



TIPPERARY CO. COUNCIL  
RECEIVED  
19 DEC 2024  
PLANNING SECTION  
FILE NO. ....

PLANNING & DEVELOPMENT ACT, 2000 (as amended)

Application for a Section 5 Declaration  
Development / Exempted Development

1. Applicant's address/contact details:

Applicant	Paddy O'Donnell	
Address	Ballyboe, Kilsheelan, E91 Vx73	
Telephone No.	[REDACTED]	
E-mail	[REDACTED]	

2. Agent's (if any) address:

Agent	Wm McGarry	
Address	15 Mary St Clonmel, Co Tipp	
Telephone No.	[REDACTED]	
E-mail	[REDACTED]	
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)	Ballyboe Lodge Ballypatrick, Clonmel E91 V868
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Receipt No 188138  
Issued 19 12 2024  
€80.00 Cheque

Tipperary County Council  
RECEIVED  
19 DEC 2024  
CASH OFFICE  
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 EXTENSION TO THE
REAR AND MINOR MODIFICATIONS
TO EXISTING LODGE ARE EXEMPTED
DEVELOPMENT.
Proposed floor area of proposed works/uses: 18 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	B. Occupier <input checked="" type="checkbox"/>
	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: Patrick O'Donnell Address: Ballyboe, Kilshoelen.	

Signature of Applicant(s) 

Date: 18.12.24

**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
  - 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](mailto:planning@tipperarycoco.ie)**

**FOR OFFICE USE ONLY**

**DATE STAMP**

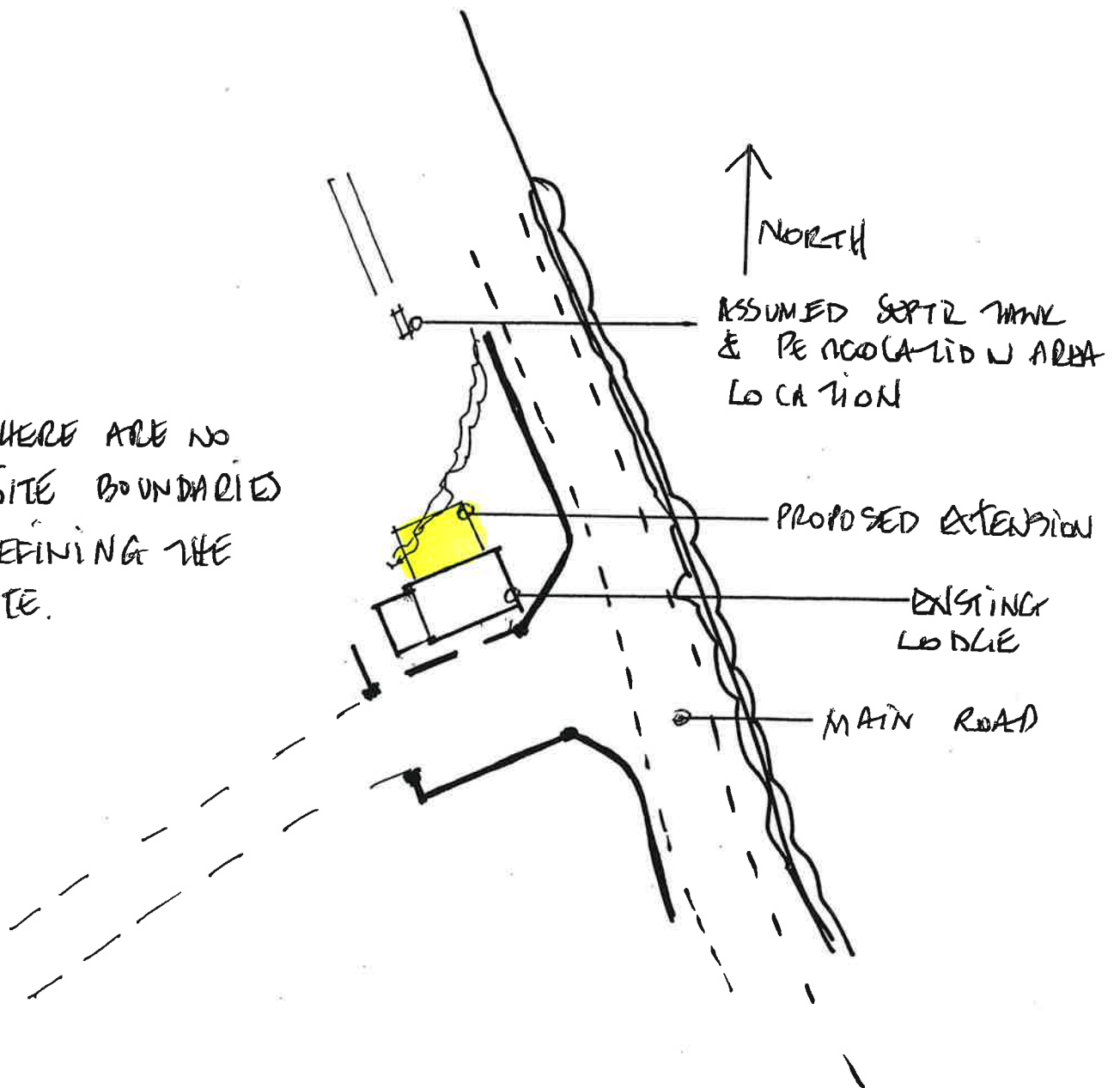
**Fee Recd. €** \_\_\_\_\_

Receipt No \_\_\_\_\_

Date \_\_\_\_\_

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

THERE ARE NO  
SITE BOUNDARIES  
DEFINING THE  
SITE.



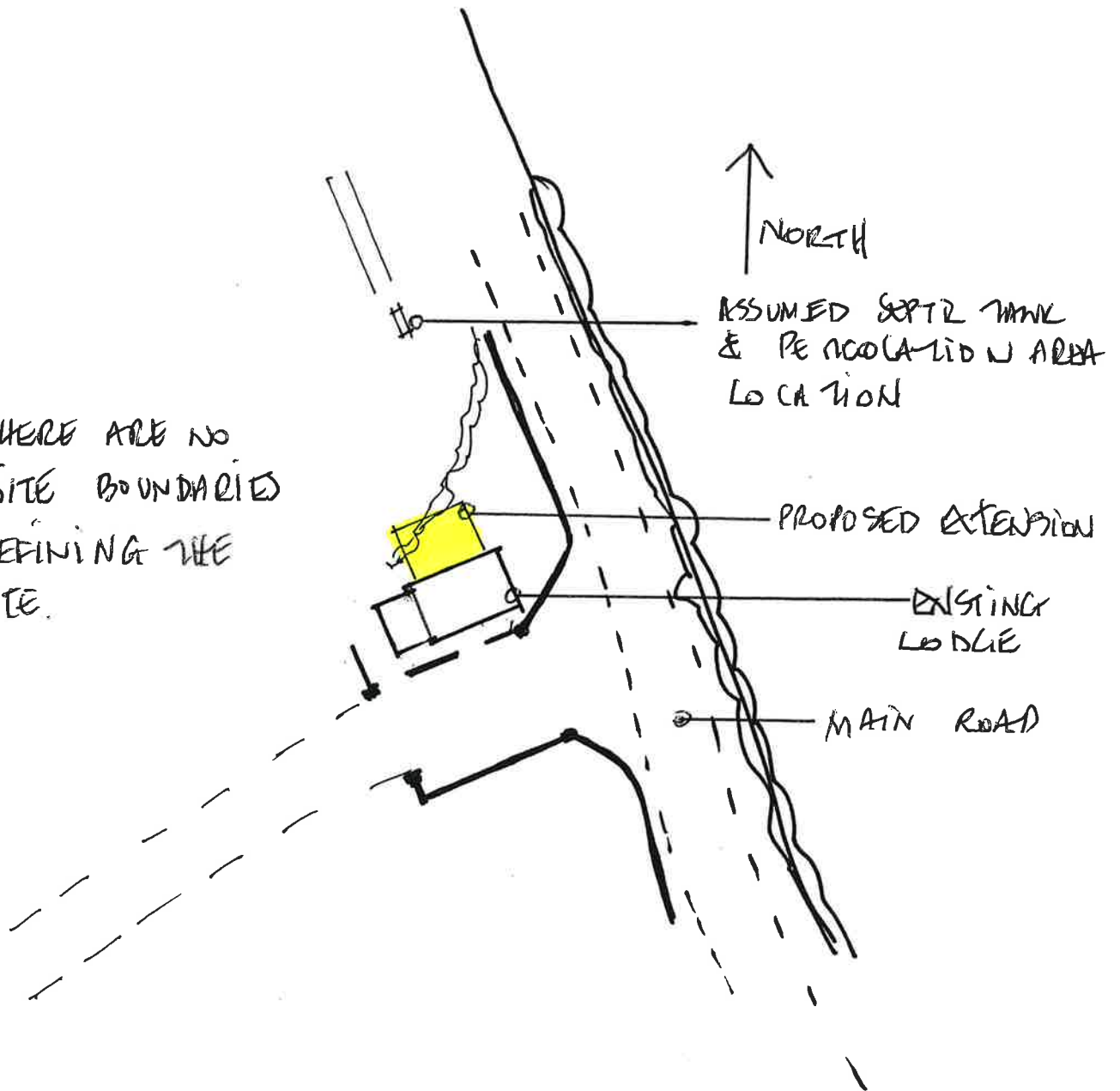
BALLYBOE LODGE

BALLYBOE

SITE LAYOUT 1/500

DATE DEC 2024

THERE ARE NO  
SITE BOUNDARIES  
DEFINING THE  
SITE.

