



**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>	Cloughjordan Train Station, Townsfields, Cloughjordan, Co. Tipperary.
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**4. Development Details:**

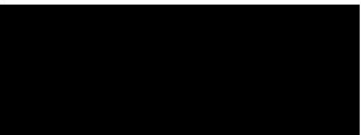
Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(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 at Cloughjordan Train
Station, Cloughjordan, 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: 22/04/2026

**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:**

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

<b>FOR OFFICE USE ONLY</b>	
<b>Fee Recd. €</b> <u>80.00</u>	<b><u>DATE STAMP</u></b>
Receipt No <u>136611</u>	<b>Tipperary County Council Planning Section by email Received: 22/04/2026 File ref: S5/26/56</b>
Date <u>14/04/2026</u>	
Received by <u>D O Brien</u>	

Tipperary County Council  
Planning Section by email  
Received: 22/04/2026  
File ref: S5/26/56

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

By Registered Post  
& By Email:  
[customerservices@tipperarycoco.ie](mailto:customerservices@tipperarycoco.ie)  
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**Córás Iompair Éireann**

**Oifig an Ghrúpa Aturnae**  
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Idirlíon/Web: <http://www.cie.ie>

**Our Ref :**  
26/88/37

**Your Ref :**  
TUD-26-[REDACTED]

**Date :**  
22<sup>nd</sup> April 2026

**Re: Cloughjordan Railway Station, Cloughjordan, 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: Iarnród Éireann – Irish Rail**

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Dear Sir/Madam,

We refer to previous correspondence in the above matter commencing with a warning letter dated the 12<sup>th</sup> February 2026 and a further letter of the 24<sup>th</sup> February 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 24<sup>th</sup> February 2026 on behalf of Iarnród Éireann – Irish Rail.

Your correspondence refers to a train signalling mast which has been developed at Cloughjordan Train Station and wherein the warning letter dated 12<sup>th</sup> February 2026 (TUD 26-████) 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 24<sup>th</sup> February 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 24<sup>th</sup> February 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 Cloughjordan Train Station, Townsfields, Cloughjordan, 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 approximately 147 metres from a protected structure reference TRPS457, a building referred to and described as at Cloughjordan Railway Station, Cloughjordan 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 **NENAM1/0/136611** and a copy of the receipt is enclosed.
- g. An aerial photograph identifying the distance between the protected structure (TRPS457) and the train signalling mast.

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 12<sup>th</sup> February 2026 while development constitutes an exempted development for the purpose of Section 4 of the said Act.

The Opinion and the report from Mr. David Hughes, Conservation Architect, deal with the Tipperary County Development Plan 2022-2028 where there is contained one protected structure which is relevant to the considerations of whether the development amounts to an exempted development which is TRPS457 entitled Cloughjordan Railway Station, Cloughjordan 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 train signalling mast is approximately 147 metres west of this structure, is visually and physically separate from it and is located in an entirely different context at the western end of the land.

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 building which has been identified as a protected structure in the said County Development Plan, 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 147 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 24<sup>th</sup> February 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 disapplies 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 disapplied in these circumstances. Further, the train signalling mast is approximately 147 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.

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 disapplied 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**

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**OPINION**

I am asked to advise in respect of a train signalling mast constructed at Cloughjordan Train Station, Townsfields, Cloughjordan, Co. Tipperary.

The train signalling mast was the subject matter of a warning letter dated 12<sup>th</sup> February 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 statutory 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 12<sup>th</sup> February 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 TRPS457 and where the protected structure is the CloghJordan Railway Station and which was

photographed to identify the specific building protected under the said County Development Plan.

The train signalling mast is approximately 147 meters west of this structure and is visually and physically separated from it and located in an entirely different context, at the western end of the lands.

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, 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 some 147 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 approximately 147 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. Having regard to the foregoing 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 is defined in Section 2 as 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 am instructed to apply for a formal Declaration both in respect of the exempted status of the structure under Section 5 of the Planning and Development Act, 2000 and a Declaration pursuant to Section 57 (2) 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. Córas Iompair Éireann/Iarnród Éireann (hereinafter referred to as CIÉ) 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 147 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, that is the train signalling mast, 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 Cloughjordan Train Station, Townsfields, Cloughjordan, 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.

#### **Section 4(2) of the Planning and Development Act, 2000 (as amended)**

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.

#### **Class 23 of the Planning and Development Regulations, 2001 (as amended)**

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”. 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.

Thus column 1 of Class 23 provides that the carrying out by a 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 an 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 12<sup>th</sup> 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 Cloughjordan 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 Cloughjordan 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 147 meters from the nearest protected structure which is the Cloughjordan 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 equivalent to the development the subject of these Advices 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 TRPS457 which is identified as the building known as Cloughjordan Railway Station, Cloughjordan, located in Townsfields and where there is a photograph of the said structure which identifies and limits the extend of the structure listed for protection. On its face therefore, the Development Plan lists only a single structure namely the Cloughjordan 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 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.
69. In this instance, applying the provisions of the 2022-2028 Development Plan, particularly the identification of a specific building both by name and by a photograph must be construed as the protected status applying only to Cloughjordan Railway Station and that its curtilage must be confined to the footprint of the building, both 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.

70. The train signalling mast is located approximately 147 meters from the protected structure (Reference TRPS457) and it is inconceivable that a reasonably intelligent person could conclude that all structures located within 147 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.
71. 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 147 meters away from the protected structure, does not involve any works to the structure indeed the closest point to the structure is 147 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.
72. 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.
73. 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 Cloughjordan 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**

74. 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.

75. 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 Cloughjordan Railway Station under reference number TRPS457 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 147 meters, the said development would not materially affect the character of the said protected structure listed under reference TRPS457 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 a GSM-R train signalling mast at Cloughjordan Railway Station, County Tipperary constitutes exempted development under the Planning and Development Act, 2000 (as amended).**

**DATE: 17 April 2026**

**Report Prepared By:**

David Hughes B.Arch., CPMA, FRIAI, RIBA

RIAI Accredited Conservation Architect

Senior Architect / Conservation Architect

Iarnród Éireann

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### 1. Introduction

This report addresses whether the proposed addition of a Global System for Mobile Communications Railway (GSM-R) train signalling mast at Cloughjordan Railway Station, Cloughjordan, 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 TRPS457) is a protected structure. I have concluded that the addition of a train signalling mast at Cloughjordan 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).

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### 2. Cloughjordan Station — Description and Heritage Context

Cloughjordan Railway Station is a single storey rendered masonry structure built between 1860 and 1865 as part of the Ballybrophy to Limerick City railway line. It is recorded on the National Inventory of Architectural Heritage (NIAH) Regional level of importance with categories of special interest identified as Architectural and Social. The station remains in active use as a functioning railway station.

