



PLANNING & DEVELOPMENT ACT, 2000 (as amended)

Application for a Section 5 Declaration
Development / Exempted Development

1. Applicant's address/contact details:

<i>Applicant</i>	Iarnród Éireann-Irish Rail (C/O Paul Flynn)
<i>Address</i>	Engineering & New Works Building, Inchicore Works, Inchicore, Dublin 8
<i>Telephone No.</i>	[REDACTED]
<i>E-mail</i>	[REDACTED]

2. Agent's (if any) address:

<i>Agent</i>	CIÉ Group Solicitors
<i>Address</i>	CIÉ Group Solicitor's Office, Bridgewater House, Islandbridge, Dublin 8
<i>Telephone No.</i>	[REDACTED]
<i>E-mail</i>	[REDACTED]
<i>Please advise where all correspondence in relation to this application is to be sent;</i>	
Applicant [X] Agent []	

3. Location of Proposed Development:

<i>Postal Address or Townland or Location (as may best identify the land or structure in question)</i>	Church Street, Townparks, Cahir, Co. Tipperary.
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4. Development Details:

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

Works consisting of the construction of a GSM-R Train Signalling Mast in/off Church Street,
Townparks, Cahir, Co. Tipperary on lands owned by CIÉ.
Proposed floor area of proposed works/uses:0.5 sqm

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

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

Signature of Applicant(s) 

Date: 10/04/2026

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

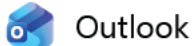
- (1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.
- (2) This application should be accompanied by **TWO COPIES** of the following documentation
 - OSI Site Location Map with the site outlined clearly – 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	<u>OR</u>	Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary
Enquires:		
Telephone 0818 06 5000		
E-Mail planning@tipperarycoco.ie		

FOR OFFICE USE ONLY	
Fee Recd. € <u>80.00</u>	<u>DATE STAMP</u>
Receipt No <u>202538</u>	Tipperary County Council Planning Section by email Received: 10/04/2026 File ref: S5/26/51
Date <u>08/04/2026</u>	
Received by <u>C.Ahern</u>	



[External] Cahir Railway Station, Cahir Co. Tipperary Application for Declaration pursuant to Section 5 Planning and Development Act and Section 57 Planning and Development Act

From Serena Paraschiv [REDACTED]
Date Fri 10 Apr 2026 3:22 PM
To Planning <planning@tipperarycoco.ie>
Cc Customer Service Desk <customerservices@tipperarycoco.ie>

9 attachments (12 MB)

Letter to Tipperary Co Co 10.04.2026 CIE Ref 26.48.37 TCC Ref TUD25-226.pdf; Annex A section 5 application form.pdf; Annex B section 57 application form.pdf; Annex C Opinion of Michael O'Donnell SC.pdf; Annex D Heritage Impact Assessment David Hughes.pdf; Annex E 26_GSMR PH4 MAST_03 - Cahir GSM-R Compound Elevation.pdf; Annex E and G 26_GSMR PH4 MAST_01- Cahir Station Aerial Layout.pdf; Annex E DSI GSMR_30LT 700_1700 ass.pdf; Annex G Photograph View from TRPS1303 eastwards.jpg;

CAUTION FROM TIPPERARY COUNTY COUNCIL IT SECTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Our Reference: 26/48/37

Your Reference: TUD-25 [REDACTED]

Dear Sir/Madam,

Please find attached herewith the following documents forming our Application for a Declaration pursuant to Section 5 of the Planning and Development Act 2000 and Section 57 of the Planning and Development Act 2000:

1. Letter to Tipperary County Council 10 April 2026;
 - A. Section 5 Application Form;
 - B. Section 57 Application Form;
 - C. Opinion of Michael O'Donnell SC;
 - D. Heritage Impact Assessment Report of David Hughes, Conservation Architect;
 - E. Site layout plan and drawings of the train signalling mast;
 - F. The receipt number evidencing the payment of the fee is 202538;
 - G. Aerial photograph showing the distance from the protected structure TRPS1303 to the mast location and photograph from TRPS1303 eastwards towards the mast location.

Please acknowledge receipt of the within submission and also forward the within email and submission to Ms Caroline Conway.

Kind regards,



Serena Paraschiv

[REDACTED]
Property Department, CIE Group Solicitors, Bridgewater House, Islandbridge, Dublin 8.

www.cie.ie

Driving Change for a Sustainable future

At C oras Iompair  ireann we believe in facilitating flexible working, so while it suits me to email now, I do not expect a response or action outside of your own working hours

Director of Services
Tipperary County Council
Planning and Building Department
Civic Offices,
Clonmel,
Co. Tipperary

By Registered Post
& By Email:
customerservices@tipperarycoco.ie
planning@tipperarycoco.ie



C6ras Iompair  ireann

Oifig an Ghr pa Aturnae

Teach Uisce an Droichid

Droichead na hInse

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D08 T9NH

DX: 148001 ISLANDBRIDGE

Teil/Tel: + 01 353 703 1504/1519

R omhphost/Email: Law@cie.ie

Idirl on/Web: <http://www.cie.ie>

Our Ref :
26/48/37

Your Ref :
TUD- [REDACTED]

Date :
10th April 2026

Re: Cahir Railway Station, Cahir, Co. Tipperary

Application for a Declaration pursuant to Section 5 of the Planning and Development Act, 2000 (as amended)

Application for a Declaration under Section 57(2) of the Planning and Development Act, 2000 (as amended)

Applicant: Iarnr d  ireann – Irish Rail

Dear Sir/Madam,

We refer to previous correspondence in the above matter commencing with a warning letter dated the 16th January 2026 and a further letter of the 11th March 2026, and the response that has been made to those letters, and to the subsequent discussions with the Planning Authority. Arising from this correspondence, and the discussions, we have been instructed to seek a Declaration pursuant to Section 5 of the Planning and Development Act, 2000 (as amended) as well as a Declaration under Section 57(2) of the said Planning and Development Act, 2000, as specifically referred to in your letter of the 11th March 2026 on behalf of Iarnr d  ireann – Irish Rail.

Your correspondence refers to a train signalling mast which has been developed at Cahir Train Station and wherein the warning letter dated 6th January 2026 (TUD [REDACTED]) a response was requested by the Planning Authority in respect of whether the erection of the mast constituted "development", and if so, whether it amounted to an "exempted development" for the purpose of Section 4 of the Planning and Development Act, 2000 (as amended).

Córas Iompair Éireann (CIÉ), responded within the statutory period and relied on Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001. This provides for an exemption for a "railway undertaking" (in this case, CIÉ/Irish Rail) in respect of "development" (whether works as defined in Section 2 and/or a material change of use as referred to in Section 3 of the Planning and Development Act, 2000) required "in connection with the movement of traffic by rail". In this regard, the train signalling mast is a critically important facility which is urgently required in respect of the safe and efficient movement of persons and goods being carried by rail, is mandatorily required under Council Directive 96/48/EC which relates to the inter-operability of European Railways and where there is a requirement that these facilities be in place to comply with CIÉ/Irish Rail's obligations under European Community Law as well as for reasons of safety.

Accordingly, the said development falls squarely within the exemption under Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

The Planning Authority in its correspondence, and in particular its letter of the 11th March 2026 raised issues in respect of its understanding as to whether the exemption referred to in our earlier letters applied. In the light of the importance and significance of this piece of railway infrastructure, and the need for clarity and certainty, we are instructed to seek a Declaration pursuant to Section 5 of the Planning and Development Act, 2000 (as amended) as well as a Declaration under Section 57(2) of the said Act, and as referred to in the letter already referred to of the 11th March 2026 on behalf of Iarnród Éireann – Irish Rail.

A Declaration is sought pursuant to Section 5 of the Planning and Development Act, 2000 as to whether the development of a train signalling mast at Cahir Train Station, Townparks, Cahir, Co. Tipperary constitutes exempted development for the purposes of Section 4(2) of the Planning and Development Act, 2000, and specifically whether it falls within the exemption contained in Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

In respect of the Declaration sought under Section 57(2) of the Planning and Development Act, 2000 the Declaration sought is that the development of a train signalling mast located over 130 metres from a protected structure reference TRPS1303, a building referred to and described as Cahir Railway Station, Cahir, Co. Tipperary where no works are proposed to the said building and where no part of the building or any element thereof is affected by the said development, and where the character of the structure and/or any element of the structure that contributes to its architectural, historical, archaeological, cultural, scientific, social, or technical interest is not affected by the proposed development which Declaration is sought by the owner/occupier of the building for the purpose of Section 57(2) of the Planning and Development Act, 2000.

In this regard, we enclose the following:

- a. A completed application for a Declaration pursuant to Section 5 of the Planning and Development Act, 2000.
- b. A completed application for a Declaration under Section 57 of the Planning and Development Act, 2000.
- c. The Opinion of Senior Counsel in respect of the train signalling mast having regard to the provisions of Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 and the extent to which the said development falls within the said exemption for the purposes of Section 4(2) of the Planning and Development Act, 2000.
- d. The report of David Hughes, Conservation Architect in respect of the said train signalling mast.
- e. A site layout plan/drawings of the said structure which identifies the nature, extent and location of the said development.
- f. The requisite fee of €80.00 has been paid, the receipt number is **202538**.
- g. An aerial photograph identifying the distance between the protected structure (TRPS1303) and the train signalling mast and a photograph showing the view from the protected structure (TRPS1303) eastwards towards the mast site location.

These documents, together with this Letter of Application to which they are appended are the documents that ground the application for the said Declarations which the Applicant, Iarnród Éireann-Irish Rail, seeks pursuant to the provisions of Section 5 and Section 57(2) of the Planning and Development Act, 2000.

CIÉ/Iarnród Éireann-Irish Rail submit that the proposed development falls within the provisions of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001. There is set out hereunder a summary of the conclusions contained in Senior Counsel's Opinion in respect of the considerations that have been applied and which Opinion is set out in full at Appendix C of this Submission.

The Opinion concludes that the development of a train signalling mast while constituting "development" within the definition of "works" as set out in Section 2 of the Planning and Development Act is an "exempted development" for the purpose of Section 4 of the Planning and Development Act, 2000 where the works have been carried out by a Railway Undertaking (CIÉ/Iarnród Éireann-Irish Rail) on or in the operational lands which lands are owned and occupied by the said Railway Undertaker, the lands being owned by CIÉ and the works having been carried out by Iarnród Éireann - Irish Rail, is a critical facility required in connection with the movement of traffic by rail and is a critical safety feature which is required to be implemented by virtue of Council Directive 96/48/EC and accordingly falls within the exemptions provided for in Column 1 of Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

The Opinion concludes furthermore that the development does not fall into any of the excluded categories contained in Class 23(a) or 23(b), nor does the development contravene Column 2 of Class 23 where no additional or any car parking is to be provided or required arising from the development and accordingly the exemption is not disapplied by the provisions of column 2 of Class 23.

The exemption of Class 23 is not, furthermore, disapplied by Article 9(1)(a) of the Planning and Development Regulations, 2001 where each of the relevant paragraphs of that provision has been considered and has been addressed, nor does Section 4 (4) have any application in respect of the aforesaid development.

Accordingly, in the Opinion of Senior Counsel the development, that is the subject matter of the correspondence commencing on 16th January 2026 while development constitutes an exempted development for the purpose of Section 4 of the said Act.

In correspondence dated the 11th March 2026, the Planning Authority raised issues in respect of the Tipperary County Development Plan 2022-2028. The Opinion deals with this matter as well as the report from Mr. David Hughes, Conservation Architect and where, having regard to the interpretation of the relevant provisions of the said County Development Plan, there is only one protected structure which is relevant to the considerations of whether the development amounts to an exempted development which is TRPS1303 entitled Cahir Railway Station and where this building was specifically identified in the said Development Plan by a photograph such that there can be no doubt that it is this building, and only this building that is identified in the said Plan for protection.

The previous County Development Plan had incorporated a number of additional buildings in the vicinity, including the Good Store, footbridge, and shelter, but these have been omitted and were excluded when the new Plan was adopted in 2022 and as a consequence the only building which remains as a protected structure is the railway station building identified specifically by way of a photograph in Volume 4 of the said County Development Plan, and which building is located in or about 20 metres from Church Street on the western extremity of the lands.

The train signalling mast is approximately 130 metres east of this structure, is visually and physically separate from it and is located in an entirely different context at the eastern end of the land close to an existing ESB mast located further east at this location close to the Clonmel Road, and which ESB mast is the dominant feature defining the character of the area.

Accordingly, having regard to the provisions of the County Development Plan which must be interpreted as a matter of law (see *Tennyson v Dun Laoghaire Corporation 1991 2IR 527*), having regard to the single building which has been identified as a protected structure in the said County Development Plan, the exclusion from the plan of the other three structures referred to, namely the Good Store, the footbridge and the shelter, it is considered that the curtilage of the said building must be confined to the actual footprint of the building and it is unreasonable and contrary to the principle set out in *Tennyson* to deem the curtilage to extend to over 130 metres from the said building.

The Opinion concludes that the owner/occupier (CIÉ/Iarnród Éireann-Irish Rail) is entitled to a Declaration pursuant to Section 57(2) and having regard to the letter from the Planning Authority of the 11th March 2026, a Declaration to this effect is being sought, namely that the works to the train signalling mast does not materially affect the character of the protected structure or any element of the protected structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, particularly in the light of the absence of any works or interference with the said structure and the separation distance from the mast to the said protected structure.


