



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
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Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary
E45 A099

t 0818 06 5000
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tipperarycoco.ie

Date: 2nd October 2024 Our Ref: S5/24/109 Civic Offices, Clonmel

**Walter Power,
C/o Will McGarry & Associates,
15 Mary Street,
Clonmel
Co. Tipperary**

Re: Application for a Section 5 Declaration – The use of existing access to the cottage, Ballycloona, Carrick on Suir, Co. Tipperary.

Dear Mr. McGarry,

I acknowledge receipt of your application for a Section 5 Declaration received on 30th September 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 sincerely,

For Director of Services

Receipt No 185 633
Issued 30/09/2024
€80-00 charge

**WILL MC GARRY & ASSOCIATES
CONSULTING ENGINEERS**

Tipperary County Council
RECEIVED
30 SEP 2024
C S D
Civic Offices, Clonmel

15 Mary Street,
Clonmel,
Co. Tipperary,
E91 WV66.

Telephone (052) 618 1828
Mobile (086) 273 7455
Email info@wmaa.ie

The Secretary,
Planning Department,
Tipperary County Council,
Civic Offices,
Clonmel,
Co. Tipperary.

TIPPERARY CO. COUNCIL
RECEIVED
30 SEP 2024
PLANNING SECTION
FILE NO.

Our Ref: 7237

24th September 2024.

**Subj:- Section 5 that the use of the existing entrance at Ballycloona, Carrick-on-Suir,
Co. Tipperary is exempt development**

Dear Sir/Madam,

Attached herewith find application for Section 5 for the existing entrance at the above address.

This Section 5 was the subject of a previous Section 5, which was adjudicated by An Bord Pleanala on 23rd May 2024 (copy of the Decision is attached).

The reason for refusal by An Bord Pleanala was that they were of the opinion that there was no evidence on file that the vehicular access, the subject matter of the referral, existed and therefore concluded that the **formation** of an entrance was not an exempted development.


In this regard, I attach the original submission but more importantly, I attach letters from locals, Pat Murphy, Walter Power (the Applicant), Margaret Doyle (a retired school teacher), James St. John (a retired overseer with Tipperary County Council), Thomas McCarthy (a retired Garda) and James Cooney (a retired postmaster).

All these letters clearly demonstrate that the vehicular access did in fact exist.

Assuming then that the County Council accept the affidavits of the above named parties, the reason for An Bord Pleanala's refusal of the exemption is no longer valid.

Therefore, it is respectfully suggested that the use of this entrance is an exempt development as per the original submission.

Yours faithfully,



Will Mc Garry, B.E. C.Eng.

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Tipperary County Council
RECEIVED
30 SEP 2024
CASH OFFICE
Civic Offices, Clonmel



Tipperary County Council
RECEIVED
30 SEP 2024
CASH OFFICE
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	<i>Nasser Pavek</i>
Address	<i>Mangan, Nine-mile house, Carrick-on-Suir,</i>
Telephone No.	[REDACTED]
E-mail	[REDACTED]

2. Agent's (if any) address:

Agent	<i>Muir Mulgarry</i>
Address	<i>15 May Street, Clonmel, Co Tipperary</i>
Telephone No.	[REDACTED]
E-mail	[REDACTED]

Please advise where all correspondence in relation to this application is to be sent;

Applicant [] Agent []

TIPPERARY CO. COUNCIL
RECEIVED
30 SEP 2024
PLANNING SECTION
FILE NO.

3. Location of Proposed Development:

Postal Address or Townland or Location (as may best identify the land or structure in question)	<i>Ballycloona, Carrick-on-Suir, Co Tipperary E32 HK13</i>
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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.)

THE USE OF THE ACCESS TO THE
COTTAGE IS NOT DEVELOPMENT
AND IS EXEMPT DEVELOPMENT
SEE ATTACHED REPORT.
Proposed floor area of proposed works/uses: <u>NA</u> 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
	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) Walter Power

Date: 24-9-04.

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.

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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**

OR

**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

DATE STAMP

Fee Recd. € _____

Receipt No _____

Date _____

Receipted by _____

Section 5 – That the use of the existing entrance at Ballynacloona, Carrick-on-Suir, Co. Tipperary, E32 HK13 is exempt development.

Introduction

I have been instructed by Walter Power of Mangan, Ninemilehouse, Carrick-on-Suir to prepare and submit a Section 5 on his behalf.

This application for a section 5 stems from a warning letter issued by Tipperary County Council under reference number TUD-23-013 to Walter Power and the subsequent meeting held with the representative of the Planning Authority on 8th of May 2023.

Arising from this meeting the biggest issue that the Planning Authority have is their view that the use of the existing entrance serving the cottage has been abandoned and that therefore the use of this entrance would be treated as if it were a new access onto a regional road which would not be looked on favourably from a planning perspective.

Hence please find attached this application for a Section 5 for the use of the access.

