



Comhairle Contae Thiobraid Árann  
Tipperary County Council

55/25/07

Tipperary County Council

RECEIVED

28 JAN 2025

C S D

Civic Offices, Clonmel

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

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

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

Applicant	RAY CODY
Address	GURTEEN, MULLINAHONE CO. TIPPERARY.
Telephone No.	
E-mail	

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

Agent	
Address	
Telephone No.	
E-mail	
Please advise where all correspondence in relation to this application is to be sent;	
Applicant [ ]	Agent [ ]

**3. Location of Proposed Development:**

Postal Address or Townland or Location (as may best identify the land or structure in question)	GURTEEN, MULLINAHONE CO TIPPERARY.
---	--

TIPPERARY CO. COUNCIL  
RECEIVED  
28 JAN 2025  
PLANNING SECTION  
FILE NO. ....

Tipperary County Council  
RECEIVED  
28 JAN 2025  
CASH OFFICE  
Civic Offices, Clonmel

Receipt No 189 OSI  
Issued 28.01.2025  
€ 80.00 Cheque

#### 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.)

Opening of a new gateway onto Road L6407. Currently we have to bring milking cows onto the Mullinahore to Callan Rd. R692 regularly to get to another grazing platform. This road has become very busy with traffic and thats the reason we want to open a new gate onto the minor road L6407 to avoid the busy road.	
Proposed floor area of proposed works/uses:	sqm Width of gateway 6m

#### 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) Ray Cody

Date: 24-1-25

**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
  - o OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
  - o Floor Plans & Elevations at a scale of not less than 1:200
  - o Site layout plan indicating position of proposed development relative to premises and adjoining properties
  - o Other details e.g. brochures, photographs if appropriate.

(All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)
- (3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