The provisions of Section 57 refer specifically to a Declaration being granted where the works would not materially affect the character of the structure (*emphasis added*) or to any element of the structure which contributes to its special character and in circumstances where Section 57(1) only disappplies the exemption where works have been carried out "to a protected structure or a proposed protected structure" and where no such works are carried out, the owners/occupiers are advised that they are entitled to such a Declaration and that the exempted development provisions cannot be disappplied in these circumstances. Further, the train signalling mast is over 130 metres from the protected structure and cannot, as a matter of law or as a matter of fact, materially affect the character of this protected structure or any element of the structure and is at such a distance, it cannot be considered as having any effect on the said protected structure. The said conclusions are reinforced by the report of Mr. David Hughes who is a Conservation Architect and who has prepared a report to accompany this application which sets out in details the absence of any effect on the said protected structure. This report concludes, having regard to the provisions of Section 57 that a Declaration is entitled to be granted where the protected structure owned and occupied by the Applicant is not and will not be affected in any respect by the proposed development. The report further concludes, not specifically relevant to the issue of a Declaration under Section 57(2) that the mast, by virtue of its elegant design, the absence of any additional equipment/antenna, will not affect the character of the area, which in any event, is dominated by an existing ESB mast immediately to the east, close to the Clonmel Road.

In summary therefore, the Opinion of Senior Counsel and the report of the Conservation Architect conclude that while this train signalling mast is development, it is nonetheless, an exempted development for the purposes of Section 4 of the Planning and Development Act, and the said exemption is not disappplied by the provisions of Section 57(1) and we attach the full Opinion of Senior Counsel, together with the full report of Mr. Hughes, the Conservation Architect, which are set out at Appendix C and D of the Application.

We would be grateful if you would consider the application.

If you require any further information, or if we can be of any assistance, please do not hesitate to contact us.

Yours faithfully,


Paul Neary
Group Solicitor ✓

MICHAEL O'DONNELL

Senior Counsel

Law Library Building
158/9 Church Street
Dublin 7

Law Library
Four Courts
Dublin 7

OPINION

I am asked to advise in respect of a train signalling mast constructed in/off Church Street, Townparks, Cahir, Co. Tipperary.

The train signalling mast was the subject matter of a warning letter dated 16th January 2026 in respect of which a response was requested in respect of whether the erection of the mast constituted “development” and if so whether it was an “exempted development” for the purposes of Section 4 of the Planning and Development Act, 2000 (as amended).

Córas Iompair Éireann (CIÉ) responded within the statute period and relied on Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 which provide an exemption for Railway Undertakings (in this case specifically Córas Iompair Éireann/Irish Rail) of development (whether works or a material change of use) required in connection with the movement of traffic by rail (and where the train signalling mast is a critically important facility for the safe and efficient movement of persons and goods) and accordingly, that the development was an exempted development for the purposes of Section 4 of the Planning and Development Act, 2000 and the Planning and Development Regulations, 2001.

Having regard to the definition of “unauthorised development” as defined in Section 2 of the Planning and Development Act, 2000 which excludes from that definition, any exempted development, the said train signalling mast cannot amount to an unauthorised development as defined in Section 2 and cannot be the subject matter of “enforcement” having regard to the above provisions.

In light of the critical importance of this train signalling structure to the safe and efficient operation of the railway system, I was requested to deal in detail with the concerns raised by the Planning Authority, and I set out hereinunder my conclusions in respect of these matters in that regard:

Summary of Conclusions

I am of the opinion that the development of a train signalling mast, while constituting “development” within the definition of “works” it is an exempted development for the purposes of Section 4 of the Planning and Development Acts where the works have been carried out by a Railway Undertaking (CIÉ and/or Irish Rail) on or in the operational lands owned and occupied by the Railway Undertaker (the land being owned by CIÉ) and is a critical facility required “in connection with the movement of traffic by rail” and accordingly falls within the exemption provided for in Column 1 of Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001. I am of the opinion furthermore that the development does not fall into any of the excluded categories contained in Class 23 (a) or (b). The development does not require any carparking to be provided and no additional carparking is to be provided arising from the proposed development and accordingly the exemption is not disapplied or affected by Column 2 of Class 23.

I am satisfied furthermore that the exemption in Class 23 is not disapplied by Article 9 of the Planning and Development Regulations, 2001, having examined each of the paragraphs of that provision, nor does Section 4 (4) have any application to the aforesaid development.

Accordingly, in my opinion the development, that is the subject matter of the correspondence commencing on 16th January 2026, while development for the purpose of Section 3 of the Planning and Development Act, 2000 constitutes an exempted development under the provisions of Section 4 of the said Act.

The Tipperary County Development Plan

I have considered the provisions of the Tipperary County Development Plan 2022-2028 and there is only one protected structure relevant to the said development which is under reference TRPS1303 and where the protected structure is the Cahir Railway Station and which was

photographed to identify the specific building protected under the said County Development Plan. The previous County Development Plan incorporated a number of additional buildings in the vicinity, including the goods store, footbridge and shelter, but these have been excluded in the 2022-2028 Plan with the only building which remains being the Railway Station, located approximately 20 meters from Church Street on the eastern extremity of the site.

The train signalling mast is over 130 meters east of this structure and is visually and physically separated from it and located in an entirely different context, at the eastern end of the lands close to the existing ESB mast located further east at this location.

Accordingly, having regard to the provisions of the County Development Plan, which must be interpreted as a matter of law (*see Tennyson -v- Dún Laoghaire Corporation 1991 2IR 527*) and having regard to a single building having been identified as a protected structure in the Tipperary County Development Plan 2022-2028 and in particular the exclusion from that plan of the other three structures referred to in the previous Plan, the goods store, the footbridge and the shelter, the curtilage of the said Railway Station must be confined to the footprint of that building and could not, in my opinion, reasonably incorporate within that curtilage a structure over 130 meters distance from it.

I am further of the opinion that the owner/occupier is entitled to a declaration pursuant to Section 57 (2) that the development does not materially affect the character of the protected structure or any element of the protected structure which contributes to its special, architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest in the light of the separation distance from the mast to the said protected structure. The provisions of Section 57 refer specifically to a declaration being granted where the works would not materially affect the character of the structure (emphasis added) or any element of the structure which contributes to its special, architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. Section 57 (1) therefore provides that where no works are being carried out to the structure nor any element of that structure is being affected then there is an entitlement to obtain a declaration under Section 57 (2) of the Planning and Development Act, 2000.

In this case the train signalling mast is over 130 meters from the structure and cannot as a matter of law or as of a matter of fact materially affect the character of this protected structure

or any element of the protected structure, is not as a matter of law or fact given the distance and the provisions of the development plan as now adopted, within the curtilage of that protected structure and accordingly there can be no contravention of the provision of Section 57 in light of what is set out above.

In those circumstances, in my opinion, the development of this train signalling mast while development is an exempted development for the purpose of Section 4 of the Planning and Development Act, 2000 and where all relevant matters are considered there is no legal basis for the issue of any enforcement proceedings in respect of the aforesaid development as it cannot as a matter of law constitute an unauthorised development where an unauthorised structure means a structure other than – (b) a structure... which exists as a result of the carrying out of exempted development (within the meaning of Section 4 of the Act of 1963 or Section 4 of the Act of 2000) and no legal or any basis for the issue of enforcement proceedings in respect of this development exists. In this regard I advise that a formal declaration both in respect of the exempted status of the structure be applied for under Section 5 of the Planning and Development Act, 2000 and a declaration pursuant to Section 57 (2) be made to the Planning Authority and I am aware that my opinion may be relied upon in any such application. I set out my detailed consideration in respect to each of the matters set out above in the following paragraphs.

INTRODUCTION

1. C oras Iompair  ireann/Iarnr od  ireann (hereinafter referred to as CI ) are in the process of upgrading the National Train Radio Communication Network from an analogue to a digital based system which is urgently required in the interest of safe and efficient movement of traffic, particularly passenger traffic by rail and is also required under EU Directive 96/48/EC. These train signalling masts are safety critical pieces of railway infrastructure which are required in connection with the movement of traffic by rail and have been installed throughout the network on all but three railway lines and where the system is required to be completed by May 2026. The train signalling mast is .5 of a meter square at its base constructed on a concrete plinth and extends in a simple latticed structure to a height of 30 meters but with no other structures incorporated or visible and is there purely to provide radio communication between rolling stock on the railway line through a dedicated railway communications standard used across the European rail network and

provides an essential communications infrastructure between train services in operation and the central rail control. They are furthermore required following a renewed investment in and operation of the Limerick Junction to Waterford railway line, and the Ballybrophy to Limerick City railway line where both lines have experienced declining service frequency in recent years and will facilitate increased modal shift to rail transport which will have significant positive impacts particularly lower carbon footprint relative to road transport and significant positive impacts on climate, hence the need for the upgraded investment in respect of the communications of these lines which is critical for their sufficient, but most importantly, their safe operation.

2. As set out in the summary above, I am of the opinion that the carrying out of the works for the construction of this train signalling mast while development, is an exempted development for the purposes of the Planning and Development Act, 2000 (as amended) and for the purposes of the Planning and Development Regulations, 2001 (as amended). I consider it appropriate for the reasons set out later in these advices and particularly as there are two public authorities involved, and it is therefore appropriate that a formal application be made for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) as will be seen later in these advices, I consider it also appropriate for a declaration under Section 57 (2) of the Planning and Development Act, 2000 in circumstances where the train signalling mast is located at a distance of 130 meters approximately from the protected structure and accordingly cannot, as a matter of law or fact have any effect on that structure or any element of the structure.
3. Section 5 of the Planning and Development Act, 2000 provides at subsection (1) *“if any question arises as to what, in any particular case is or is not development, or is or is not exempted development within the meaning of this Act, any person may, on the payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter”*.
4. The Planning and Development Act, 2000 and in particular the Planning and Development Regulations, 2001 provide for a range of exemptions in respect of statutory authorities and in particular railway undertakings to carry out development without the need to make a planning application for the purpose of Section 34 of the Planning and Development

Act, 2000. Where it is bona fide concluded that any particular development does not require planning permission then that body is entitled to proceed with the development without the need for an application under the relevant provisions of the Planning and Development Act, 2000.

5. Section 69 of the Local Government Act, 2001 provides that Local Authorities (including Planning Authorities) are, inter alia, to have regard to a number of matters including the following:
 - a. The need to cooperate with and the coordination of its activities with those of other Local Authorities, Public Authorities and bodies whose money is provided directly or indirectly either wholly or partly by a Minister for the Government, the performance of whose functions affect or may affect the performance of those of the Authority so as to ensure efficiency and economy in the performance of its functions.
 - b. The need for consultation with other Local Authorities, Public Authorities and Bodies referred to above in appropriate cases.
 - c. The need for a high standard of environmental and heritage protection and the need to promote sustainable development and the need for more social inclusion.
6. In a similar vein the Planning and Development Act, 2000 (as amended) contains numerous references, in different contexts, to the need to act consistently with the policies and objectives for the time being of the Government or any Minister of Government.
7. It is a key part of the government policy to improve public transport and address climate change particularly in the context of transportation across the country as a whole. In particular it is part of government policy to improve the rail network so as to link the various regions one with the other and to provide for a sustainable form of transport through an improved and more efficient rail network.
8. It is appropriate in those circumstances to engage with the relevant Planning Authority in respect of these works and obtain from the Planning Authority through the appropriate consultation giving procedures provided for in Section 69 of the Local Government Act the necessary information so that an appropriate declaration under Section 5 of the Planning and Development Act, 2000 can be achieved. It is understood within the scheme

of Section 5 that these applications to be made under Section 5 will be determined within a relatively short period and Section 5 provides for a period of four weeks for the giving of such a decision. It is important given the statutory timeframe provided and the requirement for consultation and the giving of appropriate information that any such application be as comprehensive possible, and in that regard it is appropriate that the plans and particulars grounding this application by way of floor plans and elevations as well as site location maps and details in respect of the proposed development to the Planning Authority in a manner appropriate so as to allow them to make the necessary declaration for the purpose of Section 5 of the Planning and Development Act, 2000.

Scope of Section 5 Declarations

9. The general law set out identifying the scope and application of Section 5 of the 2000 Act is contained in a series of judgments of the Superior Courts including *Cleary Compost & Shredding Limited v. An Bord Pleanala* [2017] IEHC 458; *Kilross Properties Limited v. The Electricity Supply Board* [2016] IECA 207, the judgment of Keane C.J. in *Grainnan an Aileach Interpretive Centre Company Limited v. Donegal County Council* [2004] IESC 43, [2004] 2 IR 625.

The concept of development

10. Development is defined in Section 3 of the Planning and Development Act, 2000 as:

“Except where the context otherwise requires the carrying out of any works on, in over or under land or the making of any material change in the use of any structure or other land”.

11. There is therefore a fundamental distinction at the hearing of the Planning and Development Act, 2000 between works defined in Section 2 of the Act and which is so broadly defined that it is difficult to conceive of any activity that does not fall within the definition of works and therefore amount to development, and use which comprises a separate and entirely distinct element of the definition of development which provides that where there is a material change of use then that will amount to development for the purpose of Section 3 of the Act.
12. The definition of use contained in Section 2 does not amount to the carrying out of works as a consequence therefore where an issue of a material change of use is concerned there are two separate questions that must be asked: whether the works for the purposes of the making of a material change of use are required, whether these of themselves are

exempted development and thereafter whether the use proposed constitutes a material change of use. If any of these questions are answered in the affirmative then the concept of development will apply.

13. In this instance the issue of development is purely concerned with works. The development is located within an existing train station and the use of the land for railway related activities and operations is well-established for almost 200 years. There is no issue here as to whether a change of use arises much less a material change of use given the existing established nature of the use of the lands.
14. The use of the lands therefore is already established and all uses that are incidental and ancillary to that use form part of the use, and therefore there is no issue of development in respect of the use of the premises for the purposes proposed.
15. In *The Rehabilitation Institute v. Dublin Corporation* Barron J. in holding that the use of a building for training and education purposes had a single use for that purpose, for the purpose of the Planning Acts, found that where any use is incidental or ancillary to a principal use it forms part of that use and therefore no issue of a change of use much less a material change of use will arise in such circumstances.
16. Equally straightforward is the issue of “works” as defined in Section 2 of the Planning and Development Act. Works are defined in Section as comprising “*any act of construction, excavation, alteration, extension, demolition, repair or renewal...*”. The said works may arise either in, on, under or over land and land is defined as land which is covered by water. It is difficult therefore to conceive of any circumstances where the carrying out of any works would not amount to development for the purposes of the Planning and Development Act. The list of activities are all embracing and are intended to be so and the use of the word “any” is intended to include even the most minor act or operation and therefore it is not necessary to spend any time on the issue of whether the construction of the train signalling mast amounts to development for the purposes of the Planning and Development Act, 2000.
17. The all embracing nature of the concept of “development” requires however, in order for the legislation to have any practical effect, to provide for specific exemptions in respect of any particular activity that would fall within the definition of works.