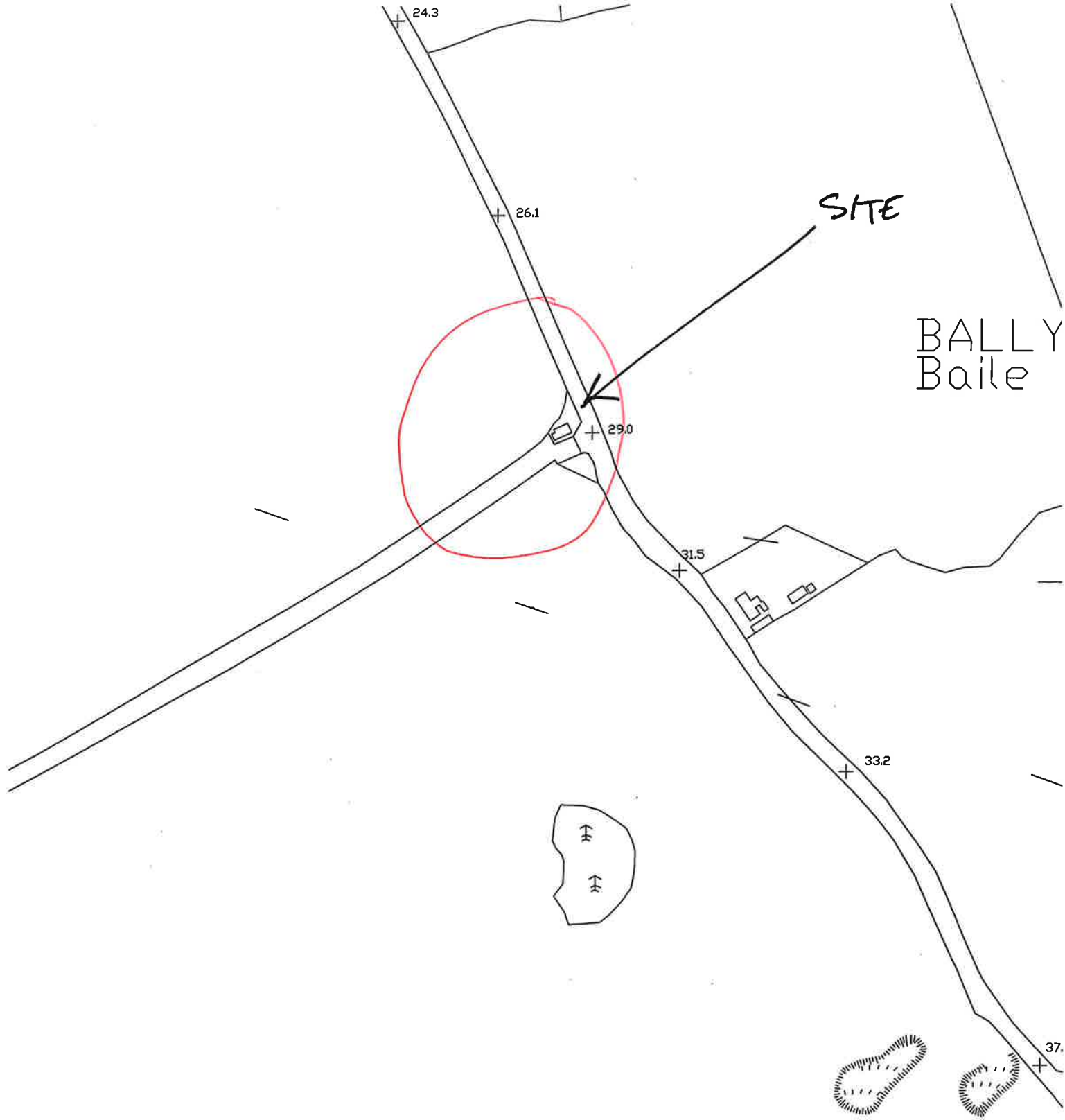


BALLYBOE CO DUNE

BALLYBOE

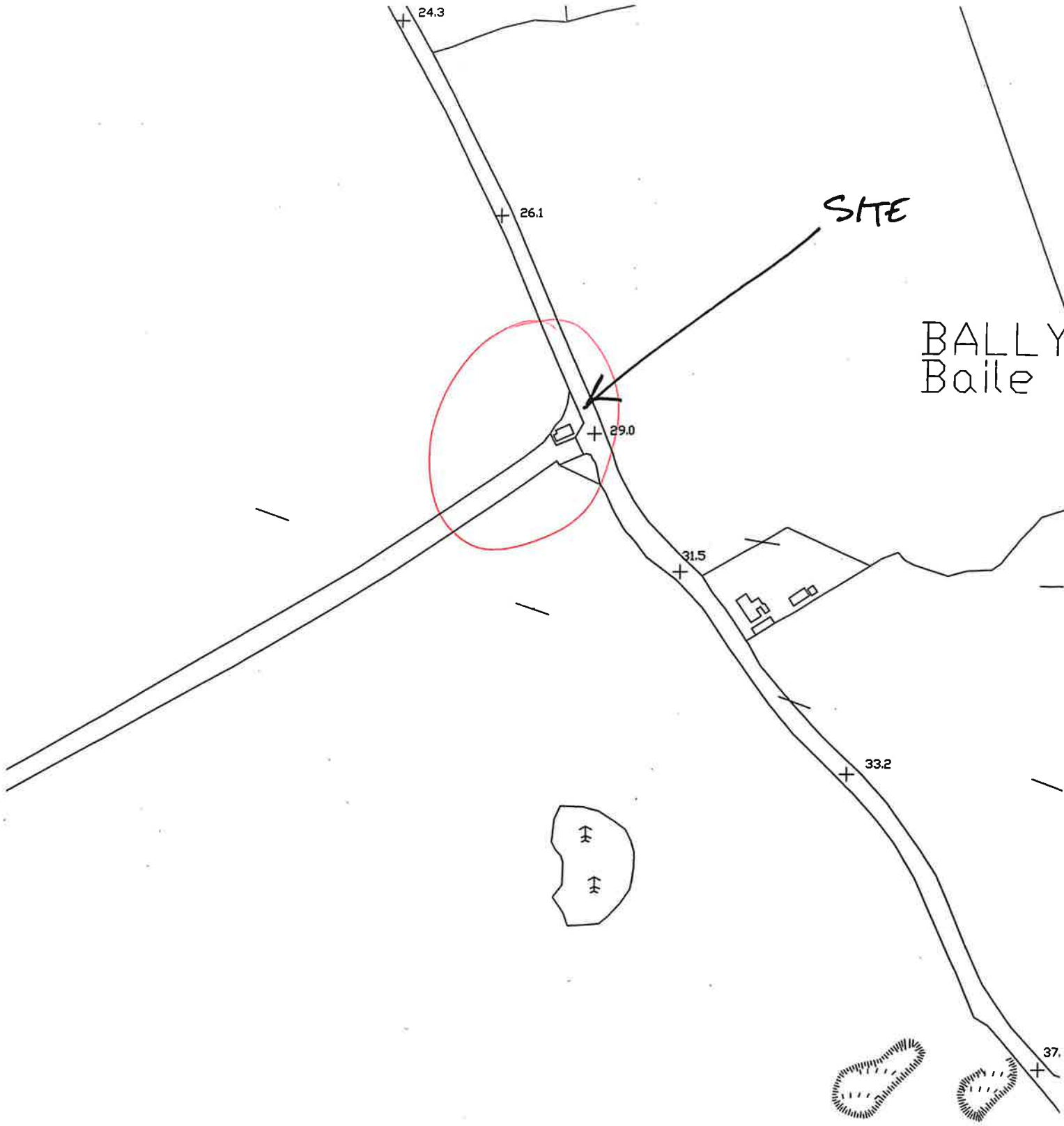
SITE LAYOUT 1:500

DATE DEC 2024



SITE LOCATION MAP  
SCALE 1/2500  
OS REF 5370-B

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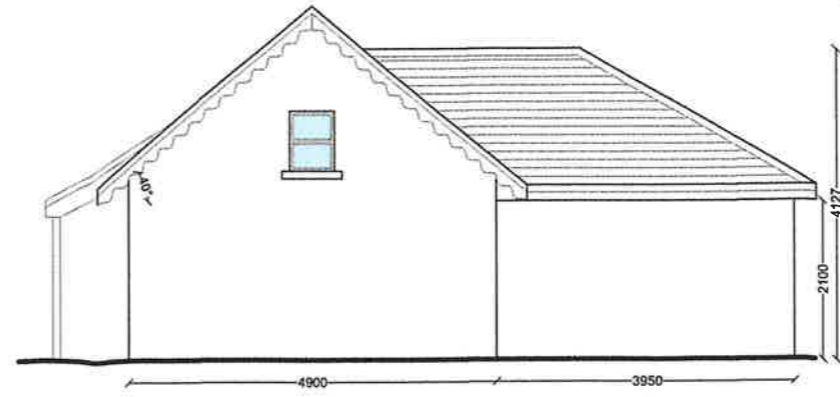


SITE LOCATION MAP  
SCALE 1/2500  
OS REF 5370-B

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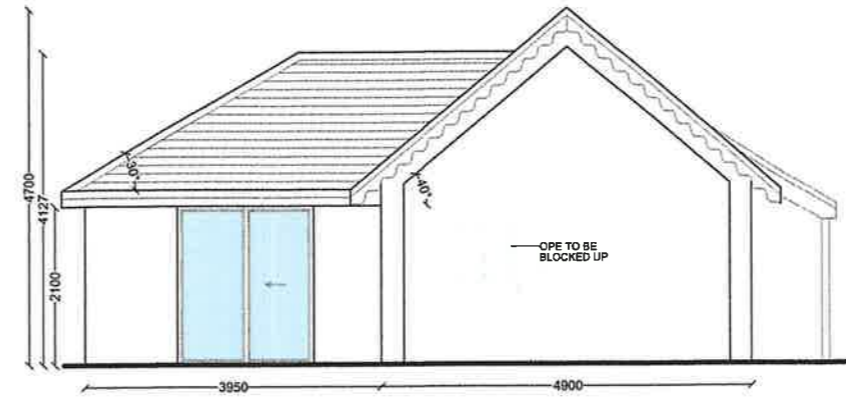
**FRONT ELEVATION**