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

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

### FOR OFFICE USE ONLY

#### DATE STAMP

**Fee Recd. €** \_\_\_\_\_

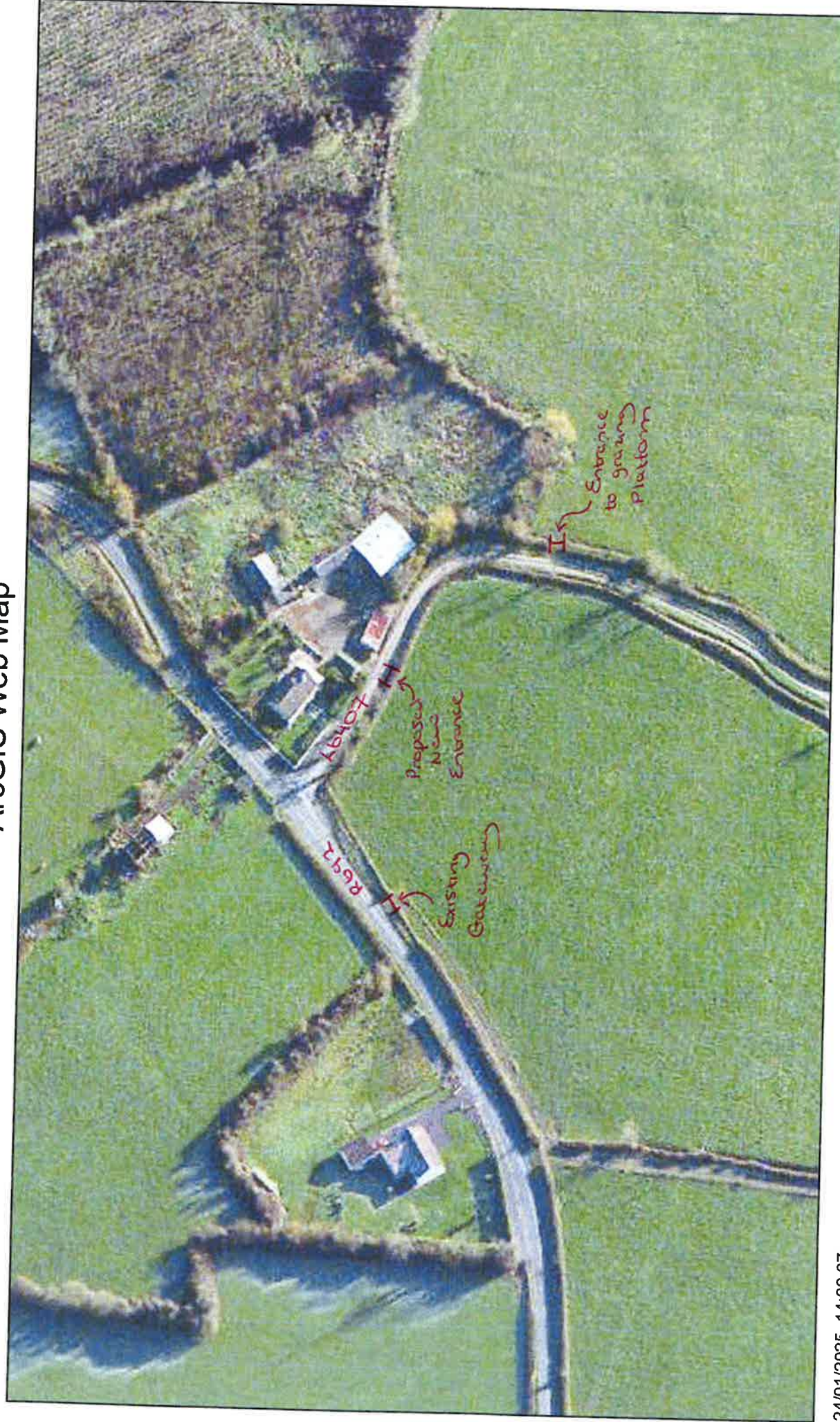
Receipt No \_\_\_\_\_

Date \_\_\_\_\_

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



# ArcGIS Web Map

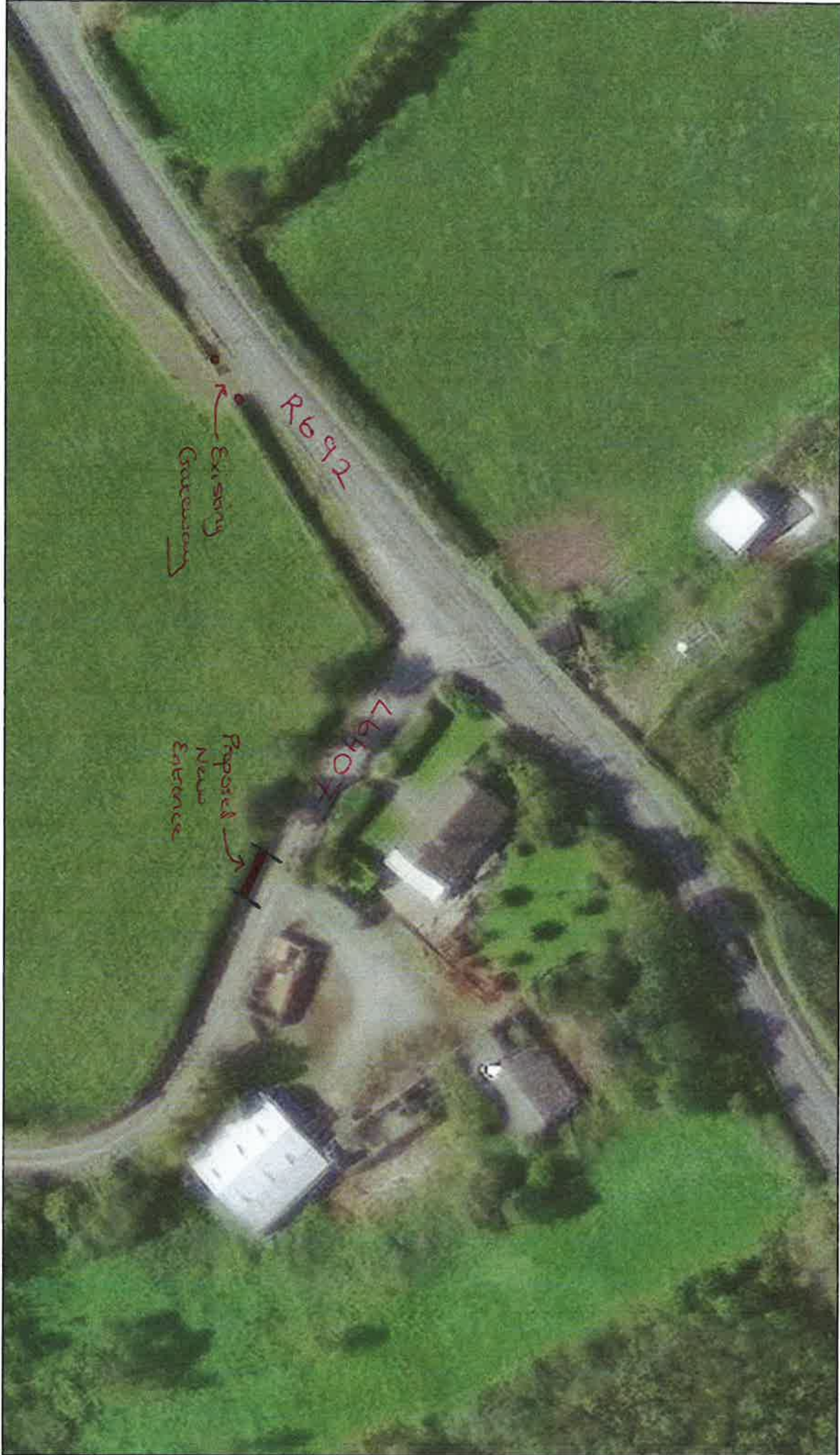


24/01/2025, 14:06:07

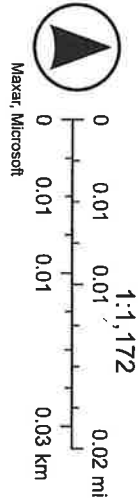