18. In this regard therefore, it is necessary to turn and consider whether there are specific exemptions that apply to the particular development the subject matter of the application to be made under Section 5 of the Planning and Development Act, 2000, namely the train signalling mast on CIÉ lands at Cahir Train Station, Townparks, Cahir, Co. Tipperary.

Exempted Development

19. Section 4(2)(a) of the Planning and Development Act, 2000 provides that:

“The Minister may by Regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that:

By reason of the size, nature or limited effect on its surroundings or development belonging to that class, the carrying out of such development would not offend against the principles of proper planning and sustainable development; or..”

20. The Minister has prescribed pursuant to Section 4(2) Class 23 of Part 1 of Schedule 2 in the Planning and Development Regulations, 2001.

Class 23 provides that:

“The carrying out by any railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking except

(a) the construction or erection of any railway station or bridge or of any residential structure, office or structure to be used for manufacturing or repair work, which is not situated wholly within the interior of a railway station or

(b) the reconstruction or alteration of any of the aforesaid structures so as materially affect the design or external appearance thereof shall be exempted development”.

It is proposed to consider of the elements of Class 23 and then consider whether the proposed development falls within the exemptions contained within that provision.

21. In construing these matters I have also had regard to the approach set out in the High Court in the case of *Cunningham v. An Bord Pleanala* [2013] IEHC 234 which – while not dealing with the carrying out by a railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under operational land of

the said undertaking – did address the relationship between exempted development and Article 6 and the de-exemption of such matters in Article 9. Accordingly, I now consider the proposed development and Class 23 in its overall statutory and regulatory framework.

22. Section 4 of the Planning and Development Act, 2000 (as amended) deals with exempted development. Section 4(2) of the 2000 Act for example provides a class of development can be prescribed as exempted development by Regulations made by the Minister (hereinafter referred to as ministerial Regulations). Article 6 of the ministerial Regulations provides for exempted development. This however is subject to Article 9. Article 9 deals with the restrictions on the exemptions in Article 6, that is it provides for exceptions to the exemptions therein contained. Article 9 provides that development to which Article 6 relates cannot be exempted development for the purposes of the Act of such matters fall within the provisions of Article 9. Therefore Article 6 of the ministerial Regulations provides the regulatory basis for different classes of exemption in Class 23 which are contained in Schedule 2 part 1 – Exempted Development – General (in the ministerial Regulations) subject to the provisions of Article 9.
23. Class 23 of the Planning and Development Regulations, 2001 (as amended) has the subtitle “Development by Statutory Undertakers”. The nature of the exemption is set out in the left hand column, that is column 1, which provides for “Description of development”. In column 2 on the right hand side then sets out conditions and limitations. All of these are contained Schedule 2 Part 1 which refers to Article 6. This column 1 of Class 23 provides that the carrying out by railway undertaking of development required in connection with the movement of traffic by rail in, on, or over the operational land of the undertaker, is prima facie exempted development and each of these terms will be considered separately in the paragraphs set out hereunder.
24. As set out earlier in this Opinion, the development comprises the construction of a train signalling mast.
25. The development is carried out by Iarnród Éireann and the particular specifications of the train signalling mast are included within the plans and particulars attached to the Section 5 referral.
26. It is now intended to deal with each of the elements that are required to be established for the purpose of Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

Railway Undertaking

27. Class 23 provides that:

“The carrying out by any railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking except

- (a) the construction or erection of any railway station or bridge or of any residential structure, office or structure to be used for manufacturing or repair work, which is not situated wholly within the interior of a railway station or*
- (b) the reconstruction or alteration of any of the aforesaid structures so as materially affect the design or external appearance thereof shall be exempted development”.*

28. The said works to be carried out by Querist amount to works by a railway undertaking for the purposes of Class 23 of the Planning and Development Regulations. While the phrase railway undertaking is referred to in different legislative context it is clearly the case, in my opinion, that Querist comes within the definition of a railway undertaking as referred to in Class 23. For example on 12th June 2015 the Minister for Transport, Tourism and Sport approved SI 249/2015 namely the European Union (Regulation of Railways) Regulation, 2015 which Regulations give effect to EU Directive 2012/34 and within which provisions Iarnród Éireann is designated as the infrastructure manager for the purpose of those Regulations and references in the Directive and Regulations to the Infrastructure Manager are references to Iarnród Éireann. Under SI 249/2015 any railway undertaking shall be granted access subject to meeting safety and licensing requirements to the State’s railway infrastructure for the purposes of operating international passenger services, international freight services, domestic freight services, international combined goods and services.

29. The purpose of SI 249/2015 was to transpose Directive 2012/34/EU establishing a single European Railway Area and the Regulations provide for railway infrastructure management and access, the assignment of an essential functions body, provision for an infrastructure management agreement and a framework agreement between infrastructure manager and a railway undertaking, the functions of the infrastructure manager and the railway undertaking and the designation of a regulatory body with monitoring appeals,

complaints and compliance functions. The Regulations also provide for the licensing of railway undertakings by a licensing authority. Regulation 2 of SI 249/2015 defines a railway undertaking as meaning “*Any public or private undertaking licensed according to the Directive and in the State, licensed according to part IV, the principal business of which is to provide services for the transport of goods or passengers or both by rail with the requirement that the undertaking in short traction; this also includes undertakings which provide traction only*”. There are other references to railway undertakings in SI 249/2015 which include reference to Querist. By way of further analogy, from an EU perspective, railway undertaking is defined as “*any public or private undertaking licensed according to applicable community legislation and the principal business of which is to provide services for the transport of goods and/or passengers by rail*”.

30. It is considered therefore that Querist, in this case Iarnród Éireann, falls within the definition of a “railway undertaking” for the purposes of Class 23.

Movement of Traffic by Rail

31. The next heading that is required to be addressed is whether the carrying out of the development is “*required in connection with the movement of traffic by rail...* ”.

32. The proposed development provides for a train signalling mast which is necessary to provide radio communication between rolling stock on the railway line through a dedicated railway communications standard used across the European rail network and provides an essential communications infrastructure between train services in operation and the central rail control. The operation of a safe and efficient rail network is vital to the movement of traffic by rail and indeed the railway undertaking is subject to strict independent monitoring and supervision of its safety requirements both for the purposes of goods but more specifically for the purposes of persons, both of which are comprised within the term traffic, an appropriate and effective but above all a safe railway network is vital.

33. The requirement in Class 23 requires that the development be carried out “*in connection with*” and therefore so long as there is a causal link between the movement of traffic by rail and the particular development then it falls within the provisions of Class 23. There is no requirement to strain language or to engage in any argument in respect of this matter wherein the provision of train signalling facilities are vital, the proposed development

clearly falls within this requirement and is clearly and unambiguously required “in connection with” the movement or traffic by rail.

The operational land of the undertaking

34. The exemption requires that the development be located “*in, on, over or under the operational land of the undertaking*”.
35. The land the subject matter of the application is within the ownership of CIE/Iarnród Éireann, and is part of Cahir Train Station. It is as a consequence within the “*operational land of the undertaking*”. It is owned by, maintained by and used by the railway undertaking as part of its ongoing transportation functions and is, for planning purposes, an established use for transportation purposes and in particular rail transport, and therefore comprises operational land use by the undertaking for the Class 23 as aforesaid.
36. Accordingly therefore the development proposed falls squarely within the general exemption contained in Class 23 and being (i) the carrying out by a railway undertaking of development, (ii) the carrying out of development required in connection with the movement of traffic by rail in, on, over or under land and (iii) that the said development is on the operational land of the railway undertaking.

Consideration of exceptions/de-exemptions with Class 23

37. The fact a proposed development comprises the carrying out by a railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the railway undertaking is not however for the purposes of Class 23 the end of the matter. It is important therefore to have regard to the exceptions and to ascertain whether or not any of the exceptions to the application of the exempted development provisions apply in respect of the proposed development.
38. Class 23(a) provides that “*the construction or erection of any railway station or bridge*” will not come within the general exemption within Class 23. In this case there is no question that the development comprises the construction or erection of a railway station or a bridge and consequently the first exception in Class 23 has no application.
39. The next exception is where the development *would comprise a residential structure/office use* and again there is no proposal that the train signalling mast to be constructed amounts to or will have any residential or office use.

40. The third category to which the exemption will not apply is a “*structure to be used for manufacturing or repair work which is not situated wholly within the interior of a railway station*”.
41. As has been stated earlier in this opinion the use of the structure is incidental and ancillary to the overall railway network, it is a dedicated digital railway communications system used across European communication networks and which under Council Directive 96/48/EC is required as a matter of European Community law to be provided. This is the only use of the structure; it is not to be used for any manufacturing or repair work and does not therefore fall within the third category of exclusion in Class 23.
42. The language of Class 23(a) relates to any such facility being located within a railway station, that is the lands which are used for the railway station or incidental and ancillary to the railway station, and therefore in my opinion comprises the totality of the lands of the railway station.
43. Class 23(b) – the second part of Class 23 which provides for a disapplication of the exemptions relates to a reconstruction or alteration of any of the aforesaid structures so as to materially affect the design or external appearance thereof. As the particular categories of structures referred to in Class 23 (b) do not arise there is equally no requirement to address the issue of reconstruction or alteration of any of the structures and therefore Class 23 (b) has no application in this instance. This provision relates only to either the construction of a railway station or a bridge, a residential structure/office or a structure to be used for manufacturing or repair and as no such structure or use is contemplated and the structure and the use is limited to a radio communication system, this provision equally has no application. There is no proposal to reconstruct or alter any such structure and accordingly Class 23 (b) has no application in this instance.
44. There is no proposal to reconstruct or alter any structure and the proposal is to build a new structure, and therefore Class 23(b) has no application in this instance. It relates purely to where there is an existing structure and where that structure’s appearance if it falls within category (a) is to be materially altered. Given that there is no structure to be altered and given that in any event none of the matter contained in Class 23(a) are triggered by the development the subject matter of this application, then class 23(b) has no application.

45. In those circumstances, given that the development falls within the broad provisions of Class 23 and is not excluded by anything in (a) and (b) of Class 23, then the proposed development is prima facie exempted development.

Column 2 of Class 23

46. There is no proposal to provide any carparking and certainly no additional carparking as part of the development of the train signalling mast. There is no proposal therefore to provide any additional carparking, and as a consequence the provisions of Column 2 do not apply so as to affect the exemption contained in Column 1 of Class 23.

47. The proposed development therefore falls within the provisions of Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

48. As set out earlier in this Opinion, it is now necessary to consider the provisions of Article 9 of the Planning and Development Regulations, 2001.

Article 9

49. Article 9 of the Planning and Development Regulations, 2001 (as amended) provides inter alia that the developments to which Article 6 relates shall not be exempted development for the purpose of the Act if under sub-paragraph (a) the carrying of such development would contravene any of the provisions of Article 9(1)(a) of the said Regulation.

50. I have examined each of the provisions set out in Article 9(1)(a) together with obtaining specialist advice in respect of these issues, and it can be definitively concluded that none of the provisions contained in Article 9(1)(a) apply.

51. The position is therefore that the proposed development for example will not contravene a condition of any planning permission or be inconsistent with any use specified in a permission under the Act Article 9(1)(a)(i).

52. Neither will it comprise or consist of the formation or laying out or materially widening of the means of access to the public road the surface carriageway of which exceeds 4 metres in width Article 9(1)(a)(ii). The existing access to the facility already exists and there is no requirement for any changes to be made to that access as part of this development.

53. Neither will it endanger public safety by reason of traffic hazard, or there would be no increased traffic, or impact arising from this development that would materially affect in

any way the existing access and egress arrangements to Cahir Train Station Article 9(1)(a)(iii). The proposed development will not interfere with the character of the landscape or with any view or special amenity value or special interest and there are no such inconsistencies or provisions in the Tipperary County Development Plan 2022-2028 that are materially affected by the proposed development, and indeed the development is entirely consistent with the broad objectives of the said Development Plan.

54. There are no areas, places or sites of archaeological, geological, historical, scientific or ecological interest that would be affected by the proposed development. The proposed development will not interfere with the character of a landscape or with a view or prospect especially amenity value or special interest, the preservation of which is an objective of the development plan for the area in which the development is proposed (Article 9 (1) (a) (vi)).
55. The proposed development will not consist of or comprise the excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservations of which is an objective of the development plan for the area in which the development is proposed and there is no proposal for any of the works specified at Article 9 (1) (a) (vii).
56. The proposed development does not consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is unauthorised use as in Article 9 (1) (a) (viii) however the proposed developments does not consist of the demolition or any alteration of a building or other structure which would preclude or restrict the continuance of an existing use of a building where it is an objective of the Planning Authority to ensure that the building would remain available for such use as provided for in Article 9 (1) (a) (ix). The proposed development doesn't consist of the fencing or closure of any land habitually open to or used by the public Article 9 (1) (a) (x) nor does it obstruct or interfere with any public right of way (9) (1) (a) (xi).
57. Article 9 (1) (a) (xii) - The development does not consist of or comprise the carrying out of works to the exterior of a structure where the structure concerned is located within an architectural conservation area, or an area specified as an architectural conservation area in the development plan, as the area is not an architectural conservation area for the purpose of Section 82 of the Planning and Development Act. The proposal is a stand-alone structure and is approximately 130 meters from the nearest protected structure

which is the Cahir Railway Station building and which building or any part of the said building is not included with the works being a considerable distance remote from the said building on the western portion of the lands. Article 9 (1) (a) (xii) therefore has no application which is restricted to architectural conservation areas only and where no such designation is made in respect of the lands that are the subject matter of the development.

