



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Donagh Madigan
No 1 Brackens Gardens
North Circular Road
Limerick**

18th February, 2021

Section 5 referral Reference R21-2

Whether the change of use of ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use to residential use is or is not development and is / is not exempted development.

A Chara,

I refer to your application received on 25th January, 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

Please Note: While this declaration considers the change of use outlined in the application form to be exempted development, it does not give permission to proceed with these works. In order to progress this, you are also requested to complete the enclosed Notification of change of use from Commercial to Residential under Article 10(6) if you are proposing to proceed with this change of use.

Mise, le meas

**Josephine Connors
Staff 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.: R21-2



Section 5 referral Reference R21-2 – Donagh Madigan

Whether the change of use of ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use to residential use is or is not development and is / is not exempted development.

AND WHEREAS, Donagh Madigan 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 –

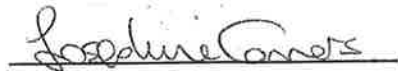
- (a) Sections 2, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended.
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018).
- (c) Part 4 Article 10 Exempted Development – Classes of use, Class 1- use as a shop.
- (d) The planning history and the previous Section 5 Declaration as issued in relation to the site.
- (e) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', Dec. 2020.

And whereas Clare County Council has concluded:

The change of use of the ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use is considered development which is exempted development under Article 10 of Planning and Development Regulations, 2001 as amended.

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 proposed development consisting of the change of use of the ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate

18th February, 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:

77170.

Reference Number:

R21-2

Date Referral Received:

25th January, 2021

Name of Applicant:

Donagh Madigan

Location of works in question:

Carmody Street & Drumbiggle Road, Ennis,
Co. Clare.

Section 5 referral Reference R21-2 – Donagh Madigan

Whether the change of use of ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use to residential use is or is not development and is / is not exempted development.

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

- (a) Sections 2, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended.
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018).
- (c) Part 4 Article 10 Exempted Development – Classes of use, Class 1- use as a shop.
- (d) The planning history and the previous Section 5 Declaration as issued in relation to the site.
- (e) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', Dec. 2020.

AND WHEREAS Clare County Council has concluded:

The change of use of the ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use is considered development which is exempted development under Article 10 of Planning and Development Regulations, 2001 as amended.

ORDER: Whereas by Chief Executive's Order No. HR 334 dated 2nd June 2020, 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 Kieran O'Donnell, Administrative Officer, 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, Kieran O'Donnell, Administrative Officer, hereby declare that the change of use of the ground floor shop unit of the building fronting onto Carmody Street from commercial/retail use to residential use at Carmody Street and Drumbiggle Road, Ennis, Co. Clare constitutes development which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

Signed:


KIERAN O'DONNELL
ADMINISTRATIVE OFFICER

Date:

18th February 2021

**CLARE COUNTY COUNCIL
SECTION 5 REFERRAL REPORT**

Reference No:	R21 2
Applicant:	Donogh Madigan
Location:	Carmody Street and Drumbiggle Road Ennis
Proposal:	Whether the change of use of ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use to residential use is or is not development and is / is not exempted development
Due Date:	19 th January 2021

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 following constitutes exempted development.

Whether the change of use of ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use to residential use is or is not development and is / is not exempted development.

Clare County Development Plan 2017- 2023

The site is located in the settlement of Ennis as per the Clare County Development Plan 2017-2023, as varied and is zoned for "*Mixed Use*". It is within the designated "*Town Centre Area*" and is also within the Ennis "*Architectural Conservation Area*".

Onsite Planning History

09-21099 – Granted - Permission for a restaurant in addition to take-away as approved under P. Ref. 06/191.

06-21191 – Granted - for development which will consist of change of use from place of gambling to fast food take-away.

Pre-planning History

None.

Section 5 Declaration History

R19 1 Declaration sought by Donagh Madigan as to:
Whether the change of use of single storey part of the building fronting onto Drumbiggle Road from Commercial/Retail use to residential use at Carmody Street and Drumbiggle Road Ennis is or is not development and is / is not exempted development.

The Planning Authority concluded that the change of use of single storey part of the building fronting onto Drumbiggle Road from Commercial/Retail use to residential use at Carmody Street and Drumbiggle Road Ennis is development which is exempted development under Article 10 of Planning and Development Regulations, 2001 as amended.