Background

Walter power purchased the property in 2006 with the sole intention of 'doing up the property' for one of his children or renting it out. The property is contained wholly within Folio TY54843F & TY54887f (total area =0.49 hectares) and doesn't form part of any other holding.

The previous owner was Patrick Maher Dec'd, who was living in the property up to the point of purchase. The house is a pre-1963 property with no planning history.

There were title issues to such an extent that the property wasn't fully registered until 2008.

Walter put a charge against the property in 2011 with ACC bank.

Walter registered the septic tank for the house in 2013.

Walter erected a chainlink fence to block the entrance at some time in 2009. The purpose of this being to prevent illegal dumping at the site.

He was unable to finance the renovations of the cottage at that time due to the financial turndown, but this in no way should be construed as abandoning the property. Walter constantly attended the property to keep it safe and had horses on the land at a number of occasions.

Abandonment

Abandonment is not defined in either the Planning and Development Act or the Regulations. The publication, 'Environmental and Planning Law' by Yvonne Scannell in 1995, suggests four tests for the definition of abandonment in Ireland, which are:

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a) the owners intention, b) the period of discontinuance, c) any intervening uses and d) the physical condition.

As one can see from the preceding paragraphs the use of the cottage use has not been abandoned because the intention of the owner has always been to refurbish the property. A number of actions during the period from when he purchased it to the current date, all indicate the owners' clear intention was never to abandon the use of the cottage and thus the same applies to the entrance.

The cottage was last occupied in 2006 and was purchased with the sole intention of doing it up. Therefore, the use of the entrance for domestic purposes has not been abandoned. The construction of a chainlink fence was a temporary measure to protect the property until such time as Walter was in a position to finance the refurbishment.

The period of discontinuance of the use of the entrance was from circa 2010 to 2023. This was necessary to protect the property and in no way should be construed as an abandonment of use.

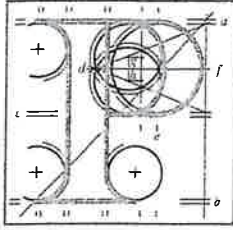
There have been no intervening uses or any changes to the physical appearance of the property.

Furthermore, the use of the entrance as a domestic entrance serving a house, comes within the scope of Section 4(1)(j) of the Planning & Development Act 2001, which states 'development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such'.

Conclusion.

The erection of a chainlink fence does not render the use of the entrance abandoned. The use of the entrance is not development and is exempt development.

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An
Bord
Pleanála

Board Order
ABP-317633-23

Planning and Development Acts 2000 to 2022

Planning Authority: Tipperary County Council

Planning Register Reference Number: S5/23/58

WHEREAS a question has arisen as to whether the use of the access to the cottage at Ballycloona, Carrick on Suir, County Tipperary is or is not development or is or is not exempted development:

AND WHEREAS Walter Power care of Will McGarry and Associates Consulting Engineers of 15 Mary Street, Clonmel, County Tipperary requested a declaration on this question from Tipperary County Council and the Council issued a declaration on the 6th day of July, 2023 stating that the works, the re-activation of the use of the existing entrance to a former residential dwelling at Ballycloona, Carrick on Suir, County Tipperary was development and was not exempted development:

AND WHEREAS Walter Power referred this declaration for review to An Bord Pleanála, on the 24th day of July, 2023:

AND WHEREAS the Board reformulated the question as follows.

Whether the formation of a vehicle access serving a dwelling house at Ballycloona, Carrick on Suir, County Tipperary is or is not development or is or is not exempted development

AND WHEREAS An Bord Pleanála, 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) Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the submissions on file, and
- (f) the report of the Planning Inspector.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the formation of a vehicular access involves the carrying out of works and is, therefore, development under section 3 of the Planning and Development Act, 2000, as amended;
- (b) on the basis of the documentation submitted, there is no evidence on file that a previous authorised vehicular access existed and served the existing house and therefore there is no evidence on file that the vehicular access, the subject matter of this referral, is being or has been re-activated;
- (c) the vehicular access directly adjoins and accesses onto the N76 national secondary road. This road has a surfaced carriageway width of more

than four metres. Article 9 of the Planning and Development Regulations, 2001, as amended, restricts the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds four metres in width;

- (d) the formation of a vehicular access, being established as development, does not come within the scope of any other provision for exempted development, as set out in the Planning and Development Act 2000, as amended or the Planning and Development Regulations, 2001, as amended:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the formation and use of a vehicle access serving a dwelling house at Ballycloona, Carrick on Suir, County Tipperary is development and is not exempted development.



Patricia Calleary

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this *23* day of *May* 2024.

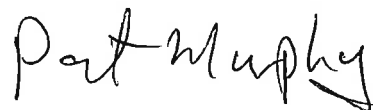
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To whom it concerns

My name is Pat Murphy from Maifield, Garenbeg, South lodge Carrick on suir county Tipperary.

