



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

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Co. Clare

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**Your Client – Michele Tacconi**

**16th November 2021**

**Section 5 referral Reference R21-60 – Michele Tacconi**

Is the use of a retail premises at the corner of Market Place and North Drumbiggle Road, as a food retail unit selling food items for consumption off the premises, a change of use from use as a shop to a different use from that specified in Class 1 of Part 4 of the 2nd Schedule of the Planning & Development Regulations as amended?

A Chara,

I refer to your application received on 22nd October 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

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

Mise, le meas

Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate

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

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



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

**Reference No.: R21-60**



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R21-60**

**Is the use of a retail premises at the corner of Market Place and North Drumbiggie Road, as a food retail unit selling food items for consumption off the premises, a change of use from use as a shop to a different use from that specified in Class 1 of Part 4 of the 2nd Schedule of the Planning & Development Regulations as amended?**

**AND WHEREAS, Michele Tacconi** 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) The definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended by the Planning and Development Regulations 2005,
- b) Articles 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- c) An inspection of the site
- d) The previous use of the building

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

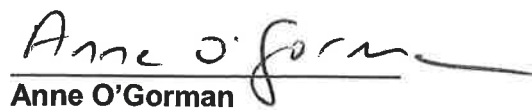
The use of the retail premises as a food retail unit selling food items for consumption off the premises is a change of use as a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the Planning and Development Regulations 2001, as amended, and is development for the following reasons:

- (a) It is considered that the sale of hot and cold food for consumption off the premises in this particular case is not subsidiary to the existing and principal use of this unit as a 'shop' and,
- (b) The sale of hot and cold food for consumption off the premises results in a material change of use within this shop from its existing retail use

**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 that the use of the retail premises as a food retail unit selling food items for consumption off the premises is a change of use as a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the is Planning

and Development Regulations 2001, as amended, is development and is not exempted development.



Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate

16th November 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:** 78731

**Reference Number:** R21-60

**Date Referral Received:** 22nd October 2021

**Name of Applicant:** Michele Tacconi

**Location of works in question:** Corner of Market Place and North Drumbiggle Road, Ennis, Co. Clare

**Section 5 referral Reference R21-60 – Michele Tacconi**

Is the use of a retail premises at the corner of Market Place and North Drumbiggle Road, as a food retail unit selling food items for consumption off the premises, a change of use from use as a shop to a different use from that specified in Class 1 of Part 4 of the 2nd Schedule of the Planning & Development Regulations as amended?

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

- a) The definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended by the Planning and Development Regulations 2005,
- b) Articles 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- c) An inspection of the site
- d) The previous use of the building

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

The use of the retail premises as a food retail unit selling food items for consumption off the premises is a change of use as a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the Planning and Development Regulations 2001, as amended, and is development for the following reasons:

- (a) It is considered that the sale of hot and cold food for consumption off the premises in this particular case is not subsidiary to the existing and principal use of this unit as a 'shop' and,
- (b) The sale of hot and cold food for consumption off the premises results in a material change of use within this shop from its existing retail use

**ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001,

delegate to Gareth 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 proposed development, a change of use of the retail premises to a food retail unit selling food items for consumption off the premises, is a change of use from a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the Planning and Development Regulations 2001, as amended, and is development which is not exempted development.

**Signed:**

  
\_\_\_\_\_  
**GARETH RUANE**  
**SENIOR EXECUTIVE PLANNER** A-2f

**Date:**

**16th November 2021**

**CLARE COUNTY COUNCIL  
SECTION 5 REFERRAL REPORT**

<b>Reference No:</b>	R21 60
<b>Applicant:</b>	Michele Tacconi
<b>Location:</b>	The Corner of Market Place and North Drumbiggle Road, Ennis
<b>Proposal:</b>	Whether the use of a food retail unit selling food items for consumption off the premises is development and if so, is exempted development.
<b>Due Date:</b>	18 <sup>th</sup> Nov. 2021

**Introduction**

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 as amended to determine whether or not the following constitutes exempted development:

*Whether the use of the retail premises as a food retail unit selling food items for consumption off the premises is a change of use as a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the Planning and Development Regulations 2001, as amended, or is not development and is / is not exempted development.*

The subject unit is a corner ground floor unit located at the junction of Market Place and North Drumbiggle Road. The unit is currently vacant. The last known use was that as a convenience retail store – Epic Value. Please refer to screenshot from Google Streetview, captured in 2017:





Previous to that, a bookies had at one stage occupied the building. Please refer to screenshot from Google Streetview, captured in 2009:



#### **Clare County Development Plan 2017- 2023, as varied**

The site is located in the settlement of Ennis as per the Clare County Development Plan 2017-2023, as varied and is zoned for “Mixed Use”. It is within the designated “Town Centre Area” and is designed “Core Shopping Area” and is also within the Ennis “Architectural Conservation Area”, within a recorded monument zone of notification, and within Flood Zone A. The building to the immediate west is a ‘Protected Structure’.

#### **Onsite Planning History**

None on record

#### **Pre-planning History**

None

#### **Section 5 Declaration History**

None

#### **Details Received**

- Completed application form
- Site location map.
- Letter of consent from the property owner

#### **Background**

Planning and Development Act, 2000 (as amended)

#### **Section 2**

'Works' are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

*"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

### Section 3

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

S.3.(1) In this Act, "*development*" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

### Section 4(1)(H)

Section 4 (1)(H) states that the following shall be exempted development for the purpose of the Act.-

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

Section 6 - (a) The Board shall keep a record of any decision made by it on a referral under this section and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

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

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

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

Article 5(1) of the Regulations as amended by S.I. No. 364 of 2005 substitutes the following for the definition of 'shop' – *'shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public-*

- a) for the retail sale of goods,*
- b) as a post office,*
- c) for the sale of tickets or as a travel agency,*
- d) for the sales of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,*
- e) for hairdressing,*
- f) for the display of goods for sale,*
- g) for the hiring out of domestic or personal goods or articles,*
- h) as a launderette or dry cleaners,*
- i) for the reception of goods to be washed, cleaned or repaired,*



*but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which Class 2 or 3 of Part 4 of Schedule 2 applies’.*

## Part 2 Exempted Development

Article 6 (1) states

*‘Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.*

## Article 9 -Restrictions on Exemptions

‘Under Article 9 (1) of the same Regulations, development to which Article 10 relates shall not be exempted development for the purposes of the Act:

- (a) *if the carrying out of such development would –*
  - i. *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
  - ii. *consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
  - iii. *endanger public safety by reason of traffic hazard or obstruction of road users,*
  - iv. *except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*
  - v. *consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*
  - vi. *interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*
  - vii. (a) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*
  - vii. (b) *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*
  - vii. (c)

*consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000."*

- viii. consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*
- ix. consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*
- x. consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*
- xi. obstruct any public right of way,*
- xii. further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area'.*

#### Article 10 Change of Use

*Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—*

- (a) involve the carrying out of any works other than works which are exempted development,*
  - (b) contravene a condition attached to a permission under the Act,*
  - (c) be inconsistent with any use specified or included in such a permission, or*
  - (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*
- (2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.*
- (b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—*
    - (i) as an amusement arcade,*
    - (ii) as a motor service station,*
    - (iii) for the sale or leasing, or display for sale or leasing, of*

- motor vehicles,*
  - (iv) for a taxi or hackney business or for the hire of motor vehicles,*
  - (v) as a scrap yard, or a yard for the breaking of motor vehicles,*
  - (vi) for the storage or distribution of minerals,*
  - (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,*
  - (vii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or*
  - (viii) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.*
- (3) Development consisting of the provision within a building occupied by, or under the control of, a State authority of a shop or restaurant for visiting members of the public shall be exempted development for the purposes of the Act.*
  - (4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*
  - (5) Development consisting of the use of a house for child minding shall be exempted development for the purposes of the Act.*

Part 4 Article 10 Exempted Development- Class of use- Class 1 is use as a shop.