ArcGIS Web Map

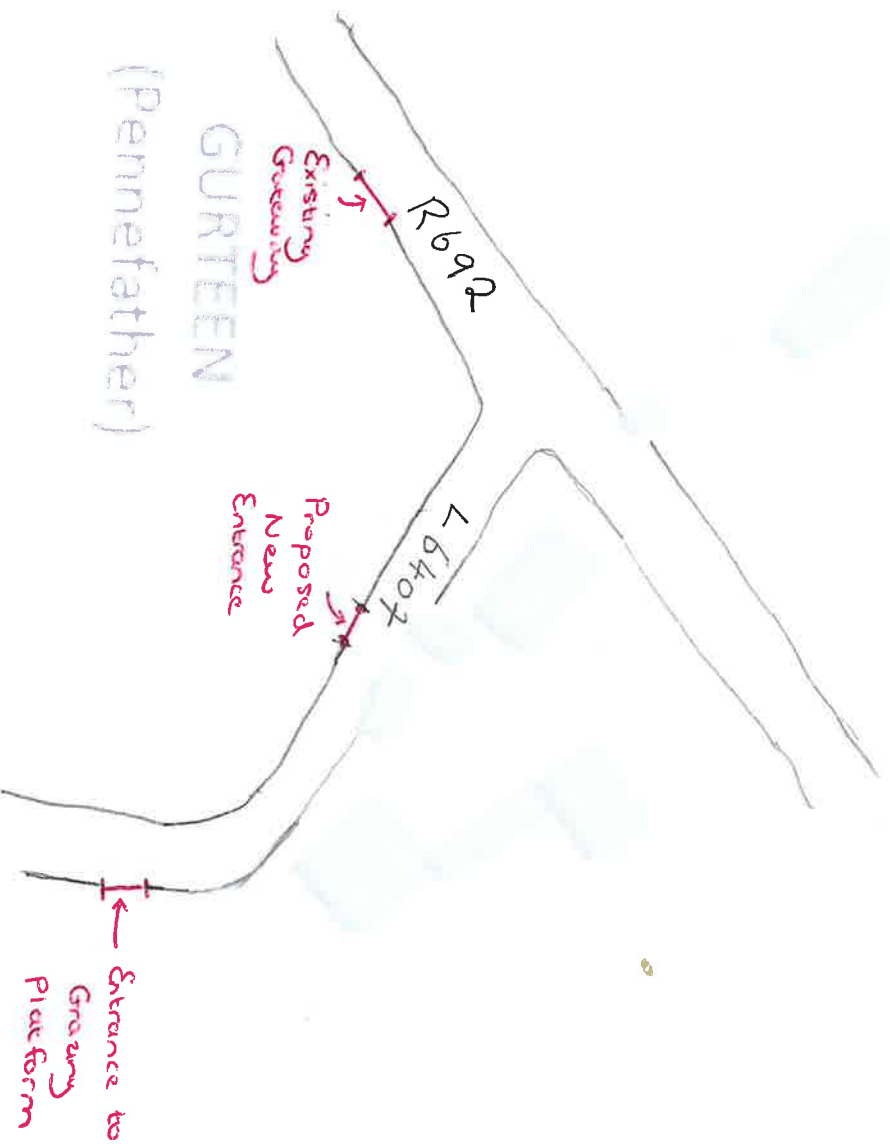


24/01/2025, 12:47:39



# ArcGIS Web Map

24/01/2025, 12:52:23



© Taille Éireann



Surveyed 1839 - 1841  
Revised 1901 - 1948  
Levelled 1948

# Record PLACE Map



237047

141150

## DESCRIPTION

## MAP SCALES

6inch  
KK026  
TY063

KK030  
TY064



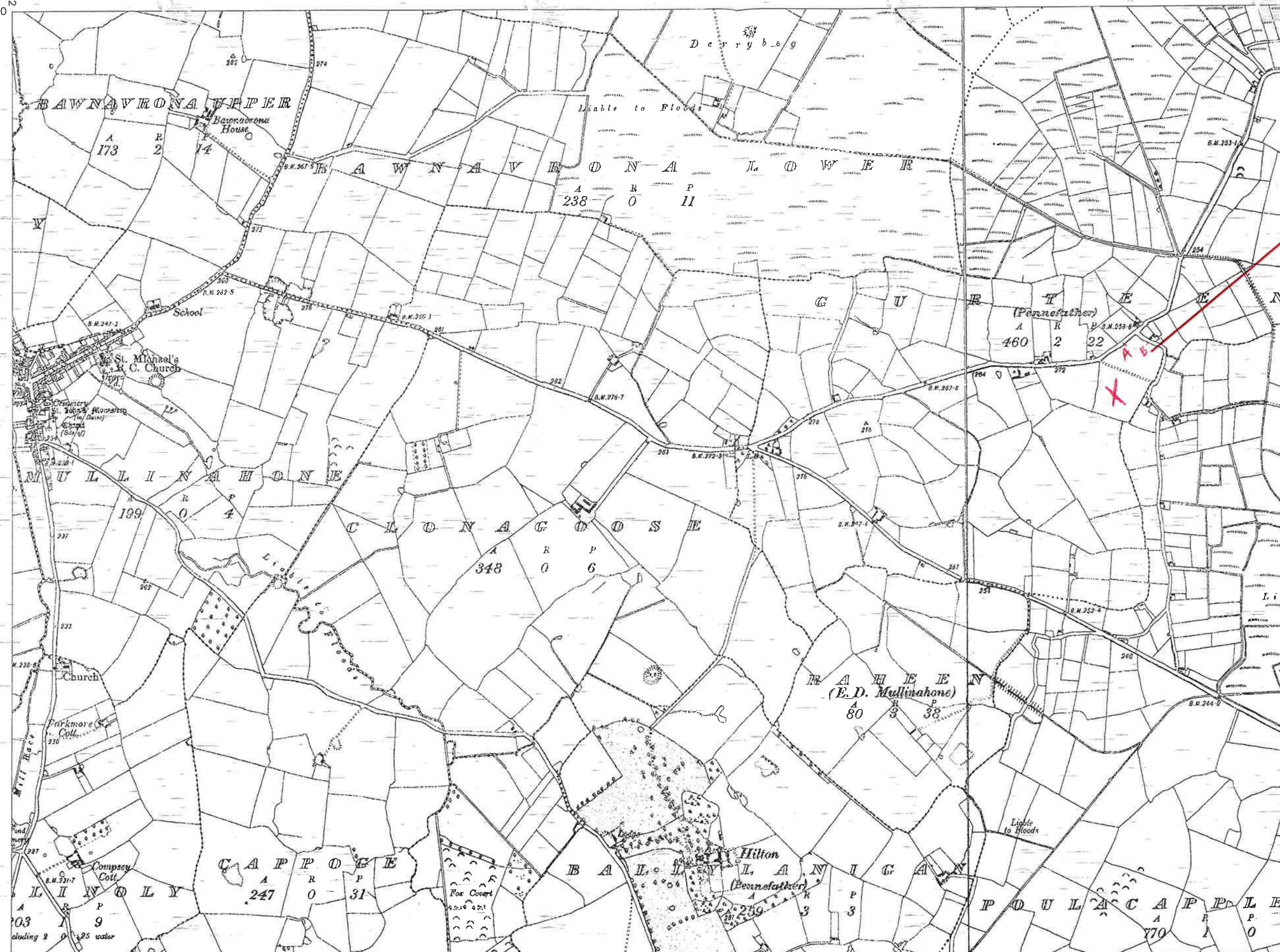
Printed by The Map Shop 79 John's Street  
Kilkenny City.