I am writing to state what I know about Walter Powers' house at Ballinacloona at the bottom of Glenbower. My house is less than 2 kilometres north on the same road the N76. I've been a farmer all my life with part of my farm in Ballyneill which meant that I passed by Mrs Martins house (Walter Powers house today) frequently looking after the livestock. I knew Mrs Martin and remember her car parked in the yard beside her house. When I got married in 1974 to Helen my deceased wife, we stayed in the house for a short time while awaiting the completion of our own house. Mrs Martin was away for a while and it suited everyone. We had two cars and parked them in the yard. My deceased father Jimmy was a county councillor and this meant that I was more familiar than most people about council projects in the area. The council had realigned the N76 at the house in the early 1960s and the double timber gate, wall and fence had been erected by the county council.

Signed Pat Murphy

A handwritten signature in black ink that reads "Pat Murphy". The signature is written in a cursive style with a large initial 'P' and a long, sweeping tail on the 'y'.A red, rectangular stamp with the word "SCANNED" in a bold, sans-serif font. The stamp is slightly tilted and has a textured, ink-like appearance.

To whom it concerns

I own the house in Ballinacloona eircode E32hk13 since 2008. I had a contractor clearing the yard beside it in 2008 and when he was entering the yard with an excavator the piers were damaged. Subsequently I erected timber posts and chain link fence to prevent dumping as there had been repeated dumping into the yard. I intend replacing the piers and replacing the gates which were timber with a pair of iron gates.

When I purchased the house to renovate it there was an entrance with 2 piers and double timber gates to the south side. There is also a single pedestrian gate at the north side of the house.

Signed Walter Power.



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To whom it concerns in Tipperary County Council.

My name is Margaret Doyle and I live in Lisadobber, Carrick-on-Suir, Co. Tipperary. I was born in 1952 and I have lived here for most of my life. I remember Mrs. Martin living in Walter Power's house in Ballinacluna. There was a family called Clapson that lived there at one time. Both Mrs. Martin and The Clapsons had cars that they used to park in the yard beside the house. My late husband Billy Doyle did maintenance jobs for Mrs. Martin and he used to enter through the gate at the Clonmel side of the house.

Signed

Margaret Doyle

Margaret Doyle.

14/08/2024

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To whom it concerns2

My name is James StJohn. I am a retired road overseer with Tipperary county council. I live about 1 kilometre from Walter Power's house in Ballinacloona on the side of the N76. There was always a vehicular entrance in at the south side of the house. The road was realigned during the 1960s.

Signed James StJohn

James St. John

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To whom it concerns

My name is Thomas McCarthy of Grangemockler Carrick on suir county Tipperary. I'm a retired Garda since 2003. I served in Grangemockler and Carrick on suir from 1984 to 2003.

The purpose of this letter is to state what I know about Walter Powers house in Ballinacloona. It was the Garda station for the area for almost two years before the Garda station opened in Grangemockler in 1962. I often called to the lady Mrs Martin who used to live there. She was getting on in years but used to often reminisce about her "little car". I thought that she was dreaming but many neighbours of hers were able to tell me that she indeed did have a Morris Minor. There was always an entrance into the yard beside her house. I remember this entrance in recent times with a low double gate about 9 foot wide.

Signed Thomas McCarthy.

Thomas F. McCarthy R.I. Garda

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To Tipperary County Council

My name is Jimmy Cooney

I have lived in Ardbane up the road from Glenbower all my life. I was born in 1938. I ran the post office in South Lodge from 1971 to 2003 which is less than a mile up the road from the house that Walter Power owns today in Ballinacloona.

I know Walter Powers house in Ballinacloona all my life. I remember Mrs Martin living there. She had a motor car. Before that the house was lived in by a Clapson family from Czechoslovakia who also had a car. The house was the local Garda station for 18 months in the early sixties before the Gardaí moved to the newly built station in Grangemockler. The house was also lived in by a family of Tobins in the 1940s and by a family of Lyons before Mrs Martin.

I remember the entrance into the yard at the south side of the house. There was an outbuilding a few yards south of the dwelling house. A gate used to swing into the yard from this out building.

