



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

Patrick Ryan
Derrynalicka
Kilmurry Mc Mahon
Co. Clare

14th May 2021

Section 5 referral Reference R21-23 – Patrick Ryan

Whether the clearing the present area of failed ash trees to progress replanting under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare is considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 20th April 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

Mise, le meas

Kieran O'Donnell
Administrative Officer
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúirthóireacht Forbairt Gheilleaghrach
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



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: 77617.

Reference Number: R21-23

Date Referral Received: 20th April 2021

Name of Applicant: Patrick Ryan

Location of works in question: Derrynalecka, Kilmurry Mc Mahon

Section 5 referral Reference R21-23 – Patrick Ryan

Whether the clearing the present area of failed ash trees to progress replanting under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon 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 (1) (i) of the Planning and Development Act, 2000, as amended,
- (b) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) Clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon 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 development of clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare, represents the replacement of broadleaf high forest by conifer species and is therefore not compatible with the exemption for replacement forestry described at Section 4 (1) (i) of the Planning and Development Act, 2000, as amended,

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th 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 clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare is considered development which is not exempted development

Signed:



GARRETH RUANE
SENIOR EXECUTIVE PLANNER

Date:

14th May 2021

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

Reference No.: R21-23



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R21-23

Whether the clearing the present area of failed ash trees to progress replanting under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare is considered development and if so, is it exempted development.

AND WHEREAS, Patrick Ryan 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) (i) of the Planning and Development Act, 2000, as amended,
- (b) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) Clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon 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 development of clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare, represents the replacement of broadleaf high forest by conifer species and is therefore not compatible with the exemption for replacement forestry described at Section 4 (1) (i) of the Planning and Development Act, 2000, 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:

Clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon 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

14th May, 2021

Mark Kerin

From: Padraig Egan <padraig.egan@swsforestry.ie>
Sent: Wednesday 12 May 2021 18:06
To: Mark Kerin
Subject: RE: R21-23 Patrick Ryan

Hi Mark,

This crop has to be cleared from a disease point of view.

The replanting of same will be undertaken immediately.

Due to the location of the site we would feel that the replacement crop should be 85% Sitka spruce and 15% Broadleaves.

A pure crop of Broadleaves on this site will not reach its full potential due to the exposure from the Atlantic winds.

Regards,

Padraig Egan
General Manager
SWS Forestry
Mob : +353 87-2587817



***** This email has been scanned by the Alpha IT Email Filtering service *****

From: Mark Kerin [mailto:MKerin@clarecoco.ie]
Sent: Wednesday 12 May 2021 14:44
To: padraig.egan@swsforestry.ie
Subject: R21-23 Patrick Ryan

Padraig,

Just further to our conversation in relation to the Section 5 application on behalf of your client Patrick Ryan.

Section 4 (1) (i) of the Act outlines the development that is exempted development:

development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;

Could you please confirm if it is native or evergreen trees that you intending to replant on the subject site?

Once this confirmation is received we should be in a position to issue the declaration based on this information.

Regards
Mark

Mark Kerin
Clerical Officer

Planning Department

Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2

T: 065 6846409 | E: mkerin@clarecoco.ie | W: www.clarecoco.ie

Council of the Year 2020



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

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SÉANADH: Is eolas rúnda atá sa teachtaireacht seo agus d'fhéadfadh sé bheith faoi phribhléid dhlíthiúil. Is don seolai amháin atá sí ceaptha. Is neamhúdaraíthe í an rochtain ar an teachtaireacht seo ag duine ar bith eile. Tá toirmeasc ar aon nochtadh, cóipeáil nó leithdháileadh den teachtaireacht, nó aon ghníomh nó neamhghníomh a ghlacann tusa agus tú ag brath uirthi, mura tusa an faighteoir a bhí ceaptha di. Téigh i dteagmháil leis an seoltóir láithreach má fuair tú an teachtaireacht seo trí earráid, le do thoil. Go raibh maith agat.

CLARE COUNTY COUNCIL SECTION 5 DECLARATION OF EXEMPTION APPLICATION PLANNERS REPORT	
FILE REF:	R21-23
APPLICANT(S):	Patrick Ryan
REFERENCE:	Whether the clearing the present area of failed ash trees to progress replanting under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare is considered development and if so, is it exempted development.
LOCATION:	Derrynalecka, Kilmurry McMahon, Co. Clare
DUE DATE:	17 th May 2021

Site Location

The site of the proposed development is located c.2km east of Kilmurry McMahon, within a rural area. The site contains ash forestry and is surrounded on 3 sides by coniferous forestry.

Recent Planning Application History

None

Enforcement History

None

Background to Referral

This Referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by Patrick Ryan.

The applicant is seeking a Section 5 Declaration as to whether the clearing the present area of failed ash trees to progress replanting under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare is considered development and if so, is it exempted development.

Development details and specification

The following has been submitted:

- Ordnance Survey maps that clearly show the location of the site;
- Declaration request form fully completed, with written description of the proposal.
- Further explanation of the proposal, which was received by email on the 12th of May 2021, stating as follows:

This crop has to be cleared from a disease point of view.

