



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

David and Fiona Whelan  
c/o NAPS Ltd,  
Loughash,  
Newmarket on Fergus,  
Co. Clare

12<sup>th</sup> March, 2021

**Section 5 referral Reference R21-6 – David and Fiona Whelan**

**Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development?**

A Chara,

I refer to your application received on 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

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

**An Roinn Pleanála**  
**An Stiúirthóireacht 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



**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:**

77263.

**Reference Number:**

**R21-6**

**Date Referral Received:**

**5<sup>th</sup> February 2021**

**Name of Applicant:**

**David and Fiona Whelan**

**Location of works in question:**

**Tiermaclane, Ennis, Co. Clare.**

**Section 5 referral Reference R21-6 – David and Fiona Whelan**

**Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is 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) Class 13 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 placement of hard surface over an existing agriculture track to create a farm roadway at Tiermaclane, 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 placement of hard surface over an existing agriculture track to create a farm roadway is exempted development having regard to Class 13 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 2<sup>nd</sup> 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 Garreth Ruane, A/Senior Executive Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Garreth Ruane, A/ Senior Executive Planner, hereby declare that the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is considered development which is exempted development

**Signed:**

  
**GARRETH RUANE**  
**A/SENIOR EXECUTIVE PLANNER** 

**Date:** <sup>✓</sup>12 March 2021

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

**Reference No.: R21-6**



**Section 5 referral Reference R21-6**

**Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development?**

**AND WHEREAS, David and Fiona Whelan** 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 13 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 placement of hard surface over an existing agriculture track to create a farm roadway at Tiermaclane, 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 placement of hard surface over an existing agriculture track to create a farm roadway is exempted development having regard to Class 13 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 placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

P.P. 

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

**12<sup>th</sup> March, 2021**

**CLARE COUNTY COUNCIL**  
**SECTION 5 DECLARATION OF EXEMPTION APPLICATION**  
**PLANNERS REPORT**

<b>FILE REF:</b>	R21-6
<b>APPLICANT(S):</b>	David and Fiona Whelan
<b>REFERENCE:</b>	Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development.
<b>LOCATION:</b>	Tiermaclane, Ennis, Co. Clare
<b>DUE DATE:</b>	23rd March 2021

**Site Location**

The site of the proposed development is located partly within and partly outside the boundary of the Cluster of Ballyveskil/Teermaclane, off the R473 Ennis-Kildysart road, 2.5km southwest of Clarecastle and 1.2km east of Ballyea. The site entrance adjoins the L8254. Ground levels on the site are approximately level with the road, and the ground levels within the site are generally flat.

The subject of the Declaration Request is an existing track of c.300m in length, and is part of a c.7ha landholding at this location. There is a derelict cottage on a narrow plot at the NE of the entrance to the track from the public road. There are grassed fields on both sides of the track along its entire length, with boundary ditches on one side for the entire length also.

**Recent Planning Application History**

**20/541:** Pending. Permission sought for the construction of a dwelling house, garage and proprietary waste treatment plant and to utilise existing entrance and roadway to access site including upgrades to same and all ancillary site works. Further Information was sought by the Planning Authority on 29<sup>th</sup> September 2020, including point No. 2, as follows:

The application seeks permission to upgrade the access roadway that runs through the site of the current application. However, the development description does not seek permission to retain the construction of the roadway. As such, the Planning Authority has concerns that it may represent unauthorised development and has concerns in relation to how this is addressed in the current application and in particular how it is accommodated within the development description. You are invited to submit proposals to address these issues.

**Enforcement History**

None

**Background to Referral**

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by David and Fiona Whelan.

The applicant is seeking a Section 5 Declaration as to Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development.

#### **Development details and specification**

The following has been submitted:

- Ordnance Survey map that clearly shows the location of the site;
- Declaration request form fully completed, with written description of the proposal;
- Site Layout Plan.

#### **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.*

##### **Planning & Development Regulations, 2001, as amended**

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

##### **Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 13**

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

- the width of any such private footpath or paving shall not exceed 3 meters.