The only protected structure requiring consideration under Section 57 of the PDA 2000 is the railway station building itself (Reference TRPS457) as this is the only structure which appears on the Record of Protected Structures in the Tipperary County Development Plan 2022-2028.

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### 3. The Proposed Development — Location and Description

The proposed GSM-R train signalling mast is located on the western or Limerick side of the station. It is situated approximately 147 metres from the protected structure (Reference TRPS457).

The mast is approximately 0.5 of a metre square at its base, constructed on a concrete plinth, and extends as a simple latticed structure to a height of 30 metres. It has no other structures incorporated or attached.

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#### **4. The GSM-R System**

Iarnród Éireann is in the process of upgrading the national train radio communication network from an analogue to a digital based system as required under EU Directive 96/48/EC. The Global System for Mobile Communications Railway (GSM-R) system is the dedicated digital railway communications standard used across the European rail network, providing essential communications infrastructure between train services in operation and central rail control.

The addition of a train signalling mast at Cloughjordan is directly required in connection with the renewed investment in and operation of the Ballybrophy to Limerick City railway line, which has experienced declining service frequency in recent years. The renewed national focus on the benefits of rail transport — particularly its significantly lower carbon footprint relative to road transport — has driven investment in this line and consequently requires modern GSM-R communications infrastructure which is critical for its safe and efficient operation.

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#### **5. Statutory Framework**

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

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 provides as follows:

##### **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.

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## **6. Class 23 Part 1 Schedule 2 of the Planning and Development Regulations, 2001 (as amended) — Primary Basis for Exemption**

Class 23 Part 1 Schedule 2 of the Planning and Development Regulations, 2001 (as amended) provides as follows:

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.

Accordingly, in order to fall within Class 23 a number of requirements must be complied with namely that the works be carried out by a railway undertaker, that the works are being carried out on the operational land of the railway undertaker and the works are required in connection with the movement of traffic by railway.

### **Railway Undertaking**

Iarnród Éireann is a railway undertaking for the purposes of Class 23 of the Planning and Development Regulations, 2001 (as amended) and is the entity involved in the carrying out of the works.

### **Development Required in Connection with the Movement of Traffic by Rail**

The proposed train signalling mast provides radio communication between rolling stock on the Ballybrophy to Limerick City railway line and central rail control. It is a safety critical piece of railway infrastructure required under EU Directive 96/48/EC and is unambiguously required in connection with the movement of traffic by rail. The causal link between the mast and the movement of rail traffic is direct and self-evident.

### **Operational Land of the Undertaking**

The land on which the mast is located is within the ownership of CIÉ/Iarnród Éireann and forms part of Cloughjordan Train Station. It is operational land of the railway undertaking for the purposes of Class 23 of the Planning and Development Regulations, 2001 (as amended).

### **Exceptions under Class 23(a) and (b)**

The proposed train signalling mast does not fall within any of the exceptions contained in Class 23(a). It is not a railway station, a bridge, a residential structure, an office or a structure to be used for manufacturing or repair work. It is a dedicated train signalling structure with no other use or purpose. Class 23(b) has no application as there is no proposal to reconstruct or alter any existing structure.

### **Column 2 — Car Parking**

No car parking is proposed or required as part of this development. Column 2 of Class 23 does not apply.

The train signalling mast, being operational railway communications infrastructure required for the safe management of train services, would fall within the scope of this exemption.

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## **7. Application of Section 57(1) of the PDA 2000 to the development at Cloughjordan Railway Station**

Section 57(1) provides that the aforesaid exemption will not apply if the development involves works to a protected structure which materially affects the character of the structure.

It is necessary to consider whether there are any works proposed to be carried out to the protected structure (Reference TRPS457) such as to contravene Section 57(1) and thereby disapply the exemption in Class 23 Part 1 Schedule 2.

The essential issue under Section 57 (1) (a) is whether, where works carried out to a protected structure, those 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 the protected structure Cloughjordan Railway Station (Reference TRPS457) and all of the works relating to the said train signalling mast are at a distance of approximately 147m from the said protected structure. There is then no possible contravention of Section 57(1).

Given that the train signalling mast is located approximately 147m meters west 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 as 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. Accordingly, the exemption under Class 23 of Part 1 of Schedule 2 is not disapplied.

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 elevations of the protected structure. The antennae is located at a distance of approximately 147 meters from the building, there is a series of intervening buildings between the two and by virtue of its distance there will be no adverse effect on the protected structure in any event. I would emphasise however, that this is not the test in respect of Section 57 which is concerned with the impact of a development, primarily works, to a protected structure and I have already emphasised that no such effect could ever arise from the train signalling mast constructed some 147 meters west of that protected structure.

In addition, the character of the station, its single storey rendered masonry construction with limestone quoins and reveals on the front façade, its relationship with the station platform, entrance piers and gates will be completely unaffected by the addition of a discreet train signalling mast to the west 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 the protected structure or 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. In my opinion for the reason set out above the train signalling mast will have no effect given its distance from the protected structure.

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.

## **8. Section 57(1)(b) The Eight Special Interest Categories**

I have considered whether the proposed mast would materially affect any element of the protected structure which contributes to its special interest under each of the eight categories identified in Section 57(1)(b).

<b>Special Interest Category</b>	<b>Assessment</b>	<b>Impact</b>
<b>Architectural</b>	The architectural character of Cloughjordan Station derives from its single storey rendered masonry construction, segmental headed openings and modest but carefully composed design. The proposed	No Impact

<b>Special Interest Category</b>	<b>Assessment</b>	<b>Impact</b>
	<p>mast is located approximately 147m to the west and will not be read against or in conjunction with any of these architectural elements.</p>	
<b>Historical</b>	<p>The historical significance of the station relates to its role in the development of the Ballybrophy to Limerick City railway line and its association with Cloughjordan as a market town. The addition of a modern train signalling mast does not diminish or obscure any element contributing to this historical significance.</p>	No Impact
<b>Archaeological</b>	<p>There are no known archaeological elements associated with the station building that would be affected by the proposed mast.</p>	No Impact
<b>Artistic</b>	<p>The artistic interest of the station is modest and embodied in the quality of its simple rendered composition. This is entirely unaffected by the proposed mast at 147 metres' distance.</p>	No Impact
<b>Cultural</b>	<p>The cultural significance of the station relates to its continued role as a functioning railway station serving the community of Cloughjordan. The addition of the train signalling mast actively supports and sustains that cultural role by enabling the continued safe operation of the railway service.</p>	Positive Impact
<b>Scientific</b>	<p>There are no scientific interest elements associated with the station that would be affected by the proposed mast.</p>	No Impact
<b>Social</b>	<p>The social significance of the station relates to its continued use as a functioning railway station. The train signalling mast supports rather than undermines this social significance.</p>	Positive Impact
<b>Technical</b>	<p>The technical interest of the station relates to the engineering of the original railway infrastructure. The addition of a modern train signalling mast does not affect or diminish any of these elements of technical interest.</p>	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.**

---

## **9. 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. Cloughjordan 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**

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 western portion of the site without affecting the fabric, setting or composition of the protected station building.