58. For the purposes of Article 9 (1) (b) this provision relates to a special amenity area Order and no such Order has been made that are the subject matter of the application and therefore is not a relevant consideration for the purposes of that provision.

59. Further the development would not consist of or comprise the extension or alteration of an unauthorised structure or the use of a structure that is unauthorised, nor would it consist of the demolition or alteration of a building or other structure that would preclude the continuance of its use. Equally the lands which is owned and occupied and under the control of CIÉ/Iarnród Eireann does not contravene the provision in respect of fencing or closure of land habitually open and used by the public, nor would not any public right of way be excluded and there is no special amenity area order or other designation in respect of the lands that would be affected by the proposed development.

60. For the purposes therefore of Article 9 of the Planning and Development Regulations, none of the provisions contained therein are such as to disapply the exemption which arises from Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

Section 4(4) of the Planning and Development Act

61. Section 4(4) of the Planning and Development Act, 2000 provides that notwithstanding paragraphs Section 4(2) of the Planning and Development Act, that is the section that empowers the Minister to make Regulations including those under Class 23 of Part 1 of Schedule 2, development shall not be exempted development if any Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

62. I have considered Schedule 5 of the Planning and Development Regulations, 2001 and cannot find in that Schedule any category or class of development that require an EIA or screening for EIA to be carried out. Accordingly, Council Directive 2011/92/EU (the EIA

Directive) has no application to the development the subject matter of the Section 5 referral and therefore there can never be an EIA required. The requirements in respect EIA are only directed to those categories or classes of development specified in Schedule 5 and in circumstances where the proposed train signalling mast does not form part of any category listed in Schedule 5, then there is no application of the EIA Directive and therefore the limitations provided for in Section 4(4) in respect of EIA has no application.

Application for a declaration under Section 57 of the Planning and Development Act 2000

63. Section 57 of the Planning and Development Act provides that

“notwithstanding Section 4 (1) (a), h, i, ia, j, k, r, l and any regulations made under Section 4 (2) the carrying out of works to a protected structure or a proposed protected structure shall be exempted development only if those works would not materially affect the character of -

(a) the structure or

(b) any element of the structure which contributes to its special, architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.”

64. This provision refers explicitly to an exemption relating to *“the carrying out of works to a protected structure”* and refers to these works as being an exempted development only if they *“would not materially affect the character of the structure or any element of the structure which contributes to its special, architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest”* (emphasis added).

65. It follows that where works are not being carried to a protected structure or to any element of the structure that contributes to its architectural, historical or other interest, then there can be no contravention of Section 57 as the provision only applies to specific works to a structure which is listed for protection under the relevant development plan.

66. The relevant Development Plan in this case is the Tipperary County Development Plan 2022-2028 and where in volume 4 there is contained a list of the protected structures for the purposes of that Plan.

67. The only protected structure identified in that plan relative to the lands that are the subject matter of the development is that contained at TRPS1303 which is identified as the building known as Cahir Railway Station, Cahir, located in Townparks and where there is a photograph of the said structure which identifies and limits the extent of the structure listed for protection. On its face therefore, the Development Plan lists only a single structure namely the Cahir Railway Station and the protection is confined to that building and to that building alone and accordingly the footprint of that building comprises the extent of the curtilage of what is protected.
68. The previous Development Plan is relevant and confirms the position in this regard as in that plan there were four structures identified under reference S251 which included Cahir Railway Station as well as a goods store, a footbridge and a shelter, but these three latter structures had been excluded and the protected status now only applies specifically to the building identified both by name and by its photograph in the development plan, namely the Cahir Railway Station building.
69. The Development Plan is required to be interpreted as a matter of law following the decision of *Tennyson -v- Dún Laoghaire Corporation 1991 2IR 527* which provides that “*a development plan is a written statement prepared by a developing authority indicating the planning objectives for its area*”. An important purpose of such Plan is to inform interested persons what types of development may or may not be permitted in a particular area. In interpreting a Plan, a Court should ask itself what would a reasonably intelligent person having no particular experience in law or town planning make of the relevant provision.
70. In this instance, applying the provisions of the Plan, as they are now contained in the 2022-2028 Development Plan, the changes which were made from the previous Plan which must be construed as excluding certain structures from the protections contained in the plan by their omission, and the identification of a specific building both by name and by a photograph that the protected status only applies to Cahir Railway Station and that its curtilage must be confined to the footprint of the building, but in terms of the structure to be protected but also having regard to the exclusion of other structures at a distance from this structure and had been excluded in the Plan.

71. The train signalling mast is located approximately 130 meters from the protected structure (reference TRPS1303) and it is inconceivable that a reasonably intelligent person could conclude that all structures located within 130 meters of this structure would nonetheless fall within the curtilage of the building to be protected, and if one drew a circle around the building in this regard it would include a range of structures, which clearly any reasonably intelligent person would understand not intended to be included within the curtilage but the protection being confined to the station building itself.
72. Section 57 (2) provides that any owner/occupier is entitled to obtain a declaration if any works proposed do not materially affect the character of the structure or any element of the structure that contributes to its character and as the train signalling mast is some 130 meters away from the protected structure, does not involve any works to the structure indeed the closest point to the structure is 130 meters distant and cannot affect any element of that structure. The owner/occupier is entitled to a declaration under Section 57 (2) that the structure is not affected by the works relating to the construction of the train signalling mast.
73. It may have been the case under the previous Plan where there were additional structures included, including the goods store and shelter as well as the footbridge but the only reasonable interpretation in terms of the restrictions in the 2022-2028 Development Plan is that the protection is intended to be confined only to the Railway Station building itself and this is demonstrably not affected by the works involved in the construction of the train signalling mast and therefore the provisions of Section 57 (2) provide that a declaration can issue to this effect.
74. I have been furnished with a Heritage Assessment Report in respect of the train signalling mast on the protected structure known as the Railway Station at Cahir Train Station. This report prepared by Mr. David Hughes, a Fellow of the Royal Institute of Architects of Ireland, a conservation architect, has been included in an appendix to this advice and where appropriate extracts from that report have been relied upon in this Opinion.

Summary

75. Having carefully considered the relevant provisions of Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended) and the provisions of the Planning and Development Regulations, 2001, and in particular Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and in particular Column 1 of Class 23 and Column 2 of Class 23, I am of the opinion that the development of a train signalling mast while development for the purposes of Section 3 constitutes exempted development for the purposes of Section 4(2) of the Planning and Development Act, 2000.
76. Having regard to the Tipperary County Development Plan 2022-2028 and to the provisions of Volume 4 of that Plan which identifies a structure entitled Cahir Railway Station under reference number TRPS1303 and the absence of any works to the said structure for the purposes of Section 57(1)(a) or to any element of the said protected structure for the purposes of Section 57(1)(b), the distance of the development consisting of the train signalling mast from the said protected structure which is of a distance of over 130 meters, the said development would not materially affect the character of the said protected structure listed under reference TRPS1303 and accordingly there can be no contravention of Section 57(1).

Nothing further occurs.

Yours faithfully,

MICHAEL O'DONNELL SC

REPORT

RE: Whether the addition of GSM-R train signalling mast at Cahir Train Station, County Tipperary constitutes exempted development under the Planning and Development Act, 2000 (as amended).

DATE: 9 April 2026

Report Prepared By David Hughes B.Arch., CPMA, FRIAI, RIBA RIAI Accredited Conservation Architect Senior Architect / Conservation Architect Iannród Éireann.

1. Introduction

This opinion addresses whether the proposed addition of a Global System for Mobile Communications Railway (GSM-R mast) (hereinafter a "train signalling mast") at Cahir Station, Cahir, Co. Tipperary constitutes exempted development for the purposes of the Planning and Development Act, 2000 (as amended) (hereinafter "the PDA 2000").

The railway station building (Reference TRPS1303) is a protected structure, it is architecturally significant and is recorded on the National Inventory of Architectural Heritage (NIAH) at Regional level of importance. I have concluded that the addition of a train signalling mast at Cahir can be demonstrated to constitute exempted development for the purposes of Section 4 of the PDA 2000 and Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

2. Cahir Station

Cahir Station is an Ashlar Limestone Masonry station designed by Sancton Wood and formed part of the Great Southern and Western Railway (GSWR) line serving South and West of the Country from Heuston Station it is stylistically consistent with a series of Stations on today's Dublin to Cork mainline including Portlaoise, Portarlinton, Templemore and Thurles.

The station is a two story plus structure with an upper-level matching platform level. The grade separation arises because the railway line running between Limerick Junction and Waterford City crosses the river Suir via a notable railway bridge immediately west of the station creating a significant level change between Station Road in Cahir town and the platform access to the eastern end of the platform.

To the east of the station building there are a series of railway structures including a historic goods depot, a shelter and an overbridge and while these structures: the goods store, the shelter and the overbridge were included as protected structures under the previous Tipperary County Development Plan, these were omitted in the current Plan 2022-2028 such that the only structure that is now a protected structure is the Ashlar Limestone Masonry Railway Station (Reference TRPS1303). Having regard to the evolution of this protection the curtilage of this protected structure must be deemed to be confined to the footprint of that building given that the other

buildings originally included have now been omitted from the provisions of the current County Development Plan.

It is significant that there is an existing substantial telecommunications mast (the ESB mast), located further to the east which is much more visually obtrusive than the rather simple and elegant train signalling mast, the subject matter of this report. This telecommunications mast with its various antennae is, by a virtue of its scale and extent the dominant feature at this location and the ESB telecommunications mast forms part of the established character of the eastern end of the lands.

3. The GSM-R System

Iarnród Éireann are in the process of upgrading the national train radio communication network from an analogue to a digital based system. This is a requirement mandated under EU Directive 96/48EC. The Global System for Mobile Communications Railway (GSM-R) is the dedicated digital railway communications standard used across the European rail network. It provides the essential communications infrastructure between train services in operation and central rail control. The addition of a train signalling mast at Cahir is required as a direct consequence of the renewed investment in and operation of the Limerick Junction to Waterford line and the Ballybrophy to Limerick City line respectively. Both lines have experienced declining service frequency in recent years. It is the renewed national focus on the benefits of rail transport — particularly in relation to its significantly lower carbon footprint relative to road transport — that has driven the return of investment to these lines and consequently the requirement for modern GSM-R communications infrastructure to support their safe operation.

4. The Statutory Framework

The relevant statutory provisions are set out below for ease of reference.

Section 4 (1) The following shall be exempted developments for the purposes of this Act—

Section 4 (2) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

Section 57(1) - PDA 2000

Notwithstanding section 4(1)(a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Section 57(2) - PDA 2000

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.

5. Application of Section 57(1) – PDA 2000 to the development at Cahir Train Station

It is necessary to consider whether there have been any works carried out to the protected structure (Reference TRPS1303) such as to contravene Section 57(1) as in some circumstances the exemption in Class 23 Part 1 Schedule 2 will be disapplied.

The essential issue under Section 57 (1) (a) is whether, where works have been carried out to a protected structure these works are such as to materially affect the character of the protected structure itself or any element of that structure and where such works do materially affect the character of the structure or an element thereof, these works cannot be considered to be exempted development. It must be clarified at the outset that the provision of the train signalling mast does not involve the carrying out of any works to Cahir Railway Station (Reference TRPS1303) and all of the works relating to the said train signalling mast are at a distance of over 130m from the said protected structure.

Given that the train signalling mast is located over 130 meters east of the protected structure, and no works, that is no act of construction, excavation, alteration, demolition, extension, repair or renewal (the definition of works in Section 2 of the Planning and Development Act 2000) are being carried out in respect of or to the protected structure, there is no contravention of Section 57 (1) nor could there be given the distance from the protected structure and the complete absence of any works to that structure.

Accordingly therefore, the protected structure is not affected for the purpose of Section 57 (1) as in order for that Section to apply the works involved must relate to some alteration of the protected structure and no works whatsoever have been or have been proposed to be carried out in respect of that structure therefore there is no contravention of the said provision.

While not strictly speaking relevant to the considerations that must be applied in respect of any declaration sought under Section 57(2) or any contravention of Section 57(1) having regard to the matters I have set out above I have examined the lands, the subject matter of the development and have concluded and it is my professional opinion that the mast will not in any event be read visually, against or in conjunction with the principal evaluations of the protected structure. The antennae is located at a distance of over 130 meters from the building, there is a series of intervening buildings between the two and by virtue of its distance and its relationship to the existing telecommunications structure, constructed by the ESB there will be no adverse effect on the protected structure in any event. I would emphasise however, that this is not a test in respect of Section 57 which is concerned with the impact of a development on a protected structure and I

have already emphasised that no such effect could ever arise from the train signalling mast constructed some 130 meters east of that protected structure.

In addition, the Ashlar Limestone Masonry character of the station, its carefully composed composition, its sanction wood detailing, its relationship with the platform and the railway will be completely unaffected by the addition of a discreet train signalling mast to the east of the goods depot. Separation of the proposed mast from the protected structure, both in terms of its physical distance and visual composition (it is a simple, elegant, lattice, steel structure) means that the character of that protected structure as a whole is not materially affected.

The issue in respect of Section 57 (1) (b) is whether the works would materially affect any element of the protected structure which contributes to its special interest as already pointed out in this report there are no works either carried out or proposed to be carried out to that protected structure and accordingly no element of the protected structure is thereby affected.

Notwithstanding what is set out above, I have set out a number of elements of special interest and can demonstrate that under each of these 8 categories the train signalling mast will have no material effect on the protected structure while emphasising at all times that the provisions of Section 57(1) are limited to the carrying out of actual works to a protected structure.

6. Section 57(1)(b) — The Eight Special Interest Categories

The question under section 57(1)(b) is whether the works would materially affect any element of the protected structure which contributes to its special interest under each of the eight categories. These are assessed in the table below.

