



COMHAIRLE  
CONTAE AN CHLÁIR

CLARE  
COUNTY COUNCIL

**Registered Post**

**Brendan Keane  
c/o Ennis Abattoir Ltd.,  
Tulla Road,  
Ennis,  
Co. Clare  
V95 EY82**

**23<sup>rd</sup> April, 2021**

**Section 5 referral Reference R21-17 – Brendan Keane**

**Whether the erection of fencing at the rear of the property at Tulla Road, Ennis Co. Clare is considered development and if so, is it exempted development.**

A Chara,

I refer to your application received on 30<sup>th</sup> March, 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at [www.pleanala.ie](http://www.pleanala.ie)

Mise, le meas

**Kieran O'Donnell  
Administrative Officer  
Planning Department  
Economic Development Directorate**

**An Roinn Pleanála  
An Stiúrthóireacht Forbairt Gheilleagrach  
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2**

**Planning Department  
Economic Development Directorate  
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2**



**DECLARATION ISSUED UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

**Reference No.: R21-17**



**Comhairle Contae an Chláir  
Clare County Council**

**Section 5 referral Reference R21-17**

**Whether the erection of fencing at the rear of the property at Tulla Road, Ennis Co. Clare is considered development and if so, is it exempted development.**

**AND WHEREAS, Brendan Keane** has requested a declaration from Clare County Council on the said question.

**AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –**

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (d) The works as indicated in submitted documents from the referrer.

**And whereas Clare County Council has concluded:**

- (a) The erection of a fence of 1140m at Tulla Road, Ennis, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) The said the erection of a fence at Tulla Road, Ennis, Co. Clare is not exempted development having regard to the conditions and limitations as specified under Class 11 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.
- (d) Based on the information submitted with the Section 5 referral application to date, it cannot be conclusively determined whether or not, the proposed development, either alone or in combination with other plans / projects would have a likely significant impact on the Qualifying Interests of the Lower River Shannon SAC, and as such the proposal

would come within the restrictions on exempted development as set out in Article 9(1)(a)(viiB) of the said Regulations.

**THEREFORE:** The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The erection of fencing at the rear of the property at Tulla Road, Ennis Co. Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



**Kieran O'Donnell**  
**Administrative Officer**  
**Planning Department**  
**Economic Development Directorate**

**23<sup>rd</sup> April, 2021**

**CLARE COUNTY COUNCIL**

**SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED**

**DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT**

**Chief Executive's Order No:**

77509

**Reference Number:**

**R21-17**

**Date Referral Received:**

**30<sup>th</sup> March, 2021**

**Name of Applicant:**

**Brendan Keane**

**Location of works in question:**

**Tulla Road, Ennis Co. Clare V95 EY82**

**Section 5 referral Reference R21-17 – Brendan Keane**

**Whether the erection of fencing at the rear of the property at Tulla Road, Ennis Co. Clare is considered development and if so, is it exempted development.**

**AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –**

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (d) The works as indicated in submitted documents from the referrer.

**AND WHEREAS Clare County Council has concluded:**

- (a) The erection of a fence of 1140m at Tulla Road, Ennis, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) The said the erection of a fence at Tulla Road, Ennis, Co. Clare is not exempted development having regard to the conditions and limitations as specified under Class 11 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.
- (d) Based on the information submitted with the Section 5 referral application to date, it cannot be conclusively determined whether or not, the proposed development, either alone or in combination with other plans / projects would have a likely significant impact on the Qualifying Interests of the Lower River Shannon SAC, and as such the proposal would come within the restrictions on exempted development as set out in Article 9(1)(a)(viiB) of the said Regulations.

**ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Garreth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Garreth Ruane, Senior Executive Planner, hereby declare that the erection of fencing at the rear of the property at Tulla Road, Ennis Co. Clare is considered development which is not exempted development

**Signed:**



**GARRETH RUANE  
SENIOR EXECUTIVE PLANNER**

**Date:**

**23<sup>rd</sup> April, 2021**

**CLARE COUNTY COUNCIL**

**SECTION 5 REFERRAL**

<b>Reference No:</b>	<b>R21 17</b>
<b>Applicant:</b>	<b>Brendan Keane c/o Ennis Abattoir</b>
<b>Location:</b>	<b>Tulla Road, Ennis, Co. Clare</b>
<b>Proposal:</b>	<b>Whether the erection of a fence at the rear of the property at Tulla Road, Ennis is development and if so is it exempted development.</b>
<b>Due Date:</b>	<b>26<sup>th</sup> April 2021</b>

**Introduction**

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) to determine whether or not the erection of a fence on the ground of Ennis abattoir constitutes development and is / is not exempted development.