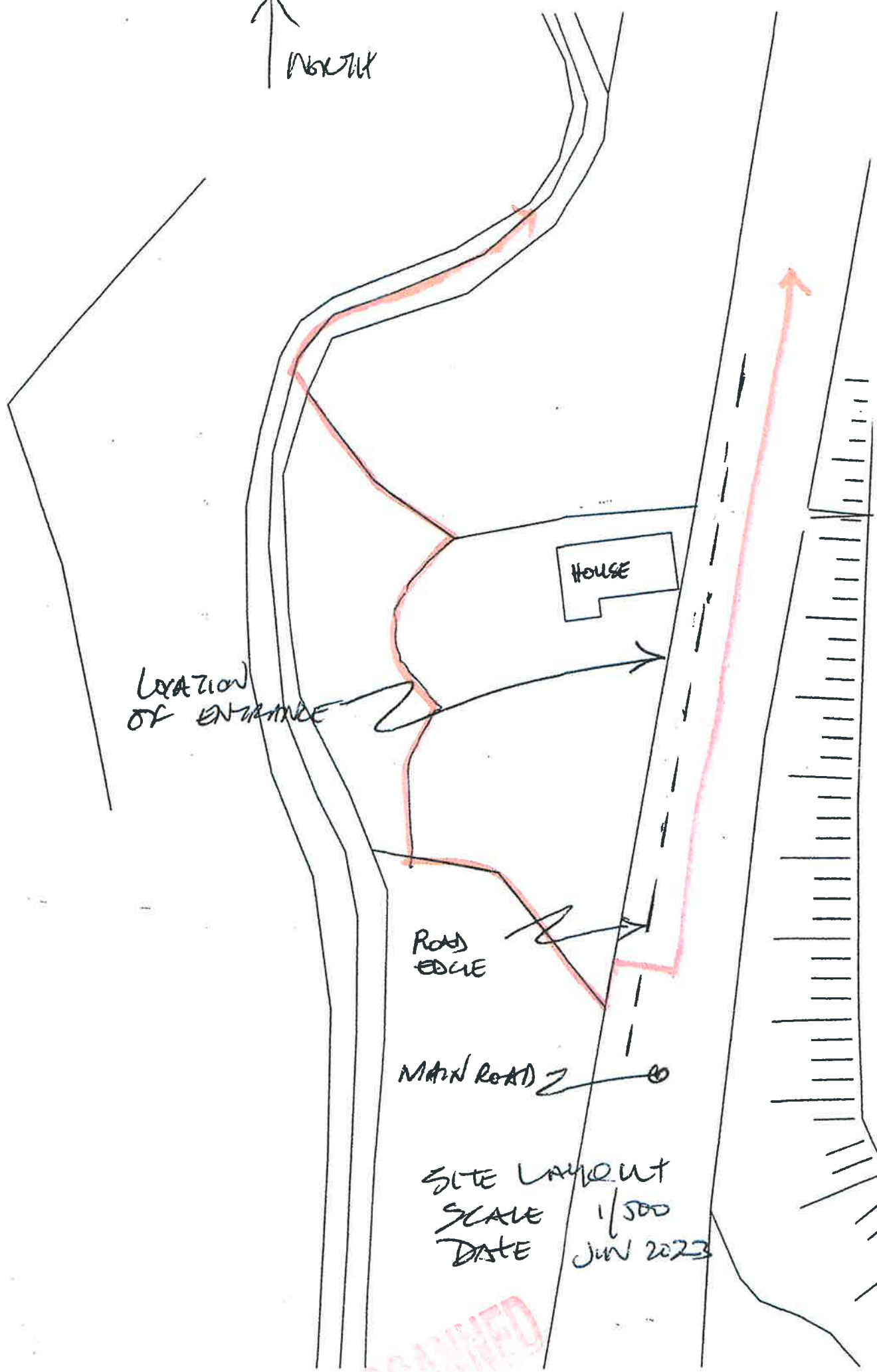
Around 1960 Tipperary County Council realigned the road in Glenbower. This included demolishing the outbuilding and building a new entrance with double gates into Mrs Martin's yard. A new wall was built between the entrance and the house. There was an abutment built along the base of the gable end of the dwelling house that faces the road. The hedgerow coming north from the house was removed and replaced with a chain link fence. All of this work was performed by South Tipperary County Council.

