

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 LB407. Currently we have to bring milking cows onto the Mullinahone to Callan Rd RB92 regularly to get to another grazing platform. This road has become very busy with traffic and that the reason we want to open a new gate onto the minor road LB407 to avoid the busy road.	
Proposed floor area of proposed works/uses:	sqm Width of gateway 7.3m

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:	

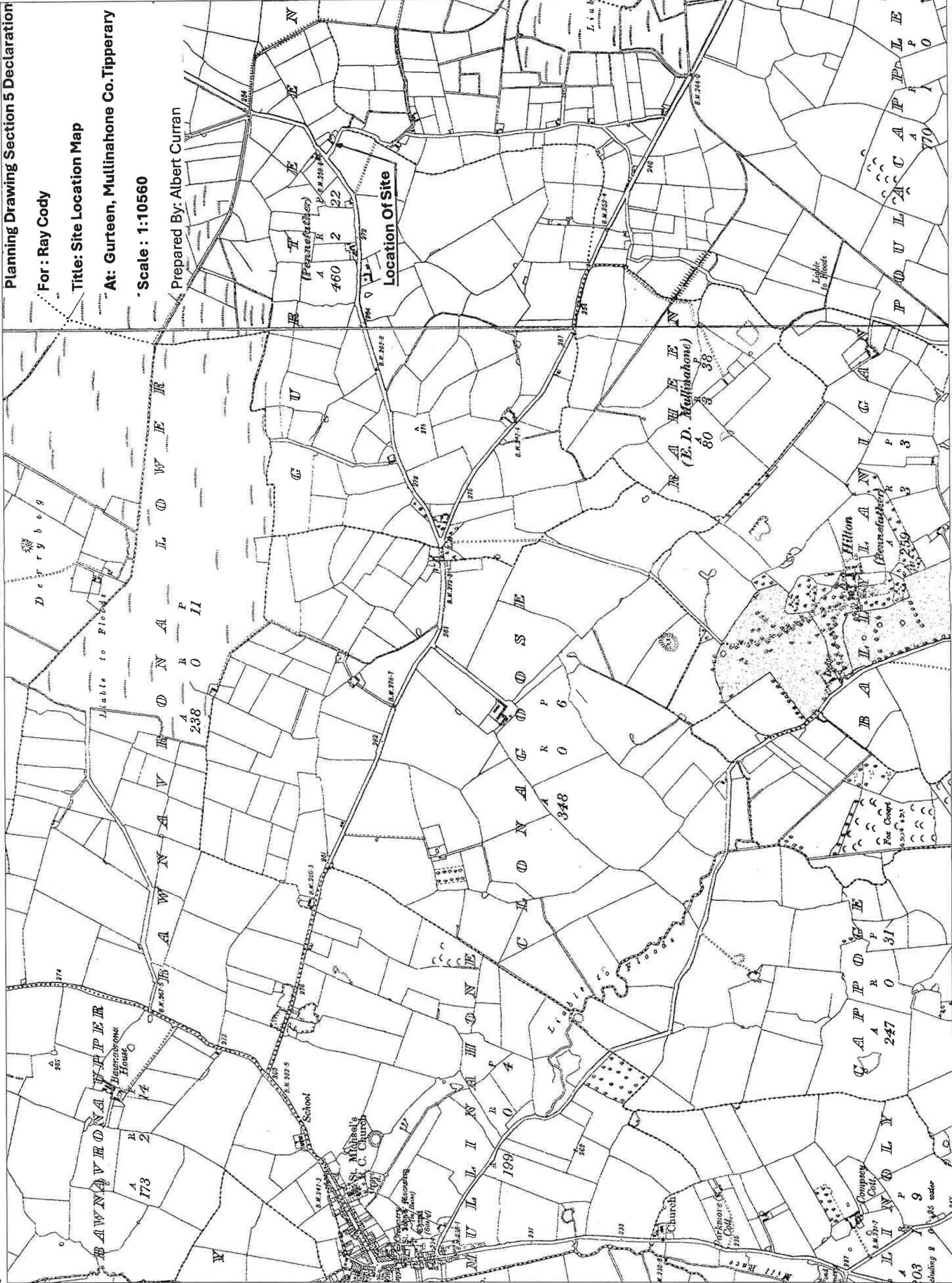
Signature of Applicant(s) Ray Lohy

Date: 7/4/2025

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.