*Schedule 2 Article 6 part 1 Exempted Development*

**CLASS 14**

*Development consisting of a change of use—*

- (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,*
- (b) from use as a public house, to use as a shop,*
- (c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,*
- (d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,*

(e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling,

(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons. The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.

#### Part 4 of Schedule 2: Exempted Development - Classes of Use:

Class 1: Use as a shop.

Class 2: Use for the provision of –

- a) financial services,
- b) professional services (other than health or medical services),
- c) any other services (including use as a betting office), where the services are provided principally to visiting members of the public

#### **Precedent Cases**

**RL3495:** The question relates to whether the use of 1.16sq.m. of shop area for the sale of hot food at a service station is or is not development or is or is not exempted development. The Board decided that:

- The sale of hot food for consumption on or off the premises resulted in a change of use,
- The change of use in this case by reason of its limited scale and ancillary nature was not a material change of use.

**RL3402:** The question related to whether the change of use of part of the existing retail premises for sale of hot food is or is not development or is or is not exempted development. The Board determined in respect of the change of use that:

- The sale of hot food for consumption off the premises is not subsidiary to the principal shop use,
- Having regard to the definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended, this has resulted in a change of use within this shop from the main retail use,
- Having regard to the potential for material planning consequences in relation to traffic, noise and general disturbance, this change of use is considered to be material in planning terms, and this matter, therefore, constitutes development, and
- This development does not come within the scope of exemptions from the general obligation to obtain planning permission, as provided under planning legislation

**RL2992:** The question related to whether the change of use of a shop granted under planning register reference 88/996 to use as a subway premises and the signage / branding changes to the front elevation is or is not development or is or is not exempted development. The Board determined in respect of the change of use that:

- The current use of the premises as a take-away commenced in 2006, is a change of use that is material, and
- There are no exemptions under the current exempted development provisions which would provide for this material change of use

**RL2590:** The question related to a shop with a meat counter and cold store, which also had a large counter for a takeaway business at the front of the premises. The Board determined that the sale of hot food for consumption off the premises was development and was not exempted development, as follows:

- The sale of hot food for consumption off the premises in this particular case was not subsidiary to the principal shop use, and
- The sale of hot food for consumption off the premises resulted in a material change of use from the use of this shop for the retail sale of groceries.

**RL2179:** The referral related to an all-purpose grocery shop (including petrol pumps in the forecourt). The shop contained a small heated cabinet and an oven associated with the sale of hot food for consumption off the premises. The Board decided that the use was not development, concluding that the sale of hot food for consumption off the premises was in this particular case subsidiary to the principal shop use; and that the use was of such a limited extent that it did not result in a material change of use of the shop.

## Assessment

### Development as Proposed

The subject of this referral relates to the provision of “food retail unit” within an existing vacant shop on the corner of Market Place and Lower Drumbiggie Road, Ennis. No internal drawings of the proposed development have been submitted, however the applicant has stated that the premises comprises of some 35sqm with an established retail use. It is stated that the outlet will prepare and sell sandwiches. No meat or other sandwich fillers would be cooked in the shop, and sandwiches will be heated on request. It is further stated that the premises will sell coffees and smoothies for consumption off the premises, with smoothies being mixed on premises. The outlet will also sell crepes and waffles, with the crepes being filled on premises. The crepe mix will be prepared off site. Both the crepes and waffles will be made on site, using a crepe / waffle maker. The premises will also contain a microwave oven, a coffee maker and a small grill for heating sandwiches.

As stated above, no floorplans have been submitted with the application; however from a review of the description of the subject, as outlined in the submitted application form, it would appear that the entirety of the public floor area of the unit would be dedicated to the sale of food for consumption off the premises.

The applicant’s referral specifically asks, “*whether the use of the retail premises at the corner of Market Place and North Drumbiggie Road, as a food retail unit selling food items for consumption off the premises is a change of use from a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the Planning and Development Regulations 2001, as amended, is or is not development and is or is not exempted development*”.

