



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Michael Nugent
Michael Nugent & Co. Solicitors
6 Sandford Road
Ranelagh
Dublin 6**

RL 5660 3320 1IE

13th May, 2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

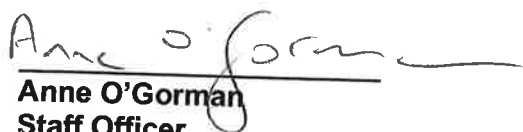
A Chara,

I refer to your application received on 24th March 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

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

Mise, le meas


Anne O'Gorman

**Staff Officer
Planning Department
Economic Development Directorate**

C.c. William Coughlan, Heathmount, Cratloe, Co. Clare

C.c. Maeve Fehilly & Cathal Crowe, Clonard, Westbury, Athlunkard, Co. Clare

**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**





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Maeve Fehilly & Cathal Crowe
Clonard
Westbury
Athlunkard
Co. Clare

RL 5660 3319 2 IE

13th May 2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

A Chairde,

Please find enclosed a copy of the decision of the Planning Authority to the Section 5 referral as outlines above.

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





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

William Coughlan
Heathmount
Cratloe
Co. Clare

RL 5660 3318 91E

13th May 2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

A Chara,

Please find enclosed a copy of the decision of the Planning Authority to the Section 5 referral as outlines above.

Mise, le meas


Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrtóireacht 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.: R22-22



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R22-22

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

AND WHEREAS, Michael Nugent 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) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1), Article 8C and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) The details and particulars submitted with the referral

And whereas Clare County Council has concluded:

- (a) The planting of trees and shrubs does not constitute development,
- (b) The construction of an earthen embankment constitutes both 'works' and 'development' as set out in the Planning & Development Act, 2000, as amended,
- (c) The embankment as constructed does not facilitate works relating to the drainage or alteration of watercourses and therefore the exempted development provisions under Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, are not applicable,
- (d) The embankment as constructed does not constitute land reclamation works, the re-contouring of land or the infilling of soil and as such does not fall within the exempted development provisions under Article 8C of the Planning and Development Regulations, 2001, as amended,
- (e) There are no other exemptions under the Planning and Development Act 2000, as amended, or the Planning and Development Regulations, 2001, as amended, to which the subject embankment works can be deemed to constitute exempted development.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the carrying out of pre-planning construction works at Heathmount, Cratloe, Co. Clare constitutes development and is not exempted development, as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in dark ink, appearing to read 'Anne O'Gorman', is written over a horizontal line.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

13th May, 2022

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: 79774
Reference Number: R22-22
Date Referral Received: 24th March 2022
Further Information Received: 26th April 2022
Name of Applicant: Michael Nugent
Location of works in question: Heathmount, Cratloe, Co. Clare

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1), Article 8C and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) The details and particulars submitted with the referral

AND WHEREAS Clare County Council has concluded:

- (a) The planting of trees and shrubs does not constitute development,
- (b) The construction of an earthen embankment constitutes both 'works' and 'development' as set out in the Planning & Development Act, 2000, as amended,
- (c) The embankment as constructed does not facilitate works relating to the drainage or alteration of watercourses and therefore the exempted development provisions under Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, are not applicable,
- (d) The embankment as constructed does not constitute land reclamation works, the re-contouring of land or the infilling of soil and as such does not fall within the exempted

- development provisions under Article 8C of the Planning and Development Regulations, 2001, as amended,
- (e) There are no other exemptions under the Planning and Development Act 2000, as amended, or the Planning and Development Regulations, 2001, as amended, to which the subject embankment works can be deemed to constitute exempted development.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to 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 carrying out of pre-planning construction works at Heathmount, Cratloe, Co. Clare constitutes development and is not exempted development.

Signed:


KIERAN O'DONNELL
ADMINISTRATIVE OFFICER *A.O.*

Date: 13th May, 2022

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF:	R22-22
APPLICANT(S):	Michael Nugent
REFERENCE:	Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to the development and if so, are they exempted development?
LOCATION:	Heathmount, Cratloe, Co. Clare
DUE DATE:	16 th May 2022

Site Location

The (3 acres) subject site is located in an upland rural location in the townland of Heathmount and is situated to the east of Gallows Hill road. The site is located off a scenic route to the west of Woodcock Hill Bog. At present the site is covered in heathers and gorse. There is also evidence of site disturbance, clearance and the creation of embankments and planting. The subject site rises from the road (158m) to the rear of the site (179m), beyond which the land continues to rise to 196m.

Recent Onsite Planning History

22-50 – Planning Permission is being sought by Maeve Fehilly and Cathal Crowe to construct private dwelling house, detached garage, wastewater treatment system and all associated site works. A request for further information has been sought on this application. The further information requested includes the following:

1. *In order to confirm site suitability to accommodate the proposed wastewater treatment system, the following further information is required:*
 - (a) *The proposed location of the water treatment system has a slope of approximately 1:5, which does not meet the standards as set out in the Environmental Protection Agency's Code of Practice which requires a natural slope of 1:8 or less within the proposed infiltration/treatment area. The applicant is therefore requested to submit a site layout plan (and cross section) of a revised location for the infiltration/treatment area with a slope of 1:8 or less as per the EPA Guidelines. You are advised that depending on the area chosen it may be necessary to carry out revised percolation tests and a trial hole evaluation as they are required to be adjacent to, but not within the proposed percolation area (in the event that further tests are proposed you are requested to notify the Planning Authority by giving ten working days notice).*
 - (b) *Clear photographs shall be submitted of the percolation test holes to show the soil horizon details and the staff gauge showing the height of the water table.*
2. *With regard to the proposed water supply, it is noted that the application form states that there will be a new connection to a private well, however the site characterisation form indicates a connection to the public mains water supply. You are requested to clarify the source of the proposed water supply to serve the dwelling. If a well is proposed, the location shall be identified on the site layout plan and shall be taken into consideration when locating the wastewater treatment plant to ensure that it is in compliance with EPA separation distances.*
3. (a) *It is noted that the gradient of the proposed driveway is steep and clarification is required as to whether it meets Section 3.1 of Part M of the Building Regulations. Please submit revised drawings in*

this regard. Please also outline details of any works required along the driveway and whether any embankments or retaining walls are required.

(b) Please submit drawings and cross-sections of the embankment along the northeastern boundary of the site.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Michael Nugent. He has stated that he has no legal interest in the site.

The applicant is seeking a Section 5 Declaration as to whether pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare are considered to be development and if so, if they are exempted development.

Planning Policy

Clare County Development Plan 2017-2023, as varied:

CDP 3.11 New Single Houses in the Countryside within the 'Areas of Special Control'

It is an objective of the Development Plan:

Within the parts of the countryside within the 'Areas of Special Control' i.e.:

- (i) Areas Under Strong Urban Pressure
- (ii) Heritage Landscape
- (iii) Sites accessed from Scenic Routes (See Chapter 13 and Appendix 5)

to permit a new single house for the permanent occupation of an applicant who falls within either of the **Categories A or B or C** below and meets the necessary criteria.