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 comprise 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) 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.*

### **Environmental Impact Assessment**

I do not consider that the proposed development falls within the mandatory requirements for an EIA as stated in EU Directive 85/337/EEC (as amended by Directive 97/11/EC, 2003/31/EC and 2009/31/EC). The proposed development is also not considered to fall

within the sub-threshold criteria having regard to the third schedule to the European Communities Environmental Impact Assessment (Amendment) Regulations 1999 and in Schedule 7 of the Planning and Development Regulations 2001, as amended.

### **Appropriate Assessment**

See assessment below.

<b>Assessment</b>
-------------------

Additional Information was required from the applicants, on March 2<sup>nd</sup> 2021, as follows:

In order for the Planning Authority to fully assess your request for a Section 5 declaration, please address the following:

1. The Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 13 define that the following is exempted development:

*"The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way".*

Having regard to the mapping and aerial photography available to it, the Planning Authority does not regard the information provided to date by the current property owner to be definitive proof that an agricultural track pre-existed the current roadway.

Please submit additional information that would seek to definitively establish that there was a pre-existing agricultural track at this location. This can include written or photographic submissions from previous property owners or from others with knowledge of the lands in question.

The initial assessment of the question posed in this instance concluded that the works would constitute both 'works' and 'development'.

- A letter from the previous owner of the lands has been submitted by the applicants on 3<sup>rd</sup> March 2021. The previous owner states that there was an agricultural track through the property when he owned it and that it was there prior to his ownership. He states that there was an old derelict building in the second field in from the public road which the track led to. (A structure was in position historically, at approximately halfway along the alignment of the track / roadway. This small structure is highlighted on the Ordnance Survey 1888-1913 extract map).

Having regard to the submission by the previous landowner it appears that an agricultural track pre-existed the current roadway.

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

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

- (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 on-site planning permissions exist.

- (ii) *consist of or comprise 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 track/roadway has a junction with the L8254 public road. This entrance has existed for a long number of years and served the cottage on-site that is immediately inside that entrance. The entrance has not been formed, laid out or materially widened in connection with the development to which this declaration request applies.

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

Not applicable as the existing entrance serves a disused dwellinghouse whereas the roadway subject of the declaration request is stated to be for agricultural use, which is a less intensive use than the established residential use (albeit that dwelling is abandoned).

- (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,*

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,*

Not applicable in this instance.

- (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.*

Having regard to the nature of the proposed development, the nature of the proposal site and its receiving environs, the views available towards the site and the absence in the Development Plan of an objective to preserve the character of the landscape, or to preserve a view or prospect of special amenity value at this location, it is considered that the development subject of the declaration request would not interfere with the character of the landscape or views in the area.

*(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,*

This is not applicable in this instance.

*(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,*

This is not applicable in this instance.

*(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,*

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 it is not considered 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.

*(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."*

This is 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**

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

*Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it 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 13 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 placement of hard surface over an existing agriculture track to create a farm roadway at Tiermaclane, 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 placement of hard surface over an existing agriculture track to create a farm roadway is exempted development having regard to Class 13 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 placement of hard surface over an existing agriculture track to create a farm roadway at Tiermaclane, Ennis, Co. Clare is development and is exempted development.



Assistant Planner

Date: 8<sup>th</sup> March 2021



Garreth Ruane


A/Senior Executive Planner

Date: 10/03/21

**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**

<b>Planning File Reference</b>	R21/6
<b>Applicant Name</b>	David and Fiona Whelan
<b>Development Location</b>	Ballyveskil, Tiermaclane, Ennis, Co. Clare
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No
<b>Description of the project</b>	
Placement of hard surface over existing agriculture track to create farm roadway	
	

**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)).

<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.

