



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Maurene Walsh  
Ballnacragga,  
Ennis Rd,  
Newmarket on Fergus,  
Co Clare**

**9/8/2021**

**Section 5 referral Reference R21-42 – Maurene Walsh**

**Whether the variations “As Constructed” to the originally approved (p16/106) works at Ballynacragga, Ennis Rd, Newmarket on Fergus, Co Clare is considered development and if so, is it exempted development.**

A Chara,

I refer to your application received on 14th July, 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

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

Mise, le meas

**Anne O'Gorman  
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.: R21-42**



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R21-42**

**Whether the variations "As Constructed" to the originally approved (p16/106) works at Ballynacragga, Ennis Rd, Newmarket on Fergus, Co Clare is considered development and if so, is it exempted development.**

**AND WHEREAS, Maurene Walsh** 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) The works as indicated in submitted documents from the referrer.*

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

(a) The constructed alterations to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus, County 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 the constructed alterations to the dwelling to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus, County Clare is not exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and Article 9(i) of the Planning and Development Regulations 2001 (as amended) as the alterations to the dwelling materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, and therefore also contravene condition number 1 of planning permission P16-106 as the dwelling has not been carried out and completed in accordance with the drawings and particulars received by the Planning Authority on the 18th February 2016.

**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 variations "As Constructed" to the originally approved (p16/106) works at Ballynacragga, Ennis Rd, Newmarket on Fergus, Co Clare **constitutes development** which is **not**

exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



**Anne O'Gorman**  
**Staff Officer**  
**Planning Department**  
**Economic Development Directorate**

**9/8/2021**

**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:

78174(B)

Reference Number:

R21-42

Date Referral Received:

14th July, 2021

Name of Applicant:

Maurene Walsh

Location of works in question:

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**Section 5 referral Reference R21-42 – Maurene Walsh**

**Whether the variations “As Constructed” to the originally approved (p16/106) works at Ballynacragga, Ennis Rd, Newmarket on Fergus, Co Clare is considered development and if so, is it exempted development.**

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

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

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

- (a) The constructed alterations to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus, County 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 the constructed alterations to the dwelling to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus, County Clare is not exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and Article 9(i) of the Planning and Development Regulations 2001 (as amended) as the alterations to the dwelling materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, and therefore also contravene condition number 1 of planning permission P16-106 as the dwelling has not been carried out and completed in accordance with the drawings and particulars received by the Planning Authority on the 18th February 2016.*

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

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Helen A/Senior Planner, hereby declare the variations "As Constructed" to the originally approved (p16/106) works at Ballynacragga, Ennis Rd, Newmarket on Fergus, Co Clare is considered development which is not exempted development

**Signed:**

  
HELEN QUINN  
A/SENIOR PLANNER 

**Date:**

9/8/2021

**Clare County Council**  
**Section 5 Declaration of Exemption Application**  
**Planners Report**

File Reference:	R21-42
Applicant(s):	Maurene Walsh
Reference:	Whether the alterations to the dwelling as constructed to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus is or is not development and is or is not exempted development.
Location:	Ballynacragga, Ennis Road, Newmarket-on-Fergus, County Clare
Due Date:	10 <sup>th</sup> August 2021

**Site Location**

The site is located in the settlement of Newmarket-on-Fergus and is zoned as "Existing Residential" in the Clare County Development Plan 2017-2023 (as varied). It accommodates a detached single storey dwelling. It is located to the rear of a number of dwellings which front onto the R458 regional road to the east. It is accessed via a private cul de sac road which serves this site and another dwelling. It is a site which benefits from a high level of screening along its boundaries and views towards the site are limited to views from the shared access road to the south.

**Recent Onsite Planning History**

16-106 – Granted – Maurene Walsh - the construction of a single storey dwelling house, with attached garage, proprietary waste treatment plant, improvement works to existing entrance and to utilise existing driveway to access proposed site including ancillary site works.

**Background to Referral**

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Maurene Walsh. She states that she is the owner of the site.

Whether the alterations to the dwelling as constructed to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus is or is not development and is or is not exempted development. The alterations to the dwelling are listed in section 2(b) of the application form.