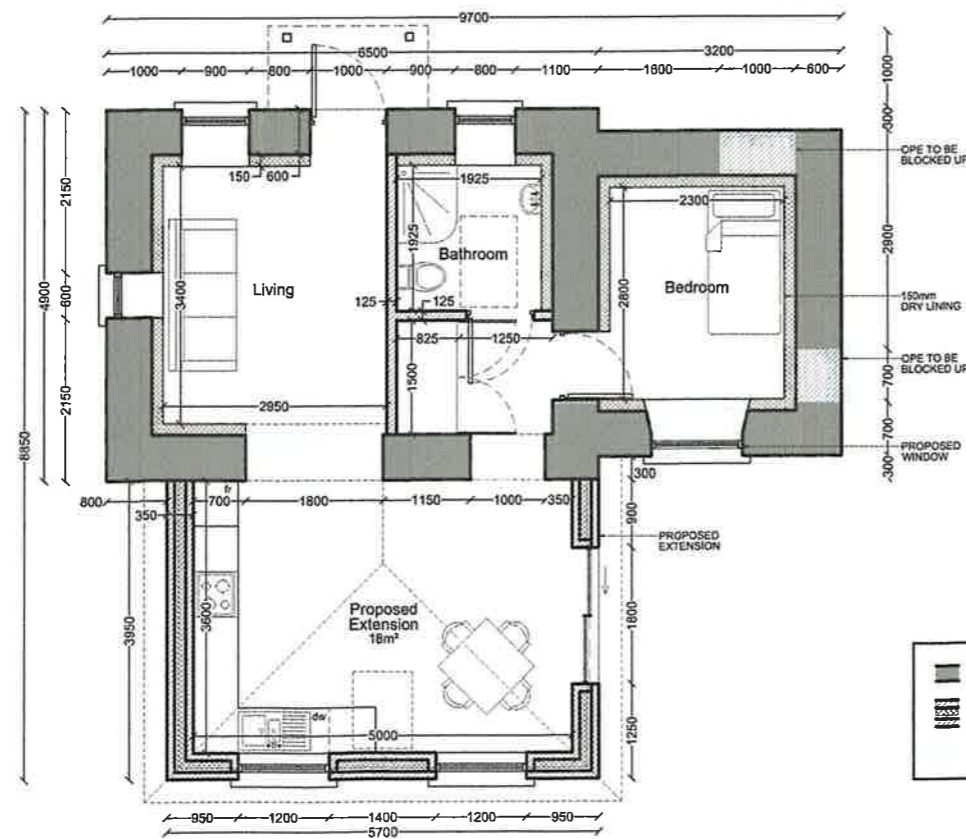
**SIDE ELEVATION**



**REAR ELEVATION**

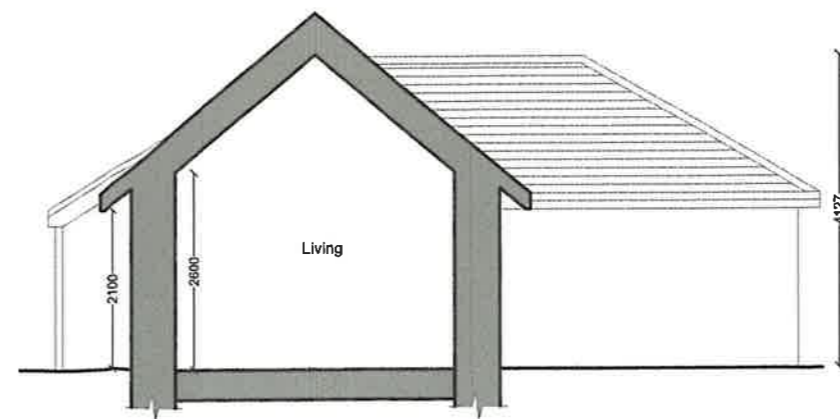


**SIDE ELEVATION**



**PROPOSED FLOOR PLAN**

Existing Area: 27.6m<sup>2</sup>  
Proposed Extension Area: 18m<sup>2</sup>



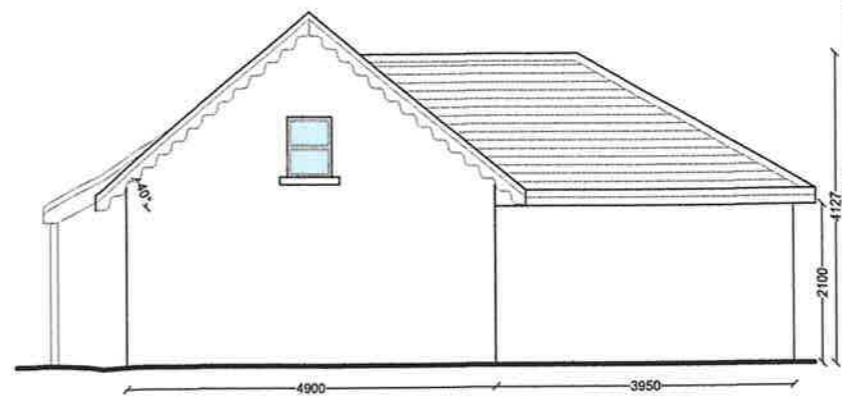
**SECTION**

REV	DESCRIPTION	DATE
<b>WILL MC GARRY &amp; ASSOCIATES ENGINEERS</b> 15 MARY STREET, CLONMEL. PHONE : 052 6181828 MOBILE : 086 2737455 EMAIL : info@wmaae.ie		
CLIENT		Paddy O'Donnell
JOB		Section 5 Application
TITLE		Cottage at Ballyboe
SCALE:	1:100(A3)	DRAWN: ak
DATE:	Dec 16 2024	CHECKED: W. mcG.
DWG NO.:	PD-102	FILE NO.:

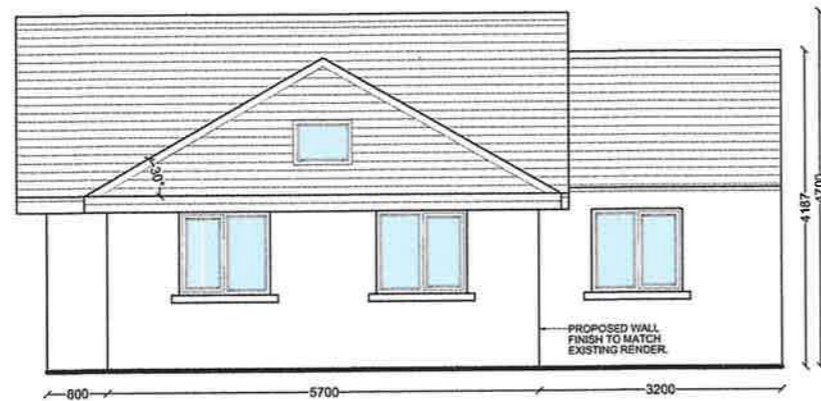




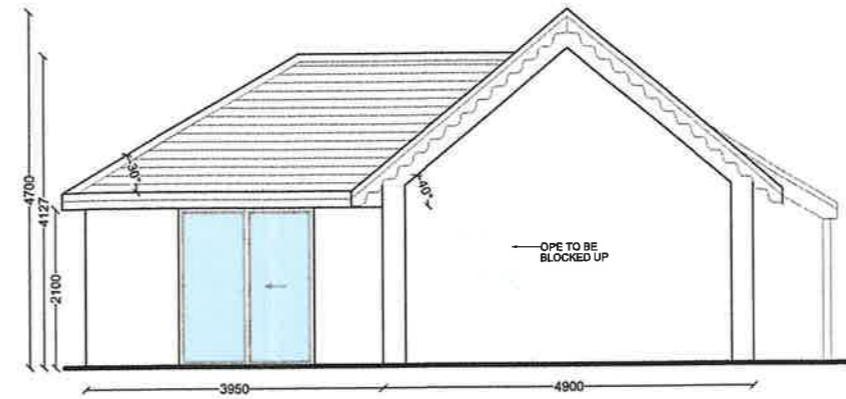
**FRONT ELEVATION**



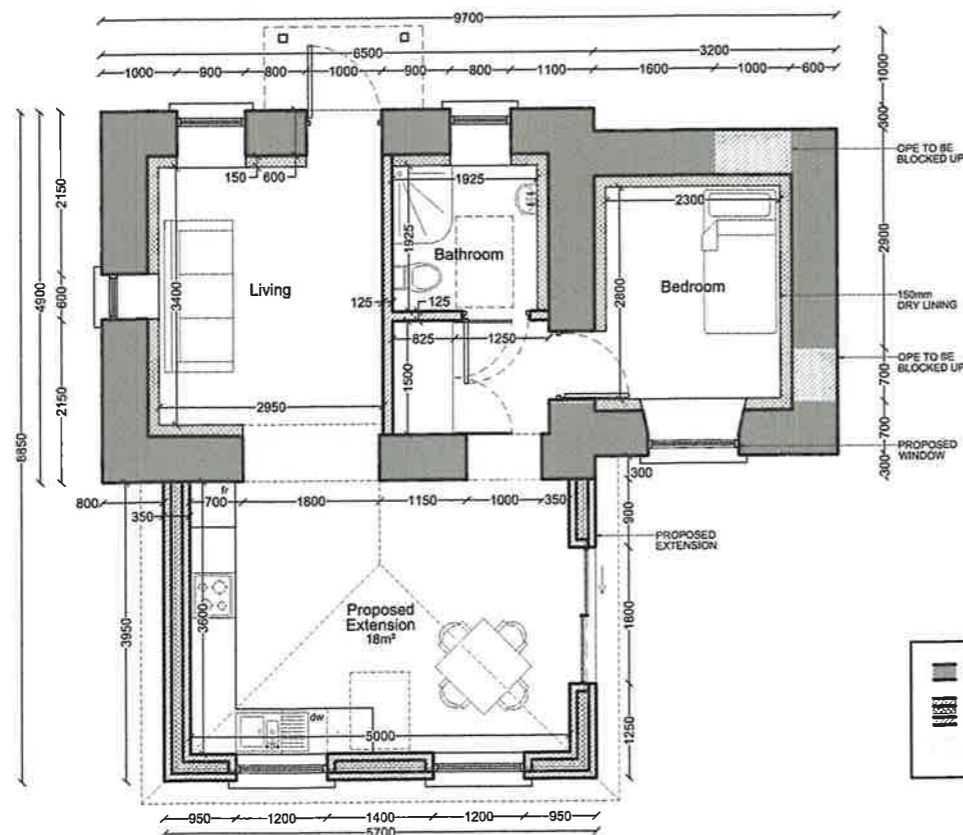
**SIDE ELEVATION**



**REAR ELEVATION**

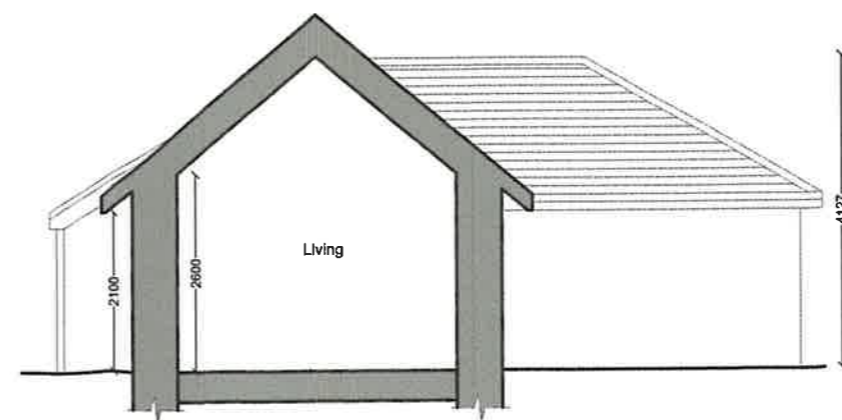


**SIDE ELEVATION**



**PROPOSED FLOOR PLAN**

Existing Area: 27.6m<sup>2</sup>  
Proposed Extension Area: 18m<sup>2</sup>



**SECTION**

REV	DESCRIPTION	DATE
<b>WILL MC GARRY &amp; ASSOCIATES ENGINEERS</b> 15 MARY STREET, CLONMEL. PHONE : 052 6181828 MOBILE : 086 2737455 EMAIL : info@wmaa.ie		
<b>CLIENT</b> Paddy O'Donnell		
<b>JOB</b> Section 5 Application		
<b>TITLE</b> Cottage at Ballyboe		
SCALE: 1:100(A3)	DRAWN: ak	
DATE: Dec 16 2024	CHECKED: W. mcG.	
DWG NO.: PD-102	FILE NO.: _____	



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  
E45 A099

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

Date: 23rd December, 2024 Our Ref: S5/24/155 Civic Offices, Clonmel

**Mr Paddy O'Donnell**  
**c/o Will McGarry**  
**15 Mary Street**  
**Clonmel**  
**Co. Tipperary**

**Re: Application for a Section 5 Declaration –Extension to the rear and minor modifications to existing lodge at Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary E91 V868**

Dear Mr. McGarry,

I acknowledge receipt of your application for a Section 5 Declaration received on 19<sup>th</sup> December, 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**

## 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.:** S5/24/155

**Applicant:** Paddy O'Donnell

**Development Address:** Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary E91 V868

**Proposed Development:** Extension to the rear and minor modifications to existing lodge.

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#### 1. GENERAL

On the 19<sup>th</sup> of December 2024 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended as to whether the following is “development” and “exempt development”:

- Extension to the rear and minor modifications to Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary.