A – Local Rural Persons

B – Persons Working Full time or Part-time in Rural Areas

C – Exceptional Health and/or Family Circumstances

Habitat Area HH3 Wet Heath

The subject site is within an area considered to be of high ecological value in a local context.

A 2008 South East Clare Habitat Mapping survey notes the area as being a *very good example of a Wet Heath habitat HH3, quite species diverse. Small areas of Dry Siliceous Heath HH1 occur on the thin soils at the higher altitudes of the site and also to the south of the site. Purple Moor Grass (Molinia caerulea) and Deergrass (Trichophorum cespitosum) are absent at these locations. Dry Neutral Acid Grassland GS3 occurs in the margins of the site with Wet grassland GS4 and Heath habitats occurring to the north and west of the site. Conifer Plantations WD4 are a prominent feature in the surrounding landscape. A good variety of invertebrates were recorded at the site, including springtails, moths and spiders. Deer are known to be present in the area and Meadow Pipits (Anthus pratensis) were sighted during the survey.*

Species List for Wet Heath HH3

Species (<i>Latin name</i>)	Species (common name)	DAFOR Scale
<i>Calluna vulgaris</i>	Ling Heather	Dominant
<i>Cladonia</i> sp.	Cladonia lichen	Frequent
<i>Erica cinerea</i>	Bell Heather	Occasional (frequent on lower slopes)
<i>Erica tetralix</i>	Cross-leaved Heath	Abundant
<i>Juncus squarrosus</i>	Heath Rush	Frequent
<i>Molinia caerulea</i>	Purple Moor Grass	Frequent
<i>Potentilla erecta</i>	Tormentil	Occasional
<i>Sphagnum</i> spp.	Sphagnum moss	Frequent
<i>Trichophorum cespitosum</i>	Deergrass	Abundant
<i>Ulex europaeus</i>	Common Gorse	Occasional

Western Corridor Working Landscape

The subject site is within the *Western Corridor Working Landscape*. Therefore Development Plan Objective CDP 13.3 is applicable in this instance.

It is an objective of the development plan:

- a) To permit development in these areas that will sustain economic activity, and enhance social well-being and quality of life - subject to conformity with all other relevant provisions of the plan and the availability and protection of resources;
- b) That selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design, are directed towards minimising visual impact;
- c) That particular regard should be given to avoiding intrusions on scenic routes and on ridges or shorelines. Developments in these areas will be required to demonstrate:
 - (i) That the site has been selected to avoid visually prominent locations;
 - (ii) That site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, public amenities and roads;
 - (iii) That design for buildings and structures reduce visual impact through careful choice of form, finishes and colours and that any site works seek to reduce visual impact of the development.

Scenic Route

The subject site is located off a designated Scenic Route, therefore Development Plan Objective CDP 13.7 is applicable in this instance.

It is an objective of Clare County Council:

- a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
- b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;
- c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

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.

Section 4 (1) (a) of the Planning and Development Act 2000, as amended:

“development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used”

Planning & Development Regulations, 2001, as amended

Schedule 2 - Part 3 – Exempted Development – Rural – Minor works and structures

Class 3 -

Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works.

Part 2, Article 8C.

Land reclamation works consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to the development and if so, if it is exempted development.

Particulars of the Development

There is currently a live planning application on the subject site to construct private dwelling house, detached garage, wastewater treatment system and all associated site works. A request for further information has been sought on this application.

The pre-application development works that are the subject of this Section 5 Declaration include:

1. Removal of a large area of natural bog and heathland causing extreme ecological damage to a section of rare blanket bog adjacent to Woodcock Hill National Heritage Site.
2. Construction of a 3m high earth and stone bank on the north-east boundary.
3. Construction of a 1.5m high earth and stone bank on the road boundary of the neighbouring land.
4. Planting of approx. 120 trees and shrub on a blanket bog changing the natural ecological habitat of the site.

The submission also notes that the above was carried out in the first half of 2021 as pre-planning site construction works, and not for agricultural or arterial drainage purposes. The submission included a site location map, photographs and extracts from Planning Application P22-50.

Assessment

I refer to the previous planning report in which further information was sought from the various parties with respect to this declaration.

No response has been received from the two landowners.

The referral party (Michael Nugent) has responded to the FI request as sought and the following is noted from same:

- It is stated that without the landowners consent to access the lands it is not possible to produce detailed drawings of the embankments.
- Reference is made to the details on Pl. Ref 22/50 which shows the location of the embankment and photographs of its height – it is stated that these works are evidence of the significant extent/scale of the embankments which should allow for a determination of the Section 5.
- It is also stated that the planning documents make reference to a height in excess of 3m and 1.5m.
- Long range photographs of the site have been submitted
- Regarding the material used in the embankments it is stated that it appears to consist of materials excavated from the site and also materials imported from the site.
- The works do not appear to be related to the construction of any drain, gully or other watercourse.
- It is further reiterated by the applicant that the works as carried out constitute development and are not exempted development, being effectively to assist in the screening of the dwelling as sought for under Pl. ref 22/50

Planning Exemption Assessment

I have assessed the referral party's response to the further information request.

'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.

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.

It is clear to me that the works (embankment) as carried out constitute both 'works' and 'development' and the main question is whether the embankment constitutes exempted development.

In this regard I note the various provisions of the Act and Regulations. Section 4 of the Act includes for *"development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used"*. It is noted that the subject site is generally used for agricultural purposes though I note that a planning application has been made on the subject site where further information has been sought. From examination of the landscaping plan submitted with the application it is noted that the works were carried out 'with the intention of screening the proposed dwelling from the approach road from the northeast and to decrease wind exposure on site'. It would appear therefore that the subject works do not fall within this particular provision of the Act as they do not appear to be related to agricultural development specifically but rather to assist in the screening of the proposed development.

Schedule 2, Part 3 – Exempted Development (Rural) provides for works relating to the construction or maintenance of any gully, drain etc and the making of any embankments in connection with these works. Again it is unclear as to whether the works as carried out specifically relate to this matter based on the details submitted with the planning application. I note that this particular provision of the regulations does not have a condition or limitation restricting the height of any embankment.

I note also the restrictions on exempted development under Article 9 though on examination of same I do not consider that these are applicable though due to the location of the site off a Scenic Route it is arguable that Article 9 (vi) may apply. The site is not within a designated NHA, being 1.3km from the Woodcockhill Bog NHA and as such it is not considered that the proposal would impact directly on this designation and I consider that the provisions of Article 9 (viiC) do not apply though I note the referral parties concerns in this regard.

Article 8C of the Regulations outlines that *'Land reclamation works consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development'*. There is no definition of 're-contouring' in the regulations however guidance from the Dept of Agriculture (Environmental Impact Assessment(Agriculture) Regulations Information Leaflet for Farmers) outlines that:

Re-contouring of land covers, for example, levelling off hills or infilling of hollows (by removing or shifting earth or rock that originates from within the farm-holding).

It is not clear that this particular provision of the regulations applies in this instance as the works involve the construction of an embankment and not recontouring as set out above (levelling of hills or infilling of hollows).