### Is or is not development

In the Planning and Development Act 2000, as amended, ‘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. Article 5 (1), Part 2 of the Planning and Development Regulations, 2001 (as amended) provides a definition of a “shop”. A “shop” means a structure used for inter alia the retail sale of goods or the sale of sandwiches or other food or of wine for consumption off the premises, **where the sale of such food or wine is subsidiary to the main retail use** and where the sale, display or service is principally to visiting members of the public. This definition does not include the sale of hot food for consumption off the premises except where the sale of food is subsidiary to the main retail use as described above.

The critical issue with respect to this referral is whether or not the change of use of a shop for the sale of sandwiches, crepes, waffles and coffee falls within the definition of a “shop” and is therefore exempted development or whether such change of use would constitute a material change of use of the unit. It can be seen from the comparable cases as outlined earlier in this report that a determining factor in previous Board decisions has been the scale and intensity of the use, and whether the sale of food was considered subsidiary to the principal retail use or not. Another key consideration in previous cases was whether the use generated material planning consequences. I would consider these to be the critical factors in this referral also.

In this particular case, the sale of primarily hot food (some of the sandwiches may be cold on purchase, as will the smoothies) for consumption off the premises, arises in respect of sales from an internal counter. Given the critical factors for consideration, I consider that the overall food offer is a material consideration in this case. It is a reasonable estimation to state that the overall area selling food for consumption off the premises (sandwiches, crepes, waffles), will take up all of the retail floorspace of the premises. Further it would appear that such sandwiches will be prepared on



request / as ordered, as opposed to prepared. Whether this constitutes development or not requires consideration of the definition of 'shop' in the PDR, 2001 (as amended), and by reference to the materiality of any planning implications arising from the food offer.

At the outset, I would note that there is no record of planning permission on this particular unit. I note that the permissions pertaining to the immediately adjoining units do not permit the sale of foods for consumption off the premises, however these permission do not cover the subject unit. As such, I do not consider that article 9(1)(a)(i) (i.e. restrictions on exemption arising from contravention of conditions attached to an extant permission) applies.

Having regard the details submitted it is considered that the proposal constitutes 'works' as defined by to section 2 of the Act. It is also considered that the proposal constitutes 'development' having regard to the definition of development which includes for making of any material change in the use of any structures. In respect of Section 4 (1)(H) of the Act, it is noted that while the section makes provision for development consisting for the carrying out of works for maintenance, improvement or other alterations of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures' to be considered exempted development, it does not expressly clarify that the internal alterations can result in a change of use and that this new use is exempted development. While section 4 (1) (h) of the Act has been considered, it is noted that no details have been submitted regarding any proposed external elevational changes.

Article 5 of PDR, 2001 (as amended) provides a definition of 'shop' wherein subsection (d) states: *"for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use ..."*

I consider that the sale of hot food for consumption off the premises in this particular case is not subsidiary to the main retail use of the shop due to the overall extent of floor area dedicated to the sale of hot and cold food with an apparent absence of any primary retail offering. While internal drawings have not been submitted, from the information submitted with the application, it would appear that the area given over to hot / cold food sales for consumption off the premises is typical of a self-contained take-away and on this basis, I consider that this aspect would not meet the subsidiary test.

Furthermore, the range of goods and services to be offered from the outlet, would suggest in my view, that the proposed outlet would operate as a takeaway outlet within what is currently a shop, and that would raise new material planning considerations. I consider that it would be a trip generator in and of itself and that it would generate custom which would be different to that of a shop, resulting in a material change of use.

On the basis of the foregoing, I consider that the change of use of the shop for the sale of hot food (toasted sandwiches, crepes, waffles) as well as cold food (smoothies sandwiches) for consumption off the premises in this instance, does not come within the definition of 'shop' per Article 5(d) and constitutes a separate take-away use that is not subsidiary to the shop and thus constitutes a material change of use, which is development. Further, there is the potential for such development to generate different material planning consequences relating primarily to traffic and noise.