R18-50 Declaration sought by Donogh Madigan as to:

Whether the change of use of single storey part of the building fronting onto Drumbiggle Road from Commercial/Retail use to residential use at Carmody Street and Drumbiggle Road Ennis is or is not development and is / is not exempted development.

The Planning Authority concluded that the change of use of the single storey part of the building fronting onto Drumbiggle Road from commercial/retail use to residential use at Carmody Street and Drumbiggle Road, Ennis, County Clare was considered to be development which was not exempted development under Article 10 of Planning and Development Regulations, 2001 as amended as the private amenity floor area for apartment number 2 did not comply with the minimum floor area requirements of the *"Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities 2018"* issued under section 28 of the Planning and Development Act 2000(as amended).

Details Received

- Site location map.
- Site layout plan.
- Drawings consisting of:
 - Existing/proposed front elevation,
 - Proposed floor plan.
- Detail regarding the history of use of the building.
- Details of proposed works and alterations.

Background

Planning and Development Act, 2000 (as amended)

Section 2

'Works' are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

"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

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

S.3.(1) In this Act, *"development" means, 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 structures or other land.*

Section 4(1)(H)

Section 4 (1)(H) states that the following shall be exempted development for the purpose of the Act.-

'development consisting for the carrying out of works for maintenance, improvement or other alterations 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 neighbouring structures'.

Planning & Development Regulations, 2001, as amended

Part 2 Exempted Development

Article 6 (1) states

'Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1'.

Article 9 -Restrictions on Exemptions

'Under Article 9 (1) of the same Regulations, development to which Article 10 relates shall not be exempted development for the purposes of the Act:

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

- i. *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
- ii. *consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
- iii. *endanger public safety by reason of traffic hazard or obstruction of road users,*
- iv. *except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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,*
- v. *consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*
- 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. (a)
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,
- vii. (b)
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,
- vii. (c)
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,*
- xii. *further to the provisions of section 82 of the Act, 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 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 and the development would materially affect the character of the area'.*

Article 10 Change of Use

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,*
 - (b) contravene a condition attached to a permission under the Act,*
 - (c) be inconsistent with any use specified or included in such a permission, or*
 - (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*
- (2)
- (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.*
 - (b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—*
 - (i) as an amusement arcade,*
 - (ii) as a motor service station,*
 - (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,*
 - (iv) for a taxi or hackney business or for the hire of motor vehicles,*
 - (v) as a scrap yard, or a yard for the breaking of motor*

- vehicles,
 - (vi) for the storage or distribution of minerals,
 - (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,
 - (vii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or
 - (viii) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.
- (3) Development consisting of the provision within a building occupied by, or under the control of, a State authority of a shop or restaurant for visiting members of the public shall be exempted development for the purposes of the Act.
 - (4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.
 - (5) Development consisting of the use of a house for child minding shall be exempted development for the purposes of the Act.

Planning & Development Regulations, Amendment no. 2 Regulations 2018 , (s.i.no 30 of 2018)

Article 2 of these Regulations amends Article 10 of the Principal Regulations, by inserting a new sub-article, to provide that development consisting of the change of use, and any related works, from an existing specified use class to residential use, in certain circumstances and subject to conditions and limitations, is exempt from the requirement to obtain planning permission. The exemption shall apply from when these Regulations come into force until 31 December 2021.

Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

“(6) (a) In this sub-article—‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from the making of these Regulations until 31 December 2021.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018, Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 13th February 2018.[30]

3(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d). (d) (i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall accordingly notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure, and

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

(iii) During the years 2019, 2020, 2021 and 2022, each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii)."

Part 4 Article 10 Exempted Development- Class of use- Class 1 is use as a shop.

Schedule 2 Article 6 part 1 Exempted Development

CLASS 14

Development consisting of a change of use—

- (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,*
 - (b) from use as a public house, to use as a shop,*
 - (c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,*
 - (d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,*
 - (e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling,*
 - (f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.*
- The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.*

Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018)

Minimum Requirements for Residential Units

The Regulations set out some minimum standards that apply to any residential units being provided, including minimum floor areas, storage space and the provision of natural light.