In the absence of any further details from the landowner in respect of this declaration, I consider that there is sufficient information available to make a determination on this case and based on the provisions of the act/regulations the height of the embankment does not appear to be an inhibiting factor in assessing this.

It is my view that the works as outlined and based on inspection of the site do not fall within the exempted development provisions of the Act or Regulations.

The proposal could potentially fall under Schedule 2, Part 3 – Exempted Development (Rural) which provides for exemptions for works relating to the construction or maintenance of any gully, drain etc and the making of any embankments in connection with these works. The embankment (from examination of the planning documentation) was not constructed for drainage works but to assist in the screening of the proposed dwelling. Similarly under Article 8C it does not appear to me that the works fall under the 're-contouring' of land or infilling of soil and as such this exemption does not apply.

There are no other exemptions under the Act or Regulations which could facilitate this proposal and as such it is considered that the declaration should issue advising of same as follows:

WHEREAS a question has arisen as to whether pre-planning construction works carried out at Heathmount, Cratloe, Co. Clare constitute development and if so are they exempted development.


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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1), Article 8C and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) The details and particulars submitted with the referral

AND WHEREAS Clare County Council, has concluded:

- (a) The planting of trees and shrubs does not constitute development,
- (b) The construction of an earthen embankment constitutes both 'works' and 'development' as set out in the Planning & Development Act, 2000, as amended,
- (c) The embankment as constructed does not facilitate works relating to the drainage or alteration of watercourses and therefore the exempted development provisions under Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, are not applicable,
- (d) The embankment as constructed does not constitute land reclamation works, the re-contouring of land or the infilling of soil and as such does not fall within the exempted development provisions under Article 8C of the Planning and Development Regulations, 2001, as amended,
- (e) There are no other exemptions under the Planning and Development Act 2000, as amended, or the Planning and Development Regulations, 2001, as amended, to which the subject embankment works can be deemed to constitute exempted development.

NOW THEREFORE Clare County Council in exercise of the powers conferred on it by section 5(2) of the Planning and Development Act, 2000, as amended, hereby decides that the carrying out of pre-planning construction works at Heathmount, Cratloe, Co. Clare constitutes development and is not exempted development.



Garreth Ruane
Senior Executive Planner
13/05/2022



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Michael Nugent
Michael Nugent & Co. Solicitors
6 Sandford Road
Ranelagh
Dublin 6**

26/04/2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

A Chara,

I refer to your application received on 24th March 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

I acknowledge receipt of your correspondence on the 26th April 2022, responding to the Planning Authority's request for further information.

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

Mise, le meas


Tadhg Holmes
Planning Department
Economic Development Directorate

An Roinn Pleanála
An 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



Tadhg Holmes

From: Tadhg Holmes
Sent: Friday 6 May 2022 11:18
To: 'Cathal Crowe'
Subject: RE: R22-22
Attachments: R22-22 FI Received.pdf

Good morning Cathal

I acknowledge receipt of your email requesting a copy of the Further Information submitted in relation to Section 5 application R22-22.

Please find attached a scanned copy of same.

Kind regards

Tadhg

Tadhg Holmes

Clerical Officer

Planning Department, Economic Development Directorate

Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2

T: 065 6846212 | **E:** tholmes@clarecoco.ie | **W:** www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

From: Cathal Crowe <
Sent: Friday 6 May 2022 11:02
To: Tadhg Holmes <tholmes@clarecoco.ie>
Subject: R22-22

Dear Tadhg,

I would be most grateful if you could please forward me the additional correspondence that has been submitted relating to R22-22

Many thanks
Cathal Crowe

MICHAEL NUGENT & CO.

Solicitors

Commissioners for Oaths

Michael Nugent, B.A., Mod.
Anna Rybalchenko, B.A.

6 Sandford Road,
Ranelagh,
Dublin 6,
D06 A2P4,
Ireland.

Tel: +353 (1) 497 4888
Fax: +353 (1) 497 4828
info@nugentsolicitors.com



23 April 2022

Ms Anne O'Gorman
Planning Department
Clare County Council
New Road,
Ennis,
Co. Clare.

Re: Section 5 Referral Reference No. R22-22 - Michael Nugent.
Are pre-planning site construction works carried out at
Heathmount, Cratloe, Co. Clare considered to be development and
if so are they exempted development?

Dear Ms O'Gorman,

I reply to your letter dated 19th April 2022 requesting further information as follows:

- 1. Drawings and cross sections of the embankment as constructed to include the finished level and details of the height of same.***

The Council will be aware that without the landowner's consent to access the land it is not possible for me to produce detailed drawings of both embankments as they have been constructed on site. However, I note the Council has sought confirmation of the same information from the landowner who should be able to provide satisfactory clarification to the request.

The Council is also directed to planning application P2250 (the landowner and applicant being one and the same) which clearly documents and illustrates the subject works including the intended purpose, location and height of each embankment.

A photograph was submitted as part of planning submission P2250 that was probably intended to demonstrate the height of the newly constructed embankment as a testament to its potential effectiveness in screening the proposed new house from the public road. What it also does is to demonstrate the sheer scale and inappropriateness of what is only one of two embankments constructed on a blanket bog in a manner that caused severe ecological damage.

Although it is possible to provide height estimations, as shown in the image overleaf, I submit that the precise measurements and construction method of each embankment is largely irrelevant. The photograph alone is surely sufficient evidence of the fact that these embankments constitute substantial site development works which were carried out without the benefit of planning permission.