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 rendered 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.

---

## 10. Conclusion

Having regard to:

the primary basis for exemption for the train signalling mast provided by Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), the development is being carried out by a railway undertaking on its operational land and is required in connection with the movement of traffic by rail;

the fact that the exceptions in Class 23 (a) and (b) do not apply and no car parking is required or proposed;

the fact that no works whatsoever are proposed to the only protected structure (Reference TRPS457) or any element of that structure that could contravene Section 57(1)(a) or (b) and section 4(2) and in particular Class 23 has not been disapplied;

the location of the train signalling mast approximately 147m to the west of the protected structure and outside its principal visual composition;

the positive contribution of the proposed development to the continued operational use of the station and the wider railway ensemble, consistent with the Venice Charter and DoEHLG guidance on the conservation of protected structures;

it is my opinion that the proposed addition of a GSM-R train signalling mast at Cloughjordan Railway Station, County Tipperary constitutes exempted development within the meaning of Section 4(2) of the Planning and Development Act 2000 (as amended), and specifically under Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) that in the absence of any works to the protected structure, (Reference TRPS457) 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 professional opinion 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*

*Board Member, ICOMOS Ireland*

*President / Convenor,*

*National Scientific Committee on Energy Sustainability and Climate Change (NSCES+CC),  
ICOMOS*

*Ireland Member, International Scientific Committee on Energy Sustainability (ISCES), ICOMOS  
International*

## **Schedule**

1. Extract from NIAH with photograph and description of the protected structure Cloughjordan Railway Station (Reference TRPS457).
2. Image of entrance to Cloughjordan Railway Station.
3. Extract from the Tipperary County Development Plan with description of the protected structure.
4. Aerial photograph identifying the protected structure and the train signalling mast and the distance between the two.

1.

## CloghJordan Railway Station, TOWNFIELDS, CloghJordan, TIPPERARY NORTH



 [View on map](#)

### Survey Data

Reg No	22401604
Rating	Regional
Categories of Special Interest	Architectural, Social
Original Use	Railway station
In Use As	Railway station
Date	1860 - 1865
Coordinates	198396, 187258
Date Recorded	25/08/2004
Date Updated	--/--

### Description

Detached multiple-bay single-storey railway station, built 1863, comprising four-bay central block with recessed central bays to track-side elevation and with lower two-bay wings to each end and square-plan building to west end with hipped slate roof. Hipped slate roofs with rendered chimneystacks. Rendered walls with ashlar limestone quoins and plinths. Round-headed door openings to track-side of main block with moulded render surrounds. Segmental-headed door openings to wings with ashlar block-and-start surrounds. Square-headed window openings throughout with moulded render surrounds and cut-stone sills, all blocked except for one six-over-six pane timber sliding sash window to track-side. Rubble stone wall with ashlar piers to boundary wall at north end of station. Rubble stone wall with rusticated ashlar piers, cast-iron lattice gates and stile to entrance from public road.

### Appraisal

This building is a physical reminder of a time when CloghJordan was a busy market town with a bustling railway station. It forms part of a group of railway buildings with the stationmaster's house, the goods shed and the railway bridge. The hipped roof, paired chimneystacks and segmental-headed openings make it similar in style to the stationmaster's house.