The replanting of same will be undertaken immediately.

Due to the location of the site we would feel that the replacement crop should be 85% Sitka spruce and 15% Broadleaves.

A pure crop of Broadleaves on this site will not reach its full potential due to the exposure from the Atlantic winds.

Flood Risk

Following examination of the relevant GIS information in relation to flood risk assessment, it is noted that the proposed development is located outside Flood Zones A and B.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

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.*

'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 4(1) (i) of the Planning and Development Act 2000, as amended states the following shall be exempted development:

development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Environmental Impact Assessment & Appropriate Assessment

Planning and Development Act 2000, as amended:

(4A) Notwithstanding *subsection (4)*, the Minister may make regulations prescribing development or any class of development that is —

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.]

Planning and Development Regulations 2001-2021 – Article 8F:

8F. Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of –

(a) the thinning, felling or replanting of trees, forests or woodlands, or

(b) works ancillary thereto,

shall be exempted development.

Having regard to Section 4(4A) of the Act and Article 8F of the Regulations, the question of Environmental Impact Assessment and Appropriate Assessment in respect of the proposed development is dealt with through the Forestry Licence process.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme is considered development and if so, is it exempted development.

Conclusion

Having regard to the information provided, it is considered that clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare constitutes both 'works' and 'development'. Regard has also been had to Section 4(1) (i) of the Planning and Development Act 2000, as amended which states the following shall be exempted development:

development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;

Recommendation

The following questions have been referred to the Planning Authority:

Whether clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare is or is not development and is or is not exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 (1) (i) of the Planning and Development Act, 2000, as amended,
- (b) The works as indicated in submitted documents from the referrer.

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

- (a) Clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon 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 development of clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare, represents the replacement of broadleaf high forest by conifer species and is therefore not compatible with the exemption for replacement forestry described at Section 4 (1) (i) of the Planning and Development Act, 2000, as amended,

Now therefore Clare County Council (Planning Authority), hereby decides that clearing the present area of failed ash trees to progress replanting of 85% coniferous trees and 15% broadleaf trees under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon Co. Clare is development and is not exempted development.



Assistant Planner

Date: 13th May 2021



Senior Executive Planner

Date: 13/05/21.



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Patrick Ryan
Derrynalicka
Kilmurry Mc Mahon
Co. Clare

23rd April 2021

Section 5 referral Reference R21-23 – Patrick Ryan

Whether the clearing the present area of failed ash trees to progress replanting under the Reconstitution and Underplanting Scheme at Derrynalecka, Kilmurry McMahon co. Clare is considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 20th April 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

Mark Kerin
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stúirthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inls, 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	<p>PATRICK RYAN DERRY NALICKA KILMURRY MCMAHON CO. CLARE</p>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	<p>PADRAIG EGAN SWS FORESTRY GATE LODGE WEST CORK TECHNOLOGY PARK CLONAKILTY CO. CORK</p>

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?

TO CLEAR PRESENT AREA OF FAILED ASH TREES
 TO PROGRESS REPLANTING UNDER THE RECONSTITUTION
 AND UNDERPLANTING SCHEME.

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

DESCRIPTION AS ABOVE.

- (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)

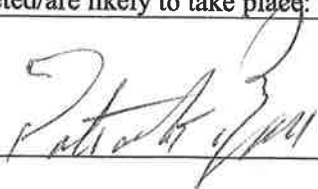
2 x COPIES OF O.S. MAP SHOWING AREA OF WORK
 OUTLINED IN RED.

ORIGINAL COPY OF FOREST SERVICE REQUEST.

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT

(a) Postal Address of the Property/Site/Building for which the declaration sought:	<u>FOREST LOCATION:</u> <u>DERRYNALECHA</u> <u>KILMURRY MCMAHON</u>
(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?	<u>NO.</u>
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	<u>OWNER (FULL)</u> <u>FORESTRY NO.</u>
(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>	<u>NA</u>
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	<u>YES.</u>
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	<u>NO.</u>
(g) Were there previous planning application/s on this site? If so please supply details:	<u>NO.</u>
(h) Date on which 'works' in question were completed/are likely to take place:	<u>SECOND HALF OF 2021 DEPENDING ON AVAILABILITY OF CONTRATOR.</u>

SIGNED:



DATE:

21/4/2021

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:.....			



MR PATRICK J RYAN
DERRYNALICKA
KILMURRY MC MAHON
CO CLARE

01/04/2021

PE

HD

Request for Supporting Documentation

Forest Owner(s)	
Contract Number	
Townland	Derrynalecka (ed kilfiddane)
County	Clare

Dear Mr Patrick J Ryan,

I refer to your application for our Reconstitution and Underplanting Scheme (Ash Dieback).

In order to process your application further under this Scheme it will be necessary for you to provide the following documentation:

As Natura 2000 designations have been screened in for the existence of potential negative impacts to their conservation status and it is proposed to replant with coniferous high forest, the applicant must supply the Forest Service with a Section 5 Exempted Development Certificate from Clare Co. Council to clarify if Planning permission is required or to forward the planning permission if so required.

