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COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Mr John and Mrs Shelly Galvin
c/o Michael Leahy
Leahy Planning Ltd.
Mill Road House,
Mill Road,
Ennis,
Co. Clare.**

24th February, 2021

Section 5 referral Reference R21-4 – Mr John and Mrs Shelly Galvin

Whether the demolition of a house at Cahercalla Road, Ennis is or is not development and is or is not exempted development

A Chara,

I refer to your application received on 29th 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.

The subject Section 5 referral is being assessed having regard to the details contained therein. It is not a comment or otherwise as to whether or not the house in question was demolished. Rather it is a declaration as to whether or not the demolition (if same was done) of a dwelling would or would not require the benefit of planning permission.

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

**Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate**

c.c. Conor & Sinead McMahon Cahercalla Road, Ennis, Co. Clare.

This Section 5 Declaration was also issued to the owner / occupier of the subject dwelling, having regard to Section 5(2)(a) of the Planning and Development Act 2000, as amended.

**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





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COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Conor & Sinead McMahon
Cahercalla Road,
Ennis,
Co. Clare

24th February, 2021

Section 5 referral Reference R21-4

Whether the demolition of a house at Cahercalla Road, Ennis is or is not development and is or is not exempted development

A Chara,

Having regard to Section 5(2)(a) of the Planning and Development Act 2000, as amended I wish to inform you that a request for a Declaration on Development and Exempted Development referral was received by the Planning Authority on 29th 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.

The subject Section 5 referral is being assessed having regard to the details contained therein. It is not a comment or otherwise as to whether or not the house in question was demolished. Rather it is a declaration as to whether or not the demolition (if same was done) of a dwelling would or would not require the benefit of planning permission.

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

Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrtóireacht 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.: R21-4



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R21-4 – Mr John and Mrs Shelly Galvin

Whether the demolition of a house at Cahercalla Road, Ennis is or is not development and is or is not exempted development

AND WHEREAS, Mr John and Mrs Shelly Galvin has requested a declaration from Clare County Council on the said question.

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

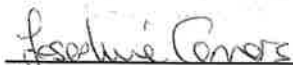
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 50 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) The demolition of a house at Cahercalla Road, Ennis, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) The said demolition of a house at Cahercalla Road, Ennis, Co. Clare is not exempted development having regard to Class 50 of Schedule 2, Part 1 of the 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 demolition of a house at Cahercalla Road, Ennis **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate

24th 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:

77206.

Reference Number:

R21-4

Date Referral Received:

29th January, 2021

Name of Applicant:

Mr John and Mrs Shelly Galvin

Location of works in question:

Cahercalla Road, Ennis, Co Clare

Section 5 referral Reference R21-4 – Mr John and Mrs Shelly Galvin

Whether the demolition of a house at Cahercalla Road, Ennis is or is not development and is or is not exempted development.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 50 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) The demolition of a house at Cahercalla Road, Ennis, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) The said demolition of a house at Cahercalla Road, Ennis, Co. Clare is not exempted development having regard to Class 50 of Schedule 2, Part 1 of the 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 proposed development consisting of the demolition of a house at Cahercalla Road, Ennis constitutes development which is **not** **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

Signed:


KIERAN O'DONNELL
ADMINISTRATIVE OFFICER 

Date:

24th February 2021

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF:	R21 4
APPLICANT(S):	John and Shelly Galvin
OWNER / OCCUPIER:	Conor and Sinead McMahon
REFERENCE:	Whether the demolition of a house at Cahercalla Road, Ennis is or is not development and is or is not exempted development
LOCATION:	Cahercalla Road, Ennis, Co Clare
DUE DATE:	25 th Feb. 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 demolition of a house at Cahercalla Road, Ennis is or is not development and is / is not exempted development.

This Referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by Mr. John and Mrs. Shelly Galvin, who are the owners of the dwelling to the East of the subject site. Mr. Michal Leahy, of Leahy Planning Ltd. Is acting as their agent in respect of this application.

The applicant is seeking a Section 5 Declaration as to whether the demolition of a house at Cahercalla Road, Ennis, Co. Clare is or is not development and is or is not exempted development.

