



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

James Neylon
Soheen,
Dysart,
Corofin
Co Clare

RL 4096 6268 2 IE

4th October, 2021

Section 5 referral Reference R21-56 – James Neylon

Is the making of a new entrance to lands for agricultural use only at Drummina, Dysert, Corofin, Co. Clare considered development and if so, is it exempted development?

A Chara,

I refer to your application received on 7th September 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

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

Mise, le meas


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.: R21-56



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R21-56

Is the making of a new entrance to lands for agricultural use only at Drummina, Dysert, Corofin, Co. Clare considered development and if so, is it exempted development?

AND WHEREAS, James Neylon 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 –

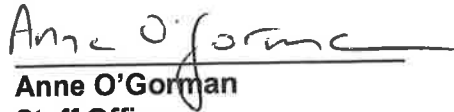
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Class 9 'Sundry Works', Schedule 2 Article 6 of The Planning and Development Regulations 2001 as amended
- (c) The details and particulars as received by the Planning Authority on the 7th September 2021.

And whereas Clare County Council has concluded:

- (a) The proposed formation of a gateway entrance to agricultural land constitutes both works and development.
- (b) Notwithstanding , Article 6, Class 9 'Sundry Works' which makes provisions for the formation of a gateway a being exempted development, regard is had to Article 9 (1) of the same Regulations, whereby development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would 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 or endanger public safety by reason of traffic hazard or obstruction of road users. The Planning Authority considers the proposed development involves the formation of a means of access on to the Regional road R476 which is wider than 4m at this point. Furthermore it is not clear from the details submitted whether the proposed development would endanger public safety by reason of traffic hazard as the proposed entrance is located in the vicinity of a junction and no details re availability of sightlines have been submitted.
- (c) there are no other exemptions that can be availed of under the Planning Act or the Planning Regulations which would render the development to be exempted development,

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 making of a new entrance to lands for agricultural use only 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

4th October, 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: 78501

Reference Number: R21-56

Date Referral Received: 7th September 2021

Name of Applicant: James Neylon

Location of works in question: Drummina, Dysert, Corofin, Co. Clare.

Section 5 referral Reference R21-56 – James Neylon

Is the making of a new entrance to lands for agricultural use only at Drummina, Dysert, Corofin, Co. Clare 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) Class 9 'Sundry Works', Schedule 2 Article 6 of The Planning and Development Regulations 2001 as amended
- (c) The details and particulars as received by the Planning Authority on the 7th September 2021.

AND WHEREAS Clare County Council has concluded:

- (a) The proposed formation of a gateway entrance to agricultural land constitutes both works and development.
- (b) Notwithstanding, Article 6, Class 9 'Sundry Works' which makes provisions for the formation of a gateway a being exempted development, regard is had to Article 9 (1) of the same Regulations, whereby development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would 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 or endanger public safety by reason of traffic hazard or obstruction of road users. The Planning Authority considers the proposed development involves the formation of a means of access on to the Regional road R476 which is wider than 4m at this point. Furthermore it is not clear from the details submitted whether the proposed development would endanger public safety by reason of traffic hazard as the proposed entrance is located in the vicinity of a junction and no details re availability of sightlines have been submitted.

- (c) there are no other exemptions that can be availed of under the Planning Act or the Planning Regulations which would render the development to be exempted development,

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

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the making of a new entrance to lands for agricultural use only is considered development which is not exempted development

Signed:



GARRETH RUANE
SENIOR EXECUTIVE PLANNER A.G.

Date:

4th October, 2021

CLARE COUNTY COUNCIL

SECTION 5 REFERRAL

Reference No: R21-56

Applicant: J. Neylon

Location: Drumminna Dysert

Proposal: Whether the making of a new entrance to lands for agricultural use only at Drumminna , Dysert Corrofin is or is not development and is or is not exempted development .

Due Date: 4th October 2021

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 making of a new entrance to lands for agricultural use only at Drumminna , Dysert Corrofin is or is not development and is / is not exempted development

The proposed entrance is to be located on the Regional Road R476 immediately north of the junction at Drumminna Cluster.

Details Submitted

- Completed application form
- A site location map scale 1 : 1000 showing the proposed location of the entrance and portion of the landholding

Background

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.

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.

Schedule 2, Article 6, Part 1 of the Planning and Development Regulations 2001 (as amended) sets out the following classes of exempted development:

Column 1 Description of Development	Column 2 Conditions & Limitations
Class 9 Sundry Works The construction , erection, renewal, or replacement other than within or bounding the curtilage of a house of any gate or gateway.	The height of any such structure shall not exceed 2m .

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

Article 9 sets out restrictions on exemptions.

Schedule 2, Article 6, Part 1 of the Planning and Development Regulations 2001 (as amended) sets out the following classes of exempted development:

Column 1 Description of Development	Column 2 Conditions & Limitations
Class 9 Sundry Works The construction , erection, renewal, or replacement other than within or bounding the curtilage of a house of any gate or gateway.	The height of any such structure shall not exceed 2m .