#### 2. STATUTORY PROVISION

The following statutory provisions are relevant to this referral case;

Section 3 (1) of the Planning and Development Act 2000, as amended, states as follows:-

*“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

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

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 4(1)(h) of the Act considers development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures; to be exempted development.

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

Exempted Development.

6. (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Schedule 2, Part 1 'Exempted Development - General:

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

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

### **Conditions and Limitations**

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres. (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres. (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres. (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house. (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

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

### **3. ASSESSMENT**

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

The site comprises a detached gate lodge dwelling at Ballyboe, Ballypatrick, Clonmel, Co. Tipperary. The site adjoins the R706 to the east, which is a designated Scenic Road.

*Figure 1 Subject Site*



**b. Relevant Planning History**

**On site**

01/499 Permission granted to the applicants for the grainstore.

04/27 Permission granted for removal of existing grain dryer and for change of use of existing grain store to compost manufacturing facility

05/1119 Permission granted to for retention of extended compost manufacturing facility in accordance with plans and drawings - the site is in the curtilage of a protected structure

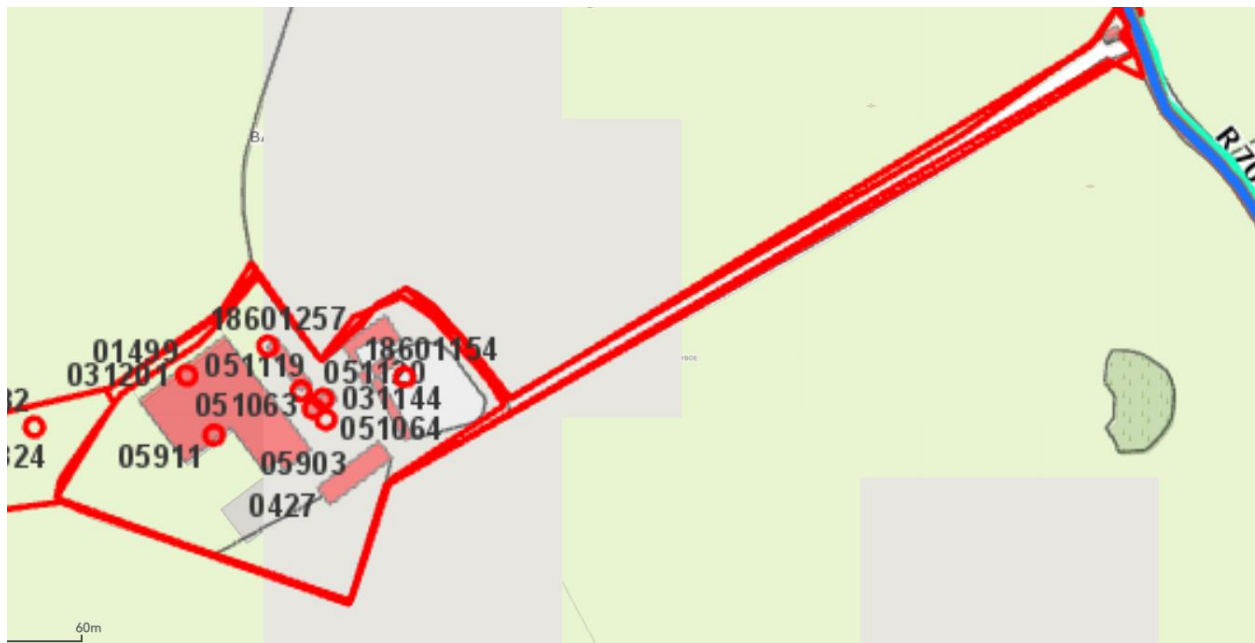
05/1120 Permission granted to extend existing compost manufacturing facility in accordance with plans and drawings - the site is in the curtilage of a protected structure

18/601257 – permission granted for Construction of an extension to ground floor areas and refurbish existing farmhouse, including all associated site works and services

**Adjacent**

None relevant

*Figure 2 Planning history*



**c. Assessment**

A) “Is or is not Development”

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

B) “Is or is not Exempted Development”

The works proposed comprise of the construction of a 18m<sup>2</sup> single storey extension to the rear of the property. It is also proposed to close a window opening on the front and side elevation and create a new opening on the rear elevation.

Figure 3 Proposed floor plans and elevations

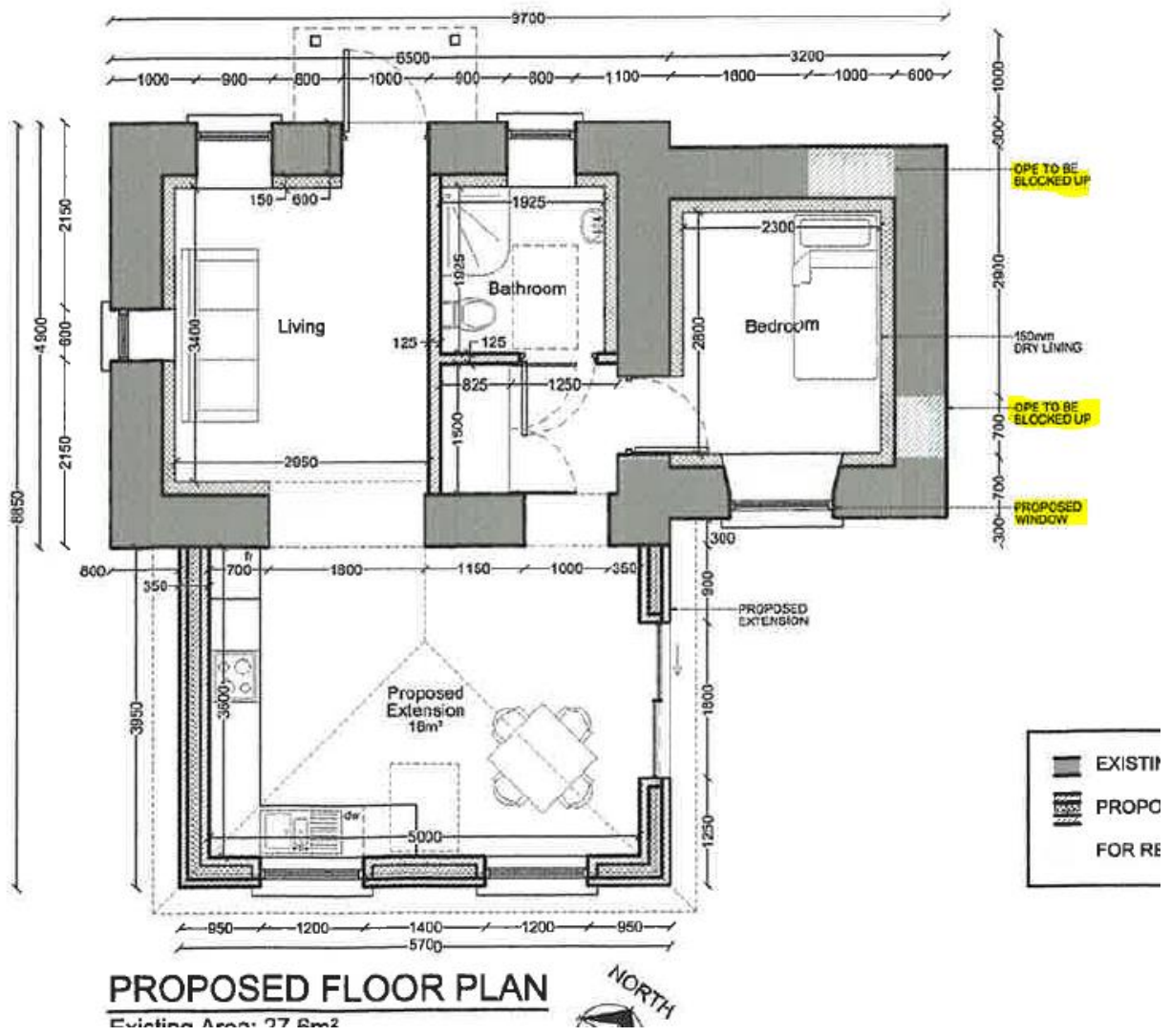


Figure 4 Proposed front elevation



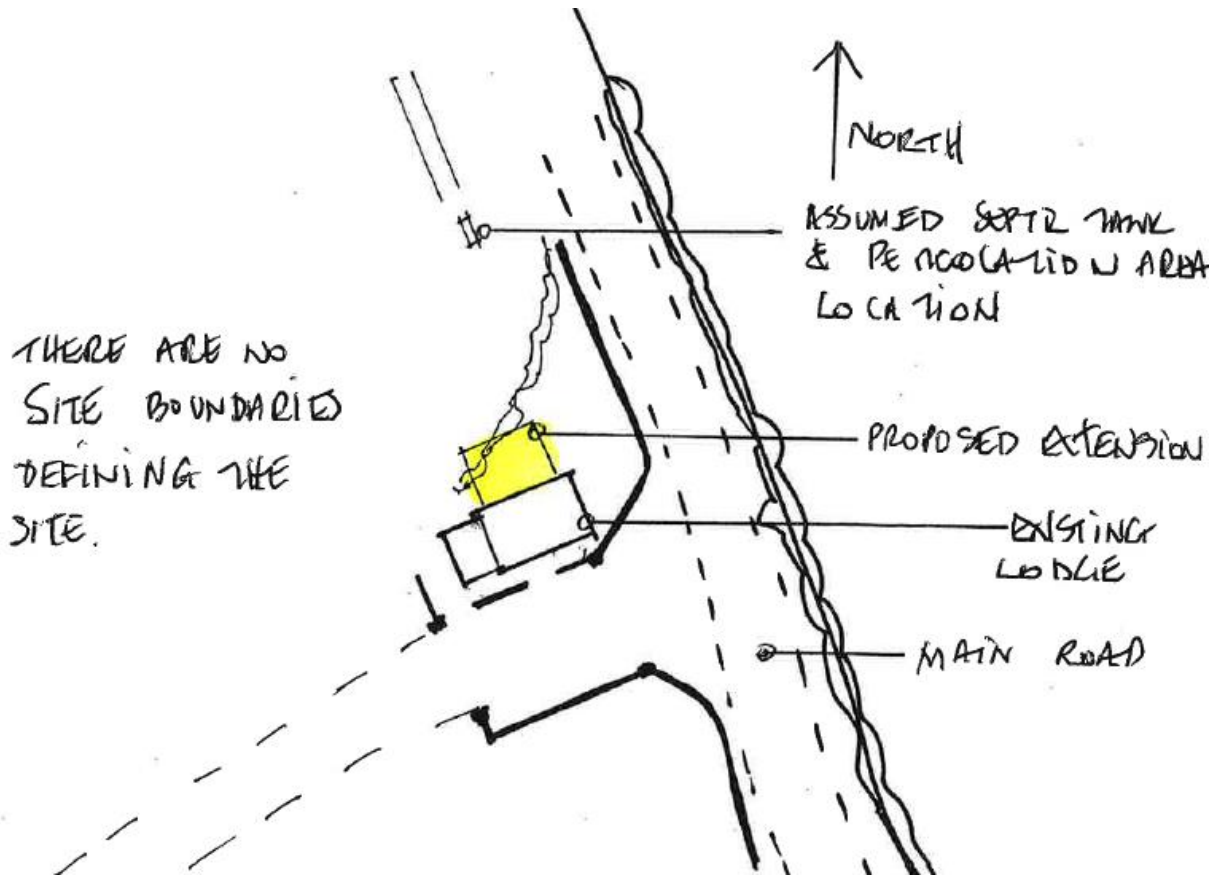
As noted above, there are two elements to this proposal, the construction of the new extension and the change to the window openings on the front, side and rear of the existing dwelling.