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

<b>European Sites<sup>2</sup></b>	<b>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.</b>	<b>Distance to Applicant Site (km)</b>
Newhall Edenvale Complex SAC	Caves not open to the public [8310] Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]	1km

<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b>	<i>Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?</i>	No
<b>2</b>	<b>Impacts on terrestrial habitats &amp; species.</b>	<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	No
<b>3</b>	<b>Impacts on designated marine habitats &amp; species.</b>	<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
<b>4</b>	<b>Impacts on birds in SPAs</b>	<i>Is the development within 1km of a Special Protection Area</i>	No
<b>5</b>	<b>Indirect effects</b>	<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 habitat or species?</i>	No

<b>Appropriate Assessment Screening Determination</b>	
<b>Reference</b>	R21/6
<b>Proposed Development</b>	Placement of hard surface over existing agriculture track to create farm roadway
<b>Development Location</b>	Tiermaclane, Co. Clare
<b>European sites within impact zone</b>	Newhall Edenvale Complex SAC
<b>Description of the project:</b> Placement of hard surface over existing agriculture track to create farm roadway.	
<b>Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site</b> As above	
<b>Describe how the project or plan (alone or in combination) is likely to affect the European site(s).</b>	
No Effect likely	
<b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b>	
N/A	
<b>Documentation reviewed for making this statement</b>	
<ul style="list-style-type: none"> <li>- County Development Plan (including Flood Maps, SEA &amp; AA)</li> <li>- Documents received</li> </ul>	

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

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 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	Tadhg MacNamara
Date	8th March 2021

<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 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.

<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.

<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.

R21-6

Ballyveskil, (Old Road)  
Tiermaclane,  
Ennis,  
Co. Clare.  
3<sup>rd</sup> March, 2021.

**To Whom it Concerns.**

I wish to confirm that lands previously owned by me at Ballyveskil, Tiermaclane, Ennis, Co. Clare, had an existing agricultural track through the property when I originally owned it. This track was there before I became owner of the property and I understand had been there for decades prior to that.

This track existed as an agricultural track through the middle of the lands when I sold it to Fiona & Dave Whelan. Furthermore the track existed for as long as can be remembered in the area. There was an old derelict building in the second field in from the public road which the track led to.

If you wish to contact me further in relation to this matter, please feel free to do so.

Yours sincerely,

John Kelly

John Kelly.





COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

David and Fiona Whelan  
c/o NAPS Ltd,  
Loughash,  
Newmarket on Fergus,  
Co. Clare

2<sup>nd</sup> March 2021

**Section 5 referral Reference R21-6 – David and Fiona Whelan**

**Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development?**

A Chara,

I refer to your application received on 5<sup>th</sup> February 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above

In accordance with Section 5 (2) (b) of the Planning and Development Act 2000 as amended, and in order for the Planning Authority to make an assessment on this declaration application you are requested to submit the following information:

In order for the Planning Authority to fully assess your request for a Section 5 declaration please address the following:

1. The Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 13 define that the following is exempted development:

*"The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way".*

Having regard to the mapping and aerial photography available to it, the Planning Authority does not regard the information provided to date by the current property owner to be definitive proof that an agricultural track pre-existed the current roadway.

Please submit additional information that would seek to definitively establish that there was a pre-existing agricultural track at this location. This can include written or photographic submissions from previous property owners or from others with knowledge of the lands in question.

Mise, le meas

Kieran O'Donnell  
Administrative 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



**CLARE COUNTY COUNCIL  
SECTION 5 DECLARATION OF EXEMPTION APPLICATION  
PLANNERS REPORT**

<b>FILE REF:</b>	R21-6
<b>APPLICANT(S):</b>	David and Fiona Whelan
<b>REFERENCE:</b>	Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development.
<b>LOCATION:</b>	Tiermaclane, Ennis, Co. Clare
<b>DUE DATE:</b>	4 <sup>th</sup> March 2021

**Site Location**

The site of the proposed development is located partly within and partly outside the boundary of the Cluster of Ballyveskil/Teermaclane, off the R473 Ennis-Kildysart road, 2.5km southwest of Clarecastle and 1.2km east of Ballyea. The site entrance adjoins the L8254. Ground levels on the site are approximately level with the road, and the ground levels within the site are generally flat.

The subject of the Declaration Request is an existing track of c.300m in length, and is part of a c.7ha landholding at this location. There is a derelict cottage on a narrow plot at the NE of the entrance to the track from the public road. There are grassed fields on both sides of the track along its entire length, with boundary ditches on one side for the entire length also.