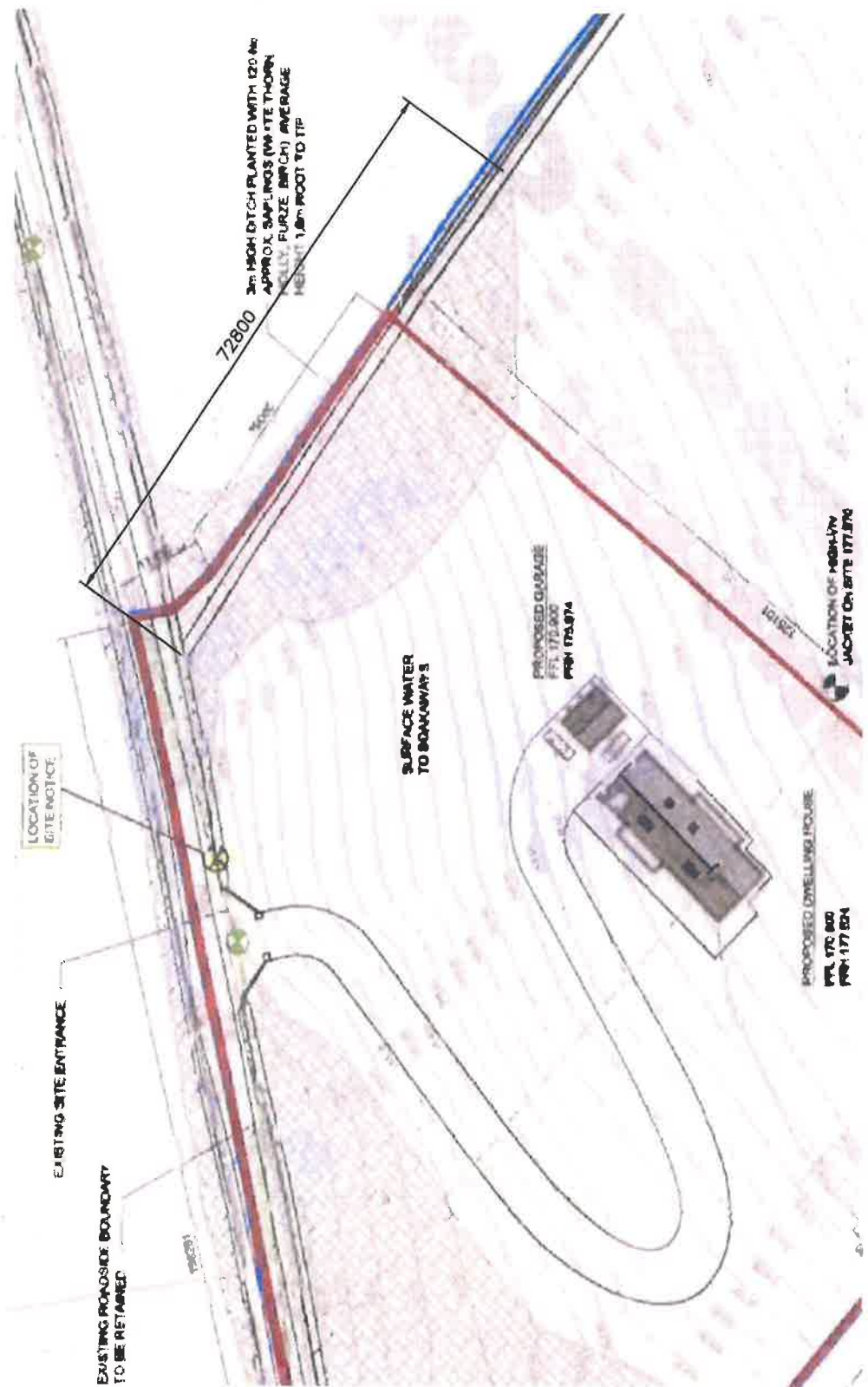
I submit that an examination of the documents submitted with P2250 or a visit to the site should be enough for the Council to make a quick determination of this Section 5 Referral.

See photograph 1 below, showing the estimated height of the larger of the two embankments.

See Site Layout Plan below, showing the estimated length of the larger of the two embankments.



Photograph 1: Estimated Height of Larger of Two
Embankments
Taken from Planning Application P.2250



Site Layout Plan: Estimated Length of Larger of Two Embankments
Taken from Planning Application P.2250

2. **Details of the ground levels as previously existed on this site prior to works taking place on site.**

Again, for the reasons outlined at point 1 above I am not in a position to provide details of the ground levels as previously existed on this site prior to construction works taking place. I can however direct the Council's attention to drawings and documents submitted as part of planning submission P2250.

Additionally, I submit that this precise information is not required to determine this submission as the applicants themselves clearly state in their own planning application that they constructed two embankments; acknowledging one to be in excess of 3m in height and one in excess of 1.5m in height. It is clear that at least some of the material for these embankments was gouged from the site.

Not only are both embankments starkly visible on the public approach road to the site, but they are also clearly visible from Gallows Hill, from WoodCock Hill and also from across the valley in the direction of Sixmilebridge (see **photograph 2 and map 1** below).

In this context, it is submitted that precise information relating to previous ground levels would seem unnecessary.



Photograph 2: Distant View of Larger of Two Embankments.

Map 1: Over 2km in Distance from Location Where the Photograph Was Taken to Location of Subject Site.

3. **Clarification of the type of material used in the construction of the embankments and whether this is inert material or otherwise.**

Again, without first-hand information about the manner in which these site development works were carried out, or the ability to carry out core drilling, I cannot provide definitive clarification of the type of material used in the construction of the embankments either on the surface or in the core. However, based on visual inspection and the information supplied by the applicants themselves in P2250 they would appear to be made of stone and compacted earth.

Given the large area of exposed ground (see **photographs 3 and 4** below) material for the embankments was clearly gouged from the site but some of the material was also clearly imported from elsewhere.



Photograph 3: Evidence of Site Clearance Works.



Photograph 4: Evidence of Site Clearance Works.

- 4. Clarification if the works as carried out relate to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, or the widening or deepening of watercourses.**

These embankments were not constructed for any of the purposes listed above. P2250 formally documents that the embankments were constructed for a single, specific purpose; being to facilitate a future planning application on the site by screening views of the proposed dwelling house from the public approach road to the site. It would be disingenuous on anyone's part to try to suggest at this stage an alternative purpose.

Planning Precedent:

I further submit that:

- Planning Application P2250 clearly and formally documents that substantial development works were undertaken at Heathmount in the early part of 2021.
- These works were undertaken without the benefit of planning permission yet no referral was made to the Enforcement Office during consideration of the application.
- The lack of enforcement might be interpreted as the Council considering the works not to be development or to be exempted development.
- This Section 5 seeks clarity from the Planning Department on that precise point.
- This application has the potential to set an important planning precedent.

Sufficiency of information and documentation:

Given the extent of the information already at the disposal of the planning authority, it should be possible for this matter to be addressed quickly.

The available documentation and the sequence of events suggest:

- a. The applicants of P2250 wished to apply for planning permission for a dwelling house in a rural location designated in the Clare County Development Plan as a scenic route. Knowing the application would most likely not succeed, they set about altering the nature of the subject site with a view to making the proposed new house less intrusive on the receiving landscape.
- b. The applicants acknowledge that both embankments were built in advance of lodging their application as part of a calculated strategy to improve the chances of a successful planning outcome.
- c. The size of the embankments is not in question - nor is the visual impact of both the embankments and site clearance works over a wide geographical area.

A further issue arises in relation to the validity of the current planning application P2250.

No planning submission was sought for the works of which I complain, and so the applicants did not advertise their intention to carry out these works and no-one was afforded the opportunity to object. When P2250 was eventually lodged, the applicants failed to acknowledge any of these works already carried out on site either on their site notice or in their newspaper advertisement. As part of a Further Information Request, detailed drawings of the embankments as built have been requested. As these drawings are of works never previously acknowledged as part of P2250 these embankments should represent 'significant additional data' that will require re-publication of the planning permission application in an approved newspaper.

In conclusion, I submit that this Section 5 application is important, because should the Council consider these works not to be development or to be exempted development then an extremely dangerous precedent will be set. How could any Enforcement Office or Planning Department in any Local Authority in Ireland operate effectively in the future if a precedent setting exception to planning law is made in this instance? It would effectively give a green light to any land owner to go ahead and carry out environmentally damaging works to any number of vulnerable sites with impunity. If this activity is not stopped, then any planning applicant facing a potential impediment to his application (such as a scenic landscape) could simply alter, remove or destroy it to facilitate his planning application. The message would surely be; act illegally now and do not worry about consequences later because nothing will happen.