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a tharchur in aon fhoirm ná ar aon bhealach gan  
cead i scríbhinn roimh ré ó úinéirí an chóipchirt.  
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141150



138573

Scale:— 1:10560  
Scála:— 1:10560



Plot Ref. No. 13521\_1\_11  
Plot Date 25-JUL-2003

138573

237047





Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
Cluin 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](http://tipperarycoco.ie)

Date: 29th January, 2025

Our Ref: S5/25/07

Civic Offices, Clonmel

**Ray Cody  
Gurteen  
Mullinahone  
Co. Tipperary**

**Re: Application for a Section 5 Declaration – Opening of a new gate onto Road L6407 at Gurteen, Mullinahone, Co. Tipperary.**

Dear Mr Cody,

I acknowledge receipt of your application for a Section 5 Declaration received on 28<sup>th</sup> 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**



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

---

**Declaration Reference No.:** S5/25/07

**Query:** Whether the creation of an agricultural entrance onto the L-6407 is development and if so, does it constitute exempted development.

**Location:** Gurteen, Mullinahone, Co. Tipperary

**Querist:** Ray Cody

**Owner/Occupier:** Ray Cody

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## 1 Introduction

### 1.1 Query

- 1.1.1 A question has arisen pursuant of Section 5 of the Planning and Development Act 2000 (as amended) as to whether or not the creation of an agricultural entrance onto the L-6407 at Gurteen, Mullinahone, 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 Gurteen, Mullinahone, Co. Tipperary is located approximately 2.8km to the east of the village of Mullinahone. This is a predominately rural area, with limited development in the immediate vicinity of the site.
- 2.1.2 The site is located in the open country side as defined in the Tipperary County Development Plan 2022. There is a dwelling on site.

### 2.2 Planning History

On site

None recorded

Adjoining

None recorded

Figure 1 Planning history



### **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 In relation to this specific case, the provisions of **Class 9** are considered relevant. Class 9 allows as ‘sundry works’ the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway, subject to the condition limiting the height of such structure to not exceed 2 metres.
- 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 de 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 work, to which the query relates, is,
- The creation of a new agricultural access point (including gates) onto lands in, Gurteen, Mullinahone, Co. Tipperary.

#### **4.2 Is it development?**

- 4.2.1 Having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended), it is considered that the proposal as set out in paragraph 4.1.1 above, does constitute development as it does involve the carrying out of works on the subject land.



### 4.3 Is it exempted development?

- 4.3.1 In order for a development to be considered “exempted development”, a specific exemption must exist for the works proposed. As noted in para. 3.2.2 above, Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended), allows for the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway, subject to the condition limiting the height of such structure to not exceed 2 metres.

Figure 2 site layout



- 4.3.2 The applicant is proposing to create a gateway onto agricultural lands from the L-6407.
- 4.3.3 As this gateway is not within or bounding the curtilage of a house, the proposal could therefore be considered exempt under class 9 subject to the restrictions set out under Article 9.
- 4.3.4 Of relevance to this Declaration are the provisions of Articles 9 (1)(a) (ii and iii). Under these provisions, development is not exempted development if it consists of the formation of an access to a public road the surface carriageway of which exceeds 4 metres in width or if it presents as a traffic hazard.
- 4.3.5 From the drawings submitted, it is not possible to determine the width of the L-6407 at the point that the entrance is proposed. In addition, no details of the sightlines to be provided at the entrance are provided. As such, it is not possible to consider if these entrances would present as a traffic hazard. The height of the gate is not specified.

### 4.4 Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

- 4.4.1 The subject site is located c. 4.6 kms from the Lower River Suir SAC, 2 kms from the River Barrow And River Nore SAC and 6.7 kms from the River Nore SPA.

4.4.2 The proposed development is located in a rural area and comprises of the creation of a new entrance to agricultural lands.

4.4.3 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.