Signed James Cooney

James Cooney, Retired Post Master
South Lodge, P.O.
12/8/2024

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↑ NORTH



LOCATION OF ENTRANCE

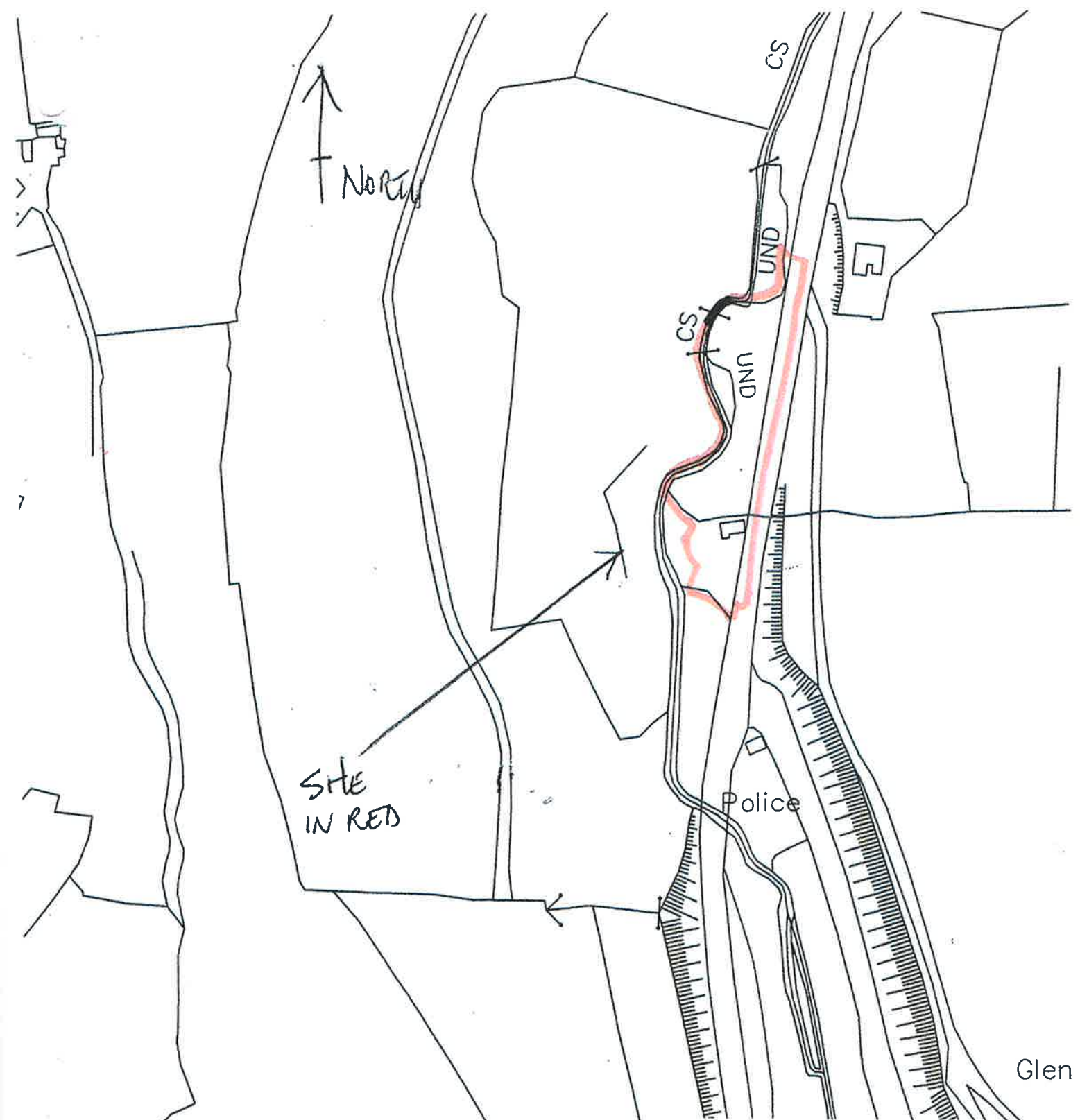
HOUSE

ROAD EDGE

MAIN ROAD 2

SITE LAYOUT
SCALE 1/500
DATE JUN 2023

SCANNED



SITE
IN RED

↑ NORTH

CS

UND

Police

Glen

SITE LOCATION MAP

SCALE 1/2500

OS REF: 5312

DATE : JUNE 2023

Prep: BY: W MCGARRY
15 MARY ST
CLONMEL

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Declaration on Exempted Development under Section 5 of the Planning and Development Act 2000

Declaration Reference No.: S5/24/109

Query: Whether the use of an access to an existing cottage is development and if so, does it constitute exempted development.

Location: Ballycloona, Carrick on Suir, Co. Tipperary

Querist: Will McGarry

Owner/Occupier: Walter Power

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Figure 1 Planning history.....*Error! Bookmark not defined.*

1 Introduction

1.1 Query

- 1.1.1 A question has arisen, on the 30th of September 2024, pursuant to Section 5 of the Planning and Development Act 2000 (as amended) as to whether or not the use of an access onto the N76 at Ballycloona, Carrick on Suir, Co. Tipperary is development and if so, if it constitutes exempted development

2 Site Location and History

2.1 Site location

- 2.1.1 The subject site at Ballycloona, Carrick on Suir, Co. Tipperary is located approximately 8.2 km to the north east of the village of Kilsheelan. The site is adjacent to the N-76 (National Road). On site, there is an existing cottage that is currently being restored. The access onto the N-76 has been reopened. As well as being a national road, this is a designated Strategic Road as defined in the Tipperary County Development Plan 2022.

2.2 Planning History

- 2.2.1 There is no record of a valid planning application on site. There is a current enforcement file, TUD-23-013, open in respect of the renovation of the cottage and the use of the entrance on site.
- 2.2.2 A previous Section 5 Declaration was issued in respect of the works queried under this declaration (S5/23/58). Tipperary County Council deemed the works not to be exempted development. This decision was appealed to An Bord Pleanala (ABP-317633-23) who also deemed the works not to be exempted development. The decision by An Bord Pleanala was based on the determination by ABP that there was no entrance in situ originally and the proposal was for the creation of a new entrance rather than the reactivation of the use of an existing entrance.