**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.

### 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.

The proposed works constitute development as defined in Section 3(1) of the Planning and Development Act 2000 (as amended).

#### Planning and Development Act 2000 (as amended) Section 4(1)(h)

*"The following shall be exempted developments for the purposes of this Act—*

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

#### 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 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies

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

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
  - (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) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
  - (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of 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,
  - (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
  - (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
  - (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000."
  - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
  - (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that



*the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*  
 (x) *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*  
 (xi) *obstruct any public right of way,*  
 (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.*

## Assessment

### Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the constructed alterations to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus is or is not development and is or is not exempted development. The alterations to the dwelling are listed in section 2(b) of the application form and comprise of the following:

1. A rear bedroom bay window was omitted;
2. The front of the integrated garage was moved back 1.2 metres to coincide with the front building line of the house;
3. The width of the bay window to the rear/side of the kitchen was increased from 2.5 metres to 3.5 metres.
4. The front door was constructed diagonally where the original was on a front building line at 90 degrees;
5. The window sizes off the corridor on either side of the front door were increased;
6. There is now a 2<sup>nd</sup> window to the walk in dressing area off the master bedroom; and
7. The ridge heights across the dwelling are now consistent. In the permission as granted there was a variation in ridge heights.

### Planning and Development Act 2000 (as amended) Section 4(1)(h)

*"The following shall be exempted developments for the purposes of this Act—*

*Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as*

*to render the appearance inconsistent with the character of the structure or of neighbouring structures;"*

Having regard to the cumulative impact of all the alterations to the dwelling from that as permitted under P16-106 I consider that these alterations materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the permitted structure.

Article 9 of the Planning and Development Regulations 2001, as amended

*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*

Condition number 1 of the permission as granted under P16-106 is as follows:

1. The development shall be carried out and completed in accordance with the drawings and particulars as received by the Planning Authority on 18<sup>th</sup> February 2016, 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.

**Reason:** In the interest of clarity.

The alterations between the dwelling as permitted and the dwelling as constructed cumulatively constitute material alterations to the dwelling as granted and therefore contravene condition number 1 of the planning permission granted.

- (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 are proposed.

- (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.

- (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,*

This is 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,*

This is 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,*

This is not applicable in this instance.

- 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."*

These are 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.

#### Conclusion

Having regard to the above it is considered that the as constructed alterations to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus, County Clare is development and is not exempted development.

#### Conclusions

**The following question has been referred to the Planning Authority:**

Whether the constructed alterations to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus is or is not development and is or is not exempted development.

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

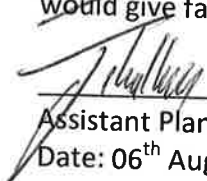
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) The works as indicated in submitted documents from the referrer.

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


- (a) The constructed alterations to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus, County 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 the constructed alterations to the dwelling to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus, County Clare is not exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and Article 9(i) of the Planning and Development Regulations 2001 (as amended) as the alterations to the dwelling materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, and therefore also contravene condition number 1 of planning permission P16-106 as the dwelling has not been carried out and completed in accordance with the drawings and particulars received by the Planning Authority on the 18<sup>th</sup> February 2016.

Now therefore Clare County Council (Planning Authority), hereby decides that the constructed alterations to the dwelling originally approved under planning permission P16-106 at Ballynacragga, Ennis Road, Newmarket-on-Fergus, County Clare is not exempted development.

~~I also recommend that a cover letter be attached to the declaration response stating that whilst the works as outlined do not constitute exempted development, subject to the receipt of an application for retention planning permission the Planning Authority would give favourable consideration to same.~~

  
Assistant Planner

Date: 06<sup>th</sup> August 2021

  
A/Senior Planner

Date: 06 - 08 - '21

Omit.  
HD.