**Site location**

The subject site is located on the Tulla Road in Ennis, and contains an existing abattoir. The building is set back from the edge of the public road by approx. 60 meters. There is an existing hard core area to the side and rear of the building, which would appear to have been recently infilled.

The site is located immediately adjacent to the Lower River Shannon SAC , and is zoned 'Mixed Use' as per the provisions of the Clare County Development Plan 2017 – 2023, as varied.

**Background to Referral**

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Brendan Keane.

It is submitted that the applicant is the owner of the subject lands.

The applicant is seeking a Section 5 Declaration as to whether the erection of a fence is development and if so is it exempted development.

The works (which have been carried out) involved the erection of a paladin fence 1.9m in height along the south and partially along the eastern site perimeter.

**Materials and Methods used**

The works involve the erection of a paladin fence which is secured to the ground by way of concrete.

**Planning History**

P01 21045

P08 21165

**Zoning**

The subject site zoned 'Mixed Use' as per the provisions of the Clare County Development Plan 2017-2023, as varied.

## Relevant Statutory Legislation

### Planning and Development Act 2000, as amended

Section 2(1) interpretation of “works” and “structure”.

Section 3(1) meaning of “development”.

Section 2 of the Planning and Development 2000, as amended also defines the terms used within the Act and the following terms are relevant for the purposes of this referral.

#### Agriculture

- includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any **creature kept for the production of food**, wool, skins or fur or for the purpose of its use in the farming of land), the training of horses, the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardening and nursery grounds and “agricultural” shall be construed accordingly.

A fence - includes a hoarding or similar structure but excludes any bank, wall or other similar structure composed wholly or mainly of earth or stone.

A structure - means any building structure, excavation or other thing constructed or made on, in or under any land or any part of a structure so defined.

Works - include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 (1) of the Act defines development 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 sets out development which is deemed to be exempted development.

Section 4(1) states that the following shall be exempted development for the purposes of the Act :

Development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied, together with the land so used.

Section 4(1)(l) – development consisting of the carrying out of any works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within 10 years preceding the date on which the works are commenced. All works consisting of land reclamation or reclamation of estuarine, marshland and of callows referred to in Section 2 of that Act.

Section 6 - (a) The Board shall keep a record of any decision made by it on a referral under this section and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

(c) The Board shall, from time to time and at least once a year, forward to each planning authority a copy of the record referred to in *paragraph (a)*.

Section 7 - A planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with *subsection (6)(c)*.

### Planning and Development Regulations 2001, as amended

#### Article 6 Relates to Exempted Development.

##### Article 6 (3)

Subject to article 9, **in areas other than a city, a town or an area specified in section 19(1)(b) of the Act** or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that

such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1

#### Article 9(1) Relates to restrictions on exemptions.

Article 9 (1) concerns development to which Article 6 relates and shall not be exempted development for the purposes of the Act.

- (a) If the carrying out of such development would inter alia,
  - (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
  - (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
  - (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
  - (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
  - (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000
  - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
  - (ix) Consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
  - (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
  - (xi) Obstruct any public right of way,

#### Part 2, Schedule 1 relates to Exempted Development – General:

Class 4 of Part 2 of the Regulations include - The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of —

- (a) any fence (not being a hoarding or sheet metal fence), or
- (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

The limitations and conditions include



1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.

2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.

#### Part 3, Schedule 2 relates to Exempted Development – Rural:

Class 4 of Part 3 of the Regulations include - the construction, erection or maintenance of any wall or fence other than a fence of sheet metal or a wall or fence within the bounding curtilage of a house. The limitations and conditions include

1. The height of the wall or fence or other than the fence referred to in

Paragraph 2 shall not exceed 2 metres.

2. The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.

**Note: While I accept that the subject site may be classified as “agricultural” use having regard to the meaning afforded to same in the Act, Article 6(3) of the Regulations does not allow for consideration of column 1 of Part 3 of Schedule 2. As a result same is being disregarded under the assessment of the subject application.**

### **Assessment**

#### Is it development?

Works are defined in the Act as “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”.

