



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

Joseph Kearney  
c/o Cyril O'Reilly Design  
Parting Glass  
Quin  
Co. Clare

2<sup>nd</sup> March, 2021

**Section 5 referral Reference R21-7 – Joseph Kearney**

**Whether the replacement of a stone boundary wall, to be rebuilt in stone maximum 1.2m high, with access gates at Tulla Road, Roslevan, 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.

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

**Kieran O'Donnell**  
**Administrative Officer**  
**Planning Department**  
**Economic Development Directorate**

**An Roinn Pleanála**  
**An Stiúirtheacht 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.: R21-7**



**Section 5 referral Reference R21-7**

**Whether the replacement of a stone boundary wall, to be rebuilt in stone maximum 1.2m high, with access gates at Tulla Road, Roslevan, Ennis Co. Clare is development and if so, is it exempted development.**

**AND WHEREAS, Joseph Kearney** 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) The provision of Schedule 2, Part 1, Class 9 and Class 11 of the Planning and Development Regulations 2001 (as amended)
- (c) The works as indicated in submitted documents from the referrer.

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

The stated works are exempted development having regard to the provision of Schedule 2, Part 1, Class 9 and Class 11 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 replacement of a stone boundary wall, to be rebuilt in stone maximum 1.2m high, with access gates at Tulla Road, Roslevan, Ennis Co. Clare constitutes development which is exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

  
**Kieran O'Donnell**  
**Administrative Officer**  
**Planning Department**  
**Economic Development Directorate**

**2<sup>nd</sup> March, 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:

77223,

Reference Number:

R21-7

Date Referral Received:

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

Name of Applicant:

Joseph Kearney

Location of works in question:

Tulla Road, Roslevan, Ennis, Co. Clare

**Section 5 referral Reference R21-7 – Joseph Kearney**

**Whether the replacement of a stone boundary wall, to be rebuilt in stone maximum 1.2m high, with access gates at Tulla Road, Roslevan, 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) The provision of Schedule 2, Part 1, Class 9 and Class 11 of the Planning and Development Regulations 2001 (as amended)
- (c) The works as indicated in submitted documents from the referrer.

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

The stated works are exempted development having regard to the provision of Schedule 2, Part 1, Class 9 and Class 11 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 Kieran O'Donnell, Administrative Officer, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Kieran O'Donnell, Administrative Officer, hereby declare that the replacement of a stone boundary wall, to be rebuilt in stone maximum 1.2m high, with access gates at Tulla Road, Roslevan, Ennis Co. Clare is considered development which is exempted development

Signed:

  
KIERAN O'DONNELL  
ADMINISTRATIVE OFFICER

Date:

2<sup>nd</sup> March 2021

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

<b>FILE REF:</b>	R21/7
<b>APPLICANT(S):</b>	Joseph Kearney
<b>REFERENCE:</b>	Whether the replacement of a stone boundary wall, to be rebuilt in stone maximum 1.2m high, with access gates at Tulla Road, Roslevan, Ennis Co. Clare is development and if so, is it exempted development.
<b>LOCATION:</b>	Roslevan, Tulla Road, Ennis.
<b>DUE DATE:</b>	4 <sup>th</sup> March 2021.

**Site Location**

This site is located within the settlement of Ennis and is accessed via the Tulla Road. The site is to the north of the Roslevan commercial area and adjacent to the Cluain Ros Leamhan housing development. The wall that it is proposed to rebuild forms part of the boundary walls of the former 'Roslevan house' the ruins of which are located here. It is proposed to construct the new wall along the southern and eastern boundaries of the site on which the ruins of Roslevan house are located.



Figure 1; Wall to be replaced.



Figure 2; Wall to be replaced.



Figure 3; Wall to be replaced.

### **Planning 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 Mr Cyril O'Reilly on behalf of Mr Joseph Kearney.

The applicant is seeking a Section 5 Declaration as to; Whether the replacement of a stone boundary wall rebuilt in stone maximum 1.2m high, with access gates to be a maximum of 1.8m in height at Tulla Road, Roslevan, Ennis Co. Clare is development and if so, is it exempted development.

### **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.*

In this case the proposed replacement of a stone boundary wall rebuilt in stone maximum 1.2m high, with access gates to be a maximum of 1.8m high at Tulla Road, Roslevan, Ennis Co. Clare is development.

Consideration has also been given to Schedule 2, Part 1, Class 9 of the Planning and Development Regulations 2001 (as amended) which provides for the following class of exempted development:

#### **CLASS 9**

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.	The height of any such structure shall not exceed 2 metres
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Consideration has also been given to Schedule 2, Part 1, Class 11 of the Planning and Development Regulations 2001 (as amended) which provides for the following class of exempted development:

## CLASS 11

The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of —

- (a) any fence (not being a hoarding or sheet metal fence), or
- (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.

2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered

The proposed works are exempted development in accordance with Classes 9 and 11 of Schedule 2, Part 1, of the Planning and Development Regulations 2001 (as amended)

Part 9 of the Planning and Development Regulations 2001 (as amended), 'Restrictions on Exempted Development' have also been considered and it is considered that none of the restrictions on exempted development apply in this case.

### Assessment

#### **Basis of Referral**

The applicant is seeking a Section 5 Declaration as to whether the replacement of a stone boundary wall rebuilt in stone maximum 1.2m high, with access gates with a maximum height of 1.8m at Tulla Road, Roslevan, Ennis Co. Clare is development and if so, is it exempted development.