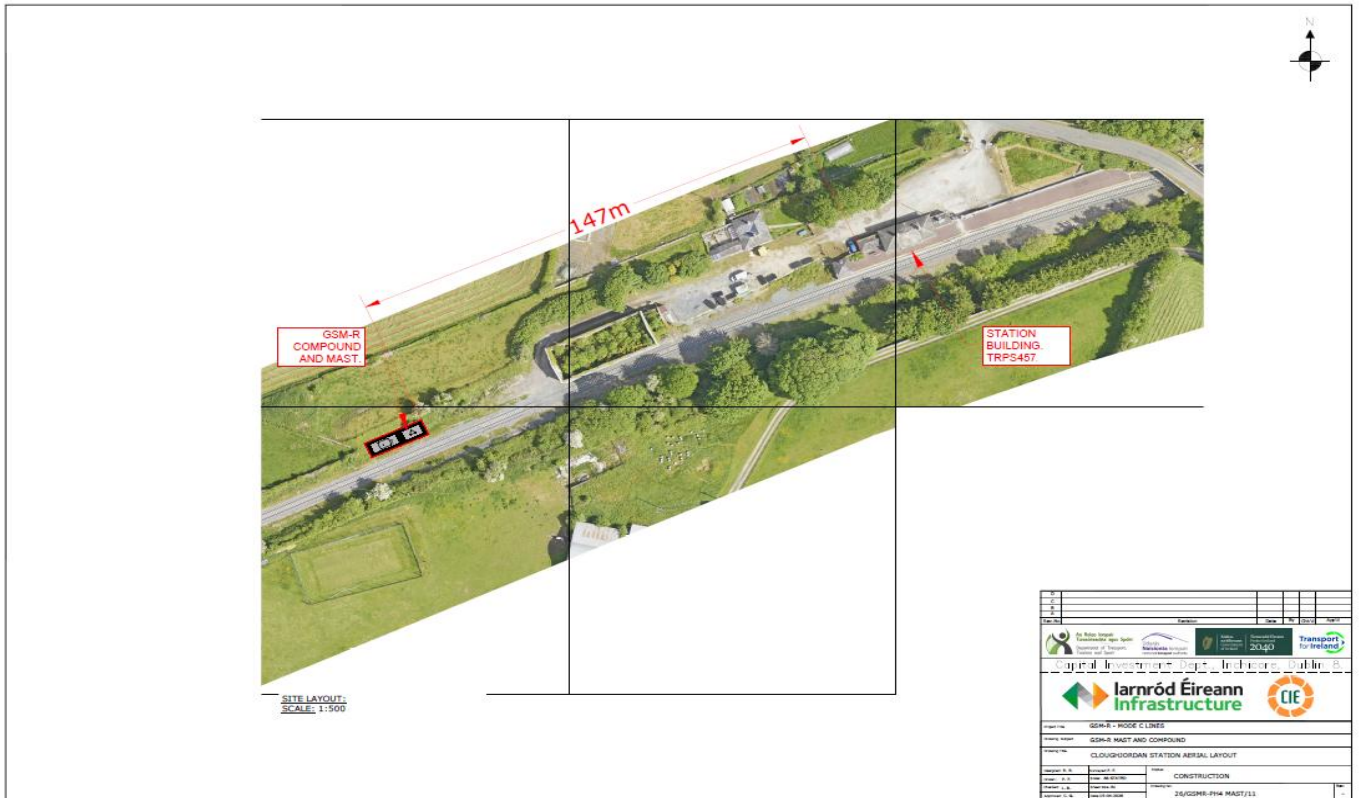
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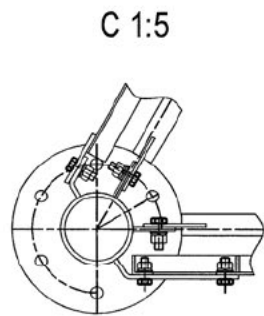
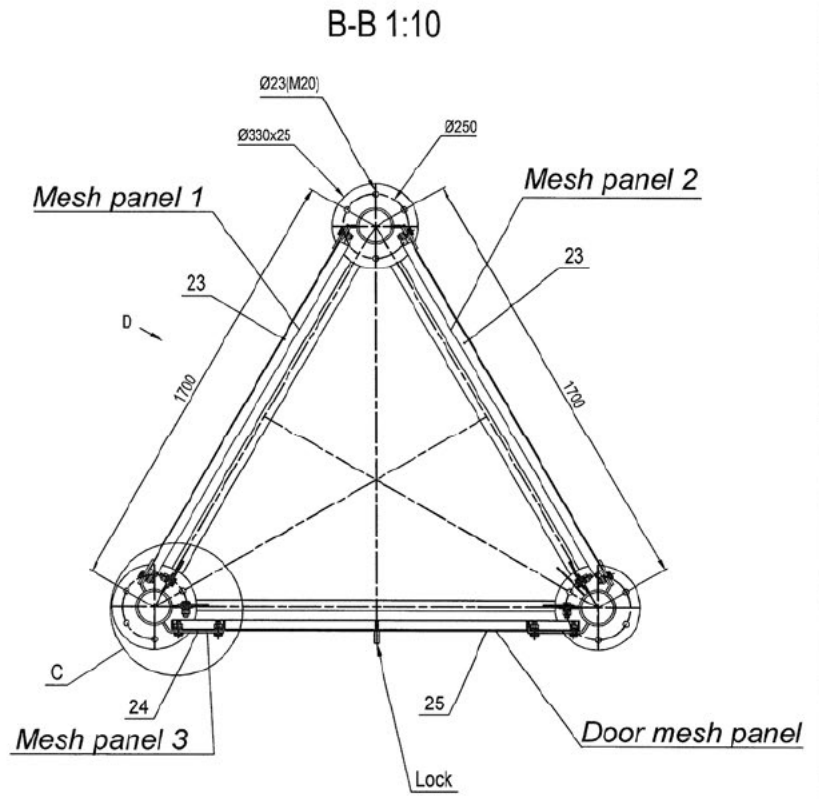
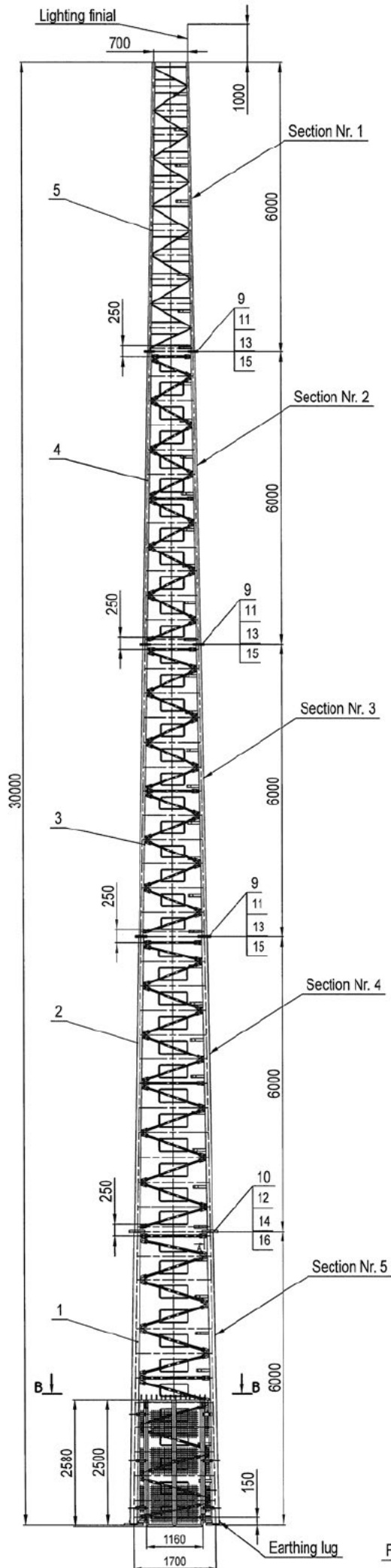


3.

TRPS457	Cloughjordan Railway Station, Cloughjordan	Townfields		Nenagh MD
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4.





Tipperary County Council  
 Planning Section by email  
 Received: 22/04/2026  
 File ref: S5/26/56