6/8/21

## Clare County Council Screening for Appropriate Assessment & Determination

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

**Table 1: Project Details**

Planning File Reference	R21-42
Applicant Name	Walsh
Development Location	Newmarket-on-Fergus
Application accompanied by an EIS	No
Application accompanied by an NIS	No

**Description of the project (To include a site location map):**

Dwelling alterations



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

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

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

European Sites <sup>2</sup>		Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Lough Gash Turlough SAC		Turloughs [3180] Rivers with muddy banks with <i>Chenopodium rubri</i> p.p. and <i>Bidention</i> p.p. vegetation [3270]	0.6km

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>	Yes
2	Impacts on terrestrial habitats and species.	<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	Yes
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?</i>	No impacts envisaged – Minor nature of the works

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

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



		Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?	
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**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	R21-42
Proposed Development	Dwelling alterations
Development Location	Newmarket-on-Fergus
European sites within impact zone	As per report
Description of the project	
Dwelling alterations	
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 impact	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
Nature of works	
Distance from designations	
No direct links	
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) <sup>3</sup>	
(b) There is no potential for significant effects to European Sites <sup>3</sup>	Yes
(c) The potential for significant effects to European Site(s) cannot be ruled out <sup>4</sup>	
(d) Significant effects to European sites are certain or likely or	

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

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

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

where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010 <sup>5</sup>	
Completed By	John O'Sullivan
Date	06 <sup>th</sup> August 2021