Special Interest Category	Assessment	Impact
Architectural	The architectural character of Cahir Station derives from its Ashlar Limestone masonry construction, Sancton Wood detailing and composition. The proposed mast is located more than 130m and to the east of the station building and will not affect or be read against any of these architectural elements.	No Impact
Historical	The historical significance of Cahir Station relates to its role as part of the original GSWR network and its association with the development of the Irish railway system in the nineteenth century. The addition of a modern operational train signalling mast does not diminish or obscure any element contributing to this historical significance.	No Impact
Archaeological	There are no archaeological elements associated with the station building that would be affected by the proposed mast installation.	No Impact
Artistic	The artistic interest of the station, to the extent that it exists, is embodied in the quality of the Sancton Wood design and the	No Impact

Special Interest Category	Assessment	Impact
	craftsmanship of the Ashlar Limestone construction. Neither is affected by the proposed mast.	
Cultural	The cultural significance of the station relates to its continued role as a functioning railway station serving the communities of Cahir and south Tipperary. The addition of the train signalling mast actively supports and sustains that cultural role by enabling the continued safe operation of the railway service. Any impact is therefore positive rather than adverse.	Positive Impact
Scientific	There are no scientific interest elements associated with the station that would be affected by the proposed mast.	No Impact
Social	The social significance of the station similarly relates to its continued use as a functioning railway station. As with the cultural assessment above, the train signalling mast supports rather than undermines this social significance.	Positive Impact
Technical	The technical interest of the station relates to the engineering of the original railway infrastructure — the Sancton Wood station building, the River Suir railway bridge and the associated civil engineering works. The addition of a modern train signalling mast, while itself a technical structure, does not affect or diminish any of these elements of technical interest.	No Impact

The proposed development does not materially affect any element of the protected structure contributing to its special interest under any of the eight categories.

7. National and International Conservation Guidance

In addition to the statutory tests set out above, the proposed development is consistent with the relevant national and international guidance on the conservation of protected structures and monuments.

National Guidance

The Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government (DoEHLG) state that one of the primary means of ensuring the continued survival of a protected structure is to ensure that its original use continues. Cahir station remains in active use as a functioning railway station, preserving precisely the original use for which it was constructed. The addition of GSM-R

infrastructure actively supports that continued use and is directly necessary to sustain the railway services that give these stations their continued operational and cultural relevance.

International Guidance — The Venice Charter and ICOMOS Principles

International Guidance — The Venice Charter and ICOMOS Principles

The Venice Charter of 1964 — the founding international document for the conservation of monuments and sites, adopted under the auspices of UNESCO — states in Article 5 that the conservation of monuments is always facilitated by making use of them for some socially useful purpose. The continued operation of these stations as functioning elements of the national railway network satisfies this principle entirely.

The International Council on Monuments and Sites (ICOMOS), established in 1964, provides authoritative international guidance on conservation matters globally. The author of this opinion sits on the Board of ICOMOS Ireland and serves as President and Convenor of the National Scientific Committee on Energy Sustainability and Climate Change (NSCES+CC). In addition, the author sits on the corresponding International Scientific Committee (ISCES) of ICOMOS at the international level. This active involvement in the body responsible for setting and developing conservation standards globally informs the application of ICOMOS principles in this opinion. A number of those principles are directly applicable to the present assessment and are identified specifically below.

The first is the principle already reflected in the DoEHLG guidance — that the best means of conserving a structure is to continue its original use. The station satisfies this principle by remaining in active railway use.

The second is the principle that interventions should be *as much as necessary but no more*. A train signalling mast is a minimal, discrete intervention. It adds a single functional structure to the eastern portion of the site without affecting the fabric, setting or composition of the protected station buildings.

The third is the principle that interventions should be *clearly distinguishable* from the historic structure. A modern train signalling mast is self-evidently distinguishable from nineteenth century Ashlar Limestone masonry. This is not a weakness — it is precisely what internationally recognised conservation guidance requires of new interventions at historic sites.

The fourth is the principle of *reversibility*. A train signalling mast can be removed without any impact whatsoever on the fabric of the protected structure. The intervention is entirely reversible.

The proposed development satisfies all four of these internationally recognised conservation principles.

8. Class 23 of the Planning and Development Regulations, 2001 (as amended)

For completeness it is noted that Class 23 of the Planning and Development Regulations 2001 to 2019, made under section 4(2) of the PDA 2000, provides a primary basis for concluding that the

train signalling mast constitutes an exempted development where the said exemption only applies to railway undertakings in respect of development required in connection with the movement of traffic by rail on their operational land. The train signalling mast, being operational railway communications infrastructure required for the safe management of train services, would prima facie fall within the scope of this exemption.

9. Conclusion

Having regard to:

the existing telecommunications mast (the ESB mast) at the Clonmel Road overbridge which establishes the presence of such infrastructure as part of the established character of the eastern end of the Cahir Train Station site;

where no works are proposed to the protected structure or any element of the protected structure that could contravene Section 57(1) (a) or (b);

the location of the train signalling mast over 130m to the east of the protected structure and outside its principal visual composition

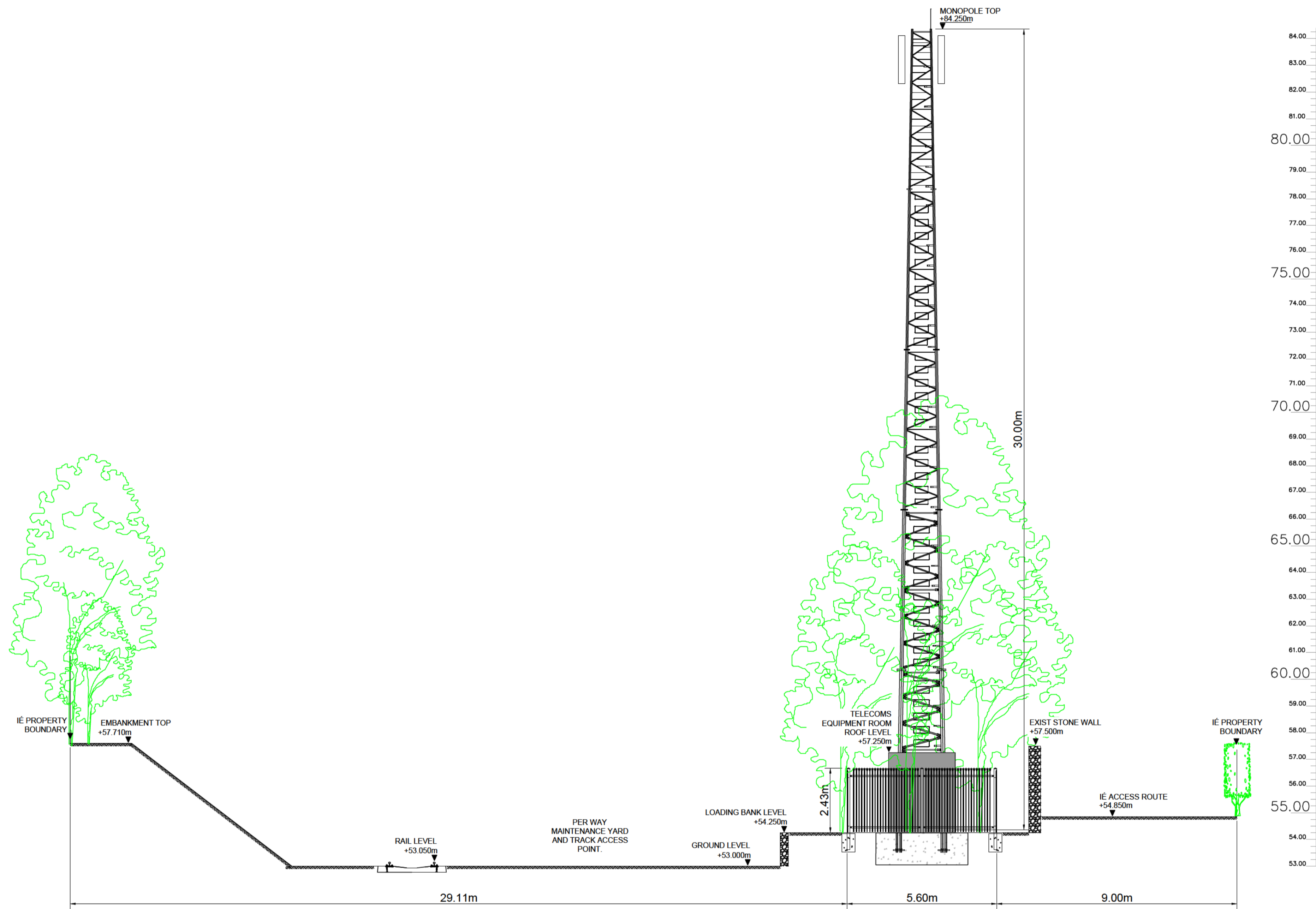
the absence of any material impact on any of the eight special interest categories applicable to the protected structure (Reference TRPS1303);

the positive contribution of the proposed development to the continued operational use of the station which is itself a key conservation principle endorsed by national guidance and the Venice Charter;

it is my opinion that the proposed addition of a train signalling mast at Cahir Station, County Tipperary constitutes exempted development within the meaning of Section 4 of the Planning and Development Act 2000 (as amended), that in the absence of any works to the protected structure, (Reference TRPS1303) there is no effect, much less a material effect on the character of that structure and/or any element of the structure that contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interests and accordingly the owner and occupier is in my view entitled to a declaration to this effect under Section 57(2).

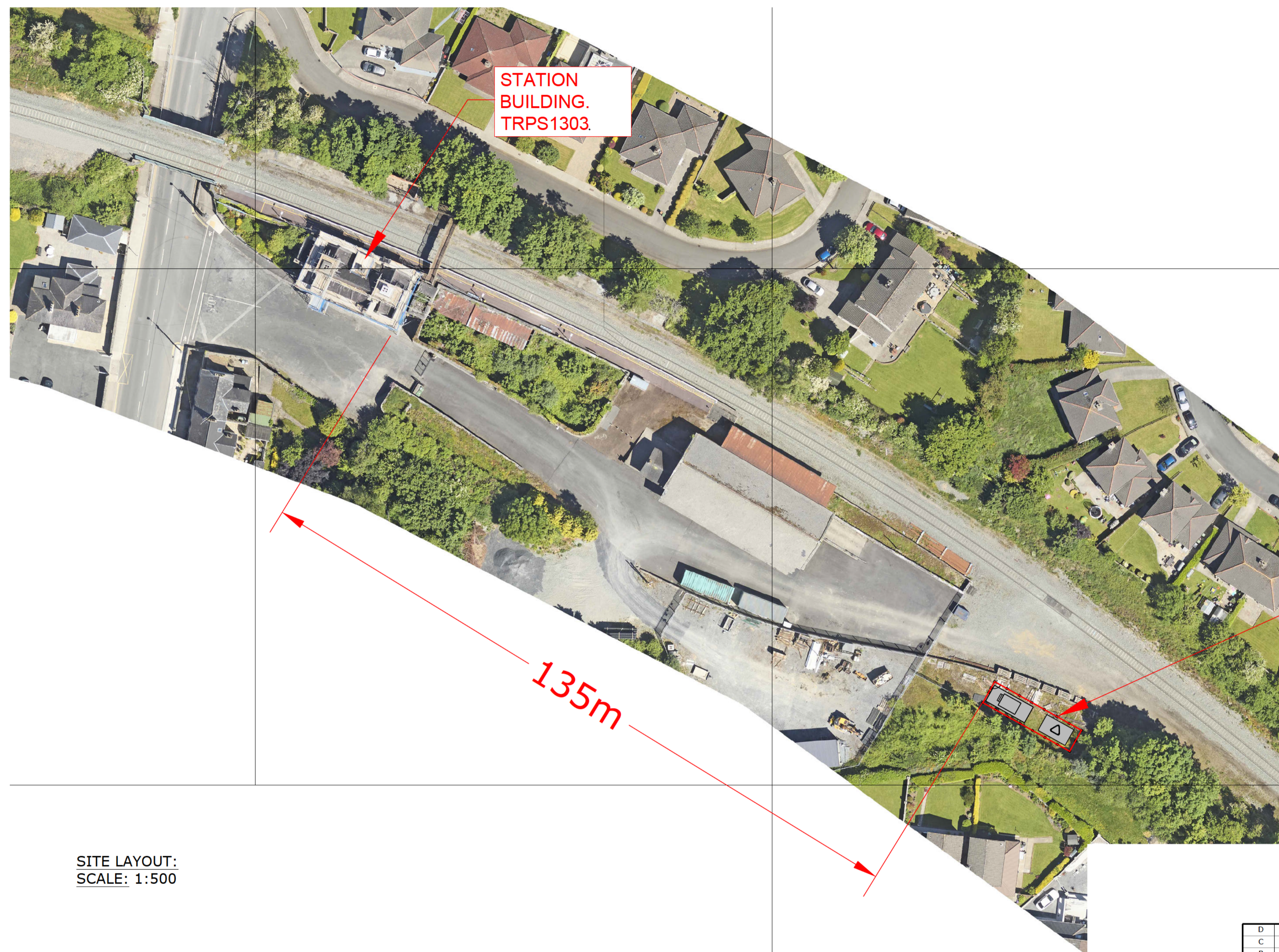
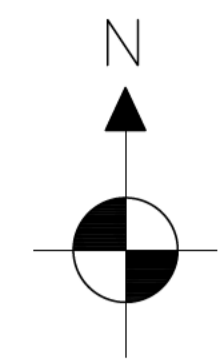
David Hughes B.Arch., CPMA, FRIAI, RIBA RIAI Accredited Conservation Architect Senior Architect / Conservation Architect Iarnród Éireann.