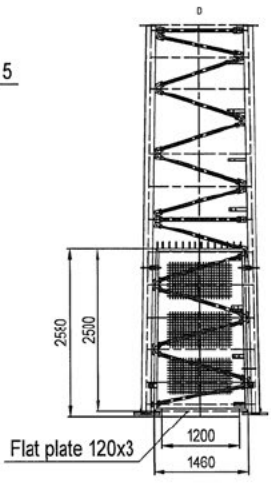
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			Size	No. of Bolts	Grade			
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2	CHS76.1 x 6.3	S355J2H	M16	6	8.8	CHS 33.7x3.2	S355J2H	Bolted
3	CHS88.9 x 6.3	S355J2H	M16	6	8.8	CHS 33.7x3.2	S355J2H	Bolted
4	CH114.3 x 8.0	S355J2H	M16	6	8.8	CHS 33.7x3.2	S355J2H	Bolted
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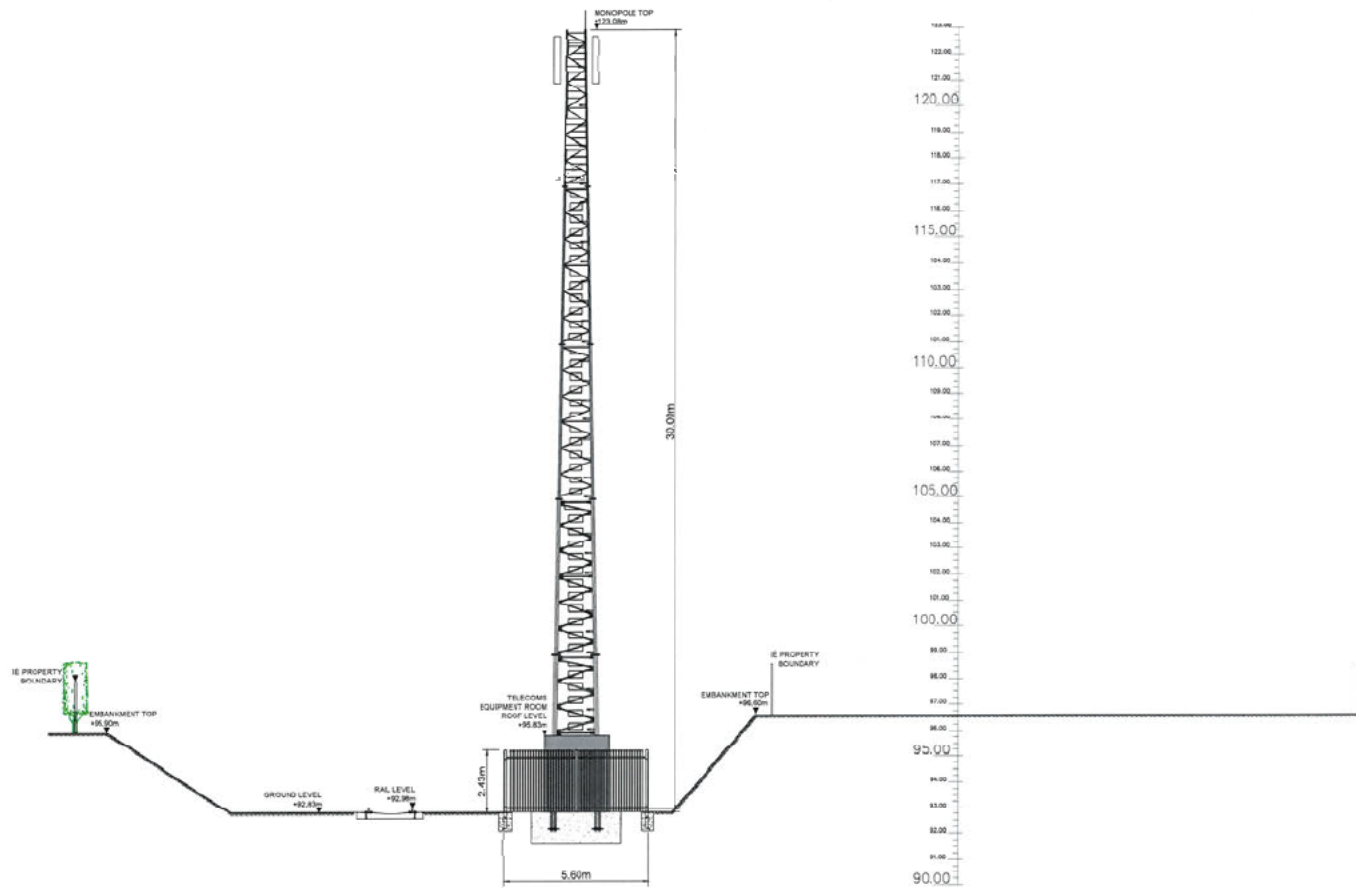
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2. Covering: dip galvanized in accordance with EN ISO 1461.
3. Tube steel grade S355J2H according to EN 10210.
4. Solid bar steel grade S355J2H according to EN 10025.
5. Flange steel grade S355J2 according to EN 10025.
6. All bolts to have a nut, 2 No. washers and 1 No. spring washer.

Pos.	Pcs.	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 M20x80 8.8	Bolt
11	64	DIN 127A 16	Spring washer
12	18	DIN 127A 20	Spring washer
13	108	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

Drawing sheet scale		30L1 700/1700	
DSI GSMR		Tapered Mast 30 m	
Date: 12/04/2026		Scale: 1:10	