Clare County Development Plan 2017- 2023, as varied

The proposal site is located within the settlement of Ennis and is to the south of the Cahercalla Road (LP4524 local primary road. The site is located on lands that are zoned as *"Existing Residential"* in the Clare County Development Plan 2017-2023, as varied.

Site Context

The site accommodates a part two story, part single storey dwelling that is located above the level of the public road. There is a 2 storey dwelling to the east of the site and a single storey to the west. The site benefits from a high level of natural screening with large mature trees located along the northern, western and southern boundaries. The sites eastern boundary comprises a mix of laurel hedging and semi-mature trees.

Onsite Planning History

P18 723 Application by Sinéad and Conor McMahon for (1) the construction of a first floor extension, (2) alterations to facades and roofs of existing dwelling, (3) single storey garage, (4) all associated alterations, site works and ancillary works. Permission granted subject to 8 no. conditions.

Planning Applications in the vicinity of the subject site

East

11-21064 – Granted - to demolish existing habitable dwelling house, permission consequent on the grant of outline planning permission (Ref. No. of outline permission 08/129) to construct a two-storey dwelling house and associated site development works and connection to public sewer and permission to construct garage.

08-21129 – Granted - to demolish existing habitable dwelling house, and outline permission to construct a two-storey dwelling house and associated site development works and connection to the public sewer.

North East

17-732 – Granted - for construction of new extension and alterations to existing dwelling along with roof alterations to existing bungalow, construction of a new garage and all associated alterations and site works.

Pre-planning History

None.

Section 5 Declaration History

none

Details Received

- Site location map.
- Written correspondence from Michael Leahy of Leahy Planning Ltd., Mill Road, Ennis, Co. Clare, who is the agent acting on behalf of the referrer.

- Written statement from John Galvin which states that *"before the new house was constructed to the West of our house, Castagnoli, on Cahercalla Road, Ennis, the existing house that was on site was completely demolished, contrary to the planning permission granted which was for alterations and extension"*.

Background to Referral

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'.

Section 5(6)(c) and (7)

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

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

Planning & 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'.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 50

(a) The demolition of a building, or buildings, within the curtilage of—

(i) a house,

(ii) an industrial building,

(iii) a business premises, or

(iv) a farmyard complex.

(b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.

1. No such building or buildings shall abut on another building in separate ownership.

2. The cumulative floor area of any such building, or buildings, shall not exceed:

(a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and

(b) in all other cases, 100 square metres.

3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

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 addition having regard to Section 5(7) I have considered the record of Section 5 decisions as made by An Bord Pleanala.

Planning and Development Regulations 2001 (as amended)

Schedule 2, Part 3, Class 50

(a) The demolition of a building, or buildings, within the curtilage of—

- (i) a house,*
- (ii) an industrial building,*
- (iii) a business premises, or*
- (iv) a farmyard complex.*

While the Regulations allow for, inter alia, the demolition of a building within the curtilage of a house, etc, they do not allow for the demolition of the house itself, it being the principal building on the site. Therefore the conditions and limitations as specified below are not entirely relevant to the question being posed under the subject referral.

- 1. No such building or buildings shall abut on another building in separate ownership.*
- 2. The cumulative floor area of any such building, or buildings, shall not exceed:*
 - (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and*
 - (b) in all other cases, 100 square metres.*
- 3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.*

Article 9

Article 9 of the Planning and Development Regulations 2001, as amended outlines restrictions on exempted development, and these are assessed below:

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

Planning permission was granted on the subject site under pl. Ref. no. p18 723 for the following development:

- (1) the construction of a first floor extension,
- (2) alterations to facades and roofs of existing dwelling,
- (3) single storey garage,
- (4) all associated alterations, site works and ancillary works

Planning permission was granted subject to 8 no. conditions. There was no specific condition attached regarding the retention or otherwise of the existing dwelling on the site. Condition 1 stated the following:

1. The development shall be carried out and completed in accordance with the drawings and particulars as received by the Planning Authority on the 12th September 2018 and the further information received on the 12th November 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the Planning Authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

- (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,*

No alterations to the existing access point associated with the proposed demolition works.

- (iii) *endanger public safety by reason of traffic hazard or obstruction of road users,*

Not applicable in this instance.