4.4.4 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 creation of a new agricultural gateway onto the L6407 from lands in Gurteen, Mullinahone, Co. Tipperary, is or is not 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

### **5.2 Determination**

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

5.2.2 The querist is to be advised as follows;

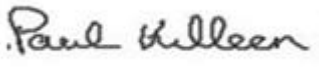
1. In order for the works proposed to be considered exempted development the Planning Authority needs to be satisfied that that the proposal does not consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, or would endanger public safety by reason of traffic hazard or obstruction of road users.




To that end, the applicant is requested to submit details of the width of the L-6407 at the point the entrance is proposed.

In addition, the applicant is requested to provide a site layout plan outlining the sightlines available at the entrance point from a 4.5m setback at the centre of the proposed entrance. This is required to enable the planning Authority consider if the works proposed would result in a traffic hazard.

2. The applicant is also requested to confirm the height of the proposed gate.

Signed:   
Paul Killeen  
District planner

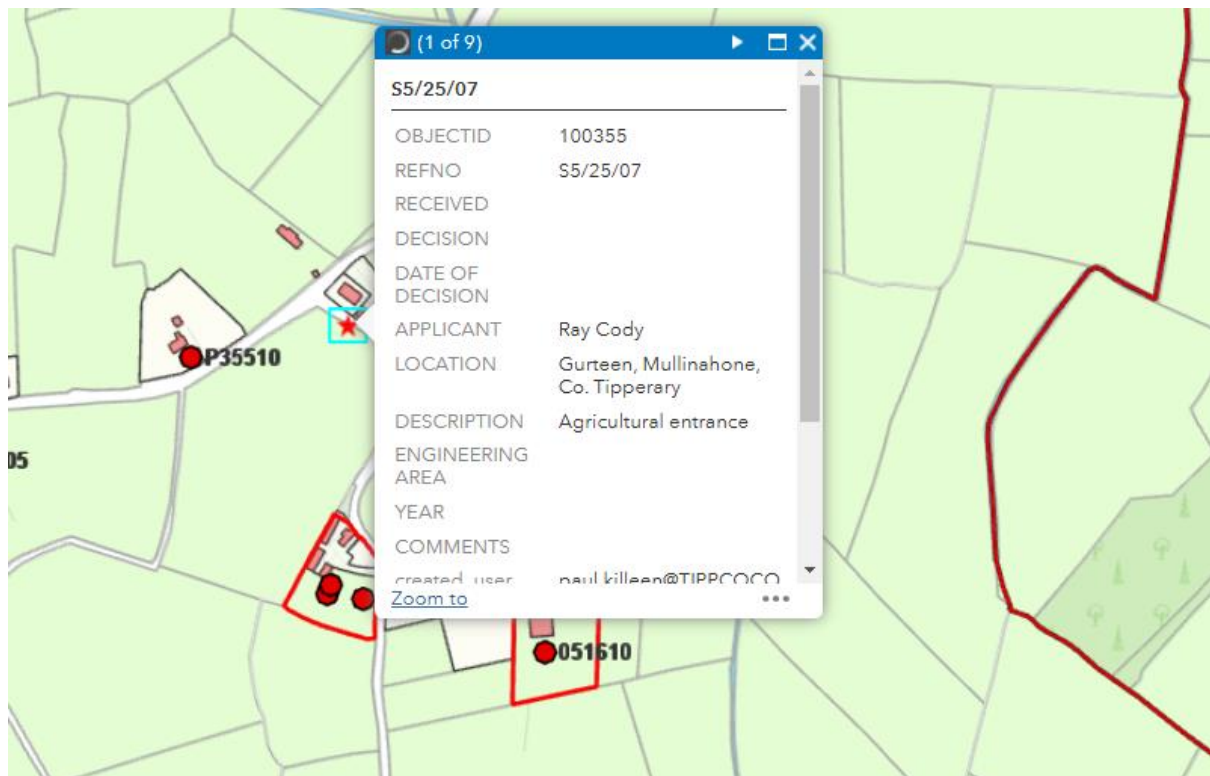
Date: 19/02/25

  
Signed: C. Conway  
Senior Executive Planner

Date: 19.2.2025

EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
<b>File Reference:</b>	S5/25/07
<b>Development Summary:</b>	Creation of agricultural gateway
<b>Was a Screening Determination carried out under Section 176A-C?</b>	<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 3 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

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Co. Tipperary

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e customerservice  
@tipperarycoco.ie

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

Date: 20<sup>th</sup> February, 2025

Our Ref: S5/25/07

Civic Offices, Nenagh

**Ray Cody  
Gurteen  
Mullinahone  
Co. Tipperary**

**Re: Application for a Section 5 Declaration – Whether the creation of an agricultural entrance onto the L-6407 is development and if so, does it constitute exempted development at Gurteen Mullinahone, Co. Tipperary**

Dear Mr Cody,

I refer to an application received from you on 28<sup>th</sup> January, 2025 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;

It is recommended to request the following further information pursuant to Section 5 (2) (b) of the Planning and Development Act 2000, as amended

1. In order for the works proposed to be considered exempted development the Planning Authority needs to be satisfied that that the proposal does not consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, or would endanger public safety by reason of traffic hazard or obstruction of road users.

To that end, the applicant is requested to submit details of the width of the L-6407 at the point the entrance is proposed.

In addition, the applicant is requested to provide a site layout plan outlining the sightlines available at the entrance point from a 4.5m setback at the centre of the proposed entrance. This is required to enable the planning Authority consider if the works proposed would result in a traffic hazard.