**Recent Planning Application History**

**20/541:** Pending. Permission sought for the construction of a dwelling house, garage and proprietary waste treatment plant and to utilise existing entrance and roadway to access site including upgrades to same and all ancillary site works. Further Information was sought by the Planning Authority on 29<sup>th</sup> September 2020, including point No. 2, as follows:

The application seeks permission to upgrade the access roadway that runs through the site of the current application. However, the development description does not seek permission to retain the construction of the roadway. As such, the Planning Authority has concerns that it may represent unauthorised development and has concerns in relation to how this is addressed in the current application and in particular how it is accommodated within the development description. You are invited to submit proposals to address these issues.

**Enforcement History**

None

**Background to Referral**

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by David and Fiona Whelan.

The applicant is seeking a Section 5 Declaration as to Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development.

#### **Development details and specification**

The following has been submitted:

- Ordnance Survey map that clearly shows the location of the site;
- Declaration request form fully completed, with written description of the proposal;
- Site Layout Plan.

#### **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.*

##### **Planning & Development Regulations, 2001, as amended**

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

##### **Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 13**

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

- the width of any such private footpath or paving shall not exceed 3 meters.

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 comprise 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) *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.*

### **Environmental Impact Assessment**

I do not consider that the proposed development falls within the mandatory requirements for an EIA as stated in EU Directive 85/337/EEC (as amended by Directive 97/11/EC, 2003/31/EC and 2009/31/EC). The proposed development is also not considered to fall

within the sub-threshold criteria having regard to the third schedule to the European Communities Environmental Impact Assessment (Amendment) Regulations 1999 and in Schedule 7 of the Planning and Development Regulations 2001, as amended.

### **Appropriate Assessment**

See assessment below.

## **Assessment**

### Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development.

### Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 13

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

- the width of any such private footpath or paving shall not exceed 3 meters.

The development, as described in writing in the submitted documents, involved the resurfacing of an existing agricultural track. Since the development does not involve the construction of a private footpath or paving, the limitation to 3 metres in width does not apply.

The current property owner has sought this declaration and appears to state that the re-surfacing of the track occurred in 2013. The owners make a number of points in support of their contention that an agricultural track along the same alignment was in existence prior to that:

- The previous owner (up to 2010) has confirmed to them that a track was in existence when they owned the land and is willing to offer written confirmation of same. This written confirmation is not included with the submitted documents;
- The track / roadway follows the long-established field boundaries, along its entire alignment.
- A structure was in position historically, at approximately halfway along the alignment of the track / roadway, which the track would have provided access to. This small structure is highlighted on the Ordnance Survey 1888-1913 extract map.

Class 13 Exempted Development allows that the repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way are exempt from planning permission. (Since the development does not involve the construction of a private footpath or paving, the limitation to 3 metres

in width does not apply). I do not regard the above points provided by the applicant to be definitive proof that an agricultural track pre-existed the current roadway.

I have checked the following sources of mapping and aerial photography:

- Ordnance Survey aerial view 2005-2012 ([www.geohive.ie](http://www.geohive.ie));
- Ordnance Survey aerial view 2005 ([www.geohive.ie](http://www.geohive.ie));
- Ordnance Survey aerial view 2000 ([www.geohive.ie](http://www.geohive.ie));
- Ordnance Survey aerial view 1995 ([www.geohive.ie](http://www.geohive.ie));
- Ordnance Survey Historic Map 25 Inch 1888-1913 ([www.geohive.ie](http://www.geohive.ie));
- Ordnance Survey Historic Map 6 Inch B&W 1837-1842 ([www.geohive.ie](http://www.geohive.ie));
- Ordnance Survey Historic Map 6 Inch Colour 1837-1842 ([www.geohive.ie](http://www.geohive.ie));
- Ordnance Survey Cassini 6 Inch map ([www.geohive.ie](http://www.geohive.ie));
- Clare County Council Planning Register Maps Sheet 41, 1922 basemap.