3 Legislative Context

3.1 Planning and Development Act 2000 (as amended)

- 3.1.1 According to **Section 2(1) of the Planning and Development Act (as amended)**, the definition of “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.
- 3.1.2 According to **Section 3(1) of the Planning and Development Act (as amended)**, “development” means, save where the context otherwise requires, the carrying out of works on, in or under land or the making of any material change in the use of any structures or other land.
- 3.1.3 **Section 4** of the same Act lists works that would be considered exempted development. Section 4 also conveys power on the Minister to make regulations to provide for any class of development to be exempted development for the purposes of the Act

3.2 Planning and Development Regulations 2001 (as amended)

- 3.2.1 **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 opposite the mention of that class in said Column 1.
- 3.2.2 Of particular relevance to this case is Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended. Class 5 of said Schedule considers 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. The following conditions should be noted;
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 block with a 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 structures shall be metal palisade or security fencing.
- 3.2.3 **Article 9** of said Regulations lists a series of restrictions on exemptions. Of particular note are the provisions of Articles 9 (1)(a) (ii and iii), which relates to the creation of access points onto a public road and Article 9(1)(a)(viiiB) which exempts developments that require an appropriate assessment because it would likely have an effect on the integrity of a European designated site.

4 Assessment

4.1 Works Proposed

- 4.1.1 For the purpose of this Declaration, the question, to which the query relates, is,
- Does the reactivation of the use of an access to an existing cottage, at Ballycloona, Carrick on Suir, Co. Tipperary, constitute development and if so, does it constitute exempted development.
- 4.1.2 At this point, it is worth noting that that applicant has submitted letters from six locals (including the querist) attesting to the fact that the cottage on site was served by a vehicular entrance. This is in response to the determination by An Bord Pleanala, which as set out above, questioned if the cottage on site was served by a vehicular entrance in the first instance. The querist has argued that since it has been demonstrated that the entrance was in place, its reuse is exempted development.
- 4.1.3 Essentially, this declaration asks the same question posed under S5/23/58. A declaration is not however a planning application. The reference to a refusal reason, set out in the accompanying cover letter, is somewhat misleading. The purpose of the declaration is to simply give, in the opinion of the Planning, an answer to whether or not works specified in the declaration application constitute development and if so, do they constitute exempted development as defined in planning legislation.

4.2 Is it development?

4.2.1 As was clearly set out in the planning report on the previous declaration, when considering the question of development, the condition of the subject site and the issue of non use are important issues.

4.2.2 A review of Google Streetview shows the site since 2009.

Figure 1 Google Streetview April 2009



Figure 2 Google Streetview September 2011



Figure 3 Google Streetview June 2017



Figure 4 Google Streetview August 2019



- 4.2.3 As illustrated above, the dwelling on site was in a poor state of repair in 2009. By 2011, the entrance had been closed and by 2019, the site was overgrown.
- 4.2.4 At a point in early 2023, the entrance was reopened and works commenced on restoring the dwelling on site.

Figure 5 Renovated dwelling and opened entrance



- 4.2.5 This Declaration relates to the reactivation of the use of the original entrance which serve a residential property on site. It is noted that the querist has not sought a declaration as to whether the restoration of the house on site constitutes development.
- 4.2.6 As with the previous declaration, the central question in respect of this declaration is that of abandonment. Should it be determined that the residential use of the structure on site was abandoned, it follows that the use of the access to facilitate entry to the site was also abandoned. The reactivation of its use would therefore constitute a material change in the use of the land.
- 4.2.7 In this case, it has been put forward by the querist that
- the subject site was purchased by the owner in 2006 with the stated intent of doing up the property for one of his children or renting it out
 - the previous owner was residing in the house up until 2006.
 - In 2009, the entrance was closed with a chain link fence, in order to prevent illegal dumping.
 - The restoration process did not commence due to the financial downturn in the global economy c 2009.
 - The septic tank was registered in 2013.

- The period of the discontinuance of the use of the site should not be considered as an abandonment of use.

4.2.8 Based on case law some suggested tests of abandonment relevant to this issue are referred to in 'Environmental and Planning Law in Ireland' (Yvonne Scannell, 1995) i.e:

- The intention of the owner and/or occupier to abandon or not abandon.
- The period during which the use was discontinued. The longer the period the more likely the use is to be abandoned.
- Whether or not there have been any intervening issues.
- The physical condition of the land or structure.

4.2.9 When considering the tests set out by Scannell above, it is necessary to have regard to the factual issue on site in particular as they relate to the length of time the subject site has not been in residential use and the length of time the entrance has not been in use. It is clear from the details submitted that the last time the site was occupied was 2006. The entrance itself was closed in 2009. With respect to intention, it is not sufficient for the owner to simply not have an intention to abandon the use on site when it is clear that neither the structure nor entrance on site has not been in use for some time.

4.2.10 The site has not been used for its original purpose since 2009, when the gates were, in essence closed. While it is acknowledged that there has been no intervening use of the site, having regard to the condition of both the entrance and the dwelling on site, it is reasonable for the Planning Authority to determine, notwithstanding the assertions made by the querist, that the use of the site had been abandoned.