2. The applicant is also requested to confirm the height of the proposed gate.

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

Yours sincerely

*Geraldine Quinn*

---

for Director of Services



## Planning Drawing

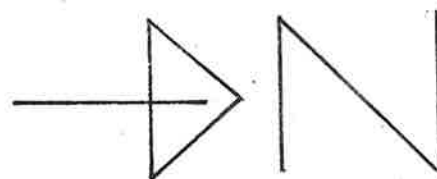
For : Ray Cody

Title: New Double Entrance Gates to Field

At: Gurteen, Mullinahone Co. Tipperary

Scale : 1:100

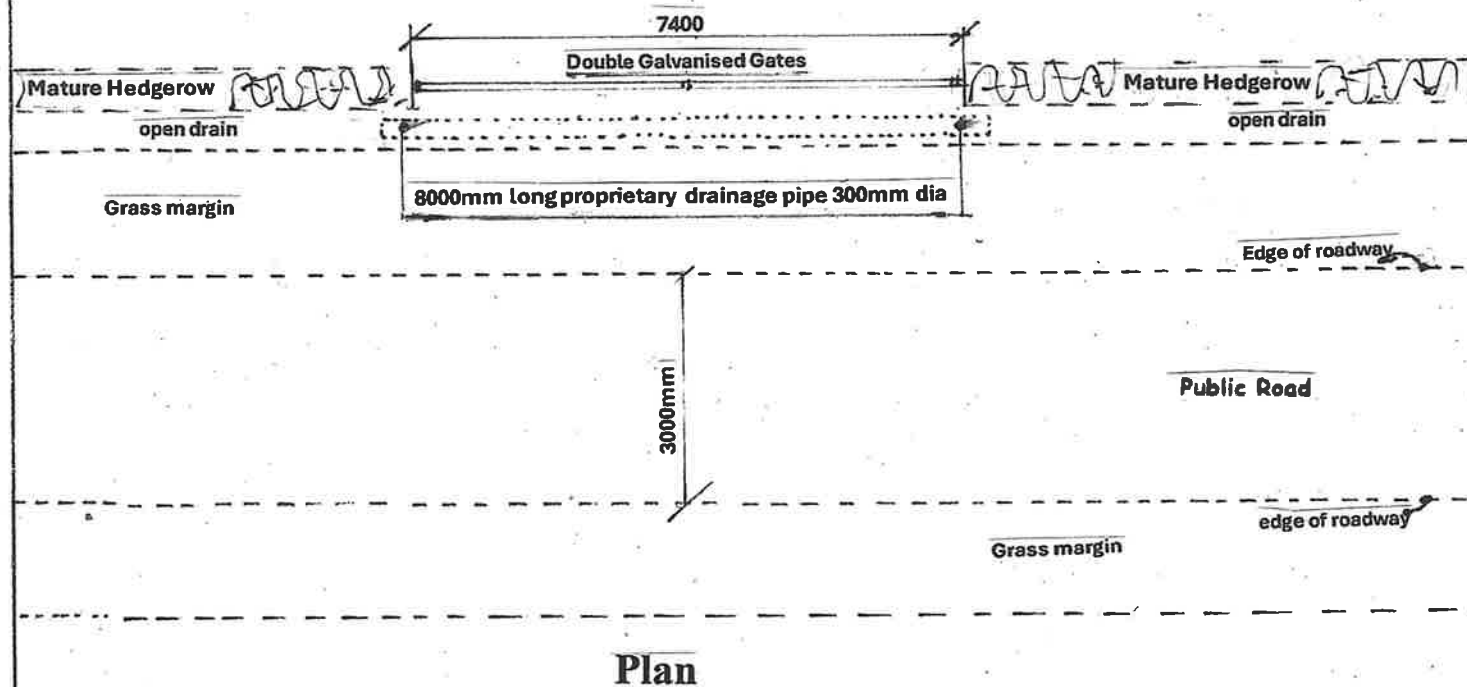
Prepared By: Albert Curran



Double Galvanised Gates 2550mm high



**Elevation**



**Plan**





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Tipperary County Council

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Co. Tipperary  
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e customerservice  
@tipperarycoco.ie  
tipperarycoco.ie

Date: 11<sup>th</sup> March 2025

Our Ref: S5/25/07

Civic Offices, Clonmel

**Ray Cody  
Gurteen  
Mullinahone  
Co. Tipperary**

**Re: Application for a Section 5 Declaration – Whether the creation of an agricultural entrance on the L-6407 is development and if so, does it constitute exempted developmet at Gurteen, Mullinahone, Co. Tipperary**

Dear Mr Cody,

I acknowledge receipt of Further Information received on 10th March, 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**

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

---

**Declaration Reference No.:** S5/25/07

**Query:** Whether the creation of an agricultural entrance onto the L-6407 is development and if so, does it constitute exempted development.

**Location:** Gurteen, Mullinahone, Co. Tipperary

**Querist:** Ray Cody

**Owner/Occupier:** Ray Cody

---

<b>1</b>	<b><i>Introduction</i></b>	<b>1</b>
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## 1 Introduction

### 1.1 Query

- 1.1.1 A question has arisen pursuant of Section 5 of the Planning and Development Act 2000 (as amended) as to whether or not the creation of an agricultural entrance onto the L-6407 at Gurteen, Mullinahone, 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 Gurteen, Mullinahone, Co. Tipperary is located approximately 2.8km to the east of the village of Mullinahone. This is a predominately rural area, with limited development in the immediate vicinity of the site.
- 2.1.2 The site is located in the open country side as defined in the Tipperary County Development Plan 2022.