Tipperary County Council
 Planning Section by email
 Received: 10/04/2026
 File ref: S5/26/51



SITE LAYOUT:
 SCALE: 1:100

D					
C					
B					
A					
Rev.No.	Revision	Date	By	Chk'd	App'd
Capital Investment Dept., Inchicore, Dublin 8.					
Project Title		GSM-R - MODE C LINES			
Drawing Subject		GSM-R MAST AND COMPOUND			
Drawing Title		CAHIR STATION COMPOUND AND MAST ELEVATION			
Designed: R. R.	Surveyed: P. F.	Status: CONSTRUCTION			
Drawn: P. F.	Scale: AS STATED				
Checked: L. B.	Sheet Size: A1	Drawing No:		26/GSMR-PH4 MAST/03	
Approved: C. G.	Date: 09-04-2026			Rev: -	



STATION BUILDING. TRPS1303.

GSM-R COMPOUND AND MAST.

135m

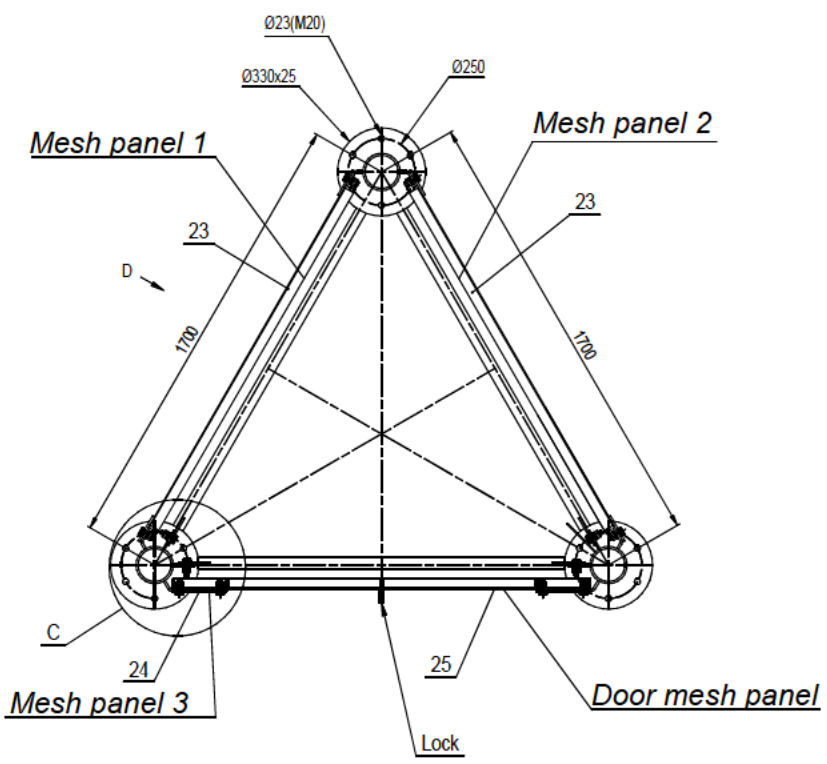
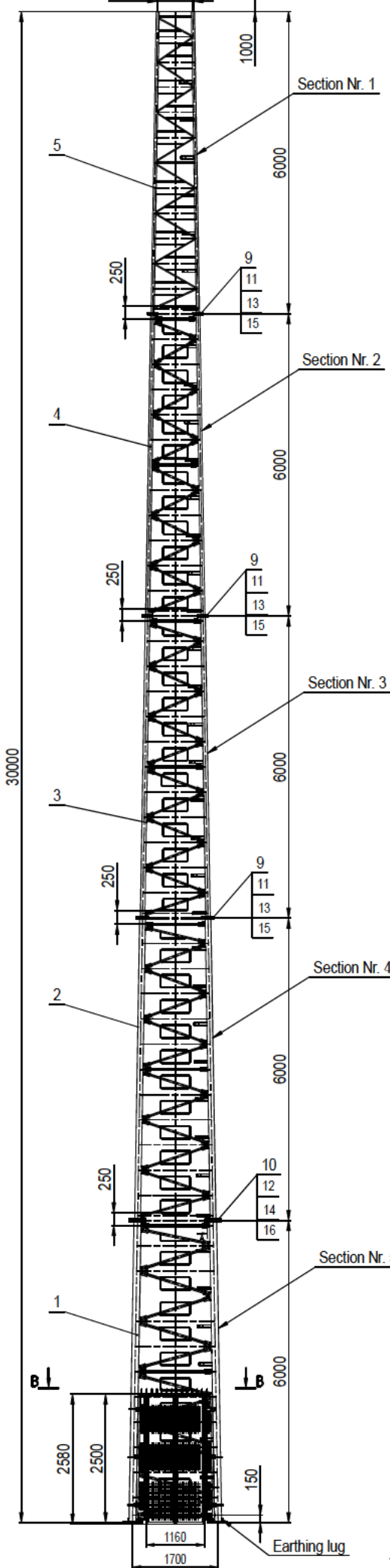
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Planning Section by email
Received: 10/04/2026
File ref: S5/26/51

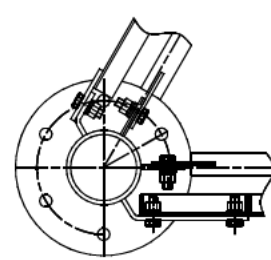
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		Capital Investment Dept., Inchicore, Dublin 8.				
Project Title		GSM-R - MODE C LINES				
Drawing Subject		GSM-R MAST AND COMPOUND				
Drawing Title		CAHIR STATION AERIAL LAYOUT				
Designed: R. B.	Surveyed: P. F.	Status: CONSTRUCTION				
Drawn: P. F.	Scale: AS STATED	Drawing No: 26/GSMR-PH4 MAST/01				
Checked: L. B.	Sheet Size: A1	Rev: -				
Approved: C. G.	Date: 09-04-2026					

Lighting finial
700

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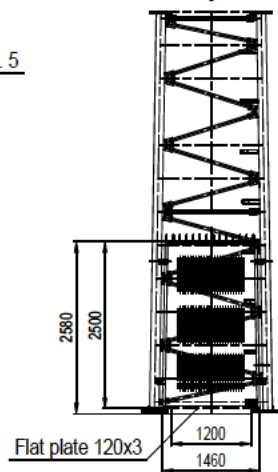
C 1:5



Tipperary County Council
Planning Section by email
Received: 10/04/2026
File ref: S5/26/51

Sections	Leg Type	Grade	Leg Bolts			Brace Type (Hor / Vert)	Grade	Size
			Size	No. of Bolts	Grade			
1	CHS60,3 x 5,0	S355J2H	M16	6	8.8	Solid 20	S355J2H	Welded
2	CHS76,1 x 6,3	S355J2H	M16	6	8.8	CHS 33,7x3,2	S355J2H	Bolted
3	CHS88,9 x 6,3	S355J2H	M16	6	8.8	CHS 33,7x3,2	S355J2H	Bolted
4	CH114,3 x 8,0	S355J2H	M16	6	8.8	CHS 33,7x3,2	S355J2H	Bolted
5	CHS139,7 x 8,0	S355J2H	M20	6	8.8	CHS 42,4x3,2	S355J2H	Bolted

1. Welding in an inert gas according to the process.
2. Covering: dip galvanized in accordance with EN ISO 1461.
3. Tube steel grade: S355J2H according to EN 10210.
4. Solid bar steel grade: S355J2H according to EN 10025.
5. Flange steel grade: S355J2 according to EN 10025.
6. All bolts to have a nut, 2 No. washers and 1 No. spring washer.



Pos.	Qty.	Designation	Name
1	1	6S1-700/900 D	Section 1
2	1	6S2-900/1100 D	Section 2
3	1	6S3-1100/1300 D	Section 3
4	1	6S4-1300/1500 D	Section 4
5	2	6S5-1500/1700 D	Section 5
9	54	DIN 912 M16x60 8.8	Bolt
10	18	DIN 912 M20x60 8.8	Bolt
11	54	DIN 127A 16	Spring washer
12	18	DIN 127A 20	Spring washer
13	18	DIN 125A 16	Washer
14	18	DIN 125A 20	Washer
15	54	DIN 934 M16 8.8	Nut
16	18	DIN 934 M20 8.8	Nut

DATA STRUCTURES
DSJ GSMR
Tapered Mast 30 m
30LT 700/1700
A2

Tipperary County Council
Civic Offices
Clonmel
Co Tipperary

08/04/2026 16:07:35

Receipt No. : CLONMEL/0/202538

LIAM BOYCE
IRISH RAIL ARCHITECTS
INCHICORE RAILWAY WORKS
DUBLIN 8
(RE CAHIR RAILWAY STATION)

SECTION5 EXEMPTION DECLARATION	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total : 80.00 EUR

Tendered :
Credit Card 80.00

Change : 0.00



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: 13th April 2026

Our Ref: S5/26/51

Civic Offices, Clonmel

Iarnrod Eireann – Irish Rail
C/O Paul Flynn,
Engineering & New Works Building,
Inchicore Works,
Inchicore,
Co. Dublin.

Re: Application for a Section 5 Declaration – Construction of a GSM-R Train Signalling Mass on lands owned by CÍE at Church Street, Townspark, Cahir, Co. Tipperary.

Dear Mr. Flynn,

I acknowledge receipt of your application for a Section 5 Declaration received on 10th April 2026 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

Planning Ref.: S5/26/51

Applicant: Iarnrod Eireann – Irish Rail

Development Address: Church Street, Townspark, Cahir, Co. Tipperary

Proposed Development: Construction of a GSM-R Train Signalling Mast.

1. GENERAL

On the 10th of April 2026, 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”:

- Construction of a GSM-R Train Signalling Mast.

The site of the Mast is located on lands owned by Iarnrod Eireann – Irish Rail. The train station in Cahir is listed on the Record of Protected Structures (TRPS1303) and is located within a designated Architectural Conservation Area (ACA). The site of the mast is not within the ACA.

It should be noted that the train station and associated structures are listed on the National inventory of Architectural Heritage (NIAH Ref's 22111017 – Cahir Rail Station, 22111016 footbridge Cahir Rail Station; 22111065 Cahir Railway Station waiting rooms and 22111018 three bay single storey goods shed).

The site was inspected on the 17th of April 2026. The mast was noted to be substantially complete.

Figure 1 Subject Mast



Figure 2 Longer view of mast



Figure 3 Mast as viewed from train station



Figure 4 Buildings listed on NLAH (turquoise dot)

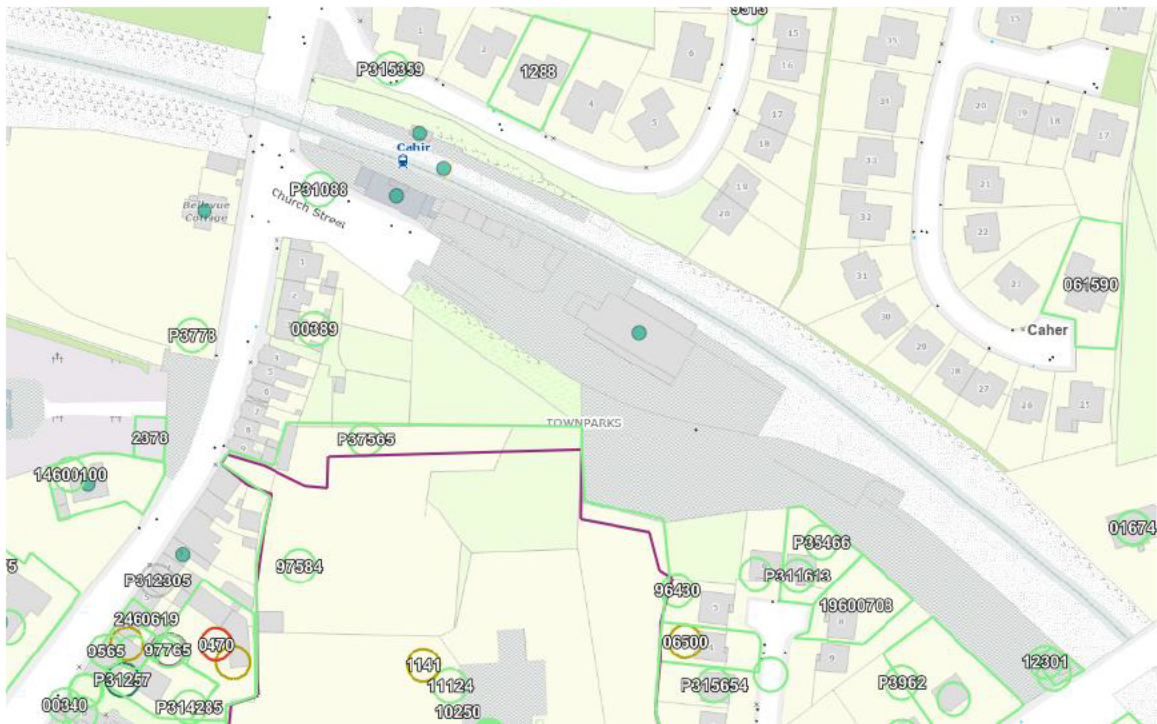


Figure 5 Location of ACA (shaded Area) and protected structures (red dot)