#### **Is or is not exempted development**

Given the particulars of the subject case I do not consider that the change of use of part of the shop for the sale of hot food (toasted sandwiches, crepes, waffles) as well as cold food (smoothies sandwiches) for consumption off the premises comes within that which is provided for by Article 5(d). The development does not, therefore, come within the scope of the exemptions from the general obligation to obtain planning permission as provided for under the planning legislation.

#### **CONCLUSION**



In considering this referral I have had regard to the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended); to the planning history of the subject site and any relevant decision as made by An Bord Pleanála. Arising from this, I conclude that the sale of hot food (toasted sandwiches, crepes, waffles) as well as cold food (smoothies sandwiches) for consumption off the premises is not subsidiary or incidental to the shop use, but is more accurately described as a separate, takeaway use, which is a material change of use for which there is no exemption. Accordingly, I consider the change of use of part of the shop for the sale of the sale of hot food (toasted sandwiches, crepes, waffles) as well as cold food (smoothies sandwiches) for consumption off the premises for consumption off the premises is development and is not exempted development. I therefore consider that the question as posed by the applicant:

*Whether the use of the retail premises as a food retail unit selling food items for consumption off the premises is a change of use as a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the is Planning and Development Regulations 2001, as amended, or is not development and is / is not exempted development.*

Constitutes development which is not exempted development.

### **Recommendation**

Having regard to Article 10, of the Planning and Development Regulations, 2001, as amended.

WHEREAS a question has arisen as to Whether the use of the retail premises as a food retail unit selling food items for consumption off the premises is a change of use as a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the is Planning and Development Regulations 2001, as amended, or is not development and is / is not exempted development.

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

- a) The definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended by the Planning and Development Regulations 2005,
- b) Articles 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- c) An inspection of the site
- d) The previous use of the building

**AND WHEREAS Clare County Council has concluded that –**

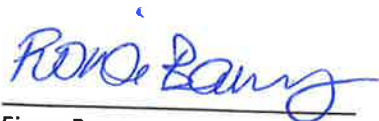
The use of the retail premises as a food retail unit selling food items for consumption off the premises is a change of use as a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the ~~is~~ Planning and Development Regulations 2001, as amended, <sup>which</sup> is development for the following reasons:

- (a) It is considered that the sale of hot and cold food for consumption off the premises in this particular case is not subsidiary to the existing and principal use of this unit as a 'shop' and,
- (b) The sale of hot and cold food for consumption off the premises results in a material change of use within this shop from ~~the~~ its existing retail use

### **NOW THEREFORE**

Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides ~~that~~ <sup>whether</sup> the use of the retail premises as a food retail unit selling food items for consumption off the premises is a change of use as a shop to a different use from that specified in Class 1 of Part 4 of the 2<sup>nd</sup> Schedule of the ~~is~~ Planning and Development Regulations 2001, as amended, <sup>which</sup> is development and is not exempted development.

Signed



Fiona Barry  
Executive Planner  
Date: 15<sup>th</sup> Nov. 2021

Signed



Garreth Ruane  
Senior Executive Planner  
15/11/21

**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 60
<b>Applicant Name</b>	Michele Tacconi
<b>Development Location</b>	The corner of Market Place and North Drumbiggle Road , Ennis
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No
<b>Description of the project (To include a site location map):</b>	
Use of a food retail unit selling food items for consumption off the premises	

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

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

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

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Lower River Shannon SAC 0012156	<p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>☐ Estuaries [1130]</p> <p>☐ Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>☐ *Coastal lagoons [1150]</p> <p>☐ Large shallow inlets and bays [1160]</p> <p>☐ Reefs [1170]</p> <p>☐ Perennial vegetation of stony banks [1220]</p> <p>☐ Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>☐ <i>Salicornia</i> and other annuals colonizing mud and sand [1310]</p> <p>☐ Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) [1330]</p> <p>☐ Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p>☐ <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>☐ *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p>Annex II species:</p> <p>☐ Freshwater Pearl Mussel <i>Margaritifera margaritifera</i> [1029]</p>	50m