None of the aerial photos or maps definitively show that a track existed at this location. However, I acknowledge that in the aerial photos, the trees along the field boundaries abutting the track could be overhanging the track and hiding its visibility. The historic mapping has shortcomings also in that it was captured c.100 years ago at its most recent. I consider that Further Information should be sought from the property owners in order to better demonstrate that a track existed here prior to its being upgraded.

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

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

- (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 on-site planning permissions exist.

- (ii) *consist of or comprise 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 track/roadway has a junction with the L8254 public road. This entrance has existed for a long number of years and served the cottage on-site that is immediately inside that entrance. The entrance has not been formed, laid out or materially widened in connection with the development to which this declaration request applies.

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

Not applicable as the existing entrance serves a disused dwellinghouse whereas the roadway subject of the declaration request is stated to be for agricultural use, which is a

less intensive use than the established residential use (albeit that dwelling is abandoned).

(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,

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,*

Not applicable in this instance.

*(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.*

Having regard to the nature of the proposed development, the nature of the proposal site and its receiving environs, the views available towards the site and the absence in the Development Plan of an objective to preserve the character of the landscape, or to preserve a view or prospect of special amenity value at this location, it is considered that the development subject of the declaration request would not interfere with the character of the landscape or views in the area.

*(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,*

This is not applicable in this instance.

*(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,*

This is not applicable in this instance.

*(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,*

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 it is not considered 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.

*(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."*

This is 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**

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

*Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development?*

### **Conclusion**

Having regard to the above it is considered that placement of hard surface over an existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare constitutes both 'works' and 'development'. Regard has been had to Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, which may provide an exemption for the development that is described in the documentation. I consider that the property owner should be requested to provide additional information that may definitively establish that there was a pre-existing agricultural track at this location.

### **Recommendation**

I recommend requesting additional information as follows:

In order for the Planning Authority to fully assess your request for a Section 5 declaration please address the following:

1. The Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 13 define that the following is exempted development:
  - c. The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way.

Having regard to the mapping and aerial photography available to it, the Planning Authority does not regard the information provided to date by the current property owner to be definitive proof that an agricultural track pre-existed the current roadway.

Please submit additional information that would seek to definitively establish that there was a pre-existing agricultural track at this location. This can include written or photographic submissions from previous property owners or from others with knowledge of the lands in question.



*Assistant Planner*

Date: 1<sup>st</sup> March 2021



Name: Helen Quinn


A/Senior Planner

Date 01-03-2021

**Clare County Council**  
**Screening for Appropriate Assessment & Determination**

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

**Table 1: Project Details**

<b>Planning File Reference</b>	R21/6
<b>Applicant Name</b>	David and Fiona Whelan
<b>Development Location</b>	Ballyveskil, Tiermaclane, Ennis, Co. Clare
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No
<b>Description of the project</b>	
Placement of hard surface over existing agriculture track to create farm roadway	
	

**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)).

<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.

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

<b>European Sites<sup>2</sup></b>			<b>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.</b>	<b>Distance to Applicant Site (km)</b>
Newhall	Edenvale	Complex SAC	Caves not open to the public [8310] Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]	1km
<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b>		<i>Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?</i>	No
<b>2</b>	<b>Impacts on terrestrial habitats &amp; species.</b>		<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	No
<b>3</b>	<b>Impacts on designated marine habitats &amp; species.</b>		<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
<b>4</b>	<b>Impacts on birds in SPAs</b>		<i>Is the development within 1km of a Special Protection Area</i>	No
<b>5</b>	<b>Indirect effects</b>		<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 habitat or species?</i>	No

<b>Appropriate Assessment Screening Determination</b>	
<b>Reference</b>	R21/6
<b>Proposed Development</b>	Placement of hard surface over existing agriculture track to create farm roadway
<b>Development Location</b>	Tiermaclane, Co. Clare
<b>European sites within impact zone</b>	Newhall Edenvale Complex SAC
<b>Description of the project:</b> Placement of hard surface over existing agriculture track to create farm roadway.	
<b>Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site</b> As above	
<b>Describe how the project or plan (alone or in combination) is likely to affect the European site(s).</b>	
No Effect likely	
<b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b>	
N/A	
<b>Documentation reviewed for making this statement</b>	
<ul style="list-style-type: none"> <li>- County Development Plan (including Flood Maps, SEA &amp; AA)</li> <li>- Documents received</li> </ul>	