- A maximum of 9 residential units can be provided in any structure.
- The minimum floor area and minimum storage space requirements of the 'Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', 2017* must be complied with. This ensures that apartments will be of adequate size and will include adequate storage. The minimum floor areas allowed are:

Minimum overall apartment floor areas

- Studio apartment 37 sq.m
- 1-bedroom apartment 45 sq.m
- 2-bedroom apartment (3 person) 63sq.m
- 2-bedroom apartment (4 persons) 73 sq.m
- 3-bedroom apartment 90 sq.m

Minimum aggregate floor areas for living/dining/kitchen rooms, and minimum widths for the main living/dining rooms

- Studio apartment 30 sq.m
- 1-bedroom apartment 23 sq.m
- 2-bedroom apartment (3 person) 28 sq.m
- 2-bedroom apartment (4 persons) 30 sq.m

- 3-bedroom apartment 34 sq.m

Minimum bedroom floor areas

- Studio 30sqm
- Single bedroom 7.1 sq.m
- Double bedroom 11.4 sq.m
- Twin bedroom 13 sq.m

Minimum aggregate bedroom floor areas

- 1-bedroom apartment 11.4 sq.m
- 2-bedroom apartment (3 person) 20.1 sq.m
- 2-bedroom apartment (4 persons) 24.4 sq.m
- 3-bedroom apartment 31.5 sq.m

Minimum storage space requirements

- Studio apartment 3 sq.m
- 1-bedroom apartment 3 sq.m
- 2-bedroom apartment (3 person) 5 sq.m
- 2-bedroom apartment (4 person) 6 sq.m
- 3-bedroom apartment 9 sq.m

* amended by Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities December 2020

Assessment

Primary legislation

Having regard the details submitted it is considered that the proposal constitutes 'works' as defined by to section 2 of the Act. It is also considered that the proposal constitutes 'development' having regard to the definition of development which includes for making of any material change in the use of any structures. In respect of Section 4 (1)(H) of the Act, it is noted that while the section makes provision for development consisting for the carrying out of works for maintenance, improvement or other alterations 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 neighbouring structures' to be considered exempted development, it does not expressly clarify that the internal alterations can result in a change of use and that this new use is exempted development. I therefore consider that section 4 (1) (h) is not relevant to the query.

Planning and Development Regulations 2001, as amended

- I refer to Part 4 Article 10 Exempted Development- Class of use- Class 2 is use for the provision of professional services. It is considered that the existing use falls under this class of use and definition of shop.
- I refer to Schedule 2 part 1 Article 6 Exempted Development – General, wherein in class 14 sets out changes of use that are considered to be exempted development. I do not consider that the proposed change of use falls under the provision of class 14 of the Planning and Development Regulations 2001 as amended.
- I refer to part 2 Article 6 (1) Exempted Development and Article 9 Restrictions on Exemptions. I note Article (9) (1) (a) (iii) states the following:

Development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would—

endanger public safety by reason of traffic hazard or obstruction of road users,

It is considered that the provisions of article 9 are applicable to the query. It is noted that no onsite parking has been provided on site. However public off street parking is available in the vicinity of the site.

- I refer to Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) as amended by the Planning and Development Regulations 2018 (no 2). Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

"(6) (a) In this sub-article—'habitable room' means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

'relevant period' means the period from the making of these Regulations until 31 December 2021.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018. Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 13th February 2018.[30].

The structure has been in existence prior to the coming in to effect of the amendment.

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

The structure has been used as commercial purposes (takeaway) and has been vacant for in excess of 2 years.

(d) (i) The development is commenced and completed during the relevant period.

The applicant advised that it is intended to commence works immediately. Therefore the development would be commenced within the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

Having regard to the drawings submitted it is considered that the proposal complies with this requirement. It is noted that no changes are proposed to the front elevation of the building (facing Carmody Street).

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

This is not applicable, as no changes are proposed to the external appearance of the building.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan,

pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

There is no objective in the County Development Plan requiring ground floor use to remain as retail in Ennis.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

One residential unit is proposed. It is noted that a Section 5 declaration was previously issued to the applicant in respect of 2 no. residential units within the overall building (R19 1 refers). (Note: some of the written correspondence submitted with the Section 5 declaration application alludes to the provision of 2 no. apartments. It is presumed that this is an error, and as such regard is had to the question being asked in the declaration application form).

