



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Martina & Breeda O'Loughlin  
Mahonburgh  
Inch  
Ennis  
Co. Clare  
V95 VN0N**

*RL 5660 3351 51E*

**28th July, 2022**

**Section 5 referral Reference R22-38 – Martina & Breeda O'Loughlin**

Is the opening of a new agricultural entrance off a secondary road at Bansha, Darragh, Co. Clare considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 13th June 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above, the further information received by the Planning Authority on the 15<sup>th</sup> July 2022.

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

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

Mise, le meas

  
**Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate**

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

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



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

**Reference No.: R22-38**



**Section 5 referral Reference R22-38**

**Is the opening of a new agricultural entrance off a secondary road at Bansha, Darragh, Co. Clare considered to be development and if so, is it exempted development?**

**AND WHEREAS, Martina & Breeda O'Loughlin** has requested a declaration from Clare County Council on the said question.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) The works as indicated in submitted documents from the referrer on 13<sup>th</sup> June 2022 and the 15<sup>th</sup> July 2022.

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

- (a) the development of opening of a new agricultural entrance off a secondary road at Bansha, Darragh, County Clare, constitutes "*works*" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "*development*" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- (c) the said development of opening of a new agricultural entrance off a secondary road at Bansha, Darragh, County Clare is exempted development having regard to Article 9 (1)(a)(ii) & Article 9 (1)(a)(iii) of the Planning and Development Regulations 2001 (as amended) as the public road is less than 4 metres in width and the proposed access would not constitute a traffic hazard.

**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 opening of a new agricultural entrance off a secondary road at Bansha, Darragh, County Clare, is development and is 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', followed by a horizontal line.

**Anne O'Gorman**  
**Staff Officer**  
**Planning Department**  
**Economic Development Directorate**

**28th July, 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:**

80205

**Reference Number:**

**R22-38**

**Date Referral Received:**

**13th June 2022**

**Further Information Received:**

**15<sup>th</sup> July 2022**

**Name of Applicant:**

**Martina & Breeda O'Loughlin**

**Location of works in question:**

**Bansha, Darragh, Co. Clare**

**Section 5 referral Reference R22-38 – Martina & Breeda O'Loughlin**

Is the opening of a new agricultural entrance off a secondary road at Bansha, Darragh, Co. Clare considered to be development and if so, is it exempted development?

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) The works as indicated in submitted documents from the referrer on 13<sup>th</sup> June 2022 and the 15<sup>th</sup> July 2022.

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

- (a) the development of opening of a new agricultural entrance off a secondary road at Bansha, Darragh, County Clare, constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- (c) the said development of opening of a new agricultural entrance off a secondary road at Bansha, Darragh, County Clare is exempted development having regard to Article 9 (1)(a)(ii) & Article 9 (1)(a)(iii) of the Planning and Development Regulations 2001 (as amended) as the public road is less than 4 metres in width and the proposed access would not constitute a traffic hazard.

**ORDER:**

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

to Helen Quinn, Acting Senior Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Helen Quinn, Acting Senior Planner, hereby declare that the opening of a new agricultural entrance off a secondary road at Bansha, Darragh, County Clare, is development and is exempted development.

**Signed:**

Helen Quinn.  
**HELEN QUINN**  
**ACTING SENIOR PLANNER** *A.G.*

**Date:**

**28th July, 2022**

**CLARE COUNTY COUNCIL**  
**SECTION 5 DECLARATION OF EXEMPTION APPLICATION**  
**PLANNERS REPORT 2**

<b>FILE REF:</b>	R22-38
<b>APPLICANT(S):</b>	Martin & Breeda O'Loughlin
<b>REFERENCE:</b>	Whether the opening of a new agricultural entrance off a secondary road at Bansha Darragh is or is not development and is or is not exempted development.
<b>LOCATION:</b>	Bansha, Darragh, County Clare
<b>DUE DATE:</b>	02 <sup>nd</sup> August 2022

**Introduction**

Further information was requested by the Planning Authority on the 27<sup>th</sup> June 2022. A response was received on the 15<sup>th</sup> July. Outlined below is an assessment of the response received and subsequently a reassessment of the proposed development.

**Further Information Response Assessment**

1. *You are requested to submit a revised Site Layout Plan which demonstrates the following:*

*(a)*

*The sightline availability at the proposed access in accordance with the requirements of the Appendix 1 of Volume 1 of the Clare County Development Plan 2017-2023 (as varied).*

90 metres sightlines are demonstrated on a revised Site Layout Plan.