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

<b>Conclusion of assessment (a, b, c or d)</b>	
<b>(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s)<sup>3</sup></b>	
<b>(b) There is no potential for significant effects to European Sites<sup>3</sup></b>	Yes
<b>(c) The potential for significant effects to European Site(s) cannot be ruled out<sup>4</sup></b>	
<b>(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 2010<sup>5</sup></b>	
<b>Completed By</b>	Tadhg MacNamara
<b>Date</b>	1 <sup>st</sup> March 2021

<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 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.

<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.

<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

David and Fiona Whelan  
c/o NAPS Ltd,  
Loughash,  
Newmarket on Fergus,  
Co. Clare

8<sup>th</sup> February 2021

**Section 5 referral Reference R21-6 – David and Fiona Whelan**

**Whether the placement of hard surface over existing agriculture track to create farm roadway at Tiermaclane, Ennis, Co. Clare is development and if so is it exempted development.**

A Chara,

I refer to your application received on 5<sup>th</sup> February 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

**Josephine Connors**  
Planning Department  
Economic Development Directorate

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

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



P07

**CLARE COUNTY COUNCIL  
COMHAIRLE CONTAE AN CHLÁIR**

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

Telephone No. (065) 6821616  
Fax No. (065) 6892071  
Email: [planoff@clarecoco.ie](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

David & Fiona Whelan  
New hall  
Ennis  
Co. Clare

(b) Telephone No.:

(c) Email Address:

(d) Agent's Name and address:

NAPS Ltd.  
loughash  
Newmarket on fergus  
Co. Clare.



## 2. DETAILS REGARDING DECLARATION BEING SOUGHT

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

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

Is the placement of hard surface over existing Agricultural Tracks to create Farm Road exempted development?

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

The Roadway shown on existing site layout & site location Map is currently used as a farm Road. The surface of this road circa 2013. Prior to this, the route of the current Farm Road existed as an agricultural track which traversed the land from the location of the entrance from the public Road up to the current farm buildings. The previous landowner who owned the property prior to 2010 has confirmed that the track had been in existence & is willing to offer written confirmation of same. The route of the existing road (formerly Agricultural track) was adjacent to the boundary walls which divide the land. A copy of extract of OS map from 1888-1913 shows the location of a structure (possibly a dwelling) on the route of the current Road adjacent to boundary wall, which would account for location of the current Roadway. The surface of the road has been improved but remains in the location of the historic track.

- (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)*

Site location Map

Partial site layout Map

Historic Maps

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

(a) Postal Address of the Property/Site/Building for which the declaration sought:	Tiermaclane, Ennis Co. Clare.
(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):	Owners
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	No
(g) Were there previous planning application/s on this site? If so please supply details:	Yes P20/541
(h) Date on which 'works' in question were completed/are likely to take place:	Circa 2013.