With respect to the extension element, the form, scale and height of the works proposed are noted. The extension does not exceed 40 square metres. The height of the wall of the extension does not exceed the height of the rear wall of the house.

It is not clear if the extension proposed will reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

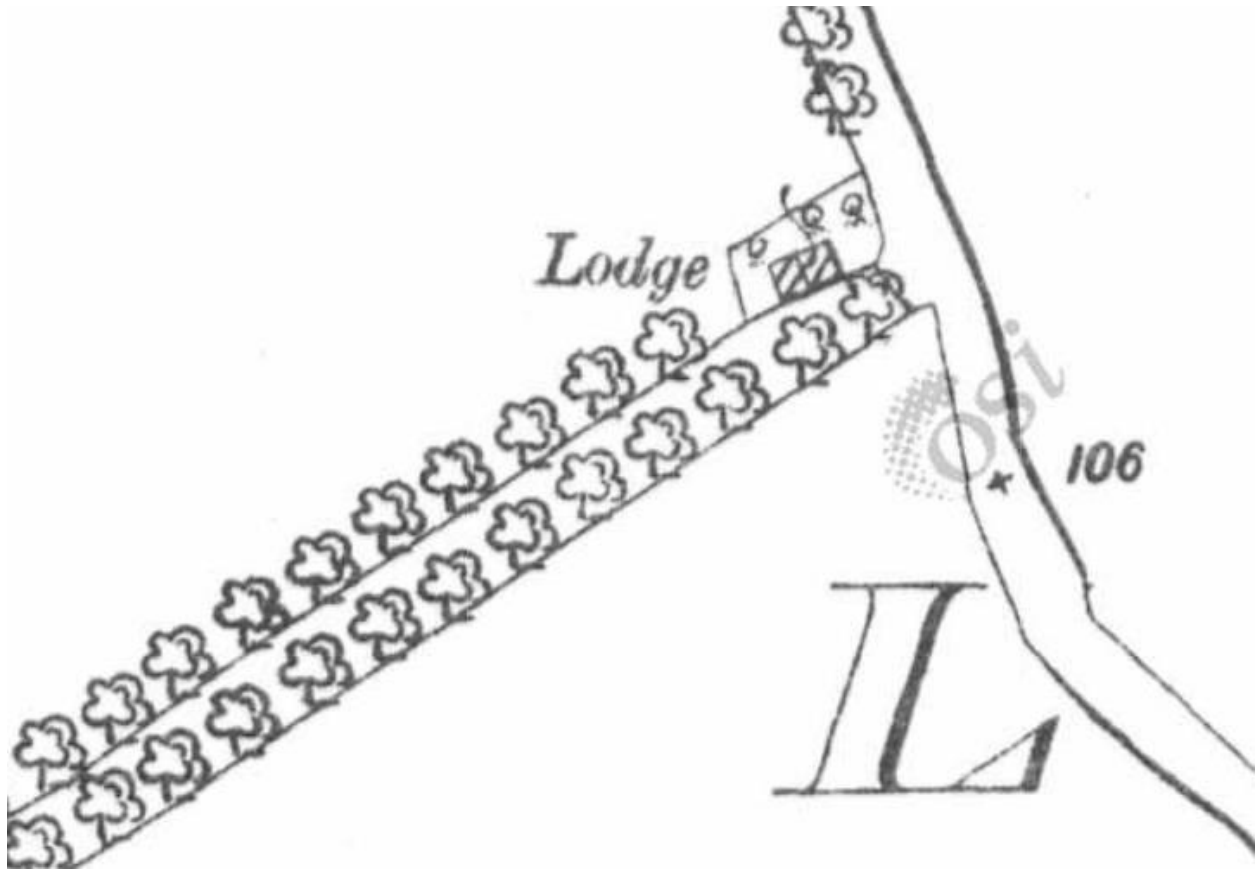


Figure 5 Submitted site layout



A review of the historic 25 inch mapping shows the footprint of the original lodge.

Figure 6 Historic 25 inch mapping



An extension to the side of the dwelling was provided. It is not clear when this extension was provided. The modifications to the window openings impact this part of the structure. Should this extension have been provided after the 1<sup>st</sup> of October 1964, it may not have the benefit of planning permission. As such the modifications to same cannot be considered under Section 4(1)(h) of the Planning and Development Act.

C) Restrictions under Article 9

To be reviewed on receipt of the Further Information referred to below.

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

The subject site is located c. 1.9 kms from the terrestrial component of the Lower River Suir SAC, 12.2 kms from the Nier Valley woodlands and 11.8 kms from the Comeragh Mountains SAC. The closest water body to the site is an unnamed stream c. 480 metres north of the site. There is no direct hydrological connection between the site and SAC's referenced above.

Having regard to:

- the nature of the development,
- the location of the site relative 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.

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.

#### **4. RECOMMENDATION**

A question has arisen as to whether the construction of a new 18m<sup>2</sup> single storey extension to the rear of the dwelling and modifications to the location of window openings is or is not exempted development. The subject site is located in Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary.

In considering this declaration, the Planning Authority had regard to:

- (a) Sections 2, 3 & 4 of the Planning and Development Act 2000 (as amended)
- (b) Part 1 Class 1 of Schedule 2 Planning & Development Regulations 2001, as amended.
- (c) Articles 6 and 9 of the Planning & Development Regulations 2001, as amended

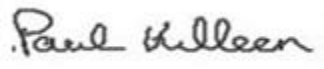
Having considered the information received, the Planning Authority is not in a position to determine if the works proposed constitute exempted development.

The querist is to be advised as follows;

Having reviewed the details presented, the Planning Authority requires clarity in respect of the following issues;

- As per the limitation associated with Condition 5 of Class 1 of Schedule 2 Part 1 of the Planning and Development Regulations, 2001, as amended, it was not possible to determine if the works proposed would reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres. Please define the area of amenity space to the rear of the property and clarify if 25sqm of space will remain.
- Having reviewed the planning history on site, it is not clear when the existing side extension was provided. The modifications to the window openings impact this part of the structure. Should this extension have been provided after the 1st of October 1964, it may not have the benefit of planning permission. As such the modifications to same cannot be considered under Section 4(1)(h) of the Planning and Development Act 2000, as amended. Please clarify when the side extension was provided. The planning status of this extension will also impact the ability to avail of the Class 1 exemption.

Signed:

  
\_\_\_\_\_  
District planner

Date: 21/01/25

Signed:

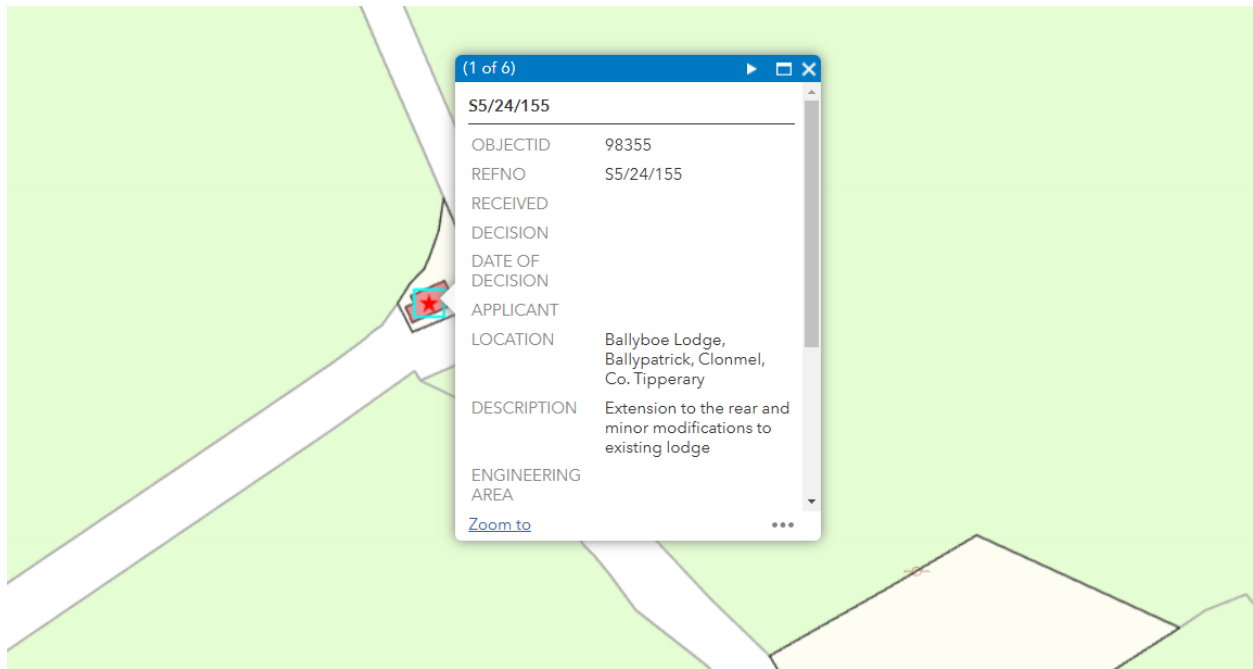
  
Senior Executive Planner

Date: 22.1.2025



EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/24/155
Development Summary:	Domestic extension
Was a Screening Determination carried out under Section 176A-C?	<input type="checkbox"/> Yes, no further action required  <input checked="" type="checkbox"/> No, Proceed to <b>Part A</b>
<b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
<input type="checkbox"/> Yes, specify class _____	<b>EIA is mandatory</b>  No Screening required
<input checked="" type="checkbox"/> No	Proceed to <b>Part B</b>
<b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) <b>and</b> does it meet/exceed the thresholds? (Tick as appropriate)	
<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2	<b>No Screening required</b>
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 <b>and</b> meets/exceeds the threshold, specify class (including threshold): _____	<b>EIA is mandatory</b>  No Screening required
<input type="checkbox"/> Yes the project is of a type listed <b>but</b> is <i>sub-threshold</i> : _____	Proceed to <b>Part C</b>
<b>C. If Yes</b> , has Schedule 7A information/screening report been submitted?	
<input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant	<b>Screening Determination required</b>
<input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant	<b>Preliminary Examination required</b>

Figure 7 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,  
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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: 23<sup>rd</sup> January, 20245

Our Ref: S5/24/155

Civic Offices, Nenagh

**Mr Paddy O'Donnell**  
**C/O Will McGarry**  
**15 Mary Street**  
**Clonmel**  
**Co. Tipperary**

**Re: Application for a Section 5 Declaration – The extension to the rear and monor modifications to existing lodge at Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary**

Dear Mr O' Donnell,

I refer to an application received from you on 19<sup>th</sup> December, 2024 requesting a Declaration from this Planning Authority as to whether or not certain works constitute development within the meaning of the Planning and Development Act 2000, as amended.