The erection of a fence therefore comes within the scope of works as defined in the Act. As such it can be reasonably and logically concluded that the erection of fencing constitutes “development” under the meaning of development as stipulated in the Act, as development is defined as, inter alia, “the carrying out of any works on, in, over or under land”.

#### Is / is not exempted development?

A question now arises as to whether or not development constitutes exempted under the broader provisions of Section 4 of the Planning and Development Act 2000, namely Section 4 (1)(a)

Section 4 (1) (a) relates to development consisting of the use of any land for the purposes of agriculture and the development consisting of the use for that purpose of any building occupied with the land so used. The Collins English dictionary provides the following definition for an abattoir:

*An abattoir is a place where animals are killed in order to provide meat.*

Having regard to the meaning of “agriculture” as contained in the Planning and Development Act 2000, as amended, it would appear that the use of lands in question is for agricultural purposes as per Section 2 of the Planning and Development Act 2000, as amended.

I consider that the construction of fencing constitutes “works” and as such “development” under the provisions of the Planning and Development Act 2000, as amended.

The next question arises as to whether or not the works undertaken could be considered exempted development under the provisions of Article 6 of the Planning and Development Act 2000 as amended. Article 6(3) states that inter alia, subject to Article 9, development of a class specified in Column 1 of Part 3 shall be exempted development for the

purposes of the Act provided that it complies with the conditions and limitations set out adjacent to the column. The subject development, having regard to its location in the urban context, does not allow for consideration under Part 3 of Schedule 2 of the Regulations.

In this regard, the subject development is being considered under Part 1, Schedule 1 which relates to Exempted Development – General. Class 11 of Part 1 of the Regulations include - The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –

- (a) any fence (not being a hoarding or sheet metal fence), or
- (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

The limitations and conditions include

1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.

This is a new fence for the most part. I met with the applicant on site on 21.04.2021. He outlined that some parts of the site were enclosed with a barbed wire fence of approx. 1m in height, while other parts of the site were not enclosed. The fence as erected extends to 1.9m is in excess of

1. An existing fence that previously existed on the site
2. The conditions and limitations as stated under Class 4 of Part 2 of the Regulations.

A question now arises as to whether or not the works undertaken accord with the various stipulations set out in Article 9 of the Regulations. There are 14 separate stipulations or de-exemptions set out under Article 9. In the context of this question I note the following:

*Development to which article 6 relates shall not be exempted development for the purposes of the Act -*

*(a) If the carrying out of such development would –*

*(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan*

It is noted that the subject site is located adjacent to the Lower River Shannon SAC I refer to the maps as received by the PA on 30<sup>th</sup> March 2021, and having regard to same I am satisfied that the proposed development did not comprise the excavation, alteration or demolition of same.

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

The proposed location of the fencing is adjacent to the Lower River Shannon SAC. A screening statement was not submitted with the application. There are concerns regarding past infilling of the site, and as such it cannot conclusively be demonstrated that the subject development, **in combination with other developments as carried out**, did / will not have a significant Qualifying Interests of the European Site.

Under Section 7 of the Planning and Development Act 2000, as amended, the Planning Authority is required to consider any relevant decision as made by An Bord Pleanála. I have searched and examined the Board's database of referrals and note there are a number of referrals relating to individual matters such as right of way, land habitually open to or used by the public during the 10 years preceding, change of use, primary and subsidiary/ancillary uses. However, I have not

been able to find a previous referral that I consider to be comparable to the subject referral – i.e. the erection of a fence around an abattoir, adjacent to an SAC.

### **Environmental Impact Assessment**

In assessing this application I have had regard to the provisions of EU Directive 2014/52/EU (which amends EU Directive 2011/92/EU), and which has been transposed into Irish legislation by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (SI No. 296 of 2018). The subject development does not fall within the mandatory requirements for EIA as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. I therefore consider that the proposal constitutes a sub-threshold development and note the requirements of Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended. As such having regard to the nature and scale of the proposed development and the nature of the receiving environment I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **Appropriate Assessment**

Having regard to the location adjacent to the Lower River Shannon SAC, the fence as erected, and the infilling of the site (which does not form part of the subject section 5 referral) it is considered that further information would be required to conclusively determine that the proposed works either alone or in-combination with other plans/or projects will not have significant effects on the European site in light of their conservation objectives.