#### **Particulars of the Development**

The proposed works include: The replacement of a stone boundary wall, to be rebuilt in stone, with a maximum height of 1.2m, with access gates to be 4.25m wide and a maximum of 1.8m high.

#### **Conclusion**

Having regard to the above, I consider that the stated works, being:

The replacement of a stone boundary wall rebuilt in stone maximum 1.2m high, with access gates with a maximum height of 1.8m at Tulla Road, Roslevan, Ennis Co. Clare, constitutes development within the meaning of the Planning and Development Act 2000 (as amended) and benefit from exempted development status under Schedule 2, Part 1, Class 9 and Class 11 of the Planning and Development Regulations 2001 (as amended)



## Recommendation

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

Whether the replacement of a stone boundary wall rebuilt in stone maximum 1.2m high, with access gates to be a maximum of 1.8m in height at Tulla Road, Roslevan, 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) The provision of Schedule 2, Part 1, Class 9 and Class 11 of the Planning and Development Regulations 2001 (as amended)
- (c) The works as indicated in submitted documents from the referrer.

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

The stated works are exempted development having regard to the provision of Schedule 2, Part 1, Class 9 and Class 11 of the Planning and Development Regulations 2001 (as amended).

Ane-marie Hennelly  
AnneMarie Hennelly

Executive Planner

Date: 01-03-21

Hb  
A/SP


01-03-21.

Noted  
[Signature]

**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>	R21-7
<b>Applicant Name</b>	Cyril O'Reilly on behalf of Joseph Kearney
<b>Development Location</b>	Roslevan House, Roslevan, Ennis Co. Clare.
<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>	
<p>Whether the replacement of a stone boundary wall rebuilt in stone maximum 1.2m high, with access gates at Tulla Road, Roslevan, Ennis Co. Clare is development and if so is it exempted development.</p> 	
<b>Figure 1: Approx. location of site.</b>	

**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.

Having regard to the nature of the proposed development, which relates to the replacement of an existing wall with a new wall, on a zoned and serviced site in the centre of an existing settlement, I consider the likely zone of impact of the proposed development to be no greater than 1k.

**Table 2 (a): European Sites within 1k of Applicant Site**

There are no European Sites within 1k of the subject site,

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<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.

Appropriate Assessment Screening Determination	
Planning File Reference	R21-7
Proposed Development	The replacement of a stone boundary wall rebuilt in stone maximum 1.2m high, with access gates at Tulla Road, Roslevan, Ennis Co. Clare
Development Location	Roslevan, Ennis
European sites within impact zone	None
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
N/A – not likely effects	
Documentation reviewed for making this statement	
<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 referral</li> </ul>	
Conclusion of assessment; There is no potential for significant effects to European Sites.	
Completed By	Anne-Marie Hennelly
Date	01-03-21

*A Hennelly 01-03-21*



COMHAIRLE | CLARE  
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Joseph Kearney  
c/o Cyril O'Reilly Design  
Parting Glass  
Quin  
Co. Clare

8<sup>th</sup> February 2021

**Section 5 referral Reference R21-7 – Joseph Kearney**

**Whether the replacement of a stone boundary wall rebuilt in stone maximum 1.2m high with access gates at Tulla Road, Roslevan, Ennis, Co. Clare is considered 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 Stiúthóireacht 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	JOSEPH KEARNEY TULLA ROAD ROSLEVAN ENNIS CO. CLARE
(b) Telephone No.:	065 6825990 026-360 8590
(c) Email Address:	CORREILLY DESIGN @ GMAIL -CO1
(d) Agent's Name and address:	CYRIL O'REILLY DESIGN PARTING GLASS QUIN CO. CLARE V95 TW40

## 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?

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

IS THE REPLACEMENT OF A STONE BOUNDARY  
WALL REBUILT IN STONE MAXIMUM 1.2M. HIGH  
WITH ACCESS GATES (ALL AS SHOWN ON  
THE ATTACHMENTS) DEVELOPMENT AND  
IF SO IS IT EXEMPT. DEVELOPMENT

### (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 LAYOUT PLAN / LOCATION MAP  
PHOTOGRAPHS APPLICATION FORM  
CHEQUE

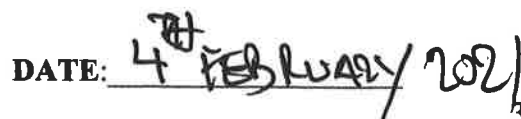
**3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT**

(a) Postal Address of the Property/Site/Building for which the declaration sought:	TULLA ROAD ROSLERAJ 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):	OWNER
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	/
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	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>	NO
(h) Date on which 'works' in question were completed/are likely to take place:	APRIL 2021

SIGNED: \_\_\_\_\_



DATE: \_\_\_\_\_





### **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:.....			

①

LOCATION of GATE opening



②



3







# SITE MAP

Scale 1:1,000 @ A3

REPLACEMENT WALL & GATE  
AT TULLA ROAD ROSLEVAN ENNIS FOR JOSEPH KEARNEY/  
LOCATION MAP. © OSI & GOVERNMENT OF IRELAND  
OSI REFERENCE A00011481



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

05/02/2021 10:54:34

Receipt No. : L1CASH/0/312214

REPRINT

JOSEPH KEARNEY  
C/O CYRIL O'REILLY DESIGN  
PARTING GLASS  
QUIN  
CO. CLARE

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

Total :

80.00 EUR

Tendered :  
CHEQUES

80.00

Change :

0.00

Issued By : L1CASH - DEIRDRE FRENCH  
From : MAIN CASH OFFICE LODGEMENT AREA  
Vat reg No.0033043E