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines. This document was up dated in December 2020.

Minimum overall floor area

Studio Apartment 37sqm.

The stated floor area of the proposed studio apartment is 37.37sqm.

Minimum storage space requirements

Studio Apartment 3 sqm.

The stated floor area of storage provision is 3.46 sqm.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

The structure is not a protected structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

Condition number 5 of planning permission P06-21191 stated that "no change of use shall take place other than with the consent of the Planning Authority whether such a change of use would but for the terms of this condition constitute exempted development". I note from the Planners Report associated with a subsequent application on the site (P09-21099) that the 2006 permission was implemented. I also note condition 7 of P09-21099 states that "Planning permission on the subject site is subject to the terms of the governing permission, planning reference P06-21191 except where departure from the terms of those permissions, in respect of permission for a restaurant is hereby authorised by this permission". It is considered that the current section 5 declaration is granted would constitute the consent of the Planning Authority in accordance with the requirements of the aforementioned condition.

(x) No development shall relate to any structure in any of the following areas:

(i) an area to which a special amenity area order relates;

Not applicable.

(II) an area of special planning control;

The site is located within the Ennis Architectural Conservation Area. No adverse impacts on the character of the area are envisaged. It is also located within an archaeological complex and recorded monument (Ref184). As no ground works are proposed and external works are considered minor not adverse impacts are envisaged.

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

Not applicable.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

The proposal complies with the above requirements.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

The building is connected to public sewer.

(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall accordingly notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure, and

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

Notification by the applicant is pending the determination by the Planning Authority or An Bord Pleanála that the section 5 query re proposed change of use is considered to be exempted development.

(iii) During the years 2019, 2020, 2021 and 2022, each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii)."

Noted.

Article 9

Under Article 9 (1) of the same Regulations, 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 –

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. **Yes.**

(ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, **Not applicable.**

(iii) endanger public safety by reason of traffic hazard or obstruction of road users, **Not applicable.**

(iv) 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. **Not applicable**

(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, **Not applicable.**

(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, **Not applicable.**

(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, **Not applicable.**

(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." **Not applicable.**

(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, **Not applicable.**

(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, **Not applicable.**

(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, **Not applicable**

(xi) obstruct any public right of way, **Not applicable.**

(xii) further to the provisions of section 82 of the Act, 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 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 and the development would materially affect the character of the area. **Not applicable.**

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 7 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.

Conclusion

With reference to the above assessment the proposed development may be considered development which is exempted development.

Recommendation

Having regard to Article 10, of the Planning and Development Regulations, 2001-2018.

WHEREAS a question has arisen as to whether the change of use of the ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use to residential use is or is not development and is / is not exempted development.

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

- (a) Sections 2, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended.
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018).
- (c) Part 4 Article 10 Exempted Development – Classes of use, Class 1- use as a shop.
- (d) The planning history and the previous Section 5 Declaration as issued in relation to the site.
- (e) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', Dec. 2020.


AND WHEREAS Clare County Council has concluded that –

the change of use of the ground floor shop unit of the building fronting onto Carmody Street from Commercial/Retail use is considered development which is exempted development under Article 10 of Planning and Development Regulations, 2001 as amended.


NOW THEREFORE Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides

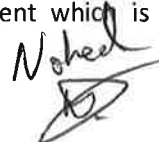
The change of use of the ground floor shop unit of the building fronting onto Carmody Street from commercial/retail use to residential use at Carmody Street and Drumbiggle Road, Ennis, Co. Clare is considered development which is exempted development.