### **Conclusion**

The fence is not considered exempt having regard to Class 11 of Part 1 of the Regulations and the conditions and limitations contained therein. Further information would be required on any potential likely significant impacts on the QI's of the SAC.

### **Recommendation**

The following question has been referred to the Planning Authority:

Whether the erection of a fence to the rear of a property at Tulla Road, Ennis, Co. Clare is development and if so is it exempted development.

### **The Planning Authority in considering this referral had regard to:**

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (d) The works as indicated in submitted documents from the referrer.

### **And whereas Clare County Council (Planning Authority) has concluded:**

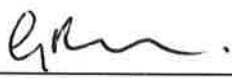
- (a) The erection of a fence of 1140m at Tulla Road, Ennis, Co. Clare constitutes “works” which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) The said works constitute “development” which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) The said the erection of a fence at Tulla Road, Ennis, Co. Clare is not exempted development having regard to the conditions and limitations as specified under Class 11 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.

(d) Based on the information submitted with the Section 5 referral application to date, it cannot be conclusively determined whether or not, the proposed development, either alone or in combination with other plans / projects would have a likely significant impact on the Qualifying Interests of the Lower River Shannon SAC, and as such the proposal would come within the restrictions on exempted development as set out in Article 9(1)(a)( viiB) of the said Regulations.

Now therefore Clare County Council (Planning Authority), hereby decides that the erection of a fence Tulla Road, Ennis, Co. Clare is development which is not exempted development.

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Fiona Barry  
Executive Planner  
Date: 22<sup>nd</sup> April 2021



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Garreth Ruane  
Senior Executive Planner  
Date: 23/04/21





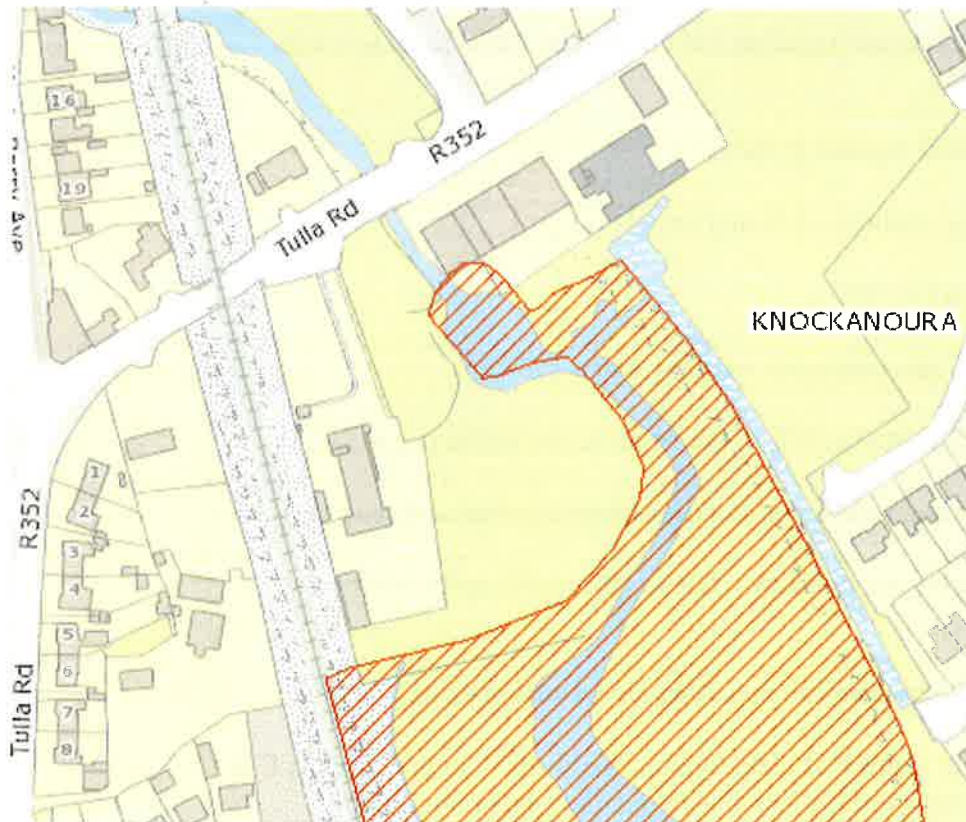
**Clare County Council**  
**Screening for Appropriate Assessment & Determination**