Further information is requested as follows;

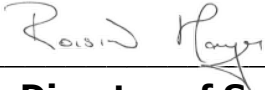
The Planning Authority requires clarity in respect of this application and it is recommended to request the following further information pursuant to Section 5 (2) (b) of the Planning and Development Act 2000, as amended

- As per the limitation associated with Condition 5 of Class 1 of Schedule 2 Part 1 of the Planning and Development Regulations, 2001, as amended, it was not possible to determine if the works proposed would reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres. Please define the area of amenity space to the rear of the property and clarify if 25sqm of space will remain.
- Having reviewed the planning history on site, it is not clear when the existing side extension was provided. The modifications to the window openings impact this part of the structure. Should this extension have

been provided after the 1st of October 1964, it may not have the benefit of planning permission. As such the modifications to same cannot be considered under Section 4(1)(h) of the Planning and Development Act 2000, as amended. Please clarify when the side extension was provided. The planning status of this extension will also impact the ability to avail of the Class 1 exemption.

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

Yours sincerely



---

for **Director of Services**



**WILL MC GARRY & ASSOCIATES  
CONSULTING ENGINEERS**

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

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

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Our Ref: 7683

28<sup>th</sup> January 2025.

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

**Subj:- Application for Section 5 Declaration at Ballyboe Lodge, Ballypatrick, Clonmel  
Co. Tipperary  
Your Ref: S5/24/155 – Request for Further Information**


Dear Sir/Madam,

I refer to your letter dated 23<sup>rd</sup> January 2025 and hereunder find the answers to the questions in the order in which they appeared.

1. This lodge was originally part of an overall estate with no defined boundaries. I have amended the site layout to put in a notional site boundary, which hopefully demonstrates rear private open space well in excess of 25m<sup>2</sup>.
2. Attached please find copy of letter from Paddy O'Donnell confirming that the cottage and the side extension are well over 70 years old. Based on the state of the property, this is feasible.

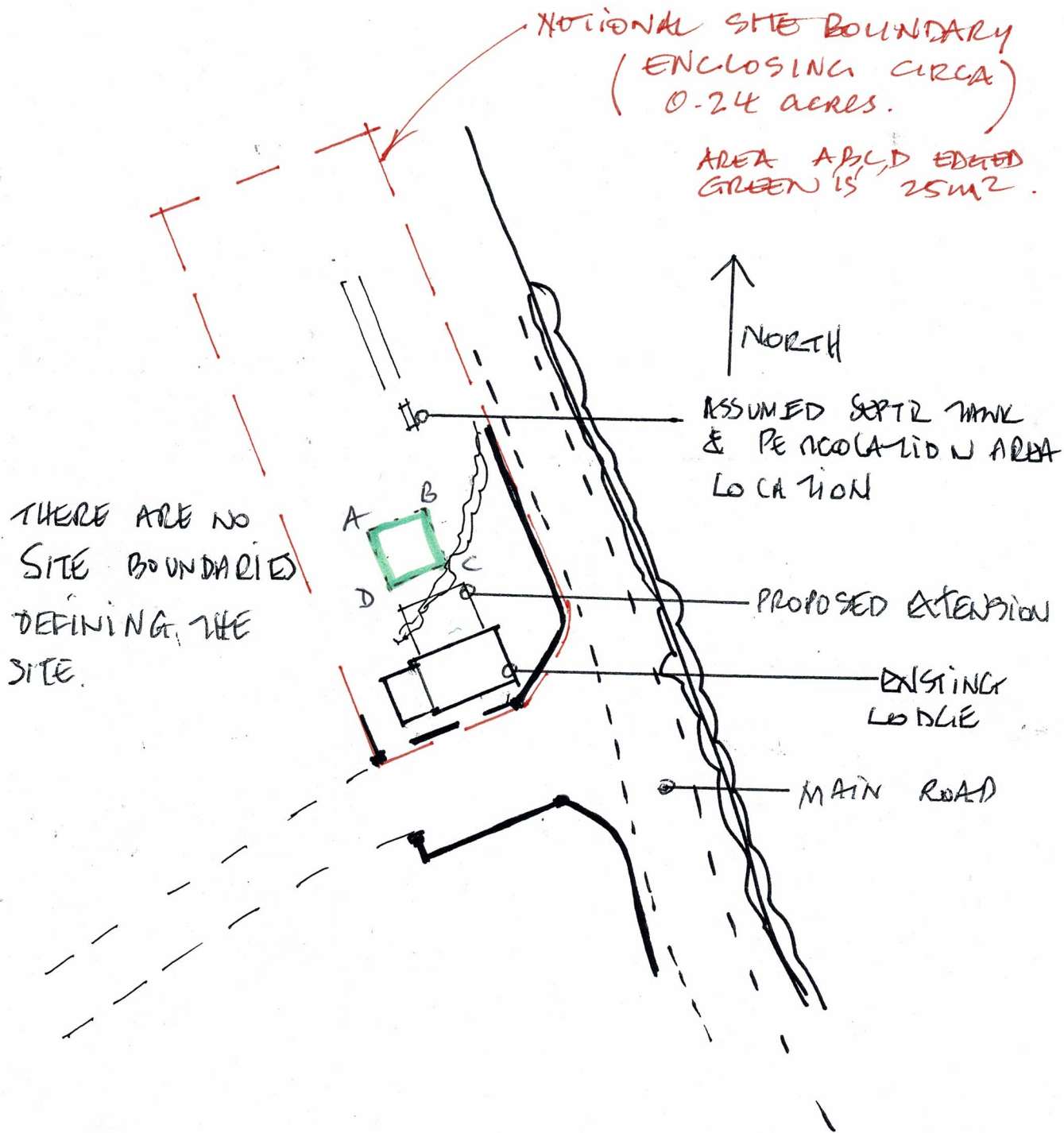
Hoping the above is to your satisfaction.

Yours faithfully,

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

REVISED 28/1/25

REVISIONS IN RED



THERE ARE NO  
SITE BOUNDARIES  
DEFINING THE  
SITE.

AREA A,B,C,D HATCHED  
GREEN IS 25M<sup>2</sup>.

NORTH

ASSUMED SEPTIC TANK  
& PERCOLATION AREA  
LOCATION

PROPOSED EXTENSION

EXISTING  
LODGE

MAIN ROAD

BALLYBOE LODGE

BALLYBOE

SITE LAYOUT 1:500

DATE DEC 2024

Will McGarry & Associates,  
Consulting Engineers,  
15 Mary Street,  
Clonmel,  
Co Tipperary.

28<sup>th</sup> January 2025

Dear Mr McGarry,

Further to your query regarding the extension to the lodge at Ballyboe Lodge, Ballypatrick, Clonmel, Co Tipperary. The exact date is unknown but it was definitely built before 1960. We can contact the people who lived in it in 1960 and they can verify this if required. Should you require any further information please do not hesitate to get in touch.

Yours sincerely,



PATRICK O' DONNELL



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  
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Date: 29th January, 2025

Our Ref: S5/24/155

Civic Offices, Clonmel

**Mr Paddy O'Donnell**  
**C/O Will McGarry**  
**15 Mary Street**  
**Clonmel**  
**Co. Tipperary**

**Re: Application for a Section 5 Declaration – The extension to the rear and minor modifications to existing lodge at Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary**

Dear Mr O'Donnell,

I acknowledge receipt of Further Information received on 29th January, 2025 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**

## 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.:** S5/24/155

**Applicant:** Paddy O'Donnell

**Development Address:** Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary E91 V868

**Proposed Development:** Extension to the rear and minor modifications to existing lodge.

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#### 1. GENERAL

On the 19<sup>th</sup> of December 2024 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended as to whether the following is “development” and “exempt development”:

- Extension to the rear and minor modifications to Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary.

#### 2. STATUTORY PROVISION

The following statutory provisions are relevant to this referral case;

Section 3 (1) of the Planning and Development Act 2000, as amended, states as follows:-

*“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

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

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 4(1)(h) of the Act considers development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures; to be exempted development.

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

Exempted Development.

6. (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Schedule 2, Part 1 'Exempted Development - General:

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

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

### **Conditions and Limitations**

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres. (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres. (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres. (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house. (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

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

### **3. ASSESSMENT**

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

The site comprises a detached gate lodge dwelling at Ballyboe, Ballypatrick, Clonmel, Co. Tipperary. The site adjoins the R706 to the east, which is a designated Scenic Road.

*Figure 1 Subject Site*



**b. Relevant Planning History**

**On site**

01/499 Permission granted to the applicants for the grainstore.