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

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

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
	<input type="checkbox"/> Sea Lamprey <i>Petromyzon marinus</i> [1095] <input type="checkbox"/> Brook Lamprey <i>Lampetra planeri</i> [1096] <input type="checkbox"/> River Lamprey <i>Lampetra fluviatilis</i> [1099] <input type="checkbox"/> Atlantic Salmon <i>Salmo salar</i> (only in fresh water) [1106] <input type="checkbox"/> Bottlenose Dolphin <i>Tursiops truncatus</i> [1349] <input type="checkbox"/> Otter <i>Lutra lutra</i> [1355]	

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?	Yes
2	Impacts on terrestrial habitats & species.	Is the development within 1km of a European site with terrestrial based habitats or species?	Yes
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: Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs	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 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?	No impacts envisaged

**Table 3: Identification of potential impacts.**

<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b> <i>Please answer the following If the answer to question 1 in table 2 was "yes" or "unknown".</i> <i>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	No
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?	No
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?	No
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?	No
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?	No
1.7	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	No
1.8	Construction within a floodplain or within an area liable to flood (See <a href="http://www.floodmaps.ie">www.floodmaps.ie</a> , internal flood risk maps, County Development Plan SFRA and <a href="http://www.cframs.ie">www.cframs.ie</a> )	No
1.9	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	No
1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	No
1.11	Development within catchment of a European site of a scale or type which involves the production of an EIS	No
1.12	Consideration of effects in combination with existing development?	No
<b>2</b>	<b>Impacts on terrestrial habitats and species.</b> <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>	
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 o	No



	breeding period of any protected species?	
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	No
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?	No
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	No

**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

<b>Appropriate Assessment Screening Determination</b>	
<b>Planning File Reference</b>	R21 60
<b>Proposed Development</b>	The use of a food retail unit selling food items for consumption off the premises
<b>Development Location</b>	The corner of Market Place and North Drumbiggie Road, Ennis
<b>European sites within impact zone</b>	As per report
<b>Description of the project:</b>	
The use of a food retail unit selling food items for consumption off the premise	
<b>Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site</b>	
As per report	
<b>Describe how the project or plan (alone or in combination) is likely to affect the European site(s).</b>	
Water quality & general disturbance	
<b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b>	
Public sewer connection Distance from designation Minor nature of works	
<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>- NPWS website</li> <li>- Documents received as part of the planning application</li> </ul>	
<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>	✓
<b>(c) The potential for significant effects to European Site(s) cannot be ruled out<sup>4</sup></b>	

<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

<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>	Fiona Barry, Executive Planner
<b>Date</b>	15 Nov. 2021

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.

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	Michele Tacconi <hr/> 44 Fairgreen Square, Ballisodare, Co. Sligo <hr/> <hr/> <hr/>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	Leahy Planning Ltd <hr/> Mill Road House <hr/> Mill Road <hr/> Ennis <hr/> Co Clare <hr/>

**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 use of the retail premises at the corner of Market Place and North Drumbiggie Road, as a food  
Retail unit selling food items for consumption off the premises a change of use from use as a shopto a different use from that specified in class 1 of part 4 of the 2nd schedule of the Planning and  
Development Regulations as amended**(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.**The premises of some 35m2 has an established retail use, Mr Tacconi intends to use the premises  
as a food retail outlet.

This outlet will prepare and sell sandwiches. No meat or other sandwich fillers would be cooked in the shop.

Sandwiches will be heated on request. The premises will also sell coffees and smoothies for consumption off the premises.

Smoothies will be mixed within the premises. The premises will also sell crepes which will be filled in the premises.