Planning Application P2250 has already generated local and national interest and it is unusual because the applicants could not have been clearer in stating the nature and purpose of their pre-planning construction works. I invite the County Council by this Section 5 Application to find that these works constitute a development, and that they are not an exempted development.

Yours Sincerely,


Michael Nugent.



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Michael Nugent
Michael Nugent & Co. Solicitors
6 Sandford Road
Ranelagh
Dublin 6

RL 5660 3358 GIE

19/04/2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

A Chara,

I refer to your application received on 24th March 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

I wish to advise that in accordance with Section 5 (2) (b) of the Planning & Development Act, 2000, as amended, the following further information is required:

1. Drawings and cross sections of the embankment as constructed to include the finished level and details of the height of same.
2. Details of the ground levels as previously existed on this site prior to works taking place on the site.
3. Clarification of the type of material used in the construction of the embankments and whether this is inert material or otherwise.
4. Clarification if the works as carried out relate to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, or the widening or deepening of watercourses.

In accordance with Section 5 (2) (c) of the Planning & Development Act, 2000, as amended, the Planning Authority has also sought this information from the owners of the properties concerned, in order to enable the Planning Authority to issue the declaration on the questions as submitted.

Mise, le meas

Anne O'Gorman
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





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Maeve Fehilly & Cathal Crowe
Clonard
Westbury
Athlunkard
Co. Clare

RL5660 3357 21E

19th April 2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

A Chairde,

You are advised that the Planning Authority have received a request for a declaration under Section 5 of the Planning and Development Act 2000, as amended, in relation to works at your property at Heathmount, Cratloe. The wording of the declaration as submitted to the Planning Authority was as follows:

"Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?"

The specific works referred to in the referral include:

1. The removal of a 'large area of natural bog and heathland causing extreme ecological damage to a section of rare blanket bog adjacent to Woodcock Hill National Heritage Site'.
2. The 'construction of a 3m high earth and stone bank on the north-east boundary'.
3. The 'construction of a 1.5m high earth and stone bank on the road boundary of the neighbouring land'.
4. 'Planting of approx. 120 trees and shrubs on a blanket bog changing the natural ecological habitat of the site'.

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

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





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

1. Please submit site specific drawings and cross sections of the embankments as constructed to include the finished level and details of the height of same.
2. Please outline details of the ground levels as previously existed on this site prior to works taking place on the site.
3. Please clarify the type of material used in the construction of the embankments and whether this is inert material or otherwise.
4. Please clarify if the works as carried out relate to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, or the widening or deepening of watercourses.

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





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

William Coughlan
Heathmount
Cratloe
Co. Clare

RL5660 3356 9IE

19th April 2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

A Chara,

You are advised that the Planning Authority have received a request for a declaration under Section 5 of the Planning and Development Act 2000, as amended, in relation to works at your property at Heathmount, Cratloe, Co. Clare. The wording of the declaration as submitted to the Planning Authority was as follows:

"Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to the development and if so, are they exempted development?"

The declaration relates to your property and the adjoining property to the southwest where there is currently a live planning application (Pl. Ref 22/50 refers). With specific regard to your property the question as raised relates to the alleged construction of a 1.5m high earth and stone bank on the roadside boundary.

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

1. Please submit drawings and cross sections of the embankment as constructed to include the finished level and details of the height of same.
2. Please outline details of the ground levels as previously existed on this site prior to works taking place on the site.

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





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

3. Please clarify the type of material used in the construction of the embankments and whether this is inert material or otherwise.
4. Please clarify if the works as carried out relate to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, or the widening or deepening of watercourses.

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



CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF: R22-22
APPLICANT(S): Michael Nugent
REFERENCE: Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to the development and if so, are they exempted development?
LOCATION: Heathmount, Cratloe, Co. Clare
DUE DATE: 20th April 2022

Site Location

The (3 acres) subject site is located in an upland rural location in the townland of Heathmount and is situated to the east of Gallows Hill road. The site is located off a scenic route to the west of Woodcock Hill Bog. At present the site is covered in heathers and gorse. There is also evidence of site disturbance, clearance and the creation of embankments and planting. The subject site rises from the road (158m) to the rear of the site (179m), beyond which the land continues to rise to 196m.

Recent Onsite Planning History

22-50 – Planning Permission is being sought by Maeve Fehilly and Cathal Crowe to construct private dwelling house, detached garage, wastewater treatment system and all associated site works. A request for further information has been sought on this application. The further information requested includes the following:

1. *In order to confirm site suitability to accommodate the proposed wastewater treatment system, the following further information is required:*
 - (a) *The proposed location of the water treatment system has a slope of approximately 1:5, which does not meet the standards as set out in the Environmental Protection Agency's Code of Practice which requires a natural slope of 1:8 or less within the proposed infiltration/treatment area. The applicant is therefore requested to submit a site layout plan (and cross section) of a revised location for the infiltration/treatment area with a slope of 1:8 or less as per the EPA Guidelines. You are advised that depending on the area chosen it may be necessary to carry out revised percolation tests and a trial hole evaluation as they are required to be adjacent to, but not within the proposed percolation area (in the event that further tests are proposed you are requested to notify the Planning Authority by giving ten working days notice).*
 - (b) *Clear photographs shall be submitted of the percolation test holes to show the soil horizon details and the staff gauge showing the height of the water table.*
2. *With regard to the proposed water supply, it is noted that the application form states that there will be a new connection to a private well, however the site characterisation form indicates a connection to the public mains water supply. You are requested to clarify the source of the proposed water supply to serve the dwelling. If a well is proposed, the location shall be identified on the site layout plan and shall be taken into consideration when locating the wastewater treatment plant to ensure that it is in compliance with EPA separation distances.*

3. (a) *It is noted that the gradient of the proposed driveway is steep and clarification is required as to whether it meets Section 3.1 of Part M of the Building Regulations. Please submit revised drawings in this regard. Please also outline details of any works required along the driveway and whether any embankments or retaining walls are required.*
(b) *Please submit drawings and cross-sections of the embankment along the northeastern boundary of the site.*

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Michael Nugent. He has stated that he has no legal interest in the site.

The applicant is seeking a Section 5 Declaration as to whether pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare are considered to be development and if so, if they are exempted development.

Planning Policy

Clare County Development Plan 2017-2023, as varied:

CDP 3.11 New Single Houses in the Countryside within the 'Areas of Special Control'

It is an objective of the Development Plan:

Within the parts of the countryside within the 'Areas of Special Control' i.e.:

- (i) Areas Under Strong Urban Pressure
- (ii) Heritage Landscape
- (iii) Sites accessed from Scenic Routes (See Chapter 13 and Appendix 5)

to permit a new single house for the permanent occupation of an applicant who falls within either of the **Categories A or B or C** below and meets the necessary criteria.