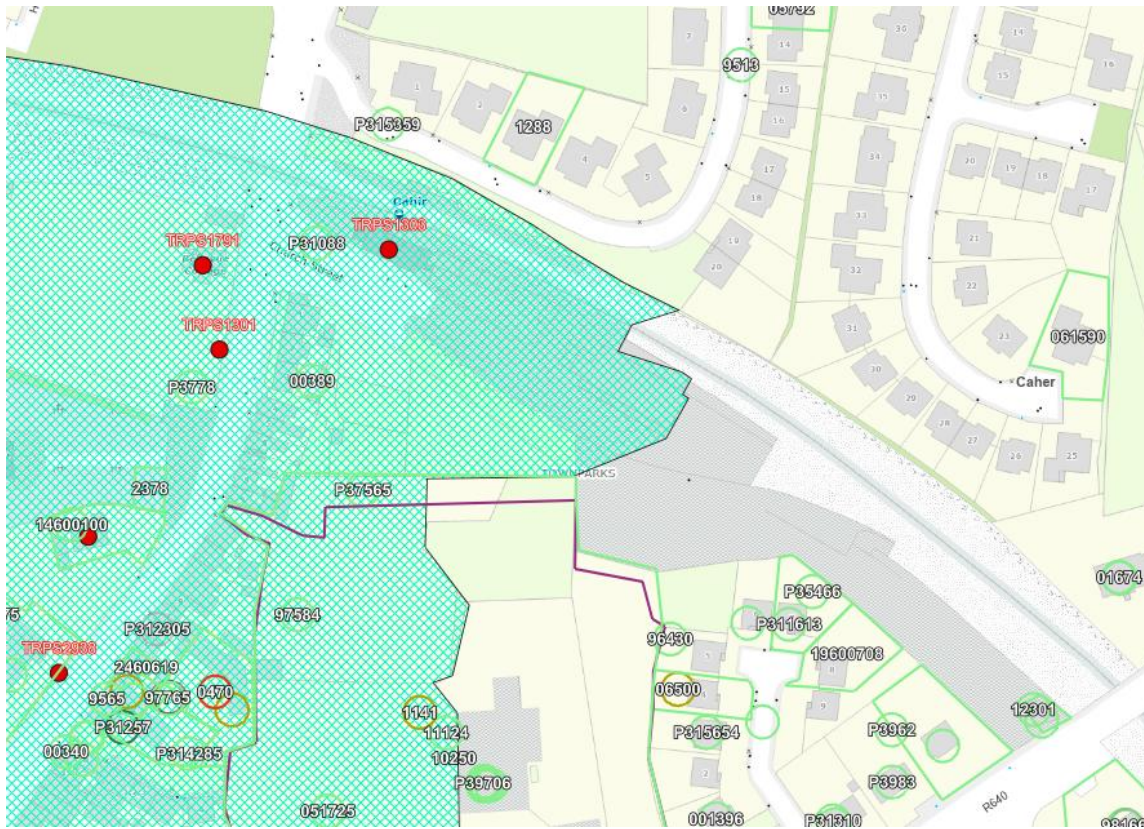
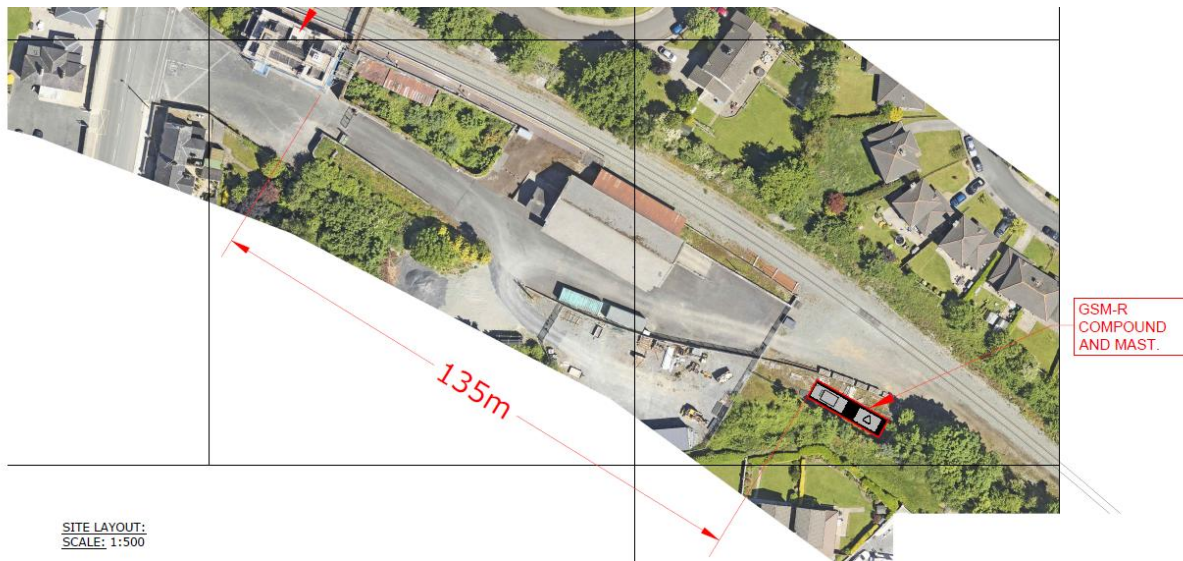


Figure 6 Location of Mast compound



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 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.

Section 57 of the Planning and Development Act 2000, as amended, states as follows

(1) Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Sub-section (4) of the same section states that;

(4) Before issuing a declaration under this section, a planning authority or the Board shall have regard to—

(a) any guidelines issued under section 52, and

(b) any recommendations made to the authority under section 53.

Planning and Development Regulations 2001 (as amended)

Article 6 (Exempted Development)

(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 Class 23

The carrying out by any railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking, except—

(a) the construction or erection of any railway station or bridge, or of any residential structure, office or structure to be used for manufacturing or repairing work, which is not situated wholly within the interior of a railway station, or

(b) the reconstruction or alteration of any of the aforementioned structures so as materially to affect the design or external appearance thereof.

Conditions and limitations

Any car park provided or constructed shall incorporate parking space for not more than 60 cars.

Article 9 (Restrictions on exemption)

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

Architectural Heritage Guidelines for Planning Authorities 2011

Section 13.1 Determining the Curtilage of a Protected Structure

Paragraphs 13.1.1 – 13.1.5 refer to the requirement to identify the extent of the curtilage of a protected structure prior to issuing a Section 57 Declaration and sets out the considerations in defining the curtilage. The curtilage of the Protected Structure has been addressed under the Section 57 Declaration.

3. ASSESSMENT

a. Site Location

The site of the mast is c. 53 metres to the south east of a goods shed associated with the train station. It is located in an enclosed section of the railway yard on a goods platform. The site is immediately south of the rail line and north of an area of residential development.

The subject site is located on lands zoned “Existing residential” in the Cahir Local Area Plan 2021.

b. Relevant Planning History

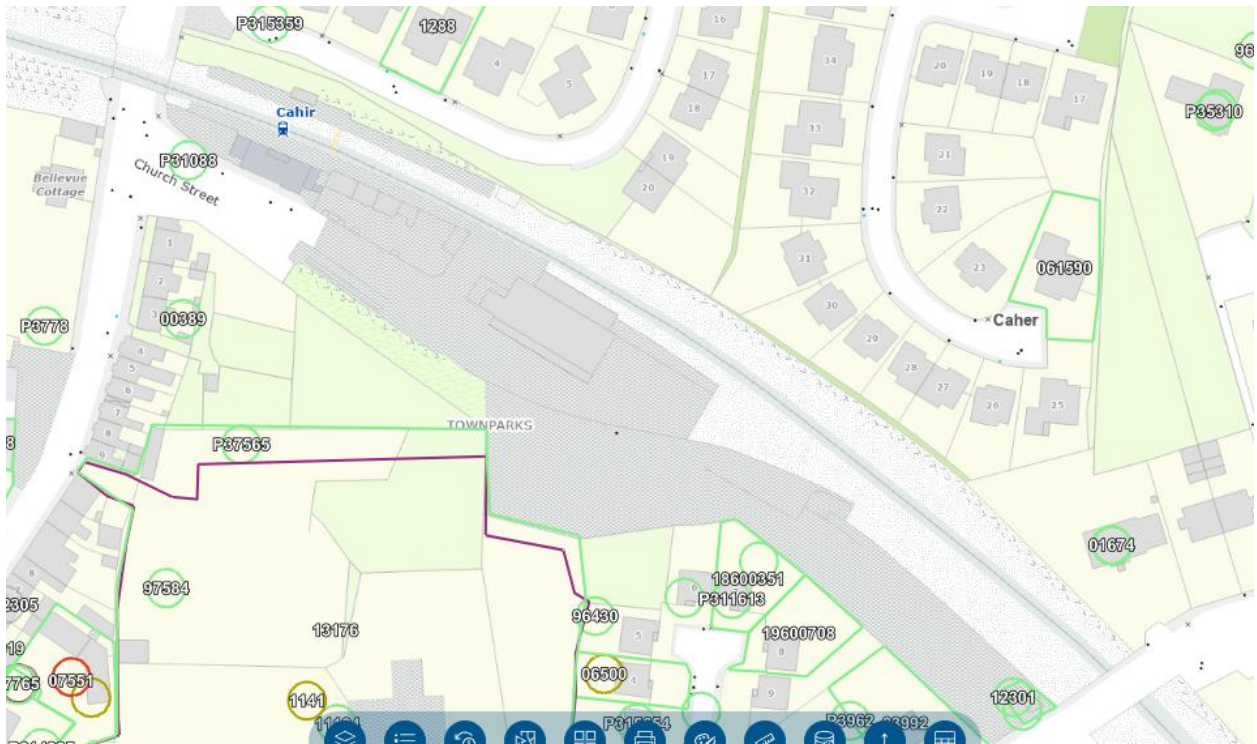
P31088 advertising sign - Granted

12/301 continuance of use of an existing reinforced concrete foundation structure (4.5 metres by 4.5 metres by 1.0 metre) including associated steps and safety handrail and three number 1.3 metre high panel antennae, two number 0.6 metre diameter link dishes, two number 0.3 metre diameter link dishes attached to an existing 32 metre high lattice communications structure following on from the expiry of the parent permission (LPA Ref: 07/221 & An Bord Pleanala Reference: PL23.223351– granted (ABP-302139-18)

TUD 25-226 – current enforcement file in relation to the subject structure.

Section 57 26/09 – current application for a Section 57 Declaration. The application refers to the mast the subject of this Section 5.

Figure 7 Planning history



c. Assessment

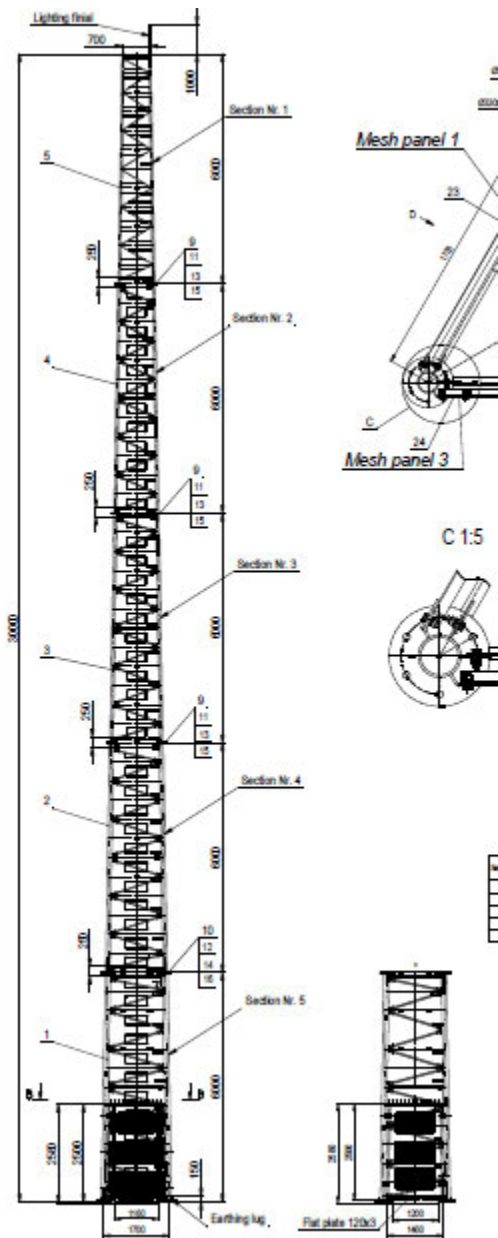
A) “Is or is not Development”

It is considered that the above listed proposals constitute “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”

As set out in Section 1 above, this query relates to installation of GSM-R Train Signalling Mast, with a maximum height of 30 metres.

Figure 8 Mast elevations



The applicant has submitted a completed application form, a cover letter stating that the subject mast is exempted development as per the provisions of Class 23 as referenced above, an opinion from a Senior Counsel reiterating that claim that the mast is exempted development, a report from a Conservation Architect suggesting that the location of the mast is outside the principle visual composition of the protected structure and does not have an impact upon the eight special interest categories applicable to the protected structure.

It is noted that this section 5 declaration was lodged in tandem with a Section 57 Declaration (S57/26/09) querying specific works that can be undertaken and would not have a material impact on the protected structure and its setting.

When considering this declaration, there are two specific questions to consider; is there an exemption provided for the subject works and is that exemption restricted by any provisions of the Planning and Development Act 2000, as amended or by Article 9 of the Planning and Development Regulations, 2001, as amended.

With respect to the first question, the provisions of Class 23 of Part 2 Schedule 1 of the Planning and Development Regulations 2001, as amended, are noted. In the cover letter that accompanies the application, the applicant has indicated that the mast is a critical facility and safety feature required in connection with the movement of traffic by rail.

The wording of Class 23 is broad and allows for development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking except for excluded categories contained in Class 23 (a) or (b). A radio signalling mast is not an excluded category of development.

Having reviewed the conditions and limitations associated with Class 23, as set out in Column 2 of Class 23, they are not applicable in this instance.

The second question is whether the exemption allowed for is restricted by other provision of the primary legislation or secondary regulations.

With respect to this query, the site context is noted. The site of the mast is located on a goods platform within the curtilage of Cahir Train Station (as per considerations set out in the Section 57 Declaration). The station is listed on the Record of Protected Structures set out in the Tipperary County Development Plan 2022 (TRPS1303). It should be noted that the National Inventory of Architectural Heritage has identified four specific components of the station (train station, footbridge, Railway Station waiting rooms and a three bay single storey goods shed) for inclusion in the inventory.

Section 57(1) of the Planning and Development Act 2000, as amended notes that; notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

As set out in *C. I. E. v An Bord Pleanala*, [2008] IEHC 295 (Jun 19, 2008), the Hight Court determined that Section 57 of the Planning and Development Act, removed the exempted development status of all works materially affecting protected structures regardless of the exemption category.

As stated above, the querist in this case has also sought a Section 57 Declaration from the Planning Authority to determine what works would not have a material impact on the character of the protected structure.