Signed


Fiona Barry
Executive Planner
Date: 16th January 2021
Feb

Signed


Helen Quinn
A / Senior Planner
Date: 17-02-2021



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

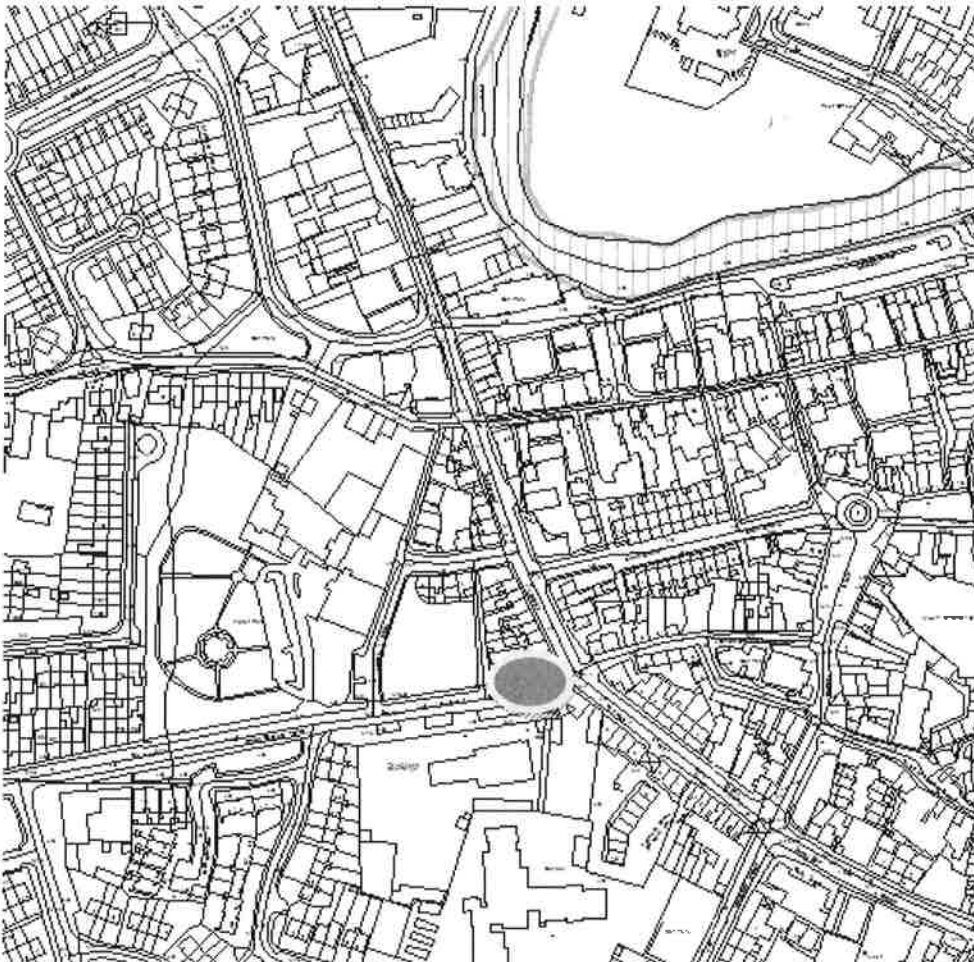
Planning File Reference	R21 2
Applicant Name	Donogh Madigan
Development Location	Drumbiggle Road, Ennis
Application accompanied by an EIS	No
Application accompanied by an NIS	No
Description of the project (To include a site location map):	
Change of Use of part of existing structure to Residential development	
	

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)¹ 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 ²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
Lower River Shannon SAC 0012156	<p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>☐ Estuaries [1130]</p> <p>☐ Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>☐ *Coastal lagoons [1150]</p> <p>☐ Large shallow inlets and bays [1160]</p> <p>☐ Reefs [1170]</p> <p>☐ Perennial vegetation of stony banks [1220]</p> <p>☐ Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>☐ <i>Salicornia</i> and other annuals colonizing mud and sand [1310]</p> <p>☐ Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</p> <p>☐ Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p>☐ <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>☐ *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p>Annex II species:</p> <p>☐ Freshwater Pearl Mussel <i>Margaritifera margaritifera</i> [1029]</p>	0.2

¹ 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.

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

European Sites ²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
	<input type="checkbox"/> Sea Lamprey <i>Petromyzon marinus</i> [1095] <input type="checkbox"/> Brook Lamprey <i>Lampetra planeri</i> [1096] <input type="checkbox"/> River Lamprey <i>Lampetra fluviatilis</i> [1099] <input type="checkbox"/> Atlantic Salmon <i>Salmo salar</i> (only in fresh water) [1106] <input type="checkbox"/> Bottlenose Dolphin <i>Tursiops truncatus</i> [1349] <input type="checkbox"/> Otter <i>Lutra lutra</i> [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?	No impacts envisaged

Table 3: Identification of potential impacts.