*(b)*

*You are advised that the proposal site is located approximately 1.5km from Knockanira House Special Area of Conservation which is a known roost of the Lesser Horseshoe Bat species and it is an objective under CDP14.11(c) of the County Development Plan to ensure that there is no net loss of treelines and hedgerows within 3km of known roosts. Therefore, having regard to Article 9 (vii)(b) of the Planning and Development Regulations 2001, as amended, you are requested to outline the full extent of the works required to the existing roadside boundary to achieve the required sight distances and the extent of tree/hedgerow removal proposed.*

It is stated that no trees and hedgerows are to be removed to achieve the required sight distances.

### **Site Location**

The site is located in a rural area to the south west of Darragh. It is to the west of the LS8262 local secondary road and comprises the roadside boundary of an agricultural field. The level of the field is below the road. The roadside boundary comprises a row of trees that are setback from the roadside edge. There is a dwelling to the north of the site. The road fronting the site is narrow and has good vertical and horizontal alignment. The site is located in the “*Western Corridor Working Landscape*”.

### **Recent Planning History**

#### **Onsite**

None.

#### **Environs**

None.

### **Background to Referral**

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Martin & Breeda O’Loughlin who are the stated owners of the site. They are seeking a Section 5 Declaration as to whether the opening of a new agricultural entrance off a secondary road at Bansha Darragh is or is not development and is or is not exempted development.

### **Statutory Provisions**

#### **Planning and Development Act, 2000 (as amended)**

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

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

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

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

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

Under Article 9 (1) of the same Regulations, *development to which Article 6 relates shall not be exempted development for the purposes of the Act:*

- (a) if the carrying out of such development would –*
  - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
  - (ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
  - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
  - (iv) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*
  - (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*
  - (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*
  - (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the*



development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

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

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

<b>Assessment</b>
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### **Particulars of the Development**

On the date of the site visit on the 22<sup>nd</sup> May 2022 I noted that there was no access in place. The metaled surface of the road is less than 4 metres in width.

### **Planning Exemption Assessment**

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

Article 9 of the Planning and Development Regulations 2001, as amended outlines restrictions on exempted development, and these are assessed below (for both the dwelling extension and the garage):

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*

Not applicable.

- (ii) *consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

The road is less than 4 metres in width.

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

Visibility at the access in line with the requirements of the Clare County Development Plan 2017-2023 (as varied) is demonstrated on the information received.

- (iv) *interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*

It is considered that the proposal would not interfere with the character of this Western Corridor Working Landscape.

- (v) *consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

This is not applicable in this instance.

- (vi) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

Not applicable.

- (vii)
  - a. *consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994,*

*save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

This is not applicable in this instance.

- b. *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

The site is located outside of any European Site designation. The site is 1.5km from Knockanira House SAC of which the qualifying interest is the Lesser Horseshoe Bat. Roadside boundary removal would be limited to the location of the access only.

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

Not applicable.

- (viii) *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

Not applicable.

- (ix) *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

T

his is not applicable in this instance.

- (x) *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

This is not applicable in this instance.

- (xi) *obstruct any public right of way,*

This is not applicable in this instance.

- (xii) *further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.*

This is not applicable in this instance.

### **Conclusion**

Having regard to the above it is considered that the opening of a new agricultural entrance off a secondary road at Bansha Darragh constitutes both 'works' and 'development'. However, regard has also been had to Article 9 (1)(a)(ii) & Article 9 (1)(a)(iii) of the Planning and Development Regulations 2001 (as amended) and the proposed access is development and is exempted development.

### **Recommendation**

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

Whether the opening of a new agricultural entrance off a secondary road at Bansha Darragh County Clare, is or is not development and is or is not exempted development.

**The Planning Authority in considering this referral had regard to:**

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) The works as indicated in submitted documents from the referrer on 13<sup>th</sup> June 2022 and the 15<sup>th</sup> July 2022.


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

- (a) the development of opening of a new agricultural entrance off a secondary road at Bansha Darragh County Clare, constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended

- (c) the said development of opening of a new agricultural entrance off a secondary road at Bansha Darragh County Clare is exempted development having regard to Article 9 (1)(a)(ii) & Article 9 (1)(a)(iii) of the Planning and Development Regulations 2001 (as amended) as the public road is less than 4 metres in width and the proposed access would not constitute a traffic hazard.

Now therefore Clare County Council (Planning Authority) hereby decides that opening of a new agricultural entrance off a secondary road at Bansha Darragh County Clare, is development and is exempted development.