At this point, it is worth noting the argument presented by the querist in both the opinion of the Senior Counsel and the report of Conservation Architect. Both the Senior Counsel and the Conservation Architect have taken the protected structure to mean literally the train station only. Both have argued that given the separation distance of c. 130 metres between the mast and the

train station building, the mast “cannot as a matter of law or as of a matter of fact materially affect the character of this protected structure”.

To take such a narrow and literal definition of the protected structure to mean the train station building only is misguided and fails to acknowledge the importance, or indeed, the protected status of other important components of the overall station, including the footbridge, the waiting area, the goods shed, the platforms and the associated yard. These elements all contribute in a meaningful way to the character of the protected structure.

The Section 57 Declaration issued by the Planning Authority on Cahir train station has defined the curtilage of the protected structure at the Cahir Railway Station to include the exterior (and interior, where applicable) of the following:

- The five-bay, two-storey railway station building fronting both onto the open area off Church Street, and onto the passenger platform of the Waterford to Limerick Junction rail line. Extensions to this building also comprise parts of the protected structure.
- The single-storey, unroofed former waiting room on the disused northern platform.
- The cast- and wrought-iron footbridge and stairs over the railway tracks north of the main station building.
- The three-bay goods shed and its single-storey north-west extension
- The stone-wall-enclosed former station yard and wrought-iron gates to same
- **All stone-built railway platforms and sidings in use or previously in use on the site.**
- The loading crane on the former goods platform and
- All historic masonry walls, whether free-standing or retaining, within or bounding the station site.

The mast itself is located on a historic platform and is c 65m south-east of the south-east gable of the existing goods shed. The south-east gable of the goods shed also constitutes the boundary of the Cahir ACA.

The report of Tipperary County Council’s Conservation officer (on the Section 57 Declaration) notes that the works undertaken on site include the construction of the mast, the excavation and formation of concrete bases for the mast, equipment room and security fencing on the surface of the former goods platform at its south-east end. Works have also included construction of concrete access steps against the historic masonry wall of the platform and installation of steel handrails on the platform as well as further security fencing.

The Section 57 Declaration has determined that the addition of any new permanent structures or extensions to existing buildings within the curtilage of the site would have a materially affect the character of the protected structure.

In addition, it has determined that the removal, relocation or material alteration of any:

- elements within the curtilage of the protected structure listed in the section above;
- existing extensions on the historic building or;
- historic, masonry boundary fabric or openings in same (except for repairs and maintenance, where specified in accordance with conservation best practice and itemised in the Declaration),

would have a materially affect the character of the protected structure.

The Special Remarks set out in the Section 57 Declaration are worth noting. As set out therein, it is the opinion of Tipperary County Council that all the extant, historic railway platforms are within the curtilage of the protected structure at Cahir Railway Station and as such are protected. It is also concluded that all the extant, historic railway platforms contribute to the special architectural and historical interest of the Protected Structure. This further reiterates the concerns raised earlier about the narrow definition of the protected structure taken by the querist.

Having regard to the Section 57 declaration issued by the Planning Authority on Cahir Train Station, the Planning Authority is of the opinion that the erection of the mast and the associated supporting structures (concrete base etc.) are new permanent structures within the curtilage of a protected structure given the location of same on a historic railway platform associated with the train station. In addition, the construction of concrete steps and associated hail rails constitute a material alteration to historic, masonry building fabric.

The works undertaken are considered to have a material impact on the character of the protected structure and associated elements of the structure (historic platforms and associated buildings) which contributes to its special architectural and historical interest. As such the available exemption is restricted by Section 57 of the Act. I am satisfied that the restrictions set out under Article 9 of the Regulations are not applicable.

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

The subject site is located c. 43200 metres from the Lower River Suir SAC, 8.7 kms from the Galtee Mountains SAC.

The proposed development is located within a long established urban area and comprises of the provision of a radio mast.

Having regard to:

- the 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.

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

Query

A question has arisen as to whether the following is or is not exempted development.

Construction of a GSM-R Train Signalling Mast at Cahir Train Station, Cahir, Co. Tipperary.

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, 4 and 57 of the Planning and Development Act 2000, as amended,
- Article 6 and 9 of the Planning and Development Regulations 2001, as amended
- Class 23 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended
- the nature and scale of the proposed use,
- the supporting documentation on file provided by the development and
- the Section 57 Declaration issued by the Planning Authority on Cahir train Station (S57/26/09).

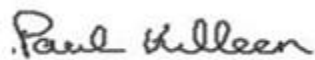
Having considered the information received, the Planning Authority has concluded that;

- the construction of the mast constitutes works and development,
- the mast falls under the exemption set out under Class 23 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended,
- The mast is located on a historic goods platform associated with Cahir Train Station, a protected structure,
- The extant, historic railway goods platform is considered to be within the curtilage of the protected structure at Cahir Railway Station and contributes to its special architectural and historical interest.
- The mast has a direct material impact on the surface of the goods platform and any historic masonry elements associated with it, as well as an indirect visual impact of the development as constructed, on the setting and views of and from the historic railway station site.
- The exemption set out under Class 23 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended, is therefore considered to be restricted by Section 57 of the Planning and Development Act 2000, as amended

Tipperary County Council has therefore determined that

- The provision of GSM-R Train Signalling Mast and associated infrastructure at Cahir Train Station, constitutes “works” and “development” within the meaning of the Planning and Development Act 2000, as amended, and is NOT “exempted development”.

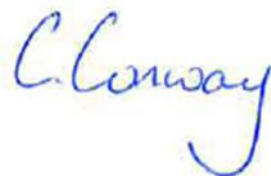
Signed:



Paul Killeen
District planner

Date: 01/05/26

Signed:



Senior Executive Planner

Date: 6.5.2026

HABITATS DIRECTIVE APPROPRIATE ASSESSMENT (AA) SCREENING REPORT

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

(a) File Reference No:	S5/26/51
(b) Brief description of the project or plan:	GSM-R Train Signalling Mast
(c) Brief description of site characteristics:	The development site is located within the curtilage of Cahir train Station
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	N/A
(e) Response to consultation:	N/A

STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.

European Site (code)	List of Qualifying Interest/Special Conservation Interest ¹	Distance from proposed development ² (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
Lower River Suir SAC 002137	https://www.npws.ie/protected-sites/sac/002137	370 metres	No due to the small scale nature of the development and the separation distance.	No
Galtee Mountains SAC	https://www.npws.ie/protected-sites/sac/000646	8.7 kilometres	No due to distance and the lack of any relevant ex-situ factors of significance to these species.	No

STEP 3. Assessment of Likely Significant Effects

(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:

Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
----------	--

<p>Construction phase e.g.</p> <ul style="list-style-type: none"> • Vegetation clearance • Demolition • Surface water runoff from soil excavation/infill/landscaping (including borrow pits) • Dust, noise, vibration • Lighting disturbance • Impact on groundwater/dewatering • Storage of excavated/construction materials • Access to site • Pests 	no
<p>Operational phase e.g.</p> <ul style="list-style-type: none"> • Direct emission to air and water • Surface water runoff containing contaminant or sediment • Lighting disturbance • Noise/vibration • Changes to water/groundwater due to drainage or abstraction • Presence of people, vehicles and activities • Physical presence of structures (e.g. collision risks) • Potential for accidents or incidents 	No
In-combination/Other	No impacts
(b)Describe any likely changes to the European site:	
<p>Examples of the type of changes to give consideration to include:</p> <ul style="list-style-type: none"> • Reduction or fragmentation of habitat area • Disturbance to QI species • Habitat or species fragmentation • Reduction or fragmentation in species density • Changes in key indicators of conservation status value (water or air quality etc.) • Changes to areas of sensitivity or threats to QI 	<p>The application site is within 370 ms of the Lower River Suir SAC. Having regard to the nature of the development, there will be no impact s on the Lower River Suir SAC.</p>

- Interference with the key relationships that define the structure or ecological function of the site

(c) Are *'mitigation'* measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?

Yes No

STEP 4. Screening Determination Statement

The assessment of significance of effects:

Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

No impacts

Conclusion:

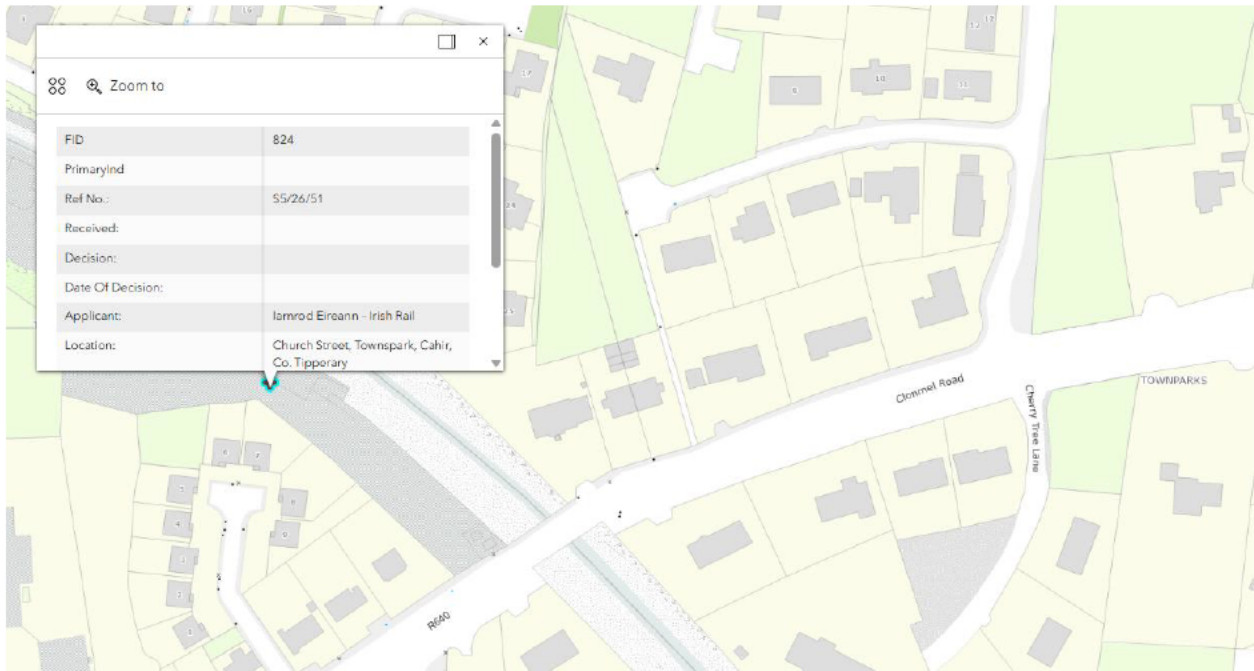
	Tick as Appropriate:	Recommendation:
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
(iii) Significant effects are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
Signature and Date of Recommending Officer:	Paul Killeen	Date: 01/05/26

Appendix 2

EIA Pre-Screening	
Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	S5/26/51
Development Summary:	GSM-R Train Signalling Mast
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 <u> [insert here] </u>	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 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

<p>C. If Yes, has Schedule 7A information/screening report been submitted?</p>	
<p><input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant</p> <p><input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant</p>	<p>Screening Determination required</p> <p>Preliminary Examination required</p>

Figure 9 Site entered on Planning register



Original

TIPPERARY COUNTY COUNCIL

DELEGATED EMPLOYEE'S ORDER

File Ref: **S5/26/51** **Delegated Employee's Order No:** _____

SUBJECT: Section 5 Declaration

I, Brian Beck, 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. 44188 dated 3rd October, 2025, hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 from Iarnrod Eireann – Irish Rail, C/O Paul Flynn, Engineering & New Works Building, Inchicore Works, Inchicore, Co. Dublin, RE: Construction of a GSM-R Train Signalling Mast at Church Street, Townspark, Cahir, Co. Tipperary is development and is exempted development.

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

- Sections 2, 3, 4 and 57 of the Planning and Development Act 2000, as amended,
- Article 6 and 9 of the Planning and Development Regulations 2001, as amended
- Class 23 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended
- the nature and scale of the proposed use,
- the supporting documentation on file provided by the development and
- the Section 57 Declaration issued by the Planning Authority on Cahir train Station (S57/26/09).

Having considered the information received, the Planning Authority has concluded that;

- the construction of the mast constitutes works and development,
- the mast falls under the exemption set out under Class 23 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended,
- The mast is located on a historic goods platform associated with Cahir Train Station, a protected structure,
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- The mast has a direct material impact on the surface of the goods platform and any historic masonry elements associated with it, as well as

an indirect visual impact of the development as constructed, on the setting and views of and from the historic railway station site.

- The exemption set out under Class 23 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended, is therefore considered to be restricted by Section 57 of the Planning and Development Act 2000, as amended

Tipperary County Council has therefore determined that

- The provision of GSM-R Train Signalling Mast and associated infrastructure at Cahir Train Station, constitutes "works" and "development" within the meaning of the Planning and Development Act 2000, as amended, and is **NOT "exempted development"**.

Signed:



Brian Beck
Director of Services

Date: 07/05/2026



Date: 7th May 2026

Our Ref: S5/26/51

Civic Offices, Nenagh

Iarnrod Eireann – Irish Rail
C/O Paul Flynn
Engineering & New Works Building
Inchicore Works
Inchicore
Co. Dublin

Re: Declaration under Section 5 of the Planning and Development Act 2000, as amended.

Dear Sir/Madam,

I refer to your application for a Section 5 Declaration received on 10th April 2026 in relation to the following proposed works:

Construction of a GSM-R Train Signalling Mast at Church Street, Townspark, Cahir, 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, 4 and 57 of the Planning and Development Act 2000, as amended,
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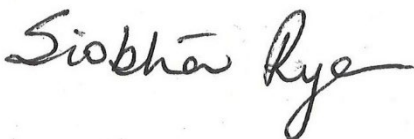
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NOTE: Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Coimisiún Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours faithfully



for **Director of Services**