4.2.11 In the case of Dublin County Council –v- Tallaght Block Company, it was found that a use of land can be abandoned and that a change of use will occur when an abandoned use is recommenced. In his judgement Hederman J. stated as follows; “where a previous use of land has not merely been suspended for a temporary and determined period, but has ceased for a considerable period of time, with no evidenced intention of resuming it at any particular time the tribunal of fact was entitled to find that the previous use had been abandoned so that the resumption constituted a material change of use”.

4.2.12 Having regard therefore to the length of time of non use, the physical condition of the entrance prior to its reopening in 2023 and to the considerations set out above, the re-activation of the use of an entrance as a means of accessing a residential site, upon which the residential use has been abandoned, constitutes development.

4.3 Is it exempted development?

4.3.1 Article 10 of the Planning and Development Regulations expressly provides that a development once abandoned cannot benefit from exempted development. Therefore the previous residential use on site cannot be relied upon so as to re-activate/resume the use of the entrance.

- 4.3.2 As such, the use of the entrance must be assessed de novo. The provision of Class 5 of Schedule 2 Part 1 of the planning and Development Regulations 2001, as amended are noted. Given that it has been concluded that the residential use on site has been abandoned, this exemption does not apply as it relates to works within or bounding the curtilage of a house. No details in respect of the form of the gate were provided.
- 4.3.3 The provisions of Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended are noted. As per this provision, the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway is exempted development subject to the height of any such structure not exceeding two metres. No details of the revised entrance gate were provided.
- 4.3.4 Notwithstanding, the restrictions on exempted development as set out in Articles 9 (1)(a) (ii and iii) are noted. Given that the works would result in the creation on an entrance onto a road in excess of 4 metres in width, the creation of an entrance at this point cannot be considered as exempted development.

4.4 A note on the submissions received

- 4.4.1 The correspondence submitted by the querist is noted. Each of the letters provided attest to the fact that there was an entrance in situ serving the dwelling on site. As stated above, these submissions were provided to address the Direction issued by An Bord Pleanála, which questioned if an entrance was ever in place at this location.
- 4.4.2 It is important to note that the question of whether or not an entrance existed at this location was not raised by Tipperary County Council in its assessment. As noted above, Tipperary County Council remains of the opinion that the residential use on site was abandoned. As such, the reactivation of the residential use on site and the use of an entrance constitutes a material change in the use of the land, for which there is no exemption.

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

- 4.5.1 The subject site is located c. 2.6 kilometres from the Lower River Suir SAC, 14.6 kms from the River Barrow River Nore SAC, and 14.9 kms Comeragh Mountains SAC.
- 4.5.2 The proposed development is located in a rural area and comprises of the re-use of entrance serving an abandoned dwelling.
- 4.5.3 Having regard to:
- the small scale nature of the development,
 - the location of the development relevant to the closest European site (lower River Suir,
 - The intervening land uses between the subject site and the SAC and
 - the consequent absence of a direct pathway to these European sites,

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.

- 4.5.4 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 attached.

5 Conclusion

5.1 Query

- 5.1.1 A question has arisen as to whether the use of an access to an existing cottage, at Ballycloona, Carrick on Suir, Co. Tipperary, constitute development and if so, does it constitute exempted development.
- 5.1.2 Part 5 of the Planning and Development Act 2000 (as amended) requires a Planning Authority to make a declaration on any question that arises as to what is or is not development. In determining this query, the Planning Authority had regard to;
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
 - Articles 6 and 9 of the Planning and Development Regulations 2001, as amended and,
 - Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and
 - the nature and scale of the proposed use, as outlined in submissions on file by the owner/occupier and

5.2 Conclusions

- 5.2.1 Having considered the information received, the Planning Authority has concluded that the existing residential use on site has been abandoned. Therefore, the previous residential use on site cannot be relied upon so as to re-activate/resume the use of the entrance to serve that property in the absence of a further grant of permission.
- 5.2.2 The reuse of the entrance therefore must be considered de novo.
- 5.2.3 As the residential use of the site has been abandoned, the provisions of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 are applicable.
- 5.2.4 The restrictions on exempted development as set out under Article 9 (1)(a)(ii) apply as the entrances onto a public road the surfaced carriageway of which exceeds 4 metres in width.

5.3 Determination

- 5.2.1 Having considered the information received, the Planning Authority has determined that the works, the re activation of the use of the existing entrance to a former residential dwelling at Ballycloona, Carrick on Suir, Co. Tipperary, constitute development and are **not exempted development**.