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species. <i>Please answer the following if the answer to question 1 in table 2 was "yes" or "unknown".</i> <i>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	No
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?	To public sewer
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?	No
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?	No
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?	No
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?	No
1.7	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	No
1.8	Construction within a floodplain or within an area liable to flood (See www.floodmaps.ie , internal flood risk maps, County Development Plan SFRA and www.cframes.ie)	No
1.9	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	No
1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	No
1.11	Development within catchment of a European site of a scale or type which involves the production of an EIS	No
1.12	Consideration of effects in combination with existing development?	No
2	Impacts on terrestrial habitats and species. <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 o	No

	breeding period of any protected species?	
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	No
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?	No
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	No

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

Appropriate Assessment Screening Determination	
Planning File Reference	R21 2
Proposed Development	Change of Use of part of existing structure to Residential development
Development Location	Drumbiggle Road Ennis
European sites within impact zone	As per report
Description of the project:	
Change of Use of part of existing structure to Residential development	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
As per report	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
Water quality & general disturbance	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
Public sewer connection Distance from designation Minor nature of works	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> - County Development Plan (including Flood Maps, SEA & AA) - NPWS website - Documents received as part of the planning application 	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) ³	
(b) There is no potential for significant effects to European Sites ³	✓
(c) The potential for significant effects to European Site(s) cannot be ruled out ⁴	

³ 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.

⁴ 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

(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 2010⁵	
Completed By	Fiona Barry, Executive Planner
Date	16 th Feb. 2021

(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 Alternatively, where other planning concerns arise the proposal could be refused planning permission.

⁵ 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

**Donagh Madigan
No 1 Brackens Gardens
North Circular Road
Limerick**

25th January, 2021

Section 5 referral Reference R21-2 – Donagh Madigan

Whether the change of use of the ground floor shop unit of the building fronting onto Carmody Street, from commercial/retail to residential use, is considered to be exempted development.

A Chara,

I refer to your application received on 25th January, 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

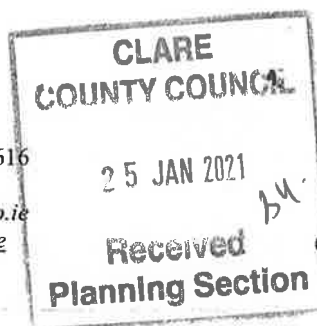


P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

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
Website: www.clarecoco.ie



**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration	DONOBU MADIGAN NO 1 BRACKENS GARDENS NORTH CIRCULAR ROAD LIMERICK
(b) Telephone No.:	(086) 8774704 (PAT HOGAN) - AGENT
(c) Email Address:	phoganplanning@gmail.com (PAT HOGAN) - AGENT
(d) Agent's Name and address:	PAT HOGAN RUSHANE KINNAMONA CO. CLARE.

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 CHANGE OF USE OF THE GROUND FLOOR SHOP UNIT OF THE BUILDING FRONTING ONTO CARMODY STREET, FROM COMMERCIAL / RETAIL TO RESIDENTIAL USE, CONSIDERED TO BE EXEMPTED DEVELOPMENT.

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

Full description of question

The overall property which was considered derelict until the applicant purchased and renovated it in 2019. It comprises of a 2 storey section fronting on to Carmody Street with a single storey section fronting on to Drumbiggle road. The two storey section includes a commercial / retail unit on the ground floor accessed from Carmody Street, and an apartment on the first floor accessed by means of a side entrance from Drumbiggle road.

The single storey section to the rear which fronts on to Drumbiggle road contains 2 apartments, the development of which were carried out after they being considered exempt by Section 5 referral No. 19-1.

The Peter McFerrry trust is taking over the 3 existing apartments within the property, and has agreed to take the ground floor shop unit, if its change of use to a studio apartment is considered acceptable to the Council.