  
A/Executive Planner  
Date: 15<sup>th</sup> July 2022

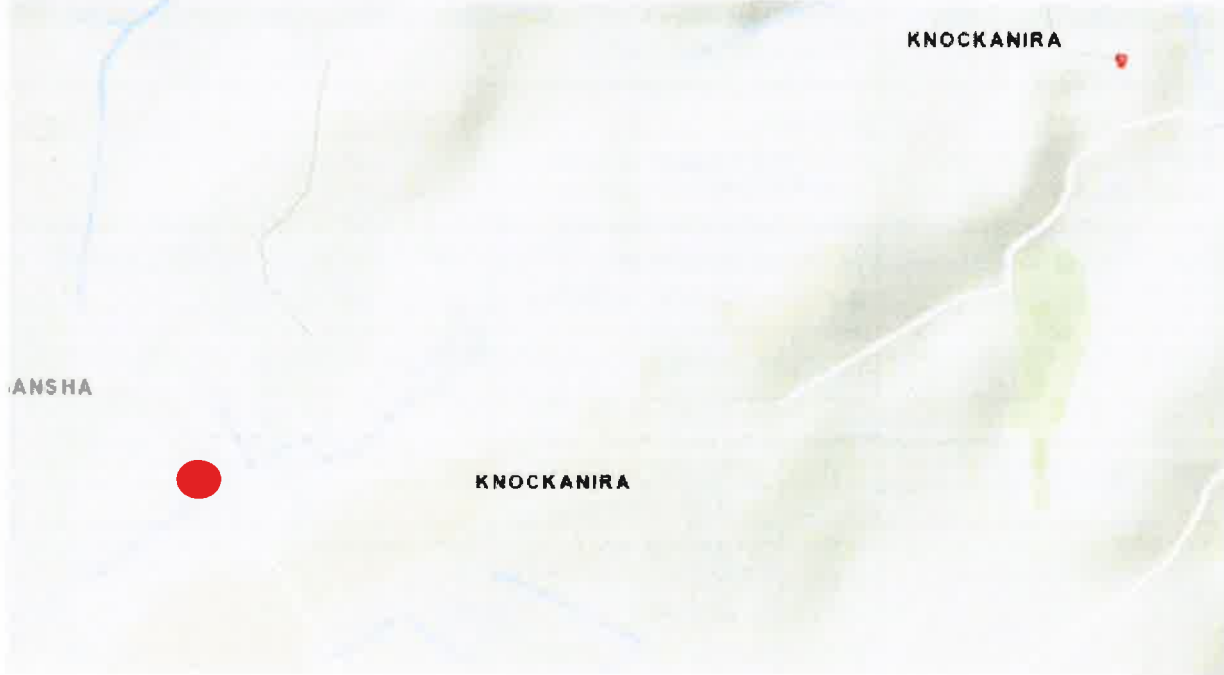
  
A/Senior Planner  
Date: 25-07-2022.

## Clare County Council

### Screening for Appropriate Assessment & Determination

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

**Table 1: Project Details**

<b>Planning File Reference</b>	R22-38
<b>Applicant Name</b>	O'Loughlin
<b>Development Location</b>	Bansha Darfagh
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No
<b>Description of the project (To include a site location map):</b>	
Agricultural access 	

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

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

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

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Knockanira House SAC	Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]	1.5

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

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

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

		<i>development (including noise) likely to impact on an adjacent habitat or species?</i>	
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**Conclusion:** If the answer to all of the above is no, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.  
If the answer is "unknown" or "yes" proceed to Table 3 and refer to the relevant sections of Table 3.



Appropriate Assessment Screening Determination	
<b>Planning File Reference</b>	R22-38
<b>Proposed Development</b>	Agricultural access
<b>Development Location</b>	Bansha Darragh
<b>European sites within impact zone</b>	As per report
<b>Description of the project</b>	
Agricultural Access	
<b>Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site</b>	
As per report	
<b>Describe how the project or plan (alone or in combination) is likely to affect the European site(s).</b>	
See FI request	
<b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b>	
<b>Documentation reviewed for making this statement</b>	
NPWS website Plans and particulars received GIS mapping database	
<b>Conclusion of assessment (a, b, c or d)</b>	
<b>(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s)<sup>3</sup></b>	
<b>(b) There is no potential for significant effects to European Sites<sup>3</sup></b>	See FI request
<b>(c) The potential for significant effects to European Site(s) cannot be ruled out<sup>4</sup></b>	
<b>(d) Significant effects to European sites are certain or likely or</b>	

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

<sup>4</sup> In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf)

Alternatively, where other planning concerns arise the proposal could be refused planning permission.

where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010 <sup>5</sup>	
<b>Completed By</b>	John O'Sullivan
<b>Date</b>	15 <sup>th</sup> July 2022

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<sup>5</sup> 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.