Surveyed 1839 – 1841
Revised 1901 – 1948
Levelled 1948

Record PLACE Map



Planning Drawing Section 5 Declaration

For : Ray Cody

Title: Site Location Map

At: Gurteen, Mullinahone Co.Tipperary

Scale : 1:10560

Prepared By: Albert Curran

Location Of Site

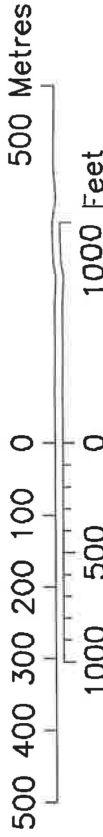
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Scála:— 1:10560



Plot Ref. No. 13521_1_10
Plot Date 25-JUL-2003

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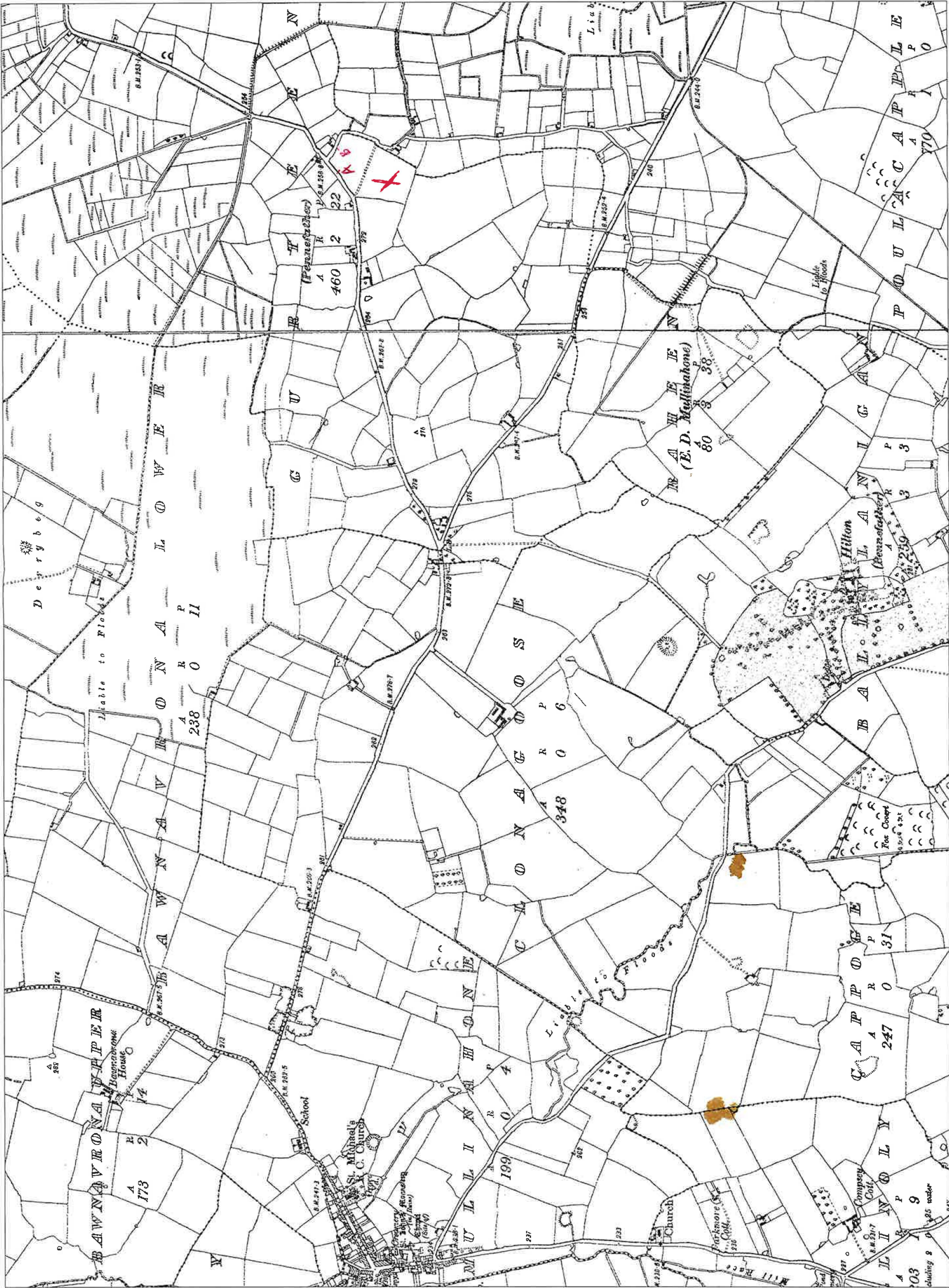
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Record PLACE Map