04/27 Permission granted for removal of existing grain dryer and for change of use of existing grain store to compost manufacturing facility

05/1119 Permission granted to for retention of extended compost manufacturing facility in accordance with plans and drawings - the site is in the curtilage of a protected structure

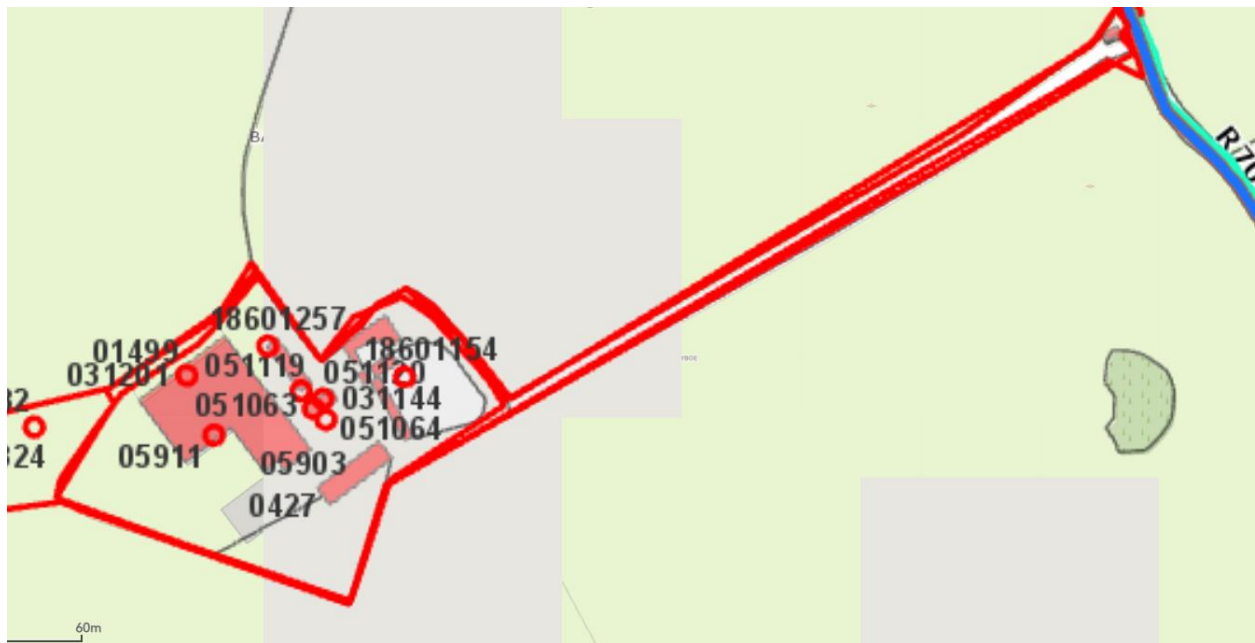
05/1120 Permission granted to extend existing compost manufacturing facility in accordance with plans and drawings - the site is in the curtilage of a protected structure

18/601257 – permission granted for Construction of an extension to ground floor areas and refurbish existing farmhouse, including all associated site works and services

**Adjacent**

None relevant

*Figure 2 Planning history*



**c. Assessment**

A) “Is or is not Development”

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

B) “Is or is not Exempted Development”

The works proposed comprise of the construction of a 18m<sup>2</sup> single storey extension to the rear of the property. It is also proposed to close a window opening on the front and side elevation and create a new opening on the rear elevation.



Figure 3 Proposed floor plans and elevations

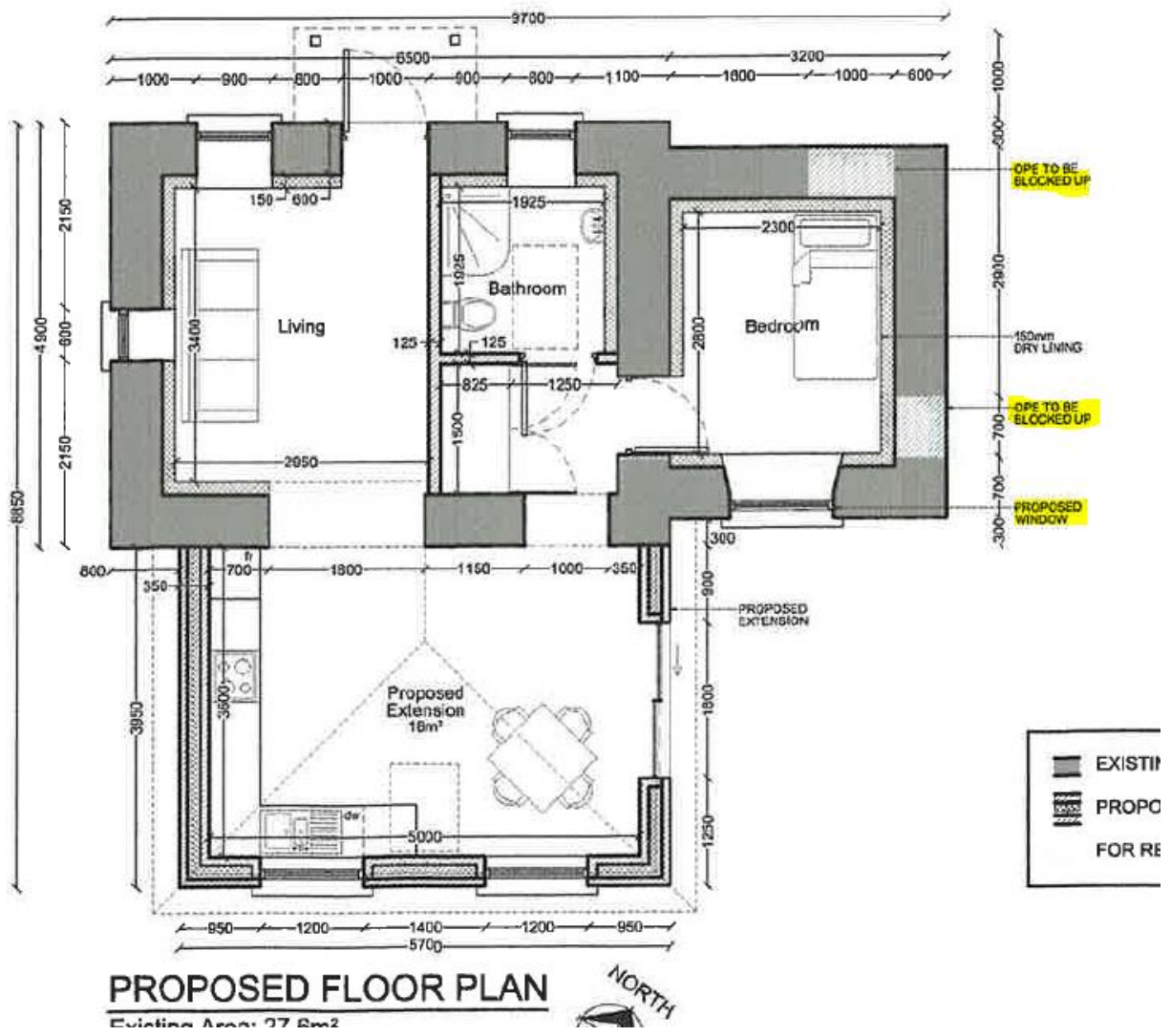


Figure 4 Proposed front elevation

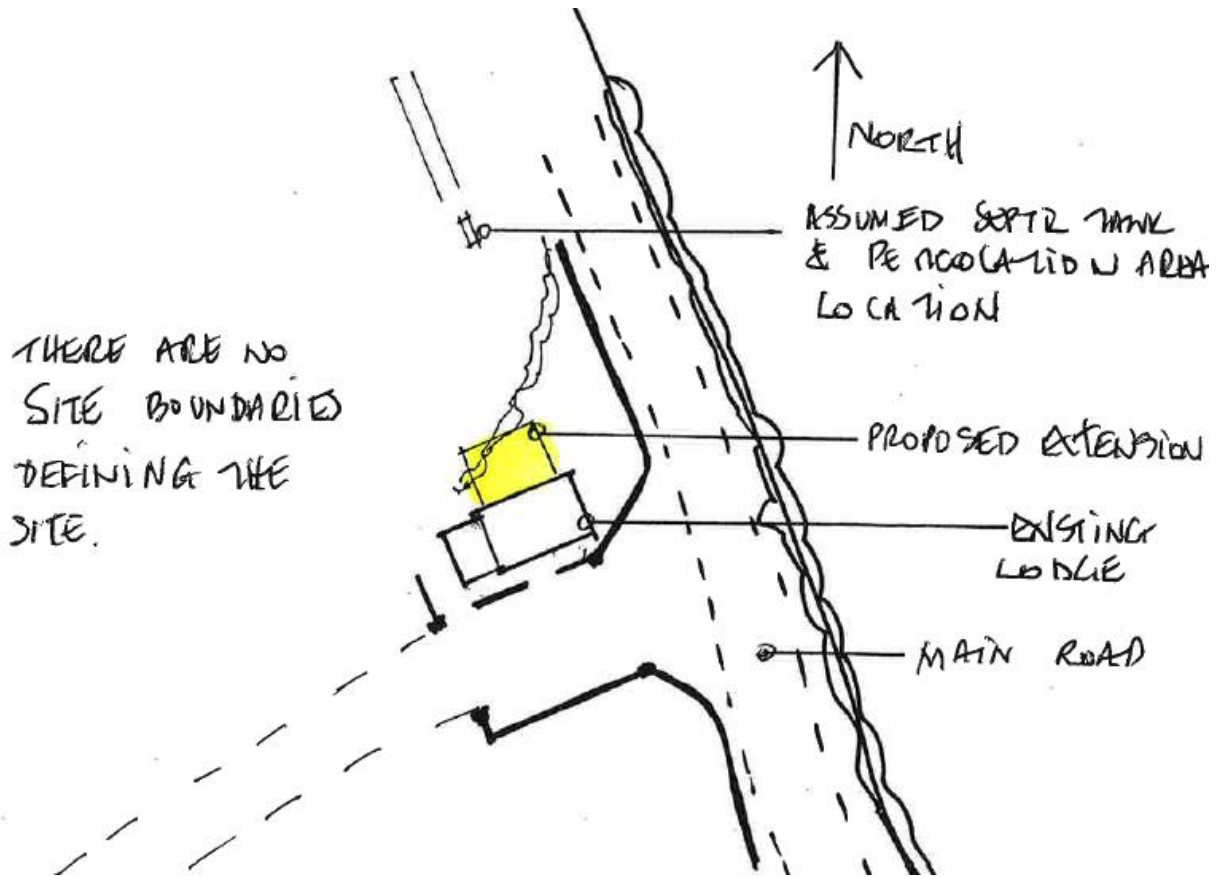


As noted above, there are two elements to this proposal, the construction of the new extension and the change to the window openings on the front, side and rear of the existing dwelling.

With respect to the extension element, the form, scale and height of the works proposed are noted. The extension does not exceed 40 square metres. The height of the wall of the extension does not exceed the height of the rear wall of the house.