The crepe mix will be prepared off site. A crepe maker will be used before the crepes are filled. A waffle

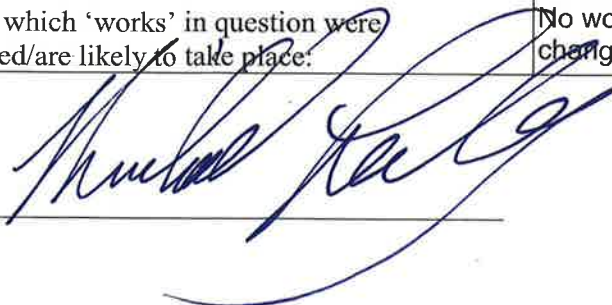
maker will also be used and waffles will be sold. In addition to a crepe maker and waffle maker, the premises will also contain  
a microwave oven, a coffee maker and a small grill for heating sandwiches.**(c) List of plans, drawings etc. submitted with this request for a declaration:***(Note: Please 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)*

Drawing TM 21 00 01 - 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:	   V95 N9KR
(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):	Proposed renter
(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>	Adrian Lynch Rose Cottage, Circular Road, Killkee, Co. Clare
(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? <i>If so please supply details:</i>	No
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	19/167 (surrounding lands) 05/21048
(h) Date on which 'works' in question were completed/are likely to take place:	No works are proposed. This referral is in respect of change of use

SIGNED:



DATE:

21<sup>st</sup> October 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: .....	

## Leahy Planning Ltd.

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

Tel No: 065-68 91254

Mobile: 087-795 8180

CRO No: 623263

Email address: [info@leahyplanning.com](mailto:info@leahyplanning.com)

Website: [www.leahyplanning.com](http://www.leahyplanning.com)

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

Planning Department  
Clare County Council  
New Road  
Ennis  
County Clare

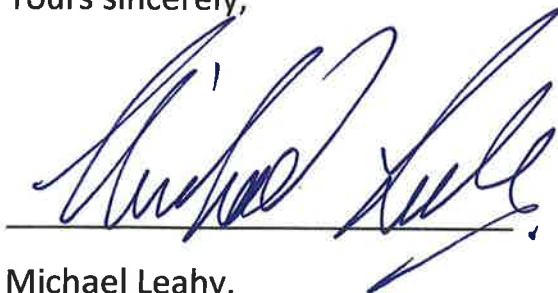
21st October 2021

Dear Sir/Madam,

### **RE: Request for Declaration on Development and Exempted Development**

Please find enclosed completed Request for Declaration on Development and Exempted Development form, along with 2 copies of site location map, 2 copies of letter from landlord and cheque for €80 being the relevant fee.

Yours sincerely,



Michael Leahy,

for Leahy Planning Ltd. on behalf of Mr Michele Tacconi

Rose Cottage  
Greene Road  
Kilkee  
Co Clare

I, Adrian Lynch am the owner of  
Market Place, Lower Market Street,  
ENNIS V95 N9KR. I AM AWARE  
of the request for change of  
USE AND I give Michele Tacconi  
Full PERMISSION AS MY TENANT.