- (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 in this instance. The subject site is located in an urban context with no specific provision for the protection of landscape, or a view or prospect of special amenity value or special interest.

- (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,

Not applicable in this instance.

- (vi) *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 in this instance

(vii)

- a. *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,*

This is not applicable in this instance.

- 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,*

An Appropriate Assessment Screening Report and Determination have been undertaken as part of the assessment of this referral. It has been determined that significant effects on European Sites can be ruled out.

- 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."*

Not applicable in this instance.

- (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,*

This is not applicable in this instance.

- (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,*

This is not applicable in this instance.

- (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,*

This is not applicable in this instance.

- (xi) *obstruct any public right of way,*

This is not applicable in this instance.

- (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.*

This is not applicable in this instance.

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.

Appropriate Assessment

The site is 1.6km from the Newhall Edenvale Complex SAC. Having regard to the nature and scale of the proposed development and the absence of proximity or connectivity to a European Site, no Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects, on a European Site. An appropriate assessment screening report and determination is attached to this report.

NOTE: this Section 5 referral is being assessed having regard to the details contained therein. It is not a comment or otherwise as to whether or not the house in question was demolished. Rather it is a declaration as to whether or not the demolition (if same was done) of a dwelling would or would not require the benefit of planning permission.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the demolition of a house at Cahercalla Road, Ennis is or is not development and is / is not exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 50 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer.

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

- (a) The demolition of a house at Cahercalla Road, Ennis, Co. Clare constitutes “works” which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) the said works constitute “development” which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) the said demolition of a house at Cahercalla Road, Ennis, Co. Clare is not exempted development having regard to Class 50 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended

Now therefore Clare County Council (Planning Authority), hereby decides that the demolition of a house at Cahercalla Road, Ennis, Co. Clare is development which is not exempted development.

Fiona Barry

Executive Planner

Date: 22.2.21



Helen Quinn

A/Senior Planner

Date: 24-02-21

S.O.O. / A/S.P:

- I. Could the following note being included in a cover letter to both the applicants and the owner/ occupiers of the dwelling in question:

The subject Section 5 referral is being assessed having regard to the details contained therein. It is not a comment or otherwise as to whether or not the house in question was demolished. Rather it is a declaration as to whether or not the demolition (if same was done) of a dwelling would or would not require the benefit of planning permission.

- II. I consider that this Section 5 Declaration should also be issued to the owner / occupier of the subject dwelling, having regard to Section 5(2)(a) of the Planning and Development Act 2000, as amended.

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 4
Referred by	John and Shelly Galvin
Development Location	Cahercalla Road, Ennis
Application accompanied by an EIS	No
Application accompanied by an NIS	No
Description of the project (To include a site location map):	

Demolition of a dwelling



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

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.

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)
Newhall Edenvale Complex SAC	Caves not open to the public [8310] Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]	1.6

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	<i>Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?</i>	No
2	Impacts on terrestrial habitats and species.	<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	No
3	Impacts on designated marine habitats and species.	<i>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</i>	No
4	Impacts on birds in SPAs	<i>Is the development within 1km of a Special Protection Area</i>	No
5	Indirect effects	<i>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</i>	No impacts envisaged – limited nature of works, existing principle of residential development established, public water supply and sewer and distance from designation

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

		<i>habitat or species?</i>	
--	--	----------------------------	--

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

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

Appropriate Assessment Screening Determination	
Planning File Reference	R21 4
Proposed Development	Demolition of a dwellinghouse
Development Location	Cahercalla Ennis
European sites within impact zone	As per report
Description of the project	
Demolition of a dwellinghouse	
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).	
No impacts envisaged	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
No impacts envisaged – limited nature of works, existing principle of residential development established, public water supply and sewer and distance from designation	
Documentation reviewed for making this statement	
NPWS website Plans and particulars received GIS mapping database	
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	

³ Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no changes may be made to the proposed

(b) There is no potential for significant effects to European Sites³	Yes
(c) The potential for significant effects to European Site(s) cannot be ruled out⁴	
(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	22 nd Feb. 2021

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 (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

Mr John and Mrs Shelly Galvin
c/o Michael Leahy
Leahy Planning Ltd.
Mill Road House,
Mill Road,
Ennis,
Co. Clare.