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. **No record of planning history on site .***

*(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. **The proposed development involves the formation of a means of access on to the Regional road R476 which is wider than 4m at this point.***

(iii) endanger public safety by reason of traffic hazard or obstruction of road users. It is not clear from the details submitted whether the proposed development would endanger public safety by reason of traffic hazard as the proposed entrance is located in the vicinity of a junction and no details re availability of sightlines have been submitted.

*(iv) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan. **Not applicable***

*(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan, **Not applicable.***

*(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended, **Not applicable.***

*(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, **Not applicable.***

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000. **Not applicable.**

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use, **Not applicable.**

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, **Not applicable.**

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility, **Not applicable**

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

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area. **Not applicable.**

Conclusion

With reference to the above assessment, and the stated restrictions on exempted development, and Article 9 of the Planning and Development Regulations 2001 as amended it is considered that the proposed development constitutes both 'works' and 'development' and that there are no provisions in the exempted development regulations for the formation of a gateway on a regional road the width of which exceeds 4m.

Recommendation

Whereas a question has arisen as to whether making of a new entrance to lands for agricultural use only at Druminna, Dysert Corrofin is or is not development and is / is not exempted development .

And Whereas Clare County Council (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) Class 9 'Sundry Works', Schedule 2, Article 6 of The Planning and Development Regulations 2001 as amended
- (c) The details and particulars as received by the Planning Authority on the 7th September 2021.

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

- (a) The proposed formation of a gateway entrance to agricultural land constitutes both works and development.
- (b) Notwithstanding, Article 6, Class 9 'Sundry Works' which makes provisions for the formation of a gateway a being exempted development, regard is had to Article 9 (1) of the same Regulations, whereby development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would 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 or endanger public safety by reason of traffic hazard or obstruction of road users. The Planning Authority considers the proposed development involves the formation of a means of access on to the Regional road R476 which is wider than 4m at this point. Furthermore it is not clear from the details submitted whether the proposed development would endanger public safety by reason of traffic hazard as the proposed entrance is located in the vicinity of a junction and no details *regarding the* ~~re~~ availability of sightlines have been submitted.
- (c) there are no other exemptions that can be availed of under the Planning Act or the Planning Regulations which would render the development to be exempted development,

Now therefore Clare County Council, in exercise of the powers conferred on it by section 5(2) of the Planning & Development Act, 2000, as amended, hereby decides that the making of a new entrance to lands for agricultural use only constitutes development which is not exempted development.

Signed Ellen Corey
E.P.

Date 30h Sep 21

Signed Gareth Ruane
Gareth Ruane S.E. P.

Date 30/09/21

Signed _____
E.P.

Date _____

Signed _____
G. Ruane.
S.E.P.

Date _____

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/ 26
Applicant Name	James Neylon
Development Location	Drummina, Dysert, Corrofin
Application accompanied by an EIS	No
Application accompanied by an NIS	NO
Description of the project (To include a site location map):	
Section 5 referral	

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

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

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

European Sites ²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
Ballycullinan lake SAC	Annex I habitats: • Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i> [7210]	1.5km north

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?	No
2	Impacts on terrestrial habitats & species.	Is the development within 1km of a European site with terrestrial based habitats or species?	No
3	Impacts on designated marine habitats & species.	Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: <i>Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs</i>	No
4	Impacts on birds in SPAs	Is the development within 1km of a Special Protection Area	No
5	Indirect effects	Is the development, in combination with other existing or proposed developments	No

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

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

		<p><i>likely to impact on an adjacent European site?</i></p> <p><i>Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?</i></p>	
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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.

Table 3: Identification of potential impacts.

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

1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	NA
1.11	Development within catchment of a European site of a scale or type which involves the production of an EIS	NA
1.12	Consideration of effects in combination with existing development?	NA
2	<p align="center">Impacts on terrestrial habitats and species. <i>Please answer the following if the answer to question 2 in table 2 was yes.</i> <i>Does the development involve any of the following:</i></p>	
2a	Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat. Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?	NA
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	NA
2c	Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?	NA
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	NA
3	<p align="center">Impacts on designated marine habitats and species. <i>Please answer the following if the answer to question 3 in table 2 was yes.</i> <i>Does the development involve any of the following:</i></p>	
3a	Removal of or interference with habitat within the European site. This includes timing of the project if there is potential to interfere with nesting or breeding periods, either directly or indirectly (e.g. by noise emission) or any aspect of the life cycle of a protected species. This also includes potential fragmentation, size reduction of habitat, or reduction in species density.	NA
3b	Coastal protection works on intertidal or marine habitats within 5km of a European site supporting coastal or marine habitats or species. This includes any works which may give rise to potential changes in hydrology or salinity of these areas.	NA