SIGNED: [Signature] (Agent for)DATE: 2/2/2021

### **GUIDANCE NOTES**

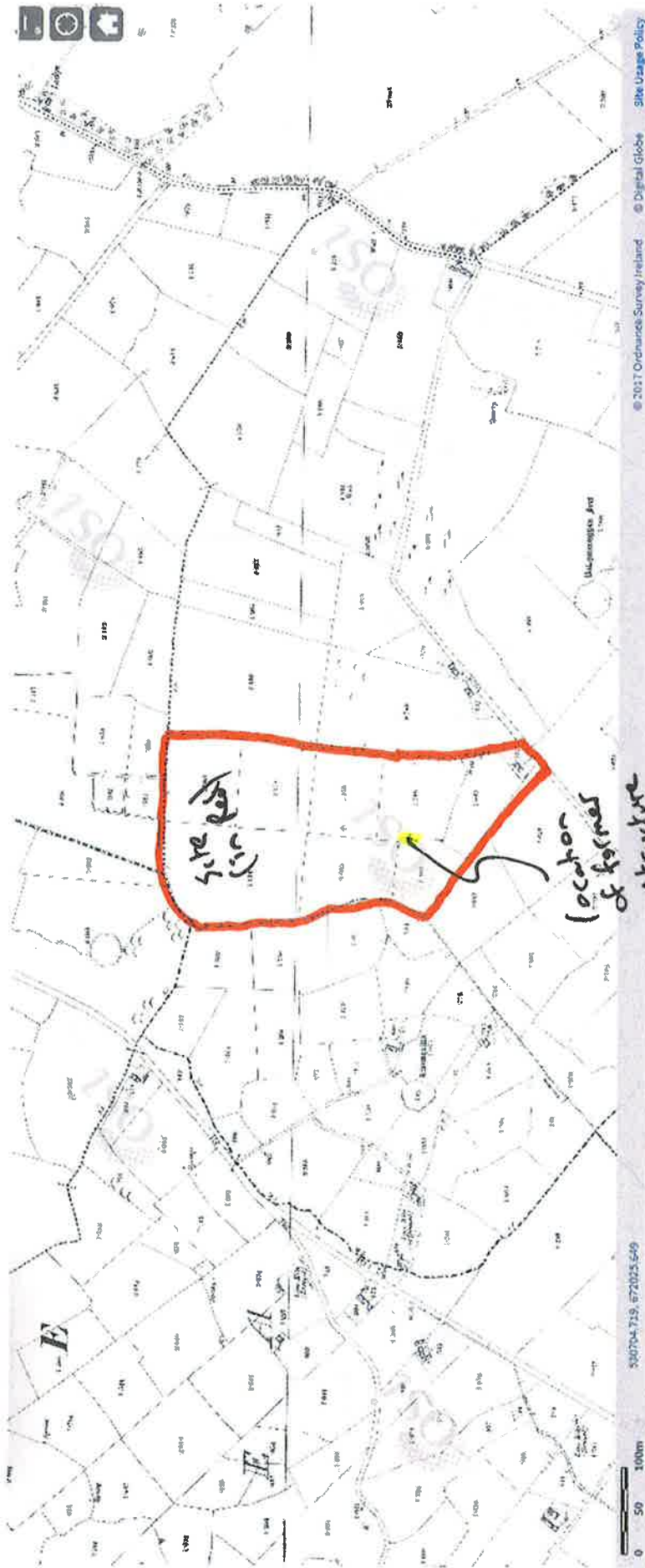
*This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority*

- (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 Chláir  
New Road  
Ennis  
Co Clare



05/02/2021 11:40:10

Receipt No. : LICASH/0/312224

REPRINT

DAVID & FIONA WHELAN  
C/O NAPS LTD  
LOUGHASH  
NEWMARKET ON FERGUS  
CO. CLARE

SECTION 5 REFERENCES  
GOODS  
VAT Exempt/Non-vatable

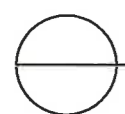
Total :

Tendered :  
CHEQUES

Change :

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





# SITE LOCATION MAP

SCALE : 1:2500

PART OF O.S  
MAPS  
CLARE 4437

Ordnance Survey Ireland Licence No. AR 0066621  
Ordnance Survey Ireland / Government of Ireland



**NAPS**

newmarket architectural & planning services

Studio Inovo  
Loughash  
Newmarket on fergus  
Co. Clare

Telephone  
061 - 476937  
E-mail  
info@naps.ie

Fax  
061 - 476947  
Website  
www.naps.ie

## Project Details

EXISTING FARM ROAD AT  
BALLYVESKIL, TIERNACLANE, CO.  
CLARE

## Clients

KELLIE WHELAN  
NEW HALL  
ENNIS  
CO. CLARE

## Drawing

SITE LOCATION MAP

## Job No.

1345-2020

## Drawing No.

P-10-L

DRAWING STATUS :

DRAWN BY : S.B

Date

25 JAN. 2021

Scale

1:2500

REVISION : 001

~~PART OF O.S MAPS  
CLARE 4437~~