A – Local Rural Persons

B – Persons Working Full time or Part-time in Rural Areas

C – Exceptional Health and/or Family Circumstances

Habitat Area HH3 Wet Heath

The subject site is within an area considered to be of high ecological value in a local context.

A 2008 South East Clare Habitat Mapping survey notes the area as being a *very good example of a Wet Heath habitat HH3, quite species diverse. Small areas of Dry Siliceous Heath HH1 occur on the thin soils at the higher altitudes of the site and also to the south of the site. Purple Moor Grass (Molinia caerulea) and Deergrass (Trichophorum cespitosum) are absent at these locations. Dry Neutral Acid Grassland GS3 occurs in the margins of the site with Wet grassland GS4 and Heath habitats occurring to the north and west of the site. Conifer Plantations WD4 are a prominent feature in the surrounding landscape. A good variety of invertebrates were recorded at the site, including springtails, moths and spiders. Deer are known to be present in the area and Meadow Pipits (Anthus pratensis) were sighted during the survey.*

Species List for Wet Heath HH3

Species (Latin name)	Species (common name)	DAFOR Scale
<i>Calluna vulgaris</i>	Ling Heather	Dominant
<i>Cladonia</i> sp.	Cladonia lichen	Frequent
<i>Erica cinerea</i>	Bell Heather	Occasional (frequent on lower slopes)
<i>Erica tetralix</i>	Cross-leaved Heath	Abundant
<i>Juncus squarrosus</i>	Heath Rush	Frequent
<i>Molinia caerulea</i>	Purple Moor Grass	Frequent
<i>Potentilla erecta</i>	Tormentil	Occasional
<i>Sphagnum</i> spp.	Sphagnum moss	Frequent
<i>Trichophorum cespitosum</i>	Deergrass	Abundant
<i>Ulex europaeus</i>	Common Gorse	Occasional

Western Corridor Working Landscape

The subject site is within the *Western Corridor Working Landscape*. Therefore Development Plan Objective CDP 13.3 is applicable in this instance.

It is an objective of the development plan:

- a) To permit development in these areas that will sustain economic activity, and enhance social well-being and quality of life - subject to conformity with all other relevant provisions of the plan and the availability and protection of resources;
- b) That selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design, are directed towards minimising visual impact;
- c) That particular regard should be given to avoiding intrusions on scenic routes and on ridges or shorelines. Developments in these areas will be required to demonstrate:
 - (i) That the site has been selected to avoid visually prominent locations;
 - (ii) That site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, public amenities and roads;
 - (iii) That design for buildings and structures reduce visual impact through careful choice of form, finishes and colours and that any site works seek to reduce visual impact of the development.

Scenic Route

The subject site is located off a designated Scenic Route, therefore Development Plan Objective CDP 13.7 is applicable in this instance.

It is an objective of Clare County Council:

- a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
- b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;
- c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

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.

Section 4 (1) (a) of the *Planning and Development Act 2000, as amended*:

“development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used”

Planning & Development Regulations, 2001, as amended

Schedule 2 - Part 3 – Exempted Development – Rural – Minor works and structures

Class 3 -

Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works.

Part 2, Article 8C.

Land reclamation works consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to the development and if so, if it is exempted development.

Particulars of the Development

There is currently a live planning application on the subject site to construct private dwelling house, detached garage, wastewater treatment system and all associated site works. A request for further information has been sought on this application.

The pre-application development works that are the subject of this Section 5 Declaration include:

1. Removal of a large area of natural bog and heathland causing extreme ecological damage to a section of rare blanket bog adjacent to Woodcock Hill National Heritage Site.
2. Construction of a 3m high earth and stone bank on the north-east boundary.
3. Construction of a 1.5m high earth and stone bank on the road boundary of the neighbouring land.
4. Planting of approx. 120 trees and shrub on a blanket bog changing the natural ecological habitat of the site.

The submission also notes that the above was carried out in the first half of 2021 as pre-planning site construction works, and not for agricultural or arterial drainage purposes. The submission included a site location map, photographs and extracts from Planning Application P22-50.

Planning Exemption Assessment

Planning and Development Act, 2000 (as amended)

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

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

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

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

The works (embankment) as carried out in my view constitute both 'works' and 'development'. I consider that the planting of trees does not constitute works or development. The question arises as to whether the embankment works constitute exempted development.

In this regard I note the various provisions of the Act and Regulations. Section 4 of the Act includes for "development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used". It is noted that the subject site is generally used for agricultural purposes though I note that a planning application has been made on the subject site where further information has been sought. From examination of the landscaping plan submitted with the application it is noted that the works were carried out 'with the intention of screening the proposed dwelling from the approach road from the northeast and to decrease wind exposure on site'. It would appear therefore that the subject works do not fall within this particular provision of the Act as they do not appear to be related to agricultural development specifically but rather to assist in the screening of the proposed development.

Schedule 2, Part 3 – Exempted Development (Rural) provides for works relating to the construction or maintenance of any gully, drain etc and the making of any embankments in connection with these works. Again it is unclear as to whether the works as carried out specifically relate to this matter based on the details submitted with the planning application. I note that this particular provision of the regulations does not have a condition or limitation restricting the height of any embankment.

I note also the restrictions on exempted development under Article 9 though on examination of same I do not consider that these are applicable though due to the location of the site off a Scenic Route it is arguable that Article 9 (vi) may apply. The site is not within a designated NHA, being 1.3km from the Woodcockhill Bog NHA and as such it is not considered that the proposal would impact directly on this designation and I consider that the provisions of Article 9 (viiC) do not apply though I note the referral parties concerns in this regard.

Article 8C of the Regulations outlines that '*Land reclamation works consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development*'. There is no definition of 're-contouring' in the regulations however guidance from the Dept of Agriculture (Environmental Impact Assessment(Agriculture) Regulations Information Leaflet for Farmers) outlines that:

Re-contouring of land covers, for example, levelling off hills or infilling of hollows (by removing or shifting earth or rock that originates from within the farm-holding).

It is not clear that this particular provision of the regulations applies in this instance as the works involve the construction of an embankment and not recontouring as set out above (levelling of hills or infilling of hollows).

In order to assess this declaration, further information is required from both the referral party and the site owners/occupiers, with regard to the subject works, in accordance with Section 5 (2) (c) of the Planning and Development Act, 2000, as amended.

It is considered that the following should issue to the Fehilly/Crowe property:

You are advised that the Planning Authority have received a request for a declaration under Section 5 of the Planning and Development Act 2000, as amended, in relation to works at your property at Heathmount, Cratloe. The wording of the declaration as submitted to the Planning Authority was as follows:

"Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to the development and if so, are they exempted development?"

The specific works referred to in the referral include:

1. The removal of a 'large area of natural bog and heathland causing extreme ecological damage to a section of rare blanket bog adjacent to Woodcock Hill National Heritage Site'.
2. The 'construction of a 3m high earth and stone bank on the north-east boundary'.
3. The 'construction of a 1.5m high earth and stone bank on the road boundary of the neighbouring land'.
4. 'Planting of approx. 120 trees and shrub on a blanket bog changing the natural ecological habitat of the site'.