3c	Development of piers, slipways, marinas, pontoons or any other infrastructure within 5km of a European site that was designated because it supports marine habitats and/or species.	NA
3d	Dredging within 5km of a European site supporting coastal or marine habitats or species.	NA
3e	Removal of topsoil or infilling within 100m of marine habitats within the designated site.	NA
3f	Land based development within 1km of a European site of a scale or type which involves the production of an EIS.	NA
3g	Marine or intertidal based development within 5km of a European site of a scale or type which involves the production of an EIS.	NA

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

Conclusion:

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

Appropriate Assessment Screening Determination	
Planning File Reference	R21/ 26
Proposed Development	Section 5 referral
Development Location	Dysert
European sites within impact zone	Ballycullinan lake SAC
Description of the project:	
As above	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
See above	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
Not likely- proposed development for agricultural entrance	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
Not significant	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> - County Development Plan (including Flood Maps, SEA & AA) - NPWS website - Documents received as part of the planning application - EPA Code of Practice 	
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	No
(b) There is no potential for significant effects to European Sites ³	There is potential for significant effects to European Sites
(c) The potential for	The potential for significant effects to European

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

significant effects to European Site(s) cannot be ruled out⁴	Site(s) can be ruled out
(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	N/A
Completed By	Ellen Carey
Date	30 th September 2021

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

**James Neylon
Soheen
Dysart
Corofin
Co. Clare
V95 P902**

07/9/2021

Section 5 referral Reference R21-56 – James Neylon

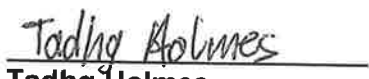
Is the making of a new entrance to lands for agricultural use only at Drummina, Dysert, Corofin, Co. Clare considered development and if so, is it exempted development?

A Chara,

I refer to your application received on 7th September 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



**Tadhg Holmes
Planning Department
Economic Development Directorate**

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

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



P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

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

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

07 SEP 2021

Received

Planning Section

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

FEE: €80

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

1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration	<p>JAMES NEYLON</p> <p>SOMEEN, DYSART</p> <p>COROPIN</p> <p>CO. CLARE</p> <p>Eircode: V95 P902</p>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	<p>MIDWEST CONSULTANT ENGINEERS</p> <p>BALLYGRIFFY SOUTH, RUAN</p> <p>ENNIS, CO. CLARE</p> <p>EIRCODE: V95XR99.</p>

2. DETAILS REGARDING DECLARATION BEING SOUGHT

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

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

IS THE MAKING OF A NEW ENTRANCE TO MY
 LANDS FOR AGRICULTURAL USE ONLY AT DRUMMINA
 DYSERT, COROFIN, CO. CLARE (LOCATION MARKED 'A') EXEMPTED
 DEVELOPMENT

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

I PROPOSE TO REMOVE ~~10~~ M OF EXISTING
 ROAD FRONTAGE, SPALY THE ENTRANCE AT
 45° TO THE ROAD TO A NEW GATE
 4.2 M WIDE 10M IN FROM THE EDGE
 OF THE EXISTING ROAD TO ALLOW A
 TRACTOR TO BE PULLED IN FROM
 THE ROAD WHILE THE GATE IS
 OPENED AND CLOSED. THE NEW SPALYED
 WING WALLS WILL BE CONSTRUCTED
 FROM STONE AND TURF TO MATCH
 EXISTING. AREA BETWEEN WILL BE
 HARDCORED.

- (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)

① SITE LOCATION MAP.

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>DRUMMINA, DYSART</u> <u>COROFIN</u> <u>CO. 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>FULL 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>	<u>N/A</u>
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	<u>Yes. NONE</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>Dec 2021.</u>

SIGNED:

James Neelan
DATE: 6-8-2021.

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:	

OSi PLACE Map



*LANDS OWNED BY APPLICANT
OUTLINED IN RED*

005.15415

*LOCATION OF PROPOSED
NEW GUINNESS
T GATE*

*D r o m a n n a
D r u m m i n a*



National Mapping Agency

CENTRE COORDINATES:
ITM 529942, 684163

PUBLISHED: 06/09/2021 **ORDER NO.:** 50217948_1

MAP SERIES: 1:5,000 **MAP SHEETS:** 4147

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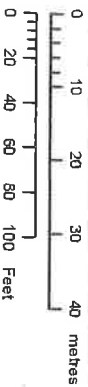
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LEGEND:
<http://www.osi.ie>,
search 'Large Scale Legend'



OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
<http://www.osi.ie>, search 'Capture Resolution'

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

07/09/2021 09:52:56

Receipt No. : LICASH/0/321752

REPRINT

JAMES NEYLON
C/O MIDWEST CONSULTANT
ENGINEERS
BALLYGRIFFEY STH
RUAN
ENNIS
CO CLARE

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

Total : 80.00 EUR

Tendered :
Cash

Change :

Issued By : LICASH - Ann Carey