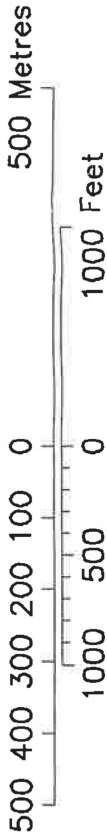
Surveyed 1839 – 1841
Revised 1901 – 1948
Levelled 1948

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Plot Ref. No. 13521_1_11
Plot Date 25-JUL-2003



Scale:— 1:10560
Scála:— 1:10560

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DESCRIPTION

MAP SCALES

6inch
KK026
TY063



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Planning Drawing Section 5 Declaration

For : Ray Cody

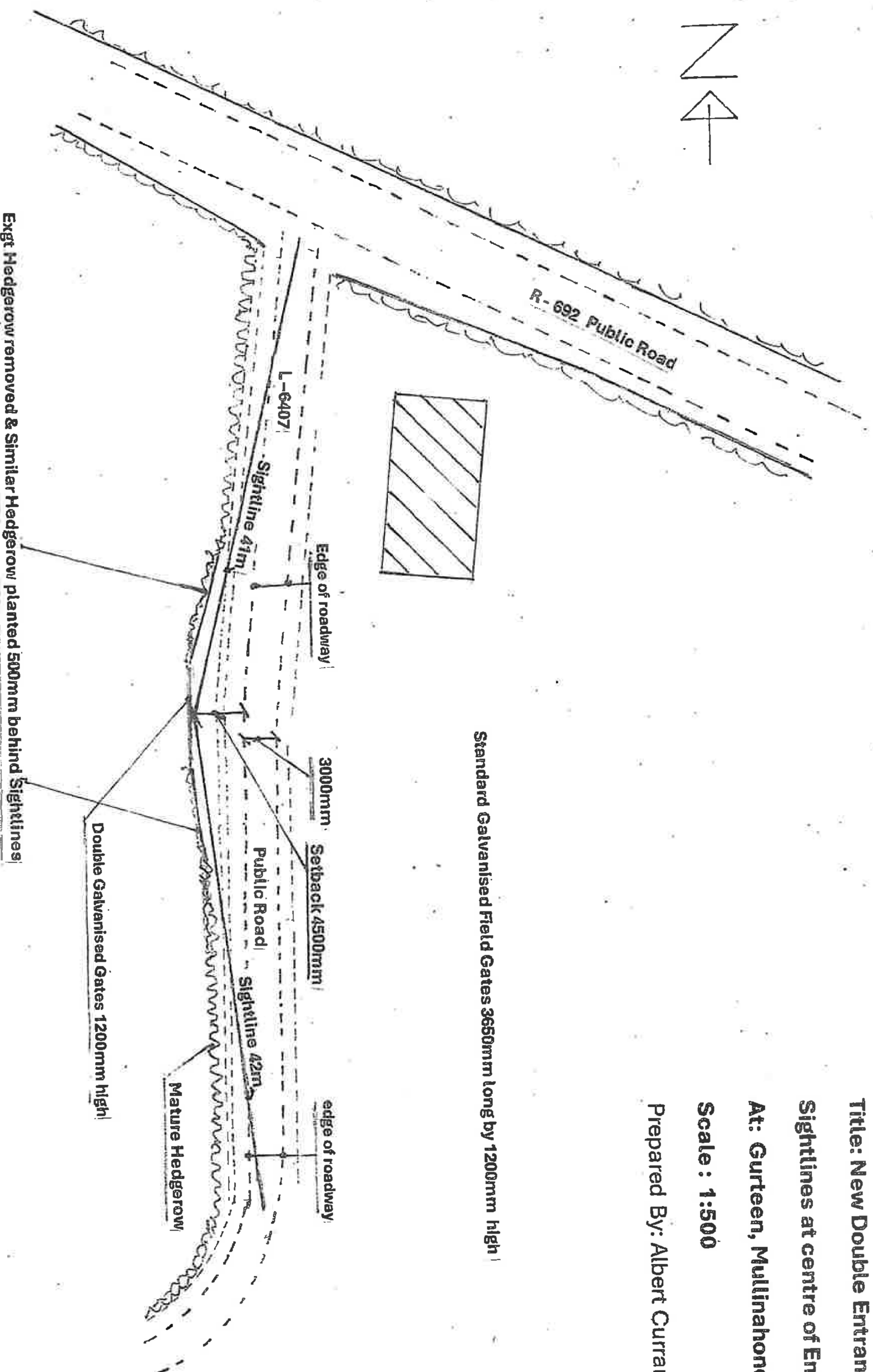
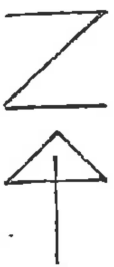
Title: New Double Entrance Gates to Field