Adrian Lynch



Planning Pack Map



CENTRE  
COORDINATES:  
ITM 533613,677311

PUBLISHED: 14/10/2021  
ORDER NO.: 50226594\_1

MAP SERIES: 1:1,000  
1:1,000  
MAP SHEETS: 4322-07  
4322-08

COMPILED AND PUBLISHED BY:  
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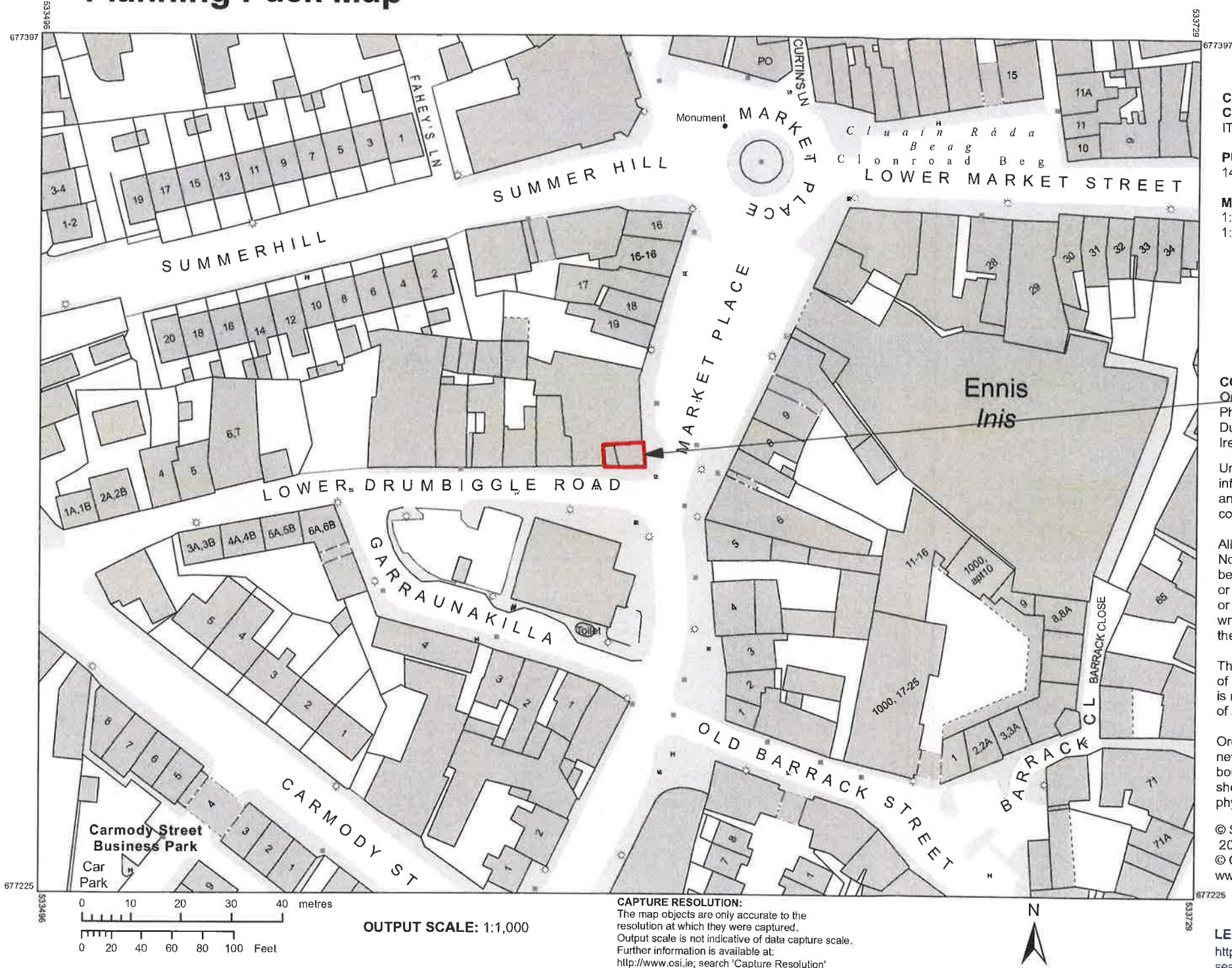
The representation on this map  
of a road, track or footpath  
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of a right of way.

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show ownership of  
physical features.

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

Site location of  
referral outlined in  
red.



OSi Store order #50226594

TM 21 00 1

OS map

1:1000

Purpose of Issue Section 5 referral.	status	Scales @ A3 1:1000	Project No. -	Originator Leahy Planning Ltd Mill Road House, Mill Road, Ennis, Co. Clare, Ireland. michael@leahyplanning.com	Project Food retail at the Market Ennis. The Market Food retail unit	Client Mr Michele Taconni	Layout Title Site Location
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Revised	Transmitted	Transmitted Set	Issue Date	Transmitted By	Status	Approved by
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Clare County Council  
Aras Contae an Chlair  
New Road  
Ennis  
Co Clare

22/10/2021 10:48:04

Receipt No. : LICASH/0/323833  
REPRINT

MICHELE TACCONI  
C/O LEAHY PLANNING LTD  
MILL ROAD HOUSE  
MILL ROAD  
ENNIS  
CO. CLARE  
R21-60

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

Total : 80.00 EUR

Tendered :  
CHEQUES

Change :

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