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

1. Please submit site specific drawings and cross sections of the embankments as constructed to include the finished level and details of the height of same.
2. Please outline details of the ground levels as previously occurred on this site prior to works taking place on the site.
3. Please clarify the type of material used in the construction of the embankments and whether this is inert material or otherwise.

4. Please clarify if the works as carried out relate to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, or the widening or deepening of watercourses.

It is considered that the following should issue to the neighbouring property owner, William Coughlan, Heathmount, Cratloe, Clare:

You are advised that the Planning Authority have received a request for a declaration under Section 5 of the Planning and Development Act 2000, as amended, in relation to works at your property at Heathmount, Cratloe. The wording of the declaration as submitted to the Planning Authority was as follows:

"Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to the development and if so, are they exempted development?"

The declaration relates to your property and the adjoining property to the southwest where there is currently a live planning application (Pl. Ref 22/50 refers). With specific regard to your property the question as raised relates to the alleged construction of a 1.5m high earth and stone bank on the roadside boundary.

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


1. Please submit drawings and cross sections of the embankment as constructed to include the finished level and details of the height of same.
2. Please outline details of the ground levels as previously occurred on this site prior to works taking place on the site.
3. Please clarify the type of material used in the construction of the embankments and whether this is inert material or otherwise.
4. Please clarify if the works as carried out relate to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, or the widening or deepening of watercourses.

It is considered that the following should issue to the Referrer, Michael Nugent:

I refer to your Section 5 declaration, R 22/22 refers. I wish to advise that in accordance with Section 5 (2) (b) of the Planning & Development Act, 2000, as amended, the following further information is required:

1. Drawings and cross sections of the embankment as constructed to include the finished level and details of the height of same.
2. Details of the ground levels as previously occurred on this site prior to works taking place on the site.
3. Clarification of the type of material used in the construction of the embankments and whether this is inert material or otherwise.
4. Clarification if the works as carried out relate to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, or the widening or deepening of watercourses.

In accordance with Section 5 (2) (c) of the Planning & Development Act, 2000, as amended, the Planning Authority has also sought this information from the owners of the properties concerned, in order to enable the Planning Authority to issue the declaration on the questions as submitted.


Assistant Planner
Date: 19.04.2022


Senior Executive Planner
Date: 19/04/22

Clare County Council
Screening for Appropriate Assessment & Determination

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

Table 1: Project Details


Planning File Reference	P22/50
Applicant Name	Maeve Fehilly and Cathal Crowe
Development Location	at Heathmount Cratloe, Co Clare
Application accompanied by an EIS	no
Application accompanied by an NIS	no
Description of the project (To include a site location map):	
PERMISSION to construct private dwelling house, detached garage, wastewater treatment system and all associated site works	
	

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

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)¹ is recommended. For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in combination effects. Having regard to the nature and scale of the proposed development, the likely zone of impact is no greater than 5km. 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 5km of Applicant Site

European Sites ²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
Special Protection Areas: River Shannon and River Fergus Estuaries SPA 004077	Cormorant (<i>Phalacrocorax carbo</i>) [A017] Whooper Swan (<i>Cygnus cygnus</i>) [A038] Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Shelduck (<i>Tadorna tadorna</i>) [A048] Wigeon (<i>Anas penelope</i>) [A050] Teal (<i>Anas crecca</i>) [A052] Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Scaup (<i>Aythya marila</i>) [A062] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Lapwing (<i>Vanellus vanellus</i>) [A142] Knot (<i>Calidris canutus</i>) [A143]	5.1km
Special Area of Conservation: Lower River Shannon SAC 002165	Sandbanks which are slightly covered by sea water all the time [1110] Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Coastal lagoons [1150] Large shallow inlets and bays [1160] Reefs [1170] Perennial vegetation of stony banks [1220] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260] Molinia meadows on calcareous, peaty or clayey-silt-laden	3.4km

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

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

European Sites ²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
	soils (Molinion caeruleae) [6410] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Petromyzon marinus (Sea Lamprey) [1095] Lampetra planeri (Brook Lamprey) [1096] Lampetra fluviatilis (River Lamprey) [1099] Salmo salar (Salmon) [1106] Tursiops truncatus (Common Bottlenose Dolphin) [1349] Lutra lutra (Otter) [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?	No
2	Impacts on terrestrial habitats & species.	Is the development within 1km of a European site with terrestrial based habitats or species?	No
3	Impacts on designated marine habitats & species.	Is the development located within marine or intertidal areas and within 5km 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

Conclusion:

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer is *unknown* or *yes* proceed to Table 3 and refer to the relevant sections of Table 3.

Table 3: Identification of potential impacts.

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

2	Impacts on terrestrial habitats and species. <i>Please answer the following if the answer to question 2 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
2a	Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat. Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?	NA
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	NA
2c	Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?	NA
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	NA
3	Impacts on designated marine habitats and species. <i>Please answer the following if the answer to question 3 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
3a	Removal of or interference with habitat within the European site. This includes timing of the project if there is potential to interfere with nesting or breeding periods, either directly or indirectly (e.g. by noise emission) or any aspect of the life cycle of a protected species. This also includes potential fragmentation, size reduction of habitat, or reduction in species density.	NA
3b	Coastal protection works on intertidal or marine habitats within 5km of a European site supporting coastal or marine habitats or species. This includes any works which may give rise to potential changes in hydrology or salinity of these areas.	NA
3c	Development of piers, slipways, marinas, pontoons or any other infrastructure within 5km of a European site that was designated because it supports marine habitats and/or species.	NA
3d	Dredging within 5km of a European site supporting coastal or marine habitats or species.	NA
3e	Removal of topsoil or infilling within 100m of marine habitats within the designated site.	NA
3f	Land based development within 1km of a European site of a scale or type which involves the production of an EIS.	NA
3g	Marine or intertidal based development within 5km of a European site of a scale or type which involves the production of an EIS.	NA

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

Conclusion:

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

Appropriate Assessment Screening Determination	
Planning File Reference	P22/50
Proposed Development	PERMISSION to construct private dwelling house, detached garage, wastewater treatment system and all associated site works
Development Location	at Heathmount Cratloe, Co Clare
European sites within impact zone	
Description of the project: PERMISSION to construct private dwelling house, detached garage, wastewater treatment system and all associated site works	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
As above	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
It is not considered that the proposed development would have an effect on the European sites	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> - County Development Plan (including Flood Maps, SEA & AA) - NPWS website - Documents received as part of the planning application - EPA Code of Practice 	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) ³	N/A
(b) There is no potential for significant effects to European Sites ³	There is no potential for significant effects to European Sites.
(c) The potential for significant effects to European Site(s) cannot be ruled out ⁴	N/A

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

⁴ In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3)

(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010⁵	N/A
Completed By	Gráinne McCormack
Date	19.4.2022

and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf. Alternatively, where other planning concerns arise the proposal could be refused planning permission.

⁵ The proposed development must either be 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

**Michael Nugent
Michael Nugent & Co. Solicitors
6 Sandford Road
Ranelagh
Dublin 6**

25/03/2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

A Chara,

I refer to your application received on 24th March 2022 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.