Sightlines at centre of Entrance

At: Gurteen, Mullinahone Co. Tipperary

Scale : 1:500

Prepared By: Albert Curran



Standard Galvanised Field Gates 3650mm long by 1200mm high

Planning Drawing Section 5 Declaration

For : Ray Cody

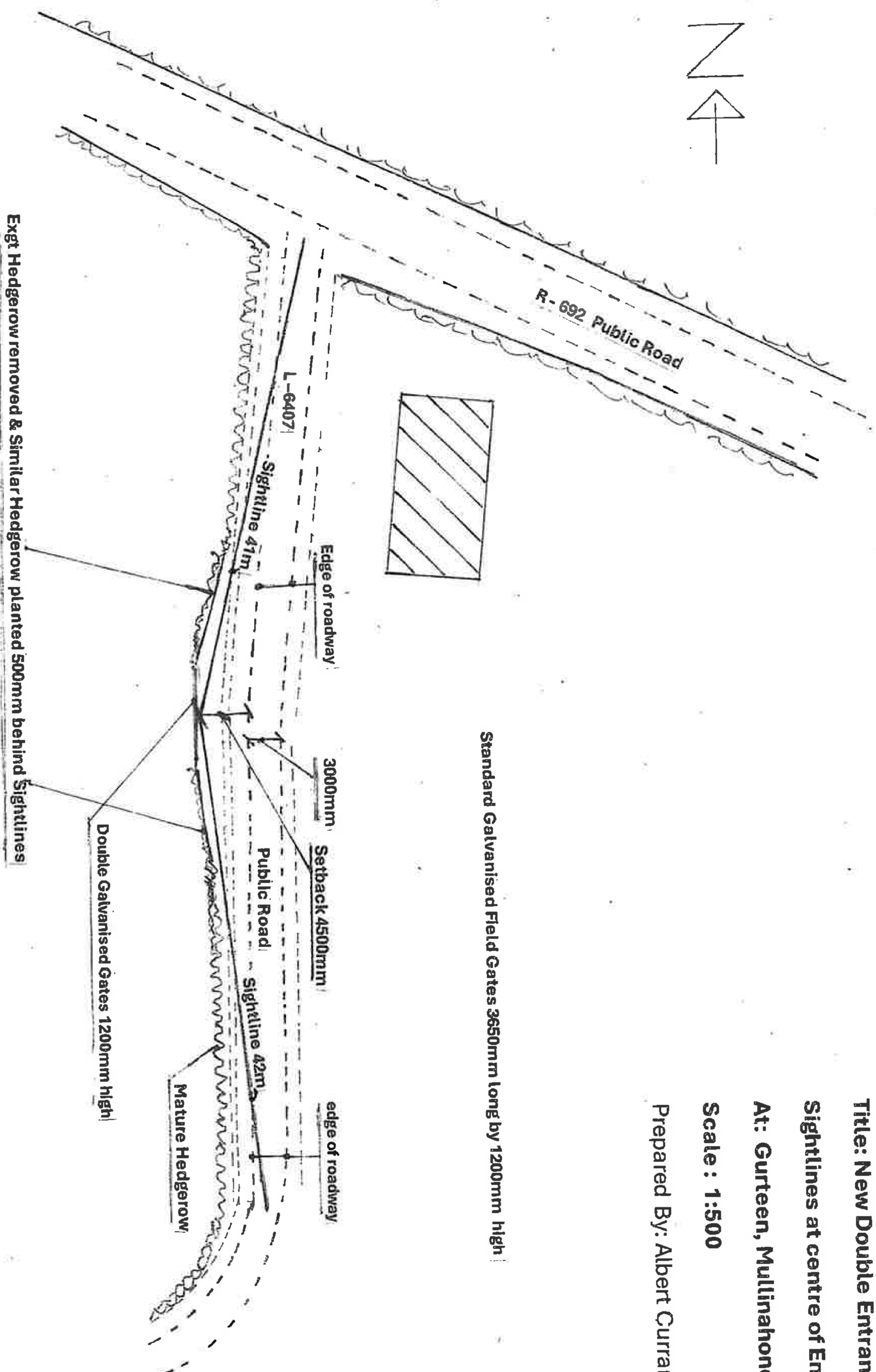
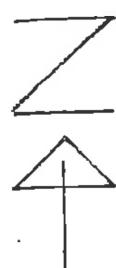
Title: New Double Entrance Gates to Field