If you have any queries please feel free to contact the Approval Section of the Forestry Division, quoting the contract number stated above, at the LoCall number (076) 106 44 65, or by email to forestryappenq@agriculture.gov.ie

Yours sincerely,

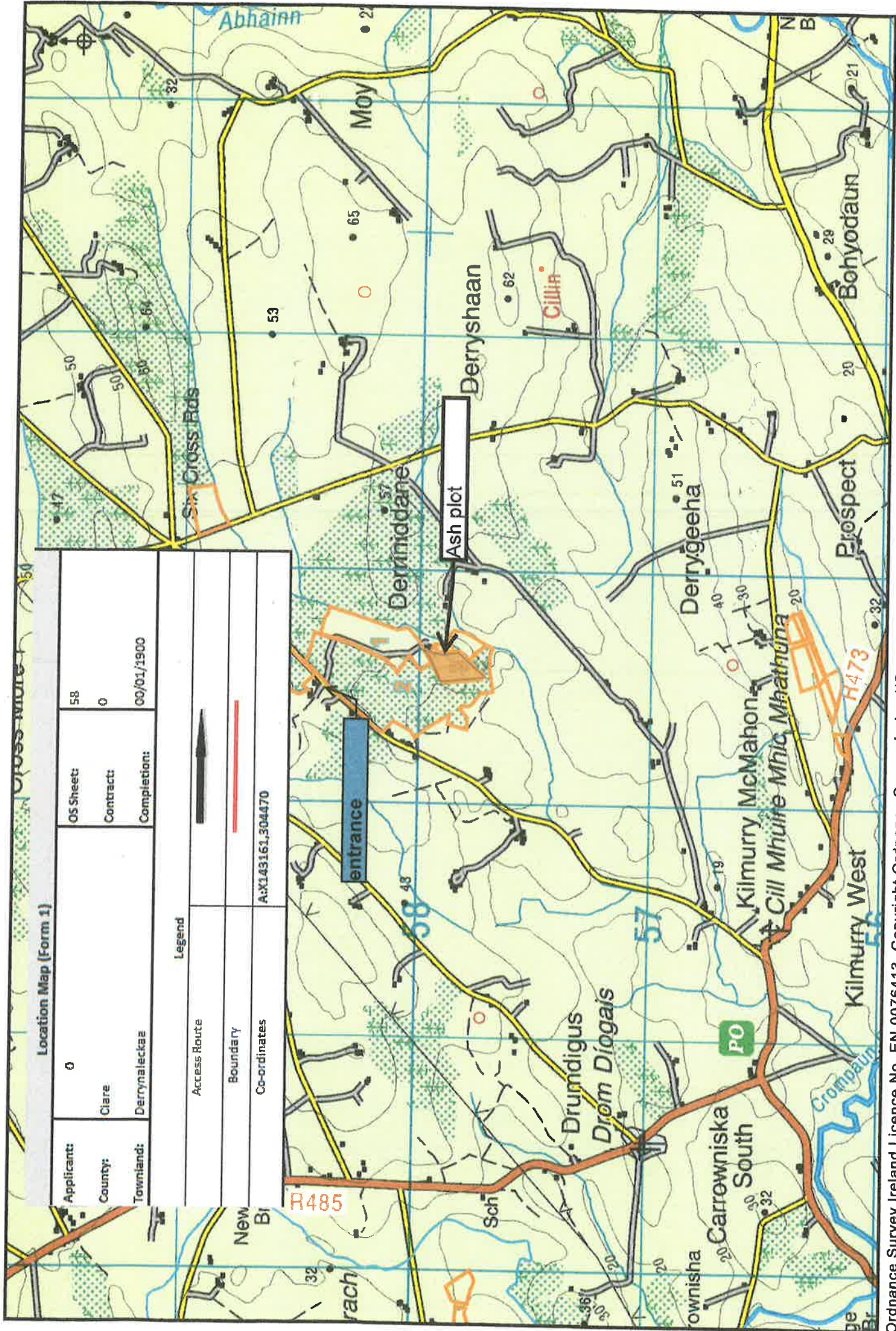
VERONICA BRENNAN
Approval Section, Forestry Division
DAFM, Johnstown Castle Estate
Wexford, Y35 PN52
(076) 106 44 65
forestryappenq@agriculture.gov.ie

Certified Species Map (Form 1)

[illegible]

Ordnance Survey Ireland Licence No. EN 0076413. Copyright Ordnance Survey Ireland/Government of Ireland
Unauthorized reproduction is not permitted. This map is for Forest Service related use only

Contract: **Pat Ryan** Scale 1:5000



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

23/04/2021 14:26:24

Receipt No. : LICASH/0/315589

REPRINT

PATRICK RYAN
DERRYNALICKA
KILMURRY MCMAHON
CO. CLARE
R21-23



SECTION 5 REFERENCES

GOODS 80.00

VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered :
CHEQUES

80.00

Change :

0.00

Issued By : LICASH - DEIRDRE FRENCH