1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all developments regardless of location which require an EIS

**Table 1: Project Details**

<b>Section 5 Reference</b>	R21 17
<b>Applicant Name</b>	Brendan Keane c/o Ennis Abattoir
<b>Development Location</b>	Tulla Road, Ennis, Co. Clare
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No

**Description of the project (To include a site location map):** Whether the erection of a fence at Tulla Road, Ennis, Co. Clare is development and if so is it exempted development.



**Table 2: Identification of European sites which may be impacted by the proposed development.**

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)<sup>1</sup> is recommended. For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in combination effects. Qualifying Interests/Special conservation Interests for each site and the distance relevant to the proposal are listed (Table 2 (a)).

**Table 2 (a): European Sites within 15km of Applicant Site**

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Lower River Shannon SAC (001926)	Sandbanks which are slightly covered by sea water all the time [1110]  Estuaries [1130]  Mudflats and sandflats not covered by seawater at low tide [1140]  Coastal lagoons [1150]  Large shallow inlets and bays [1160]  Reefs [1170]  Perennial vegetation of stony banks [1220]  Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]  Salicornia and other annuals colonising mud and sand [1310]  Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritima</i> ) [1330]  Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410]  Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]  Molinia meadows on calcareous, peaty or clayey-silt-laden	Within the site

<sup>1</sup> European Sites that are more than 15km from the proposal may have to be considered. For example in the case of sites with water dependent habitats or species and where a proposal could affect water quality or quantity it may be necessary to consider the full extent of the upstream and/or downstream catchment.

<sup>2</sup> European Site details are available on <http://webgis.npws.ie/npwsviewer/> or maybe obtained from internal mapping systems.

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
	soils (Molinion caeruleae) [6410]  Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0]  Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]  Petromyzon marinus (Sea Lamprey) [1095]  Lampetra planeri (Brook Lamprey) [1096]  Lampetra fluviatilis (River Lamprey) [1099]  Salmo salar (Salmon) [1106]  Tursiops truncatus (Common Bottlenose Dolphin) [1349]  Lutra lutra (Otter) [1355]	

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?	Yes
2	Impacts on terrestrial habitats & species.	Is the development within 1km of a European site with terrestrial based habitats or species?	Yes
3	Impacts on designated marine habitats & species.	Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs	No
4	Impacts on birds in SPAs	Is the development within 1km of a Special Protection Area	No
5	Indirect effects	Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site?  Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?	Potentially

#### Conclusion:

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.



- If the answer is *unknown* or *yes* proceed to Table 3 and refer to the relevant sections of Table 3.

**Table 3: Identification of potential impacts.**

<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b> <i>Please answer the following if the answer to question 1 in table 2 was “yes” or “unknown”. Does the development involve any of the following:</i>	
1.1	Removal of or interference with habitat within a European site. This may include any element of a project liable to interfere with breeding, nesting or roosting sites of birds, bats, water based species	Potentially
1.2	Discharges either directly (via pipe from the development) or indirectly (via sewer) to surfacewater or groundwater What is the likely volume of the discharge?	NA
1.3	Abstraction from surfacewater or groundwater in or adjacent to a European site, where hydrology is a critical element in the protection of habitat and species at the site? What is the likely volume of the abstraction?	NA
1.4	Is removal of topsoil proposed within 500m of watercourses? What transportation requirements are provided? Does the removal involve reduction in area, population density or fragmentation of area of any habitat or species?	Potentially – having regard to other plans / projects on the site
1.5	Infilling or raising of ground levels within 500m of watercourses? What transportation requirements are provided? Does the infilling or raising involve interference with area, population density or fragmentation of area of any habitat or species?	Potentially – having regard to other plans / projects on the site
1.6	Construction of drainage ditches - (scale?) Where the run off is directed to? Is the drainage run off directed to a European site where species are identified and whose conservation status may be impacted by this drainage?	NA
1.7	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	NA
1.8	Construction within a floodplain or within an area liable to flood (See <a href="http://www.floodmaps.ie">www.floodmaps.ie</a> , internal flood risk maps, County Development Plan SFRA and <a href="http://www.cframs.ie">www.cframs.ie</a> )	NA
1.9	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	NA
1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	NA
1.11	Development within catchment of a European site of a scale or	NA

	type which involves the production of an EIS	
1.12	Consideration of effects in combination with existing development?	Unknown