SITE LAYOUT:  
SCALE: 1:100

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C					
B					
A					

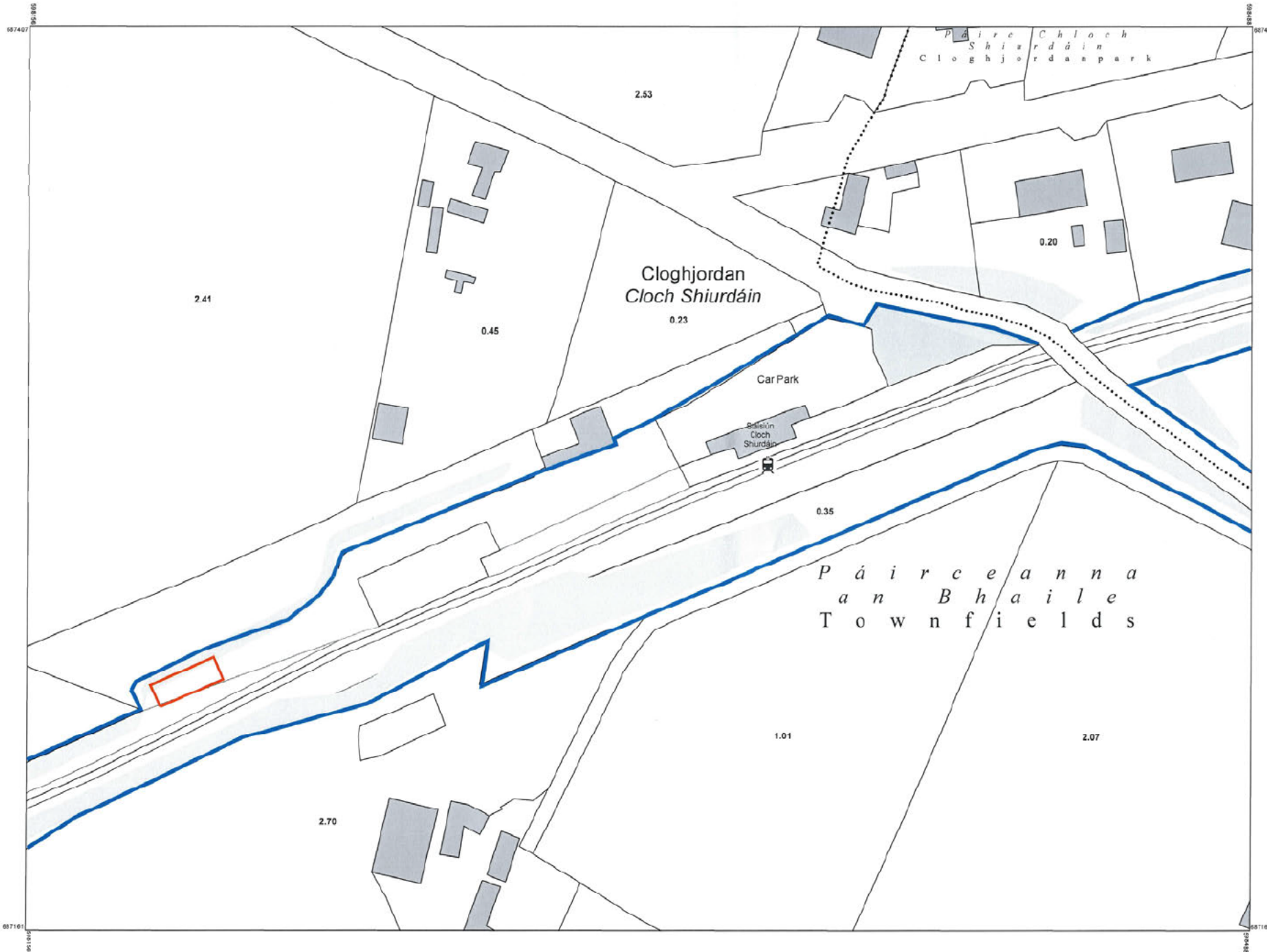
  

 Department of Transport, Tourism and Sport	 National Strategic Reference Framework	 Ireland's National Development Plan 2040	 Transport for Ireland
Capital Investment Dept., Inchicore, Dublin 8.			
Project Title	GSM-R - MODE C LINES		
Drawing Subject	GSM-R MAST AND COMPOUND		
Drawing Title	CLOUGHJORDAN STATION COMPOUND AND MAST ELEVATION		
Designed: R. R.	Drawn: P. F.	State:	CONSTRUCTION
Checked: P. R.	Issue: JCB 2020/01	Drawing No.	26/GSMR-PH4 MAST/13
Author: L. B.	Issue Date: All		
Approved: C. G.	Date: 15-04-2020		

# Planning Pack Map



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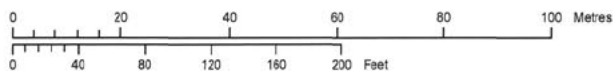
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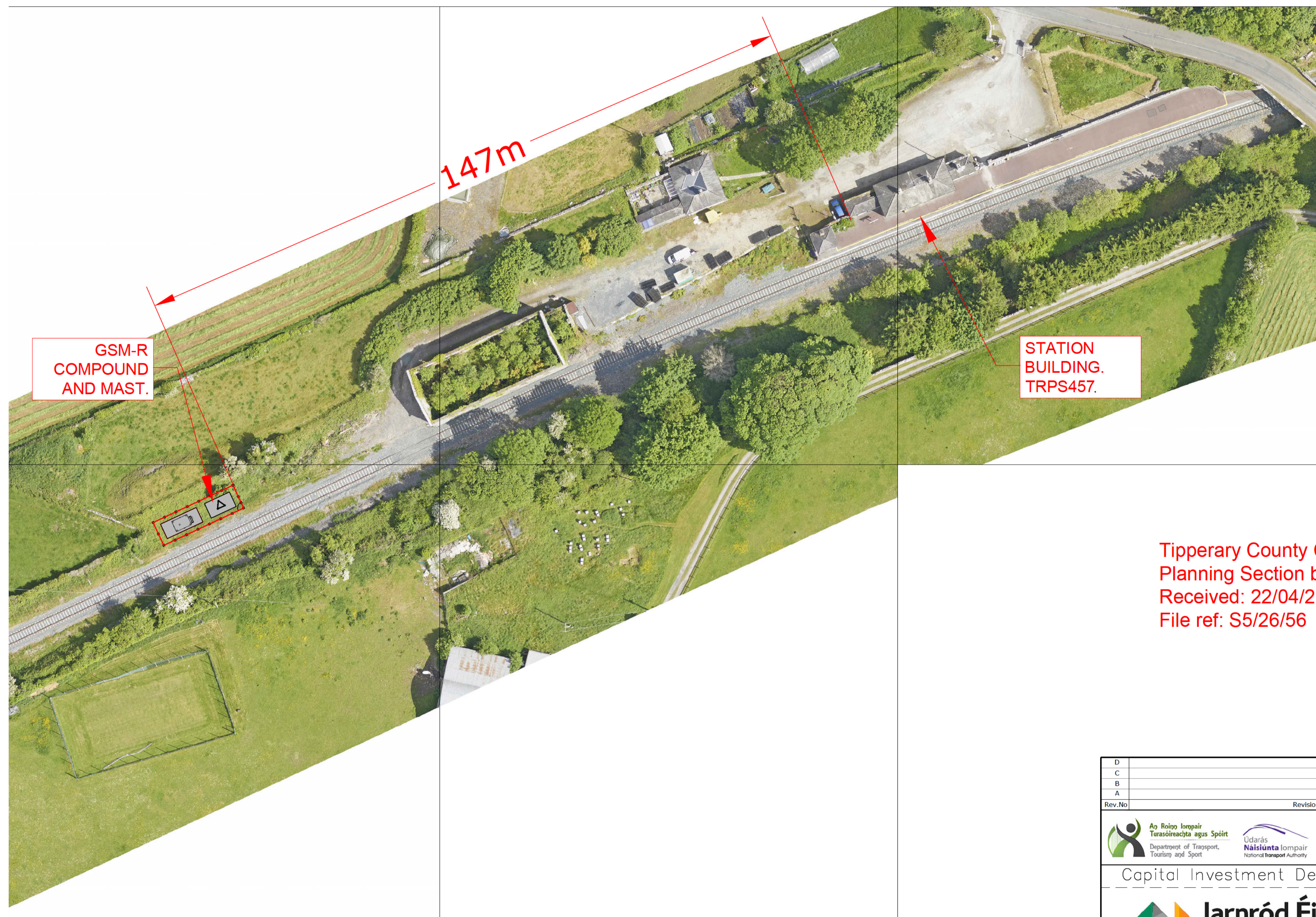
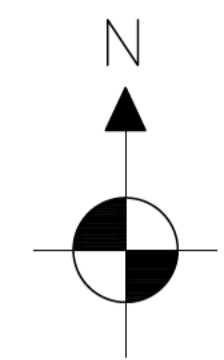


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GSM-R  
COMPOUND  
AND MAST.

STATION  
BUILDING.  
TRPS457.

Tipperary County Council  
Planning Section by email  
Received: 22/04/2026  
File ref: S5/26/56

SITE LAYOUT:  
SCALE: 1:500

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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 CLOUGHJORDAN STATION AERIAL LAYOUT					
Designed: R. B.	Surveyed: P. F.	Status: CONSTRUCTION			
Drawn: P. F.	Scale: AS STATED	Drawing No: 26/GSMR-PH4 MAST/11			
Checked: L. B.	Sheet Size: A1	Rev: -			
Approved: C. G.	Date: 15-04-2026				



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GOODS 80.00  
VAT Exempt/Non-vatable  
TUD26008

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Credit Card 80.00

Change : 0.00

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Date: 22<sup>nd</sup> April 2026

Our Ref: S5/26/56

Civic Offices, Clonmel

Iarnrod Eireann - Irish Rail,  
C/O Paul Flynn CIÉ Group Solicitors,  
CIÉ Group Solicitors Office,  
Bridgewater House,  
Islandbridge,  
Dublin 8,  
Co. Dublin.