29th January, 2021

Section 5 referral Reference R21-4 – Mr John and Mrs Shelly Galvin

Whether the demolition of a house at Cahercalla Road, Ennis is development or exempted development.

A Chara,

I refer to your application received on 29th 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



Leahy Planning Ltd.

Mill Road House, Mill Road, Ennis, Co. Clare. V95 FH5N

Tel No: 065 68 91254 **Mobile:** 087 795 8180

Email: michael@leahyplanning.com

Michael Leahy B.Arch., M.R.U.P., Dip Plng. & Env. Law, F.R.I.A.I., M.I.P.I., A.o.U.

**Clare County Council
Planning Section
County Offices
New Road
Ennis**



28 January 2021

Declaration under section 5 of the planning acts re: property in Cahercalla Road, Ennis.

Dear Sir or Madam,

On behalf of my clients, Mr. John and Mrs. Shelley Galvin, we wish to apply to the planning authority for a **declaration, under section 5 of the planning and development Acts as amended**, as to whether a particular development is or is not exempted development.

The development in question is the demolition of a house at Cahercalla Rd, Ennis. The house had previously been granted planning permission for renovations and extension under **planning permission reference number P18/723**. In the event, the house was not in fact extended but it was demolished and replaced.

My clients, who own property immediately to the east of the property in question, were regularly present on their own property while this demolition and replacement were ongoing and as per the attached letter confirm that this demolition did take place.

We believe that this demolition is not exempted development and that the applicants are therefore obliged to apply to retain the demolition which has been carried out.

Accordingly, we seek a declaration under section 5 as indicated:

"Whether the demolition of a house, at Cahercalla Road, Ennis is development or is Exempted Development"

We would be obliged for your response.

We attach herewith fee in the amount of €80 being the requisite fee as prescribed under the planning and development regulations schedule 10.

Site location map of the development in question is attached.

Yours sincerely,



Michael Leahy
For Leahy Planning Ltd.

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



Comhairle Contae an Chláir
Clare County Council

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

FEE: €80

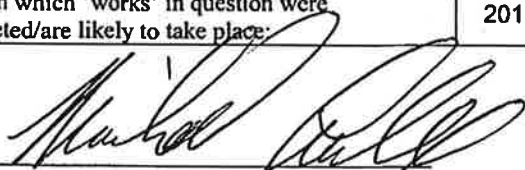
This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	Mr John and Mrs Shelly Galvin 2 The Greem Lifford Road Ennis.
(b) Telephone No.:	C/O Agent 065 68 91254
(c) Email Address:	C/O Agent- info@leahyplanning.com
(d) Agent's Name and address:	Michael Leahy Leahy Planning Ltd. Mill Road House, Mill Road, Ennis.

2.	DETAILS REGARDING DECLARATION BEING SOUGHT
(a)	PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT <i>Note: only works listed and described under this section will be assessed.</i>
	<p><u>Sample Question:</u> <i>Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?</i></p> <p>Whether the demolition of a house at Cahercalla Road, Ennis is development</p> <p>or is Exempted development.</p>
(b)	<p>Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.</p> <p>Further to planning application 18/723 a permission was granted in respect of the dwelling house in question for renovations and extension. In the event, the house was not extended and renovated but demolished. We believe that this demolitiom is not exempted development and seek a declaration in that regard.</p>
(c)	<p>List of plans, drawings etc. submitted with this request for a declaration:</p> <p><i>(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)</i></p> <p>Copy of Site location map with location of development indicated.</p>

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Cahercalla road, Ennis. _____ _____ _____ _____
(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):	No legal interest. They own the property immediately adjacent and to the east. _____
(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>	Sinéad and Conor McMahon _____ Cahercalla Road, _____ Ennis. _____
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	No.
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	The current applicants for this declaration have written to the council asking it to take enforcement action on the matter and have not received a reply.
(g) Were there previous planning application/s on this site? If so please supply details:	No applications other than as mentioned above of which we are aware and none recorded on the above mentioned file.
(h) Date on which 'works' in question were completed/are likely to take place:	2019

SIGNED:



DATE: 29 January 2021

For John and Shelly Galvin.