Please note: A notification will also be issued to the stated owners, as per this application, of the property in question, namely Maeve Fehilly & Cathal Crowe, Clonard, Westbury, Athlunkard, Co. Clare. This notification is to advise them that a Section 5 application has been received in relation to their property.

Mise, le meas

Tadhg Holmes

**Tadhg Holmes
Planning Department
Economic Development Directorate**

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

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





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Maeve Fehilly & Cathal Crowe
Clonard
Westbury
Athlunkard
Co. Clare

25th March 2022

Section 5 referral Reference R22-22 – Michael Nugent

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare considered to be development and if so, are they exempted development?

A Chairde,

The Planning Authority wishes to advise that it has received a Section 5 (Declaration on Development and/or Exempted Development) application with respect to the works listed above and issues this letter to inform you as the stated owner of the property in question.

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

Mise, le meas

Tadhg Holmes

Tadhg Holmes
Planning Department
Economic Development Directorate

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

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



P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

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

Telephone No. (065) 682 616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: 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	Michael Nugent <hr/> Michael Nugent & Co. Solicitors <hr/> 6 Sandford Road <hr/> Ranelagh, Dublin 6. <hr/>
(b) Telephone No.:	(01) 497 4888
(c) Email Address:	info@nugentsolicitors.com
(d) Agent's Name and address:	n/a <hr/> <hr/> <hr/> <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?*

Are pre-planning site construction works carried out at Heathmount, Cratloe, Co. Clare development?

And if deemed to be development are they exempted development?

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

During the first half of 2021 substantial pre-planning construction works were undertaken at Heathmount, Cratloe, Co. Clare, namely; (1) removal of a large area of natural bog and heathland causing extreme ecological damage to a section of rare blanket bog adjacent to Woodcock Hill National Heritage Site.

(2) construction of a 3m high earth and stone bank on the north-east boundary (3) construction of a 1.5m high earth and stone bank on the road boundary of the neighbouring land (4) planting of approx. 120 trees and shrubs on a blanket bog changing the natural ecological habitat of the site.

These works were not carried out for agricultural or arterial drainage purposes. The applicants of subsequent planning submission P.2250 (which was not lodged until January 2022) explicitly state in both their cover letter and in various reports and documentation submitted as part of the application that these works were carried out with the express purpose of facilitating a future planning application on the site. They photograph and record in great detail both the exact works that were carried out on site and the express purpose of those works. There can be absolutely no ambiguity or doubt around the fact that these were pre-planning site construction works.

- (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 x 2.

Extracts 1, 2, 3, 4, 5 and 6 from Planning Application P.2250.

Photographs 1 and 2 of subject site.

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

(a) Postal Address of the Property/Site/Building for which the declaration sought:	Heathmount, Cratloe, 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):	None _____ _____
(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>	Maeve Fehilly & Cathal Crowe _____ Clonard, Westbury, Athlunkard, 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)?:	No
(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>	Planning Application P.2250 lodged 27/02/2022.
(h) Date on which 'works' in question were completed/are likely to take place:	First half of 2021.

SIGNED: _____



DATE: _____

16 March 2022

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:.....			

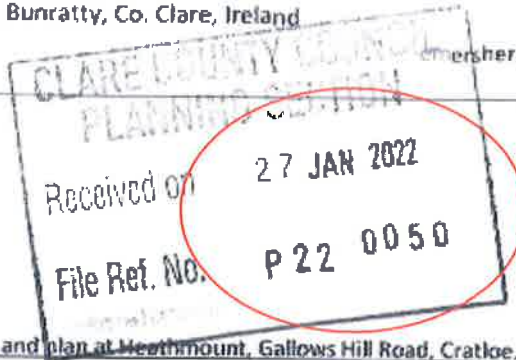
Emer Sherry Gardens, Deerpark, Bunratty, Co. Clare, Ireland
Garden design and planting plans

+353 87 636329

emersherryplants@gmail.com

To: Cathal Crowe & Maeve Fehilly

18/06/2021



Landscape & vegetation evaluation and plan at Meethmount, Gallow's Hill Road, Cratloe, Co. Clare

With the intention of screening the proposed dwelling from the approach road from the north east and to decrease wind exposure on site, works to the site above and neighbouring land were carried out earlier this year:

- A 3 metre high earth and stone bank is now in place along the north-east site boundary as indicated on the visuals attached.
- A 1.5 metre high earth and stone bank is now in place on neighbouring land along the road boundary as indicated on the visuals attached.

**Extract 1 : From Planning Application P.2250: Landscape & Vegetation Evaluation Report
Demonstrating Pre-Planning Strategy of Applicants.**

Views from North East

During the pre-planning stage it was noted that there was a small section of road visible to the north east of the site. The applicants have since created a 3m high landscaped earth and stone berm on the north eastern boundary which has been planted with 120 no. approx native species saplings (whitethorn, holly, furze and birch) with an average height of 1.6m from root to tip.

The applicants have also created a 1.5m high earth and stone bank in an existing gap on the roadside boundary on neighbouring land to mitigate views of the site when approaching from the north east

We are confident that within a couple of years, the dwelling will not be visible from the north eastern approach road once planting has been given an opportunity to mature. Photos have been provided and a Landscape and Vegetation Evaluation Report has been prepared by Emer Sherry Gardens detailing same. Please refer also to drawing no. PP-09 which details the height of the existing embankment in relation to the proposed dwelling

**Extract 2 : From Planning Application P.2250: Cover Letter
Further Demonstrating Pre-Planning Strategy of Applicants.**

III. Visuals indicating position of earth and stone banks



Extract 3 : From Planning Application P.2250: Location of Pre-Application Site Development Works.

- Construction of 3m high earth and stone bank on the North-East Site Boundary.
- Construction of 1.5m high earth and stone bank on the neighbouring site along the road boundary.
- Planting of approx. 120 trees and shrubs on the tops and sides of both banks.

II. Photographs of landscape works to date

A. Earth and stone bank on site



B.



Extract 4 : From Planning Application P.2250: Photographs of 3m high earth and stone bank.

C.



D.



Extract 5 : From Planning Application P.2250: Photographs of 3m high earth and stone bank.

E. Earth and stone bank on neighbouring property



F.



G.



Extract 6 : From Planning Application P.2250: Photographs of 1.5m high earth and stone bank.



Photograph 1. : Showing natural bog/heathland vegetative cover on the subject site.



Photograph 2. : Area of subject site where the Blanket Bog and has been completely stripped away.

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

24/03/2022 15:40:05

Receipt No. : LICASH/0/330237

REPRINT

MICHAEL NUGENT
MICHAEL NUGENT & CO. SOLICITORS
6 SANDFORD ROAD
RANELAGH
DUBLIN 6

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

Total : 80.00 EUR

Tendered :
Cash 100.00

Change : 20.00

Issued By : LICASH - Patricia Quinlivan
From : MAIN CASH OFFICE LODGEMENT AREA
t reg No.0033043E