**Re: Application for a Section 5 Declaration - Works consisting of the construction of a GSM-R Train Signalling Mast at Cloughjordan Train Station, Townsfield, Cloughjordan, Co. Tipperary on lands owned by CIÉ.**

Dear Mr. Flynn,

I acknowledge receipt of your application for a Section 5 Declaration received on 22<sup>nd</sup> 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

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**Planning Reference:** S5/26/56

**Applicant:** Iarnrod Eireann-Irish Rail

**Development Address:** Cloughjordan Train Station, Townfields, Cloughjordan, Co. Tipperary

**Proposed Development:** Construction of a GSM-R Train signalling mast at Cloughjordan Train Station

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**1. GENERAL**

On the 22/04/2026 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended by Iarnrod Eireann-Irish Rail as to whether or not the following constitutes development and if so, whether same constitutes exempted development at Cloughjordan Train Station, Townfields, Cloughjordan, Co. Tipperary

*Construction of a GSM-R Train signalling mast at Cloughjordan Train Station*

The application is accompanied by:

- Section 5 Declaration application form.
  - A Heritage Impact Assessment Report.
  - Opinion of Michael O'Donnell Senior Counsel.
  - Layout plans and elevation drawings showing the structure.
-



Fig 1: Showing location to which Declaration relates with Protected Structure TRPS457 highlighted.



Fig 2: aerial image marked to show development and Protected Structure TRPS457.

## 2. **STATUTORY PROVISIONS**

The following statutory provisions are relevant to this referral case;

### **Planning and Development Act 2000, as amended**

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 3 (1) of the Planning and Development Act 2000, as amended, defined “development” 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 4 (1) of the Planning and Development Act, 2000, as amended states:

#### ***Exempted Development***

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

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

Section 4 (2)(a) of the Planning and Development Act 2000, as amended, states as follows:-

*(2)(a) 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—*

*(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or*

*(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).*

Section 4 (4) of the Planning and Development Act 2000, as amended, states as follows:-

4. (4) *Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

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

---

Works affecting character of protected structures or proposed protected structures.

(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.*

## Schedule 2, Part 1 ‘Exempted Development - General: Class 23 of Part 1 of Schedule 2

<i>Exempted Development - General</i>	
Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development by statutory undertakers</i> 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—</p> <p>(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</p> <p>(b) the reconstruction or alteration of any of the aforementioned structures so as materially to affect the design or external appearance thereof.</p>	<p>Any car park provided or constructed shall incorporate parking space for not more than 60 cars.</p>

### 3. **ASSESSMENT**

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

The site is located at Cloughjordan Train Station, Townfields, Cloughjordan, Co. Tipperary

#### b. **Relevant Planning History**

TUD-26-008- Warning Letter issued regarding unauthorised mast structure.

Section 57//26/11- Declaration sought for premises.

#### 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”**

The Declaration relates to the installation of GSM-R Train Signalling Mast at Cloughjordan Train Station. The drawings submitted with the Declaration show same to have a height of 30 metres.

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 of Schedule 2, part 1 of the Planning and Development Regulations as referenced above, an opinion from a Senior Counsel that the mast is exempted development, a report from a Conservation Architect suggesting that

the location of the mast does not effect materially the character of the protected structure and did not involve work to the protected structure.

It is noted that this section 5 declaration was lodged in tandem with a Section 57 Declaration (S57/26/11).

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. As per considerations set out in the Section 57 Declaration (s57/26/11) the curtilage of the protected structure at the Cloughjordan Railway Station site is considered to include the exterior (and interior, where applicable) of the following:

- The four-bay, single-storey railway station building with flanking two-bay wings and square plan former signal box fronting onto the passenger platform of the Ballybrophy to Limerick branch rail line.
- The three-bay, single-storey, former station master's house.
- The five-bay goods shed and its single-storey south-west extension.
- All stone-built railway platforms, features including the swing jib crane and **railway sidings** in use or previously in use on the site.
- All historic masonry walls, whether free-standing or retaining, within or bounding the station site.

Under Section 57 Declaration (S57/26/11) the Planning Authority considered that the construction of a GSM-R Train Signalling Mast and associated works have materially affected the character of the **historic goods train siding**. The Special Remarks section of the Declaration specifically notes that ***this includes a direct material impact of the works on the (railway) siding and any historic masonry elements associated with it, as well as the indirect visual impact of the development as constructed, which has materially altered the setting and views of and from the historic railway station site.***

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.

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Having considered the Declaration application and enclosures and foregoing matters I consider the GSM-R Train signalling mast is not exempted development. For reasons outlined the exemption provided under Class 23 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended is restricted under Section 57(1) of the Planning and Development Act 2000, as amended.

D) Requirement for Appropriate Assessment and Environmental Impact Assessment

**AA**

The proposal has been screened as to the requirements for Appropriate Assessment under the EU Habitats Directive. The screening assessment considers that the proposal does not impact on any Natura 2000 site. See also Appropriate Assessment screening report attached.

**EIA**

EIA is not required in respect of the proposed development and does avail of the exemption. See also for Environmental Impact Assessment (EIA) screening report attached.

4. RECOMMENDATION

**WHEREAS** a question has arisen as to whether the following proposal at Cloughjordan Train Station, Townfields, Cloughjordan, Co. Tipperary constitutes “development” and “exempted development”

*Construction of a GSM-R Train signalling mast at Cloughjordan Train Station*

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

- (a) Sections 2, 3, 4 and 57 of the Planning and Development Act, 2000 (as amended)
- (b) Article 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- (c) Class 23, of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The Declaration application and supporting enclosures
- (e) Section 57 Declaration Reference S57/26/11.

**AND WHEREAS** Tipperary County Council has concluded that –

The proposal as presented in the declaration application constitute “development” as understood by the Planning and Development act 2000, as amended and is **NOT** “exempted development”.

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

- the construction of the mast and associated works constitutes *works* and *development* within the meaning of the Planning and Development act 2000, as amended.
- 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 the railway siding associated with Cloughjordan Train Station, a protected structure,
- The railway siding is considered to be within the curtilage of the protected structure at Cloughjordan Railway Station and contributes to its special architectural and historical interest.
- The mast has a direct material impact on the railway siding and historic masonry elements associated with it, as well as an indirect visual impact 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

