original

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/24/72**      **Delegated Employee's Order No:** \_\_\_\_\_

**SUBJECT: Section 5 Declaration**

I, Dave Carroll, A/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 William Lowry, Fishmoyne, Borrisoleigh, Co. Tipperary re: Agricultural entrance onto public at Lewagh More, Thurles, Co. Tipperary **is a development and is not exempted development.**

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

- a) Sections 2, 3 & 4 of the Planning and Development Act 2000, as amended,
- b) Article 6 & 9 of the Planning and Development Regulations 20001, as amended,
- c) Class13, Schedule 2, Part 1 of the Planning and Development Regulations 2001
- d) Class11, Schedule 2, Part 1 of the Planning and Development Regulations 2001
- e)

**AND WHEREAS** Tipperary County Council has concluded that –

The proposed development of an agricultural entrance **is development and is not exempted development** . The restrictions on exemptions are restricted under Article 9(1) (a) of the Planning and Development Regulations 2001, as amended for reason that:

- The development comprises the formation and laying out of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width. The L4121 outside the entrance is not less than 4 meters across the entirety of the frontage.
- The development consists of or comprise the extension of an unauthorised structure or a structure the use of which is an unauthorised use. The farm roadway which extends from the entrance is an unauthorised structure.

Signed:

Signed:



\_\_\_\_\_  
**Dave Carroll**  
**A/Director of Services**  
**Planning and Development (including Town Centre First),**  
**Emergency Services and Emergency Planning and**  
**Tipperary/Cahir/Cashel Municipal District**

**Date: 09/07/2024**