### 2.2 Planning History

On site

None recorded

Adjoining

None recorded

Figure 1 Planning history



### **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 In relation to this specific case, the provisions of **Class 9** are considered relevant. Class 9 allows as ‘sundry works’ the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway, subject to the condition limiting the height of such structure to not exceed 2 metres.
- 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 de 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 work, to which the query relates, is,
- The creation of a new agricultural access point (including gates) onto lands in, Gurteen, Mullinahone, Co. Tipperary.

#### **4.2 Is it development?**

- 4.2.1 Having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended), it is considered that the proposal as set out in paragraph 4.1.1 above, does constitute development as it does involve the carrying out of works on the subject land.

### 4.3 Is it exempted development?

- 4.3.1 In order for a development to be considered “exempted development”, a specific exemption must exist for the works proposed. As noted in para. 3.2.2 above, Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended), allows for the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway, subject to the condition limiting the height of such structure to not exceed 2 metres.

Figure 2 site layout



- 4.3.2 The applicant is proposing to create a gateway onto agricultural lands from the L-6407.
- 4.3.3 As this gateway is not within or bounding the curtilage of a house, the proposal could therefore be considered exempt under class 9 subject to the restrictions set out under Article 9.
- 4.3.4 Of relevance to this Declaration are the provisions of Articles 9 (1)(a) (ii and iii). Under these provisions, development is not exempted development if it consists of the formation of an access to a public road the surface carriageway of which exceeds 4 metres in width or if it presents as a traffic hazard.
- 4.3.5 From the drawings submitted, it is not possible to determine the width of the L-6407 at the point that the entrance is proposed. In addition, no details of the sightlines to be provided at the entrance are provided. As such, it is not possible to consider if these entrances would present as a traffic hazard. The height of the gate is not specified.

### 4.4 Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

- 4.4.1 The subject site is located c. 4.6 kms from the Lower River Suir SAC, 2 kms from the River Barrow And River Nore SAC and 6.7 kms from the River Nore SPA.



4.4.2 The proposed development is located in a rural area and comprises of the creation of a new entrance to agricultural lands.

4.4.3 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.

4.4.4 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 Further information**

### **5.1 Request**

5.1.1 The following further information was requested on the 20<sup>th</sup> of February 2025;

- In order for the works proposed to be considered exempted development the Planning Authority needs to be satisfied that that the proposal does not consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, or would endanger public safety by reason of traffic hazard or obstruction of road users.

To that end, the applicant is requested to submit details of the width of the L-6407 at the point the entrance is proposed.

In addition, the applicant is requested to provide a site layout plan outlining the sightlines available at the entrance point from a 4.5m setback at the centre of the proposed entrance. This is required to enable the planning Authority consider if the works proposed would result in a traffic hazard.

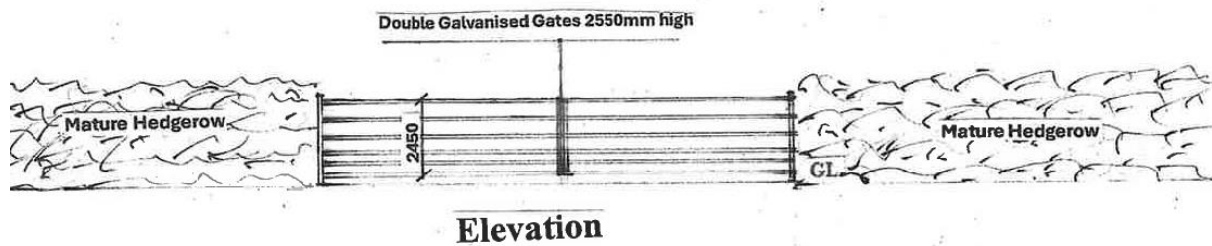
- The applicant is also requested to confirm the height of the proposed gate.

5.1.2 The querist replied on the 10th of March 2025.

5.1.3 The applicant has confirmed that the L-6407 is 3 ms wide at the point where the entrance is proposed. The applicant has not indicated the available sightlines from a 4.5m setback as requested.

5.1.4 The applicant has indicated that the gate is to be 2.4 ms high.

Figure 3 New entrance



5.1.5 As is set out in Class 9 of the Planning and Development Regulations 2001, as amended, the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway is exempt, subject to the condition limiting the height of such structure to not exceed 2 metres.

5.1.6 As the applicant has clearly indicated that the height of the gate is to exceed 2 metres, the works proposed do not constitute exempted development. Furthermore the applicant has not indicated the available sightlines and it is therefore unclear if the restriction on exemptions set out under Article 9(1)(a)(iii) apply.

## 6 Conclusion

### 6.1 Query

6.1.1 A question has arisen as to whether the creation of a new agricultural gateway onto the L6407 from lands in Gurteen, Mullinahone, Co. Tipperary, is or is not exempted development.

6.1.2 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

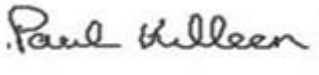
### 6.2 Determination

6.2.1 Having considered the further information received, the Planning Authority has determined that

- The construction of an agricultural entrance onto the L-6407,

constitutes development and is not considered to be “exempted development” as the height of the gate exceeds the 2m height restriction set out under Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended.

Furthermore the applicant has not indicated the available sightlines from a 4.5m setback and it is therefore unclear if the restriction on exemptions set out under Article 9(1)(a)(iii) apply.