- (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)

2 SETS OF DOCUMENTATION INCLUDING COVER LETTER, SITE LOCATION MAP, AND PROPOSED FLOOR PLANS AND ELEVATIONS.

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	CARMODY STREET & DRUMBEGLE RD ENNIS CO. CLARE (J95 X677)
(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):	FULL OWNER
(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>	N/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	YES
(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 [SECTION 5 REFERRAL NO. 19-1]
(h) Date on which 'works' in question were completed/are likely to take place:	WORKS WILL COMMENCE IMMEDIATELY

SIGNED: PATRICK (Agent)

DATE: 22/1/2021

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:	

Section 5 declaration regarding works at Carmody Street & Drumbiggle Road, Co. Clare.

Question

Is the change of use of the single storey part of the building fronting on to Drumbiggle Road, from commercial / retail to residential use, considered to be exempted development.

Full description of question

The property comprises of a 2 storey section fronting on to Carmody Street with a single storey section fronting on to Drumbiggle road. The two storey section includes a commercial / retail unit on the ground floor accessed from Carmody Street, and an apartment on the first floor accessed by means of a side entrance from Drumbiggle road, while the single storey section has always been used for commercial / retail purposes.

The proposed works are to change the use of the single storey part of the building from commercial / retail to residential, so as to provide 2 No apartments (1 single bedroom & 1 two bedroom)

Relevant section in Regulations

We believe that the works are considered exempt under amendment No.2 of the planning and development regulations 2018, which covers the change of use to residential, from classes 1,2,3, or 6. The conditions & limitations of use are set out in article 10, sub article 6 c, & d.

The following is a summary of how the proposed works comply with the conditions stated in sub article 6

- C (1) The structure is in existence for many years
- C (2) The single storey structure has always been used for commercial / retail purposes
- C (3) Structure has been vacant well in excess of 2 years

- D (1) The development will commence immediately & be completed within 6 months
- D (2) Works proposed are primarily internal, and will not materially effect the external appearance of the structure so as to make it inconsistent with the character of the structure or of neighbouring structures. The existing elevation fronting on to Carmody street will be retained.
The only changes to the elevation fronting on to Drumbiggle Road will be to replace the existing windows. Minor modifications will be made to the existing window layout so as to achieve a more uniform elevation.
- D (3) There was no shop front on elevation of the building fronting on to Drumbiggle road. (See existing & proposed elevation attached)

- D (4) The development is in compliance with the Council's development plan. The commercial / retail use will be retained on the ground floor section of the property fronting on to Carmody street.
- D (5) 2 residential units only are being proposed
- D (6) Floor areas & storage spaces will be in compliance with the minimum requirements of the design standards for new apartments (2018). All the relevant areas are tabulated on the proposed plan attached. All development works will comply with current building regulations.
- D (7) Rooms for use as habitable rooms will have adequate natural light and will comply with current building regulations.
- D (8) The structure is not a protected structure
- D (9) There are no existing planning permissions relating to the structure
- D (10) The structure is not located within a special amenity area, an area of special planning control, or close to any establishment to which major accident regulations apply.
- D (11) The development does not relate to matters in respect of an restrictions set out in the subparagraphs or articles mentioned.
- D (12) The development does not involve works to any wastewater treatment system.