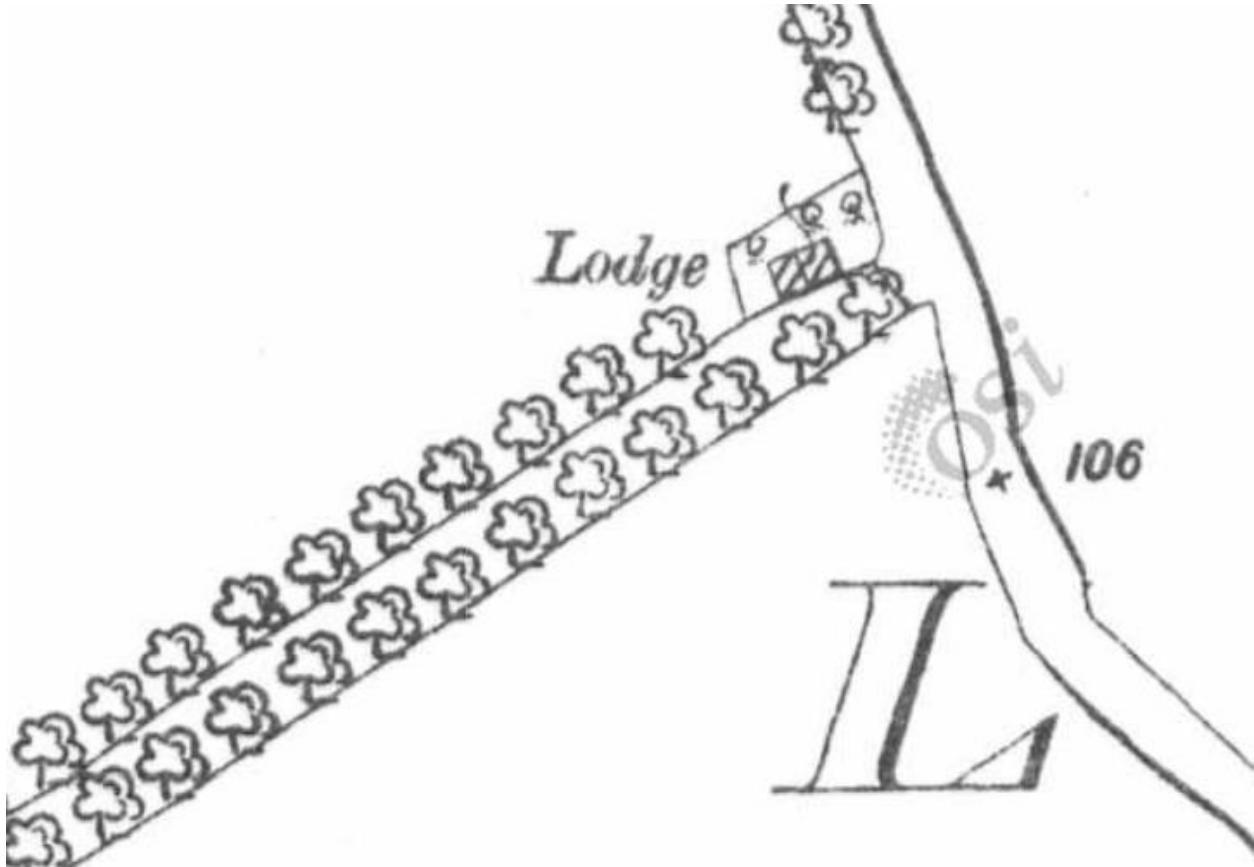
It is not clear if the extension proposed will reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

Figure 5 Submitted site layout



A review of the historic 25 inch mapping shows the footprint of the original lodge.

Figure 6 Historic 25 inch mapping



An extension to the side of the dwelling was provided. It is not clear when this extension was provided. The modifications to the window openings impact this part of the structure. Should this extension have been provided after the 1<sup>st</sup> of October 1964, it may not have the benefit of planning permission. As such the modifications to same cannot be considered under Section 4(1)(h) of the Planning and Development Act.

C) Restrictions under Article 9

None applicable.

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

The subject site is located c. 1.9 kms from the terrestrial component of the Lower River Suir SAC, 12.2 kms from the Nier Valley woodlands and 11.8 kms from the Comeragh Mountains SAC. The closest water body to the site is an unnamed stream c. 480 metres north of the site. There is no direct hydrological connection between the site and SAC's referenced above.

Having regard to:

- the nature of the development,
- the location of the site relative 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.

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.

#### **4. FURTHER INFORMATION**

The following further information was requested on the 23<sup>rd</sup> of January 2025;

The Planning Authority requires clarity in respect of this application and it is recommended to request the following further information pursuant to Section 5 (2) (b) of the Planning and Development Act 2000, as amended

- As per the limitation associated with Condition 5 of Class 1 of Schedule 2 Part 1 of the Planning and Development Regulations, 2001, as amended, it was not possible to determine if the works proposed would reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres. Please define the area of amenity space to the rear of the property and clarify if 25sqm of space will remain.
- Having reviewed the planning history on site, it is not clear when the existing side extension was provided. The modifications to the window openings impact this part of the structure. Should this extension have been provided after the 1st of October 1964, it may not have the benefit of planning permission. As such the modifications to same cannot be considered under Section 4(1)(h) of the Planning and Development Act 2000, as amended. Please clarify when the side extension was provided. The planning status of this extension will also impact the ability to avail of the Class 1 exemption

The applicant replied on the 29<sup>th</sup> of January 2025.

#### **Appraisal**

The applicant has indicated that there are no defined site boundaries in place. A notional area of 25 sqms has been identified on lands under the applicants control. It is not considered that the extension proposed will impact same.

The applicant has submitted a letter confirming that the subject structure, including the side annex is over 70 years old. As such it predates the advent of planning legislation in Ireland. The modification to the side annex can therefore be considered under Section 4(1)(h) of the Planning and Development Act, 2000, as amended.

#### **5. RECOMMENDATION**

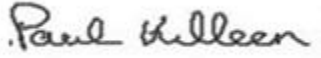
A question has arisen as to whether the construction of a new 18m<sup>2</sup> single storey extension to the rear of the dwelling and modifications to the location of window openings is or is not development and is or is not exempted development. The subject site is located in Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary.

In considering this declaration, the Planning Authority had regard to:

- (a) Sections 2, 3 & 4 of the Planning and Development Act 2000 (as amended)

- (b) Class 1 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001, as amended.
- (c) Articles 6 and 9 of the Planning & Development Regulations 2001, as amended
- (d) Information provided under the application

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

Signed:   
District planner

Date: 17/02/25

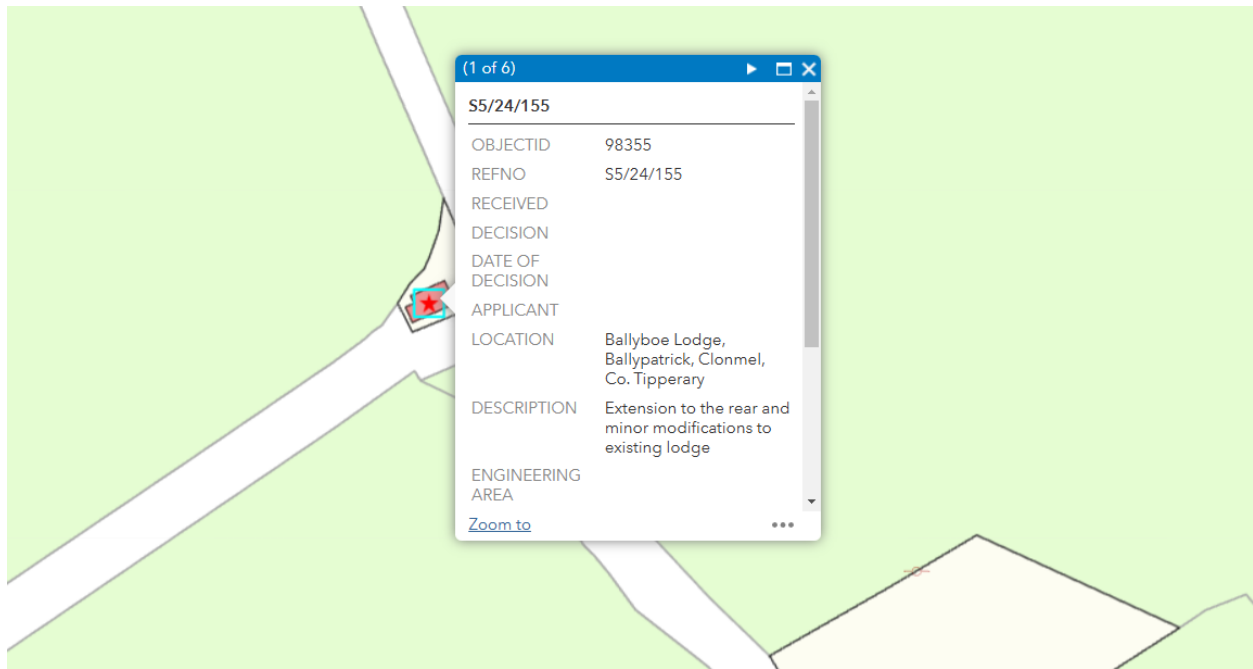


Signed:  
Senior Executive Planner

Date: 18.2.2025

EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/24/155
Development Summary:	Domestic extension
Was a Screening Determination carried out under Section 176A-C?	<input type="checkbox"/> Yes, no further action required  <input checked="" type="checkbox"/> No, Proceed to <b>Part A</b>
<b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
<input type="checkbox"/> Yes, specify class _____	<b>EIA is mandatory</b>  No Screening required
<input checked="" type="checkbox"/> No	Proceed to <b>Part B</b>
<b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) <b>and</b> does it meet/exceed the thresholds? (Tick as appropriate)	
<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2	<b>No Screening required</b>
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 <b>and</b> meets/exceeds the threshold, specify class (including threshold): _____	<b>EIA is mandatory</b>  No Screening required
<input type="checkbox"/> Yes the project is of a type listed <b>but</b> is <i>sub-threshold</i> : _____	Proceed to <b>Part C</b>
<b>C. If Yes</b> , has Schedule 7A information/screening report been submitted?	
<input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant	<b>Screening Determination required</b>
<input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant	<b>Preliminary Examination required</b>

Figure 7 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

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Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
An tAonach,  
Co. Thiobraid Árann

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Date: 18<sup>th</sup> February, 2025

Our Ref: S5/24/155

Civic Offices, Nenagh

**Mr Paddy O'Donnell**  
**C/O Will McGarry**  
**15 Mary Street**  
**Clonmel**  
**Co. Tipperary**

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

Dear Mr O'Donnell,

I refer to your application for a Section 5 Declaration received on 19<sup>th</sup> December, 2024 and Further Information received on 29<sup>th</sup> January, 2025 in relation to the following proposed works:

**Extension to the rear and minor modifications to existing lodge at Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary E91 V868.**

**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) Class 1 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001, as amended.
- (c) Articles 6 and 9 of the Planning & Development Regulations 2001, as amended
- (d) Information provided under the application

Having reviewed the details presented, Tipperary County Council has concluded that the proposal presented on the drawings and details provided with the

Declaration application as constitutes "development" within the meaning of the Planning and Development Act 2000, and is "**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*

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for **Director of Services**

**Original**

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/24/155**      **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. 40781 dated 2<sup>nd</sup> January, 2025, hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 from Mr Paddy O'Donnell, C/O Will McGarry, 15 Mary Street, Clonmel, Co. Tipperary re: Extension to the rear and minor modifications to existing lodge at Ballyboe Lodge, Ballypatrick, Clonmel, Co. Tipperary is development and is exempted development.

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

- (a) Sections 2, 3 & 4 of the Planning and Development Act 2000 (as amended)
- (b) Class 1 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001, as amended.
- (c) Articles 6 and 9 of the Planning & Development Regulations 2001, as amended
- (d) Information provided under the application

Having reviewed the details presented, Tipperary County Council has concluded that the proposal presented on the drawings and details provided with the Declaration application as constitutes "development" within the meaning of the Planning and Development Act 2000, and is "**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: 18/02/2025**