2	<b>Impacts on terrestrial habitats and species.</b> <i>Please answer the following if the answer to question 2 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
2a	Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat. Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?	Unknown
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	NA
2c	Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?	NA
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	NA
3	<b>Impacts on designated marine habitats and species.</b> <i>Please answer the following if the answer to question 3 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
3a	Removal of or interference with habitat within the European site. This includes timing of the project if there is potential to interfere with nesting or breeding periods, either directly or indirectly (e.g. by noise emission) or any aspect of the life cycle of a protected species. This also includes potential fragmentation, size reduction of habitat, or reduction in species density.	Unknown
3b	Coastal protection works on intertidal or marine habitats within 5km of a European site supporting coastal or marine habitats or species. This includes any works which may give rise to potential changes in hydrology or salinity of these areas.	NA
3c	Development of piers, slipways, marinas, pontoons or any other infrastructure within 5km of a European site that was designated because it supports marine habitats and/or species.	NA
3d	Dredging within 5km of a European site supporting coastal or marine habitats or species.	NA
3e	Removal of topsoil or infilling within 100m of marine habitats within the designated site.	NA
3f	Land based development within 1km of a European site of a scale or type which involves the production of an EIS.	NA

3g	Marine or intertidal based development within 5km of a European site of a scale or type which involves the production of an EIS.	NA
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<b>4</b>	<b>Impacts on birds in SPAs</b> <i>Please answer the following if the answer to question 5 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
4a	Removal of or interference with habitats within an SPA. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4b	Erection of wind turbines within 1km of an SPA.	NA
4c	All construction works within 100m of intertidal areas – Coastal SPAs, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4d	Infilling of coastal habitats within 500m of SPA, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4e	Discharges to coastal SPA, including any element of a discharge liable to give rise to disturbance of this habitat, either by direct, indirect, or in combination effects	NA
4f	Development of cycleways or walking routes within 100m of intertidal areas. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4g	Development within 1km of SPA of a scale or type which involves the production of an EIS. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA

**Conclusion:**

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer to any of the above is *yes*, or *unknown* effects on the European sites need to be assessed and a Natura Impact Statement will be required

<b>Appropriate Assessment Screening Determination</b>	
<b>Section 5 Reference</b>	R21 17
<b>Proposed Development</b>	Whether the erection of a fence at Tulla Road, Ennis, Co. Clare is development and if so is it exempted development.
<b>Development Location</b>	Tulla Road, Ennis, Co. Clare.
<b>European sites within impact zone</b>	As per above.
<b>Description of the project:</b>	
Whether the erection of a fence at Tulla Road, Ennis, Co. Clare is development and if so is it exempted development.	
<b>Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site</b>	
As per above.	
<b>Describe how the project or plan (alone or in combination) is likely to affect the European site(s).</b>	
Affects unknown	
<b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b>	
Not possible to conclude	
<b>Documentation reviewed for making this statement</b>	
<ul style="list-style-type: none"> <li>- County Development Plan (including Flood Maps, SEA &amp; AA).</li> <li>- NPWS website.</li> <li>- Documents received as part of the Section 5 referral</li> <li>- Aerial photography</li> </ul>	
<b>Conclusion of assessment (a, b, c or d)</b>	
<b>(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s)<sup>3</sup></b>	
<b>(b) There is no potential for significant effects to European Sites<sup>3</sup></b>	

<sup>3</sup> Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no material changes may be made to the proposed development after this conclusion has been reached as this would invalidate the findings of the screening exercise.

<b>(c) The potential for significant effects to European Site(s) cannot be ruled out<sup>4</sup></b>	v
<b>(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010<sup>5</sup></b>	
<b>Completed By</b>	Fiona Barry Executive Planner
<b>Date</b>	22 <sup>nd</sup> April 2021

<sup>4</sup> In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf) Alternatively, where other planning concerns arise the proposal could be refused planning permission.

<sup>5</sup> The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.







COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

Brendan Keane  
c/o Ennis Abattoir Ltd.,  
Tulla Road,  
Ennis,  
Co. Clare  
V95 EY82

30<sup>th</sup> March 2021

**Section 5 referral Reference R21-17 – Brendan Keane**

**Whether the erection of fencing at the rear of the property at Tulla Road, Ennis Co. Clare is considered development and if so, is it exempted development.**

A Chara,

I refer to your application received on 30<sup>th</sup> March 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

**Josephine Connors**  
Planning Department  
Economic Development Directorate

**An Roinn Pleanála**  
**An Stiúrthóireacht Forbairt Gheilleagrach**  
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department**  
**Economic Development Directorate**  
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2





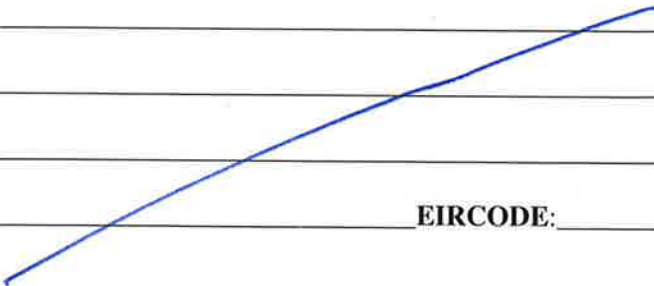
Planning Department,  
Economic Development Directorate,  
Clare County Council,  
New Road, Ennis,  
Co. Clare.  
V95DXP2

Telephone No. (065) 6821616  
Fax No. (065) 6892071  
Email: [planoff@clarecoco.ie](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://www.clarecoco.ie)

COMHAIRLE CONTAE AN CHLÁIR  
CLARE COUNTY COUNCIL

**FEE: €80**

## 1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration	Brendan Keane c/o Ennis Abattoir Ltd Tulla Road, Ennis Co. Clare Eircode: V95EY82
(b) Telephone No.:	06 5- 682 3258
(c) Email Address:	ennisabattoir@gmail.com.
(d) Agent's Name and address:	

**2. DETAILS REGARDING DECLARATION BEING SOUGHT**

- (a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT  
*Note: only works listed and described under this section will be assessed.*

Sample Question: Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?

Is the erection of fencing at the rear of the property at Tulla Road, Ennis exempted development.

- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

We erected 1.9m High Green fencing at the rear of the property as a result of our insurance company requirement to secure our property from the adjoining river. This was required for the Health and safety of our customers and also to protect the property from vandalism. We have had several instances of attempted break ins over the last few years.

- (c) List of plans, drawings etc. submitted with this request for a declaration:  
*(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)*

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Tulla Road Gunn B lane V95 EY 82.
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Breiden Keane.
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	W/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	NO
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	NO
(g) Were there previous planning application/s on this site? If so please supply details:	Yes 0121045, 0821165,
(h) Date on which 'works' in question were completed/are likely to take place:	Dec 2020

SIGNED:

*W. Keane*  
PP *Breiden Keane*

DATE:

26/03/21

### **GUIDANCE NOTES**

*This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority*

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,  
Economic Development Directorate,  
Clare County Council  
Aras Contae an Chlair,  
New Road,  
Ennis,  
Co. Clare  
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

### **FOR OFFICE USE ONLY**

Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:.....			



534800 mE, 678600 mN

**The Property  
Registration Authority**  
**An tÚdarás**  
**Clárúcháin Maoine**



Folio:

This map should be read in conjunction with the folio.

Registry maps are based on OSi topographic mapping. Where registry maps are printed at a scale that is larger than the OSi published scale, accuracy is limited to that of the original OSi map scale.

For details of the terms of use and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see [www.prai.ie](http://www.prai.ie).

This map incorporates Ordnance Survey Ireland (OSi) mapping data under a licence from OSi. Copyright © OSi and Government of Ireland.