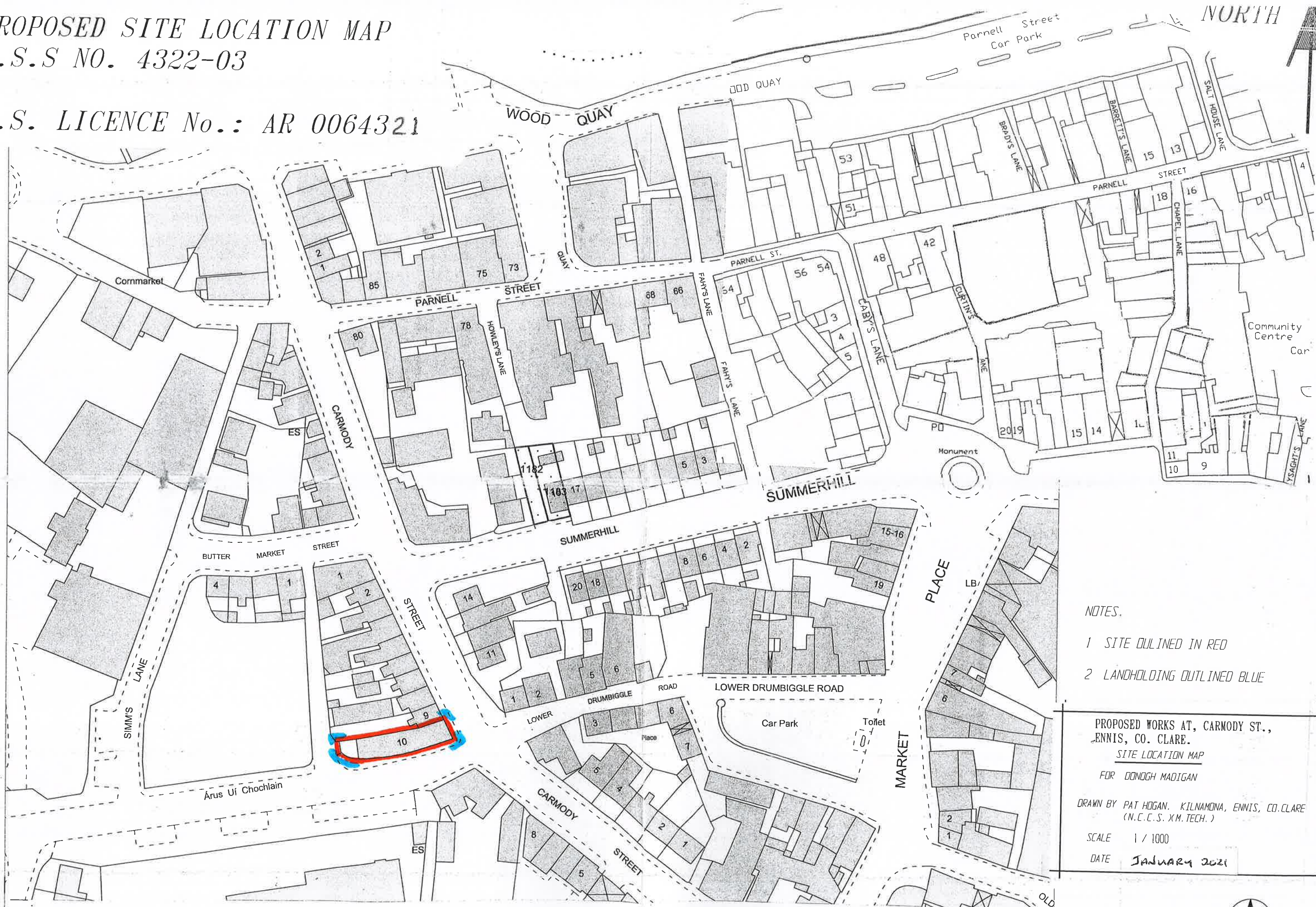
Pat Hogan (Agent for Donogh Madigan)
086 8774704



PROPOSED SITE LOCATION MAP

O.S.S NO. 4322-03

O.S. LICENCE No.: AR 0064321



NOTES.

- 1 SITE OUTLINED IN RED
- 2 LANDHOLDING OUTLINED BLUE

PROPOSED WORKS AT, CARMODY ST.,
ENNIS, CO. CLARE.

SITE LOCATION MAP

FOR DONOGH MADIGAN

DRAWN BY PAT HOGAN, KILNAMONA, ENNIS, CO. CLARE
(N.C.C.S. X.M. TECH.)

SCALE 1 / 1000

DATE JANUARY 2021

533350 mE, 677240 N
Date Printed: 19/07/2016

Creation Date: 19 July 2016 11:00:50

Application Number: P2016LR056146A

1:1000 Scale



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



25/01/2021 09:19:45

Receipt No. LICASH/0/311706
REPRINT

DONAGH MADIGAN
1 BRACKENS GARDENS
NORTH CIRCULAR ROAD
LIMERICK

COMHAIRLE

CONTAE

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

AN CHLÁIR

Total : 80.00 EUR

Tendered :
Cash



Change :

Issued By : LICASH - Neelette Barry
From : MAIN CASH OFFICE LODGEMENT AREA
Vat reg No. 0033043E