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**V95 VN0N**

**15/07/2022**

**Section 5 referral Reference R22-38 – Martina & Breeda O'Loughlin**

Is the opening of a new agricultural entrance off a secondary road at Bansha, Darragh, Co. Clare considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 13th June 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 15<sup>th</sup> July 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  
**Tadhg Holmes**  
**Planning Department**  
**Economic Development Directorate**

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An Stiúrthóireacht Forbairt Gheilleagrach  
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Planning Department  
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Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



## Tadhg Holmes

**From:** Tadhg Holmes  
**Sent:** Friday 15 July 2022 10:00  
**To:** 'michael@pndconsultancy.com'  
**Subject:** RE: Further Information for Section 5 Referral Reference Number - R 22 / 38

A Chara

I acknowledge receipt of your email and the attachments. It will be referred to the relevant planner and we will revert to you in due course.

Kind regards

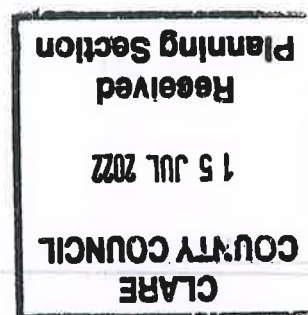
Tadhg

**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](mailto:tholmes@clarecoco.ie) | **W:** [www.clarecoco.ie](http://www.clarecoco.ie)



COMHAIRLE CONTÁE AN CHLÁIR  
CLARE COUNTY COUNCIL



**From:** Michael McCarthy <[michael@pndconsultancy.com](mailto:michael@pndconsultancy.com)>  
**Sent:** Friday 15 July 2022 00:42  
**To:** Planning Office <[planoff@clarecoco.ie](mailto:planoff@clarecoco.ie)>  
**Subject:** Further Information for Section 5 Referral Reference Number - R 22 / 38

To whom it may concern,

Please find attached the further information response for the Section 5 Referral - Application Number R 22 / 38

If you have any queries, you can contact us on the below information.

Regards,

Michael McCarthy

**PND Building Consultancy Ltd.**

Registered Building Surveyors | Registered Quantity Surveyors |  
Chartered Construction Managers | Planning Consultants | Architectural Designers

ADDRESS: Kilrush House, Frances Street, Kilrush, Co. Clare.

TELEPHONE: [+353 87 9765226](tel:+353879765226)



12<sup>th</sup> July 2022

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



## SECTION 5 - FURTHER INFORMATION RESPONSE

**Section 5 Ref. No.:** R 22 / 38

**Applicant:** Martina & Breda O'Loughlin

**Site Address:** Bansha, Darragh, Co Clare.

**Re:** Is the opening of a new agricultural entrance off a secondary road at Bansha, Darragh, Co Clare considered to be a development and if so, is it exempted development.

A Chara,

We refer to your request for further information/revised plans letter dated 27<sup>th</sup> June 2022. The applicant's formal response is as follows:

Item 1 –

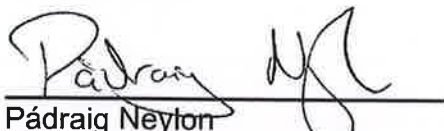
Please find enclosed a revised Site Layout Plan (M/21/77/SL) and Sight Line Detail (M/21/77/SLD) indicating a minimum 90 metres available sightline in either direction of the proposed agricultural entrance.

Item 2 –

Please note that NO trees or hedgerows are required to be removed or altered to achieve the minimum 90 metres available sightline in either direction of the proposed agricultural entrance.

We look forward to your response in due course.

Mise le meas,

  
Pádraig Neylon  
B. Sc. (Surveying) MCIOB  
Registered Building Surveyor

15 JUL 2022

Received  
Planning Section**Legend:**

Indicates = Existing Location of the Public Road

Indicates = Available 90 metres Sight Line in either Direction of the Proposed Entrance.

Sight Distance taken from 2.4m back from Road Edge  
Sight Line in accordance with TD / 47 / 01

88.515m

89.005m

90m Minimum Sight Line to the North West

90.090m

90.485m

90.890m

90m Minimum Sight Line to the South East

92.075m

92.880m

93.795m

Existing Dwelling House

Proposed New  
Agricultural Entrance

Area of Work Edged in Red

# Site Layout Plan

(C) Copyright - Drawings for Discussion Purposes Only

**Title -** Proposed Site Layout Plan**Project -** Proposed Agricultural Entrance**Client -** Martina O'Loughlin**Address -** Bansha, Darragh, Co. Clare**Scale -** 1:500**Size -** A3PND BUILDING CONSULTANCY LTD  
Registered Building Surveyors &  
Quantity Surveyors  
Kilrush House, Frances Street,  
Kilrush, Co. Clare  
Tel: 087 976 5226  
Email: padraig@pndconsultancy.com

M/21/77/SL

DP-01

22.05.22







### Sight Line Legend:

90 Minimum Metres Sight Distance to the North West