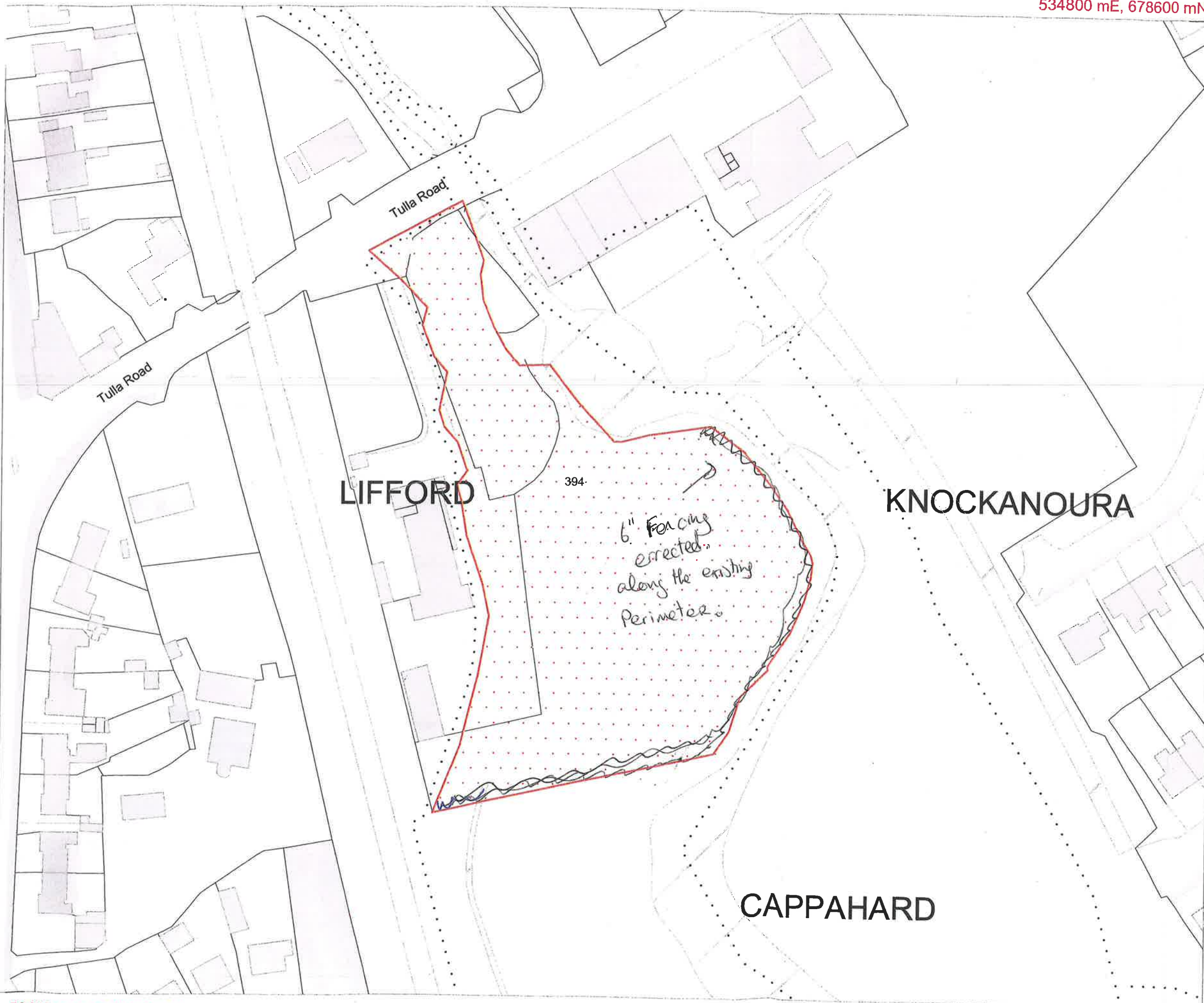
- (centre-line of parcel(s) edged)
- Freehold
- Leasehold
- SubLeasehold

**Burdens** (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- Soak Pit

A full list of burdens and their symbology can be found at: [www.landdirect.ie](http://www.landdirect.ie)

**The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent.** (see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.





Clare County Council  
Aras Contae an Chláir  
New Road  
Ennis  
Co Clare

30/03/2021 13:27:07

Receipt No. : L1CASH/0/314542

REPRINT

BRENDAN KEANE  
C/O ENNIS ABBATOIR LTD.  
TULLA ROAD  
ENNIS  
CO. CLARE  
V95 EY82  
R21-17

SECTION 5 REFERENCES 80.00  
GOODS 80.00  
VAT Exempt/Non-vatable

Total :

80.00 EUR

Tendered :  
CHEQUES

80.00

Change :

0.00

Issued By : L1CASH - Patricia Quinlivan