Sightlines at centre of Entrance

At: Gurteen, Mullinahone Co.Tipperary

Scale : 1:500

Prepared By: Albert Curran



Standard Galvanised Field Gates 3650mm long by 1200mm high

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

Declaration Reference No.: S5/25/38

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.

2.2 Planning History

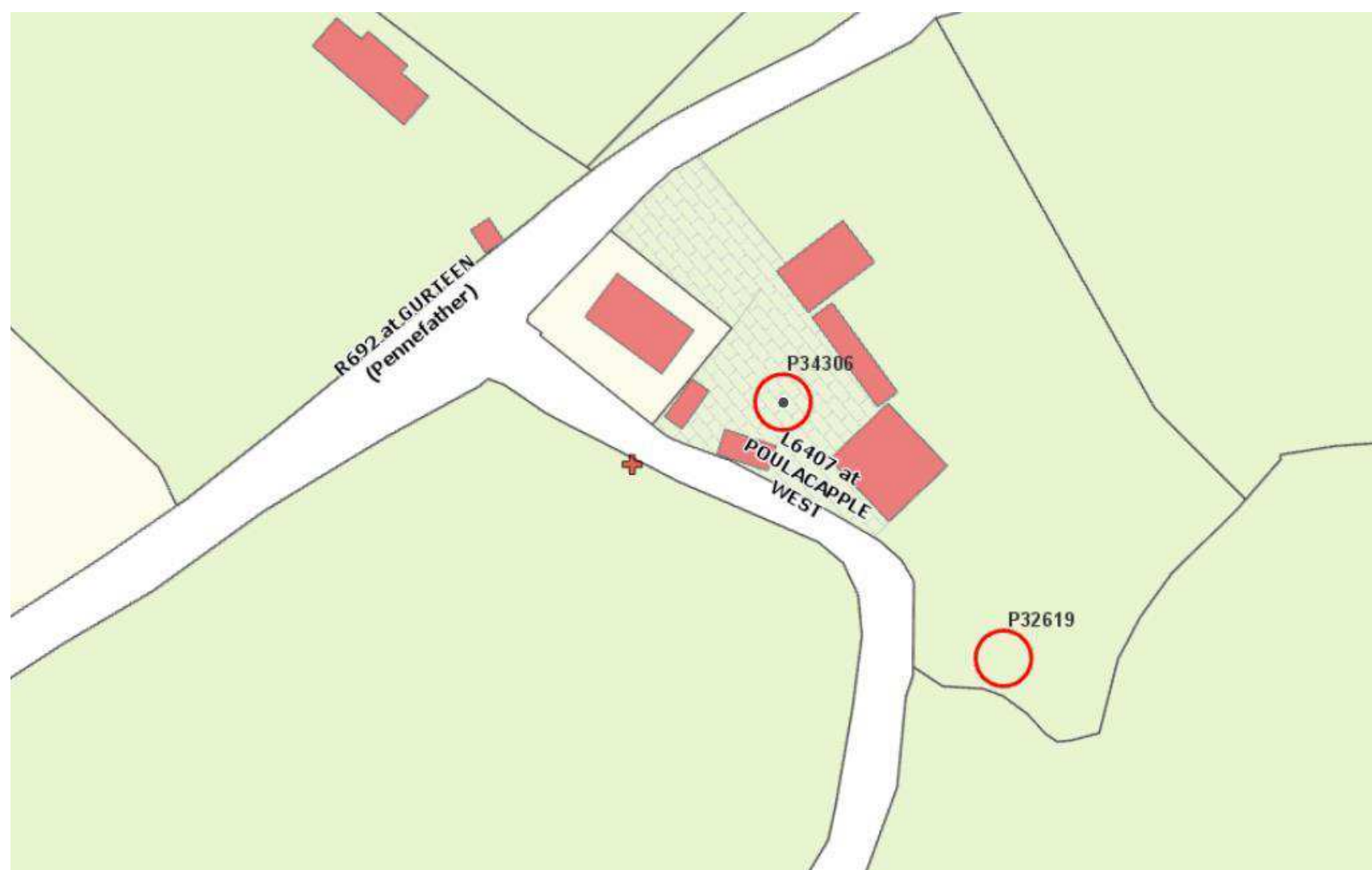
On site

S5/25/07 - Whether the creation of an agricultural entrance onto the L-6407 is development and if so, does it constitute exempted development – is development and is not exempted development

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 The applicant has indicated that the width of the L-6407 at the point that the entrance is proposed is 3 meters. The applicant has indicated the sightlines (to the middle of the road) that will be achieved at the entrance from a 4.5m setback. Having regard to the width and alignment of the local road at this location it is accepted that traffic speed will be low.