Signed: *Paul Killeen*
Paul Killeen
District planner

Date: 23/10/24

Signed: *C. Conway*
Senior Executive Planner

Date: 23.10.2024

EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/2324/109
Development Summary:	Reactivation of the use of an 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 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

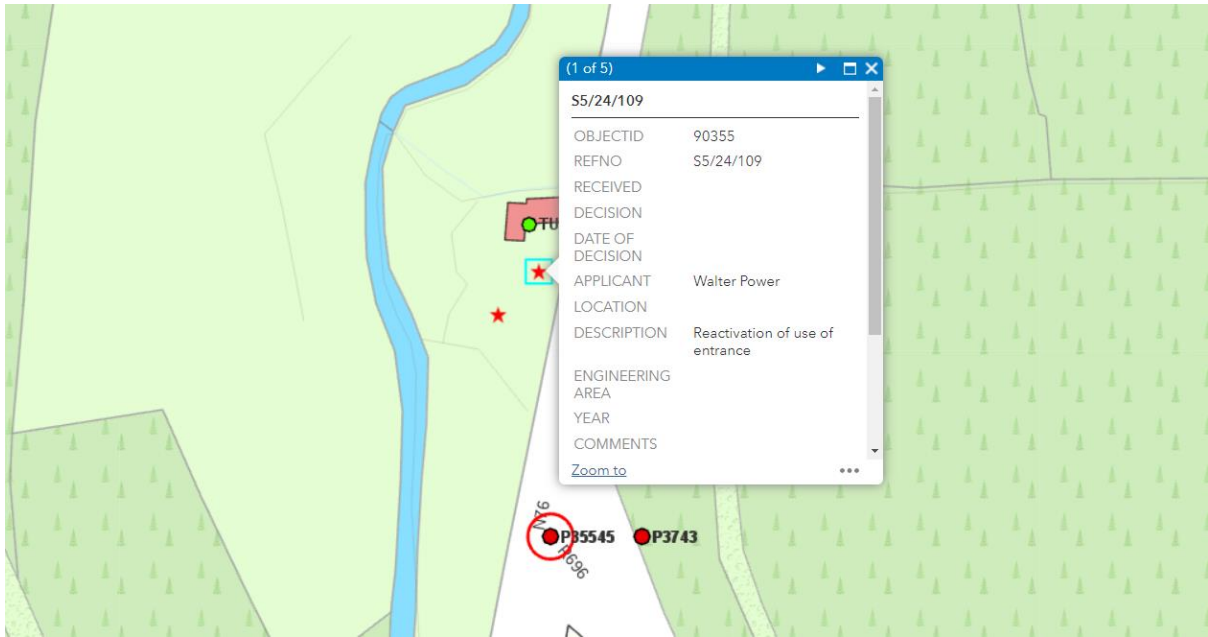


Figure 6 Site entered on Planning Register



Comhairle Contae Thiobraid Árann
Tipperary County Council

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

Tipperary County Council,
Civic Offices, Clonmel,
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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tipperarycoco.ie

Date: 23rd October, 2024

Our Ref: S5/24/109

Civic Offices, Nenagh

Walter Power
C/O Will McGarry & Associates
15 Mary Street
Clonmel
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 30th September, 2024, in relation to the following proposed works:

Whether the use of an access to an existing cottage is development and if so, does it constitute exempted development at Ballycloona, Carrick on Suir, 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) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended and,
- c) Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- d) the nature and scale of the proposed use, as outlined in submissions on file by the owner/occupier and

Conclusions

Having considered the information received, the Planning Authority has concluded that the existing residential use on site has been abandoned. Therefore, the previous residential use on site cannot be relied upon so as to re-activate/resume the use of the entrance to serve that property in the absence of a further grant of permission.

The reuse of the entrance therefore must be considered de novo.

As the residential use of the site has been abandoned, the provisions of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 are applicable.

The restrictions on exempted development as set out under Article 9 (1)(a)(ii) apply as the entrances onto a public road the surfaced carriageway of which exceeds 4 metres in width.

Determination

Having considered the information received, the Planning Authority has determined that the works, the re activation of the use of the existing entrance to a former residential dwelling at Ballycloona, Carrick on Suir, Co. Tipperary, constitute development and are **not exempted development**.

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**

Original

TIPPERARY COUNTY COUNCIL

DELEGATED EMPLOYEE'S ORDER

File Ref: **S5/24/109** **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 Walter Power, c/o Will McGarry & Associates, 15 Mary Street, Clonmel, Co. Tipperary, re: Whether the use of an access to an existing cottage at Ballycloona, Carrick on Suir, Co. Tipperary is development and is Not exempted development.

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

- a) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended and,
- c) Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- d) the nature and scale of the proposed use, as outlined in submissions on file by the owner/occupier and

Having considered the information received, the Planning Authority has determined that the works, the re activation of the use of the existing entrance to a former residential dwelling at Ballycloona, Carrick on Suir, Co. Tipperary, constitute development and are **not exempted development**.

Signed:



Sharon Kennedy

Director of Services

Planning and Development (including Town Centre First),

Emergency Services and Emergency Planning and

Tipperary/Cahir/Cashel Municipal District

Date: 23/10/2024