Signed:   
Paul Killeen  
District planner

Date: 24/03/25

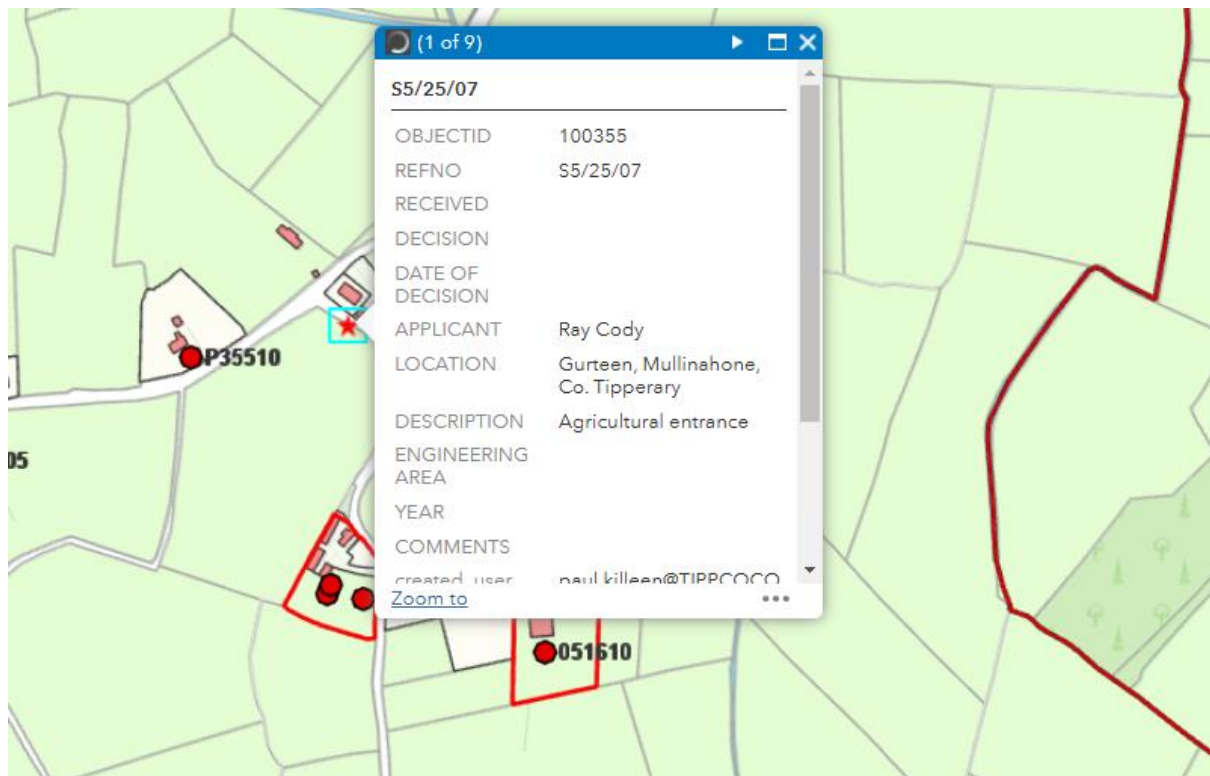
  
Signed: Senior Executive Planner

Date: 24.3.2025

EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
<b>File Reference:</b>	S5/25/07
<b>Development Summary:</b>	Creation of agricultural gateway
<b>Was a Screening Determination carried out under Section 176A-C?</b>	<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 4 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  
E45 A099

t 0818 06 5000/6000  
e customerservice  
@tipperarycoco.ie  
tipperarycoco.ie

Date: 25<sup>th</sup> March, 2025

Our Ref: S5/25/07

Civic Offices, Nenagh

Ray Cody  
Gurteen  
Mullinahone  
Co. Tipperary

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

Dear sir/madam,

I refer to your application for a Section 5 Declaration received on 28<sup>th</sup> January, 2025, and Further Information received on 10<sup>th</sup> March, 2025 in relation to the following proposed works:

**Whether the creation of an agricultural entrance onto the L-6407 is development and if so, does it constitute exempted development at Gurteen, Mullinahone, 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 –

- 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

Having considered the further information received, the Planning Authority has determined that

- The construction of an agricultural entrance onto the L-6407,

constitutes development and is **not** considered to be "exempted development" as the height of the gate exceeds the 2m height restriction set out under Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended.

Furthermore the applicant has not indicated the available sightlines from a 4.5m setback and it is therefore unclear if the restriction on exemptions set out under Article 9(1)(a)(iii) apply.

**NOTE:** Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours sincerely

*Geraldine Quinn*

for **Director of Services**

**Original**

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/25/07**      **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 Ray Cody, Gurteen, Mullinahone, Co. Tipperary re: whether the creation of an agricultural entrance onto the L-6407 is development and if so, does it constitute exempted development) at Gurteen, Mullinahone, Co. Tipperary is development and is exempted development.

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

Having considered the further information received, the Planning Authority has determined that

- The construction of an agricultural entrance onto the L-6407, constitutes development and is **not** considered to be "exempted development" as the height of the gate exceeds the 2m height restriction set out under Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended.

Furthermore the applicant has not indicated the available sightlines from a 4.5m setback and it is therefore unclear if the restriction on exemptions set out under Article 9(1)(a)(iii) apply.

**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: 25/03/2025**