Figure 3 Sightlines

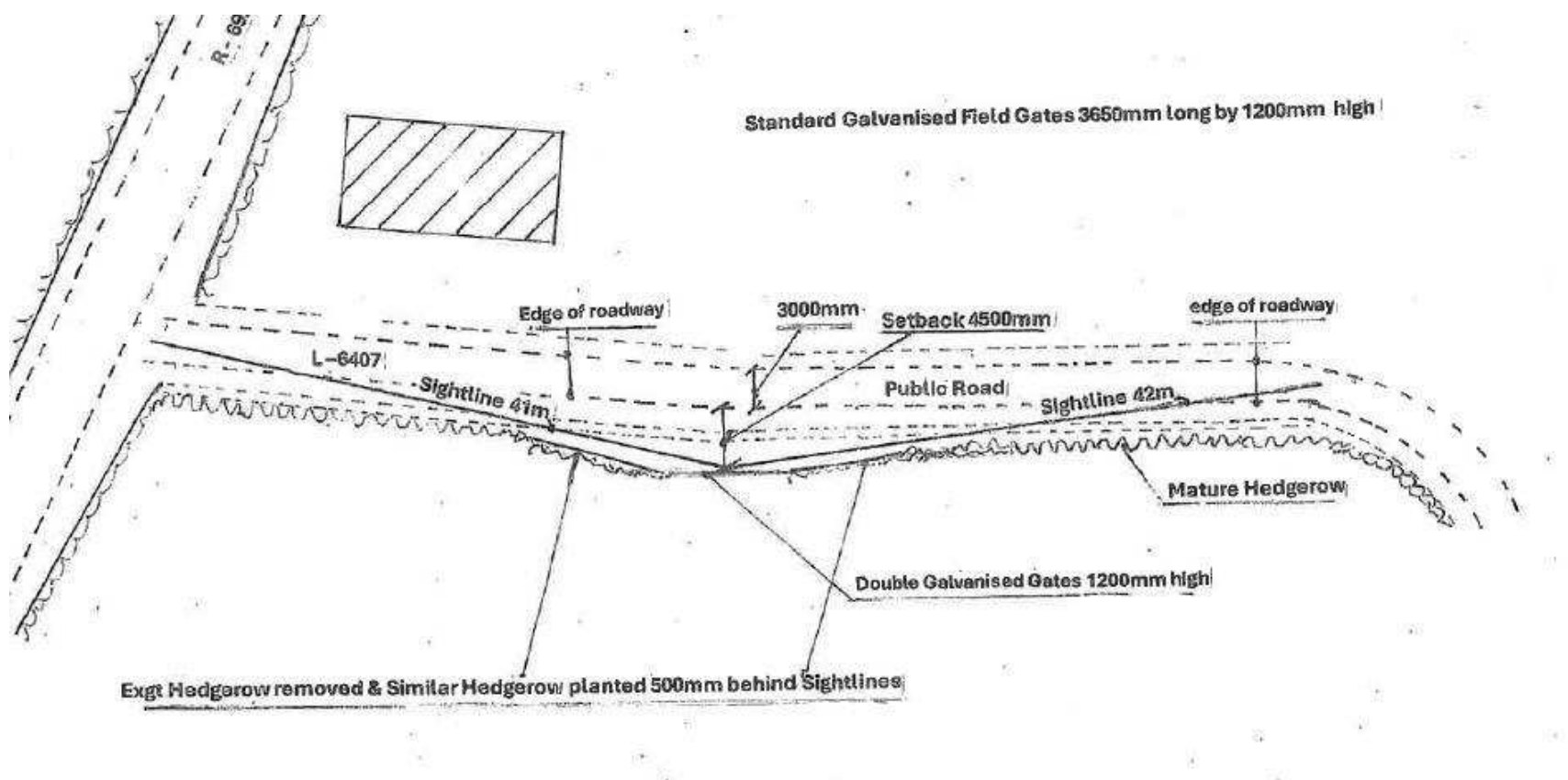


Figure 4 View along L6407



4.3.6 It is further noted that the height of the gate will be 1.2 metres.

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 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
- 5.1.3 AND WHEREAS Tipperary County Council has concluded that –
- The development consisting of the creation of a new agricultural gateway onto lands in Gurteen, Mullinahone, Co. Tipperary, is development and is exempted development as it DOES fall under the exempted development provisions as set out under Section 4 of the Planning and Development Act 2000, as amended.

NOW WHEREAS Tipperary County Council, in exercise of the powers conferred on it by section 5(2)(a) of the Planning and Development Act 2000 as amended, it is hereby decided that the proposal as outlined above is development and IS exempted development.