Senior Executive Planner: Jonathan Flood Date: 14/5/2026

## HABITATS DIRECTIVE APPROPRIATE ASSESSMENT (AA) SCREENING REPORT

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

(a) File Reference No:	S5/26/56
(b) Brief description of the project or plan:	As per report
(c) Brief description of site characteristics:	As per report
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
€ 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 <sup>1</sup>	Distance from proposed development (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
Lough Derg, North-East Shore SAC	<a href="https://www.npws.ie/protected-sites/sac/002241">https://www.npws.ie/protected-sites/sac/002241</a>	Within 15km	None	No
Kilduff, Devilsbit Mountain SAC	<a href="https://www.npws.ie/protected-sites/sac/000934">https://www.npws.ie/protected-sites/sac/000934</a>	Within 10km	None	No
Kilcarren-Firville Bog SAC	<a href="https://www.npws.ie/protected-sites/sac/000647">https://www.npws.ie/protected-sites/sac/000647</a>	Within 10km	None	No
Ballyduff/Clonfinane Bog SAC	<a href="https://www.npws.ie/protected-sites/sac/000641">https://www.npws.ie/protected-sites/sac/000641</a>	Within 15km	None	No
Sharavogue Bog SAC	<a href="https://www.npws.ie/protected-sites/sac/000585">https://www.npws.ie/protected-sites/sac/000585</a>	Within 15km	None	No
Liskeenan Fen SAC	<a href="https://www.npws.ie/protected-sites/sac/001683">https://www.npws.ie/protected-sites/sac/001683</a>	Within 15km	None	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.)
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<p>Construction phase e.g.</p> <ul style="list-style-type: none"> <li>• Vegetation clearance</li> <li>• Demolition</li> <li>• Surface water runoff from soil excavation/infill/landscaping (including borrow pits)</li> <li>• Dust, noise, vibration</li> <li>• Lighting disturbance</li> <li>• Impact on groundwater/dewatering</li> <li>• Storage of excavated/construction materials</li> <li>• Access to site</li> <li>• Pests</li> </ul>	None.
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<p>Operational phase e.g.</p> <ul style="list-style-type: none"> <li>• Direct emission to air and water</li> <li>• Surface water runoff containing contaminant or sediment</li> <li>• Lighting disturbance</li> <li>• Noise/vibration</li> <li>• Changes to water/groundwater due to drainage or abstraction</li> <li>• Presence of people, vehicles and activities</li> <li>• Physical presence of structures (e.g. collision risks)</li> <li>• Potential for accidents or incidents</li> </ul>	None.
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In-combination/Other	None.
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**(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"> <li>• Reduction or fragmentation of habitat area</li> <li>• Disturbance to QI species</li> <li>• Habitat or species fragmentation</li> <li>• Reduction or fragmentation in species density</li> <li>• Changes in key indicators of conservation status value (water or air quality etc.)</li> <li>• Changes to areas of sensitivity or threats to QI</li> <li>• Interference with the key relationships that define the structure or ecological function of the site</li> </ul>	None.
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**(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.

On the basis of the information on file, which is considered adequate to undertake a screening determination and having regard to: the nature and scale of the proposed development, the proposed land use and distance from European sites, the lack of direct connections with regard to the Source-Pathway-Receptor model, it is concluded that the proposed development, individually or in-combination

with other plans or projects, would not be likely to have a significant effect on the above listed European sites or any other European site, in view of the said sites' conservation objectives.

The proposed development is not likely to have significant effects.

**Conclusion:**

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is <b>no likelihood</b> of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is <b>uncertain</b> 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) <b>Significant effects</b> are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
<b>Signature and Date of Recommending Officer:</b>	Jonathan Flood	<b>Date:</b> 12/5/2026

**EIA Pre-Screening**  
**Establishing a development is a 'sub-threshold development'**

**File Reference:** S5/26/56

**Development Summary:** As per report

**Was a Screening Determination carried out under Section 176A-C?**

Yes, no further action required

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 _____	<b>EIA is mandatory</b>
	No Screening required
<input checked="" type="checkbox"/> No	<b>Proceed to Part B</b>

**B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2, of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds?**

(Tick as appropriate)

<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2	<b>No Screening required</b>
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 and meets/exceeds the threshold, specify class (including threshold): _____	<b>EIA is mandatory</b>
	No Screening required
<input type="checkbox"/> Yes the project is of a type listed but is <i>sub-threshold</i> : _____	<b>Proceed to Part C</b>

**C. If Yes, has Schedule 7A information/screening report been submitted?**

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

**Original**

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/26/56**      **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 3<sup>rd</sup> October, 2025, hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 Iarnrod Eireann – Irish Rail, C/O Paul Flynn, Engineering & New Works Building, Inchicore Works, Inchicore, Dublin 8, Construction of a GSM-R Train signalling mast Cloughjordan Train Station, Townfields, Cloughjordan, Co. Tipperary is development and is exempted development.

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

- (a) Sections 2, 3, 4 and 57 of the Planning and Development Act, 2000 (as amended)
- (b) Article 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- (c) Class 23, of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The Declaration application and supporting enclosures
- (e) Section 57 Declaration Reference S57/26/11.

**AND WHEREAS** Tipperary County Council has concluded that –

The proposal as presented in the declaration application constitute "development" as understood by the Planning and Development act 2000, as amended and is **NOT** "exempted development".

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

- the construction of the mast and associated works constitutes *works* and *development* within the meaning of the Planning and Development act 2000, as amended.
- 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 the railway siding associated with Cloughjordan Train Station, a protected structure,

- The railway siding is considered to be within the curtilage of the protected structure at Cloughjordan Railway Station and contributes to its special architectural and historical interest.
- The mast has a direct material impact on the railway siding and historic masonry elements associated with it, as well as an indirect visual impact 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

**Signed:**   

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**Brian Beck**  
**Director of Services**

**Date: 15/05/2026**



Date: 15<sup>th</sup> May 2026

Our Ref: S5/26/56

Civic Offices, Nenagh

Iarnrod Eireann – Irish Rail  
C/O Paul Flynn  
Engineering & New Works Building  
Inchicore Works  
Inchicore  
Dublin 8

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

Dear Mr Flynn,

I refer to your application for a Section 5 Declaration received on 22<sup>nd</sup> April 2026, in relation to the following proposed works:

**Construction of a GSM-R Train signalling mast at Cloughjordan Train Station at Cloughjordan Train Station, Townfields, Cloughjordan, Co. Tipperary**

**WHEREAS** a question has arisen as to whether the proposed development is or is not exempted development:

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

- (a) Sections 2, 3, 4 and 57 of the Planning and Development Act, 2000 (as amended)
- (b) Article 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- (c) Class 23, of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The Declaration application and supporting enclosures
- (e) Section 57 Declaration Reference S57/26/11.

**AND WHEREAS** Tipperary County Council has concluded that –

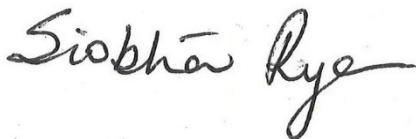
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Reason: Having considered the information received, the Planning Authority has concluded that;

- the construction of the mast and associated works constitutes *works* and *development* within the meaning of the Planning and Development act 2000, as amended.
- 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,
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- The mast has a direct material impact on the railway siding and historic masonry elements associated with it, as well as an indirect visual impact 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

**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 sincerely

A handwritten signature in black ink that reads "Siobhán Rye". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.

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for **Director of Services**