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



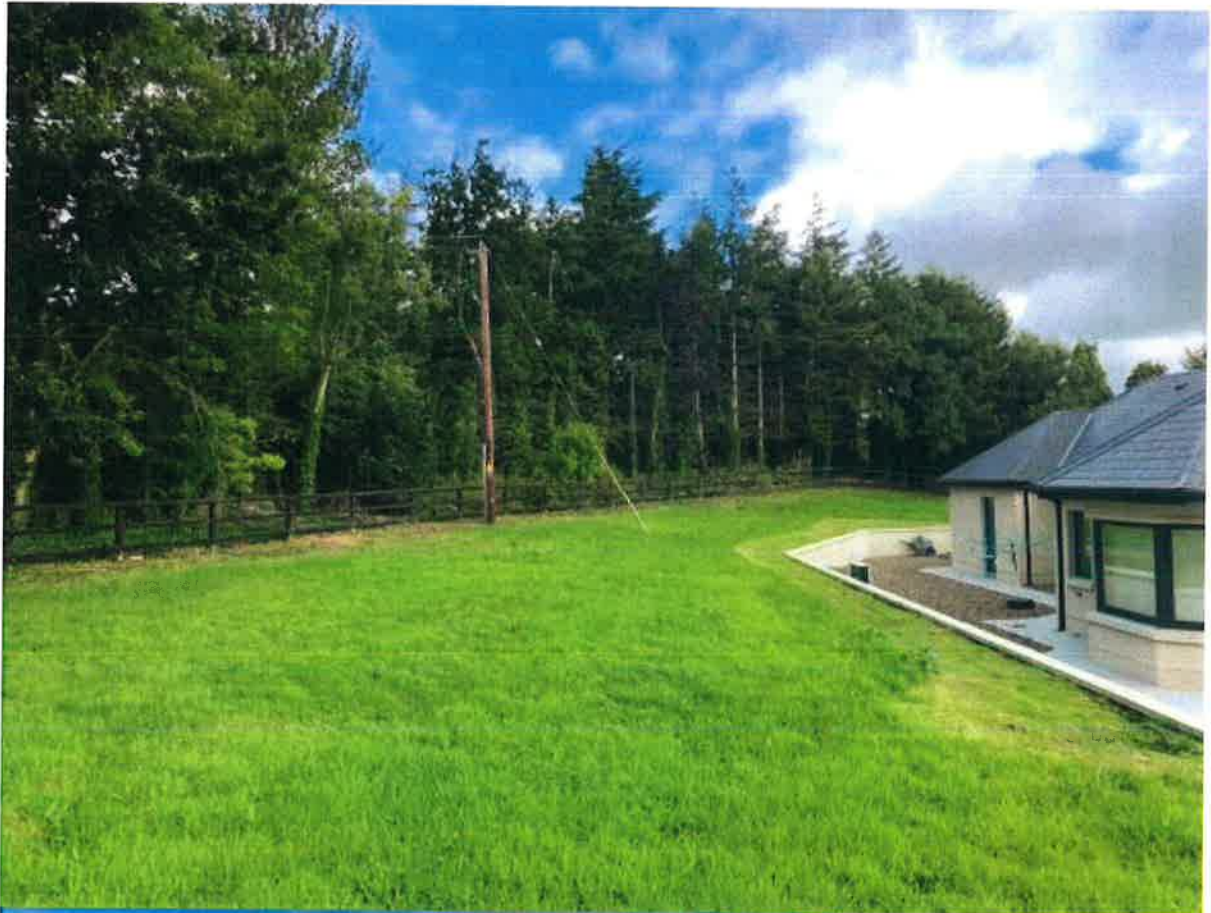


























COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

Maurene Walsh  
Ballnacragga,  
Ennis Rd,  
Newmarket on Fergus,  
Co Clare

5<sup>th</sup> July.2021

**Section 5 referral Reference R21-42 – Maurene Walsh**

**Whether the variations “As Constructed” to the originally approved (p16/106) works at Ballynacragga, Ennis Rd, Newmarket on Fergus, Co Clare is considered development and if so, is it exempted development.**

A Chara,

I refer to your application received on 14th July, 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

**Siobhan Mungovan**  
**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](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://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	MAURENE WALSH BALLYNACLISSA, ENNIS ROAD NEUMARKET, EN. FERGUS COUNTY CLARE
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address: MICHAEL ROGERS 087-2385436 01-2303488	MICHAEL ROGERS, CHARTERED ENGINEER ROGERS & ASSOCIATES 72, ALBANY ROAD LOWER SANDYCove, County DUBLIN MICHAEL.ROGERS.RBA@GMAIL.COM



## 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?

ARE THE VARIATIONS 'AS CONSTRUCTED' TO THE ORIGINALLY APPROVED (P16/106) WORKS EXEMPT FROM FURTHER PLANNING PERMISSION FOR DEFENSION AS THEY ARE NOT SIGNIFICANT CHANGES.

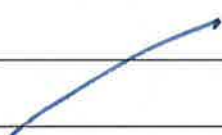
- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

- (1) A REAR BEDROOM BAY WINDOW WAS OMITTED.
- (2) THE FRONT OF THE INTEGRATED GARAGE WAS MOVED BACK 1.2m TO CO-INCIDE WITH THE FRONT BUILDING LINE OF THE HOUSE.
- (3) THE WIDTH OF THE BAY WINDOW TO THE REAR/SIDE OF THE KITCHEN WAS INCREASED FROM 2.5m TO 3.5m.
- (4) THE FRONT DOOR WAS CONSTRUCTED DIAGONALLY WHERE THE ORIGINAL WAS ON A FRONT BUILDING LINE @ 90°.
- (5) THE WINDOW SIZES OF THE CORRIDOR ON EITHER SIDE OF THE FRONT DOOR WERE INCREASED.
- (6) THERE IS NOW A SECOND WINDOW TO THE WALK-IN DRESSING AREA OF THE MASTER BEDROOM.
- (7) THE RIDGE HEIGHTS HAVE BEEN KEPT ALL THE SAME WHERE ORIGINALLY THERE WAS A SLIGHT VARIATION

- (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)*

PLANNING APPROVED (P16/106) P-01-L, P-02-L, P-0-03, P-0-5-L (4N°)  
 AS CONSTRUCTED T.1, T.2, T.3, T.4, T5 (5N°)  
 OS. MAP @ 1,2500 @ A.4

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>BALLYNACLAGGA</u> <u>ENNIS ROAD</u> <u>NEUMARICE/ON FENGUS</u> <u>COUNTY CLARE</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</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>	
(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>2017</u>

SIGNED: 

DATE: 09.07.2021

### **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: .....			

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

14/07/2021 11:48:12

Receipt No. : LICASH/0/319233

\*\*\*\*\* REPRINT \*\*\*\*\*

MAURENE WALSH  
BALLNACRAGGA  
ENNIS ROAD  
NEWMARKET ON FERGUS  
CO. CLARE  
R21/42

SECTION 5 REFERENCES 80.00  
GOODS 80.00  
VAT Exempt Non-vatable

Total :

80.00 EUR

Tendered :  
CHEQUES

80.00

Change :

0.00

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