Signed: 
Paul Killeen
District planner

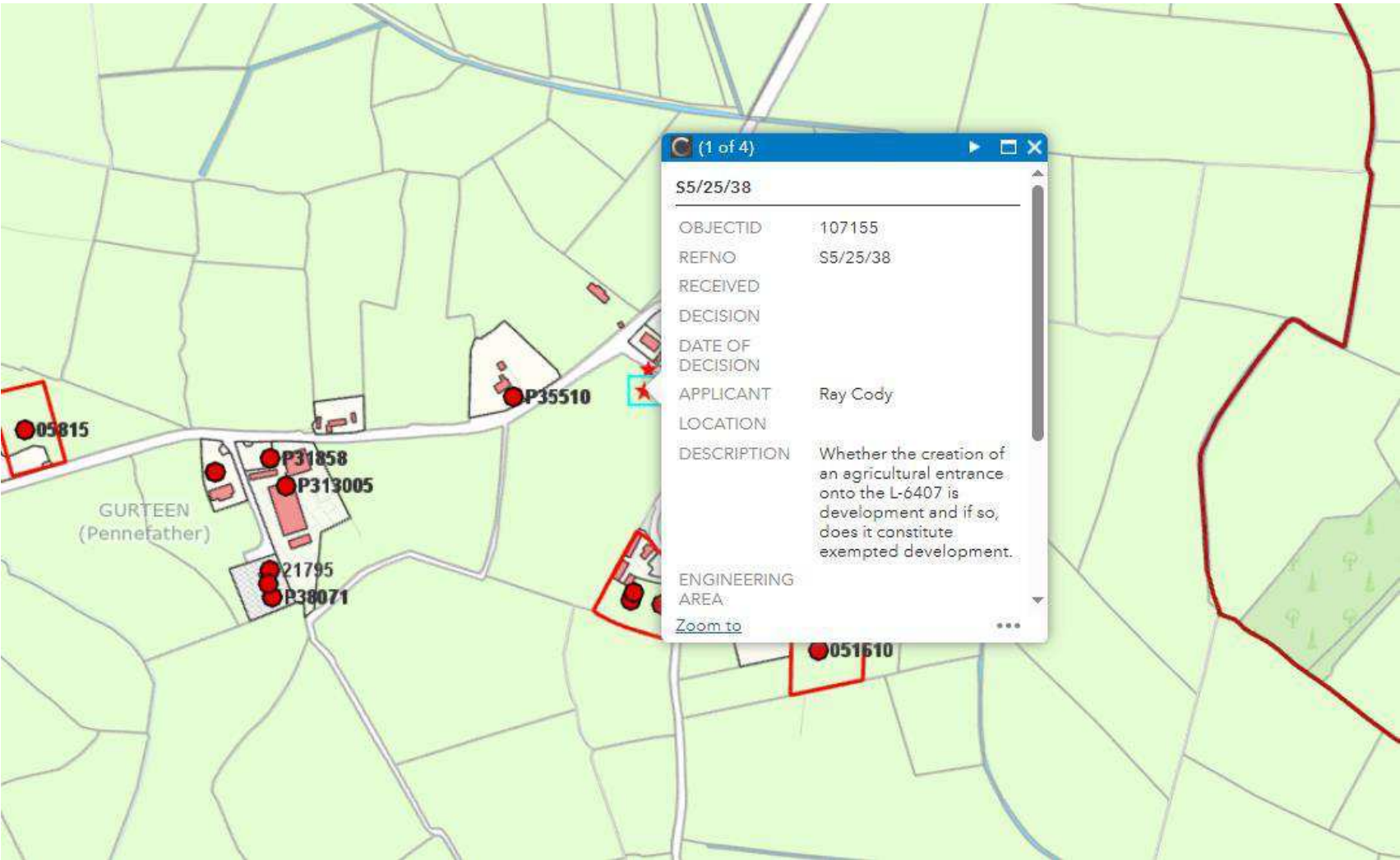
Date: 25/04/25


Signed: C. Conway
Senior Executive Planner

Date: 28.4.2025

EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/25/38
Development Summary:	Creation of agricultural gateway
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 4 Site entered on planning register



Original

TIPPERARY COUNTY COUNCIL

DELEGATED EMPLOYEE'S ORDER

File Ref: **S5/25/38** **Delegated Employee's Order No: _____**

SUBJECT: Section 5 Declaration

I, Dave Carroll, A/Director of Services, Tipperary County Council, by virtue of the powers delegated to me in accordance with the provisions of Section 154 of the Local Government Act 2001, as amended by Schedule 1, Part 1 of the Local Government Reform Act 2014 under Chief Executive's Order No. 41983 dated 17th April, 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: Creation of a new gateway onto road L6407 for agricultural purposes at Gurteen, Mullinahone, 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 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,
- (c) Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The nature and scale of the proposed use, as outlined in submissions on file by the owner/occupier

Tipperary County Council has concluded that the creation of a new gateway onto road L6407 for agricultural purposes at Gurteen, Mullinahone, Co. Tipperary is development and is exempted development. The proposals meet the exempted development provisions as set out under Section 4 of the Planning and Development Act 2000, as amended.

Signed:



Date: 28/04/2025

Dave Carroll

A/Director of Services

Planning and Development (including Town Centre First),

Emergency Services and Emergency Planning and

Tipperary/Cahir/Cashel Municipal District



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: 28th April, 2025

Our Ref: S5/25/38

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 8th April, 2025 in relation to the following proposed works:

Creation of a new gateway onto road L6407 for agricultural purposes 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 –

- 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,
 - 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
- Tipperary County Council has concluded that the creation of a new gateway onto road 6407 for agricultural purposes at Gurteen, Mullinahone, is development and is **exempted development**. The proposal meets the exempted development provisions as set out under Section 4 of the Planning and Development Act, 2000, as amended.

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**