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 Chláir,
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.:

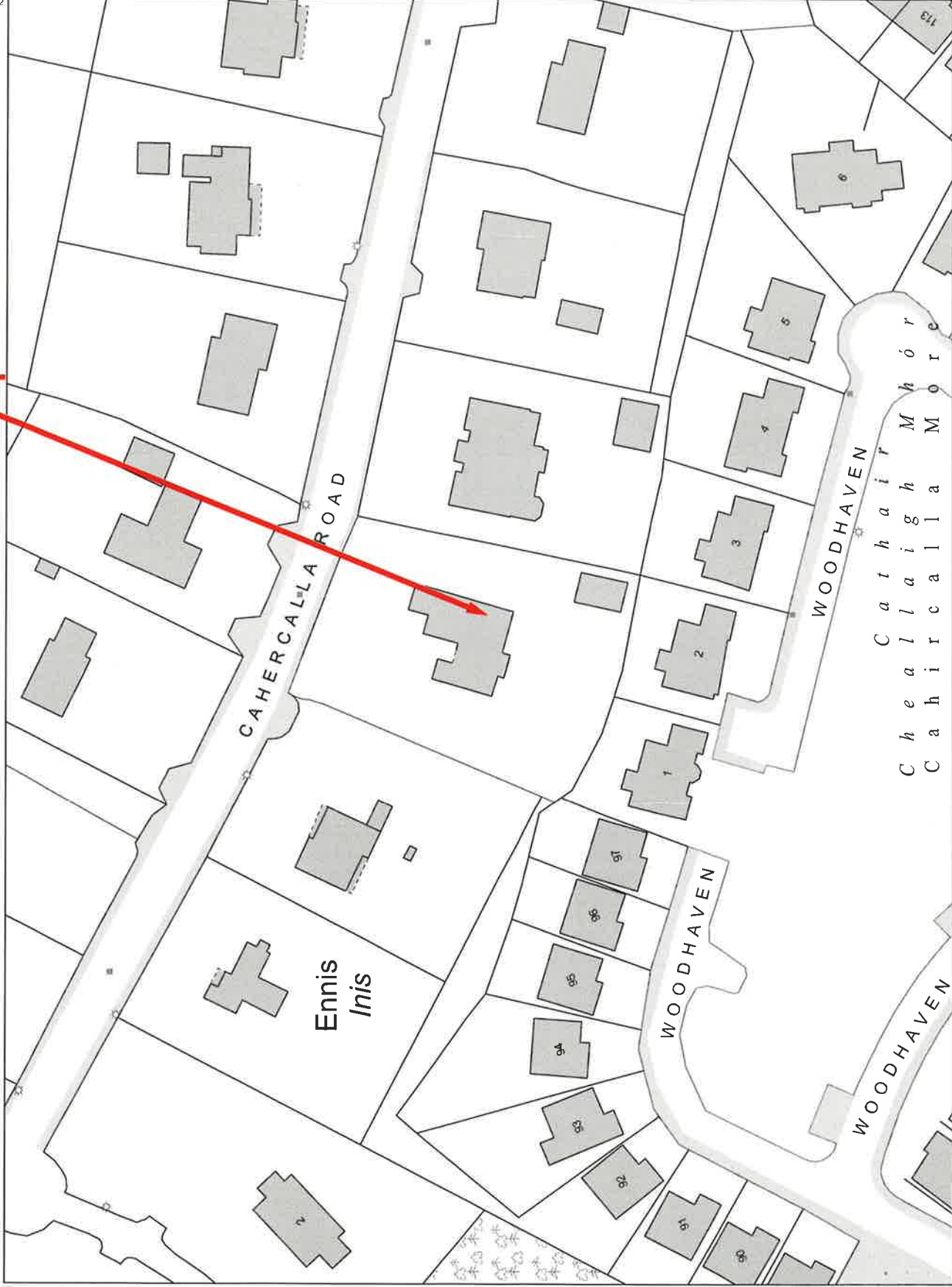
Decision:

Planning Pack Map

532912

532679

Location of Development



532912

532679

CENTRE
COORDINATES:
ITM 532796,676283

PUBLISHED:
27/01/2021

ORDER NO.:
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MAP SERIES:
1:1,000
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4322-12
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4322-17
1:2,500
4322-C

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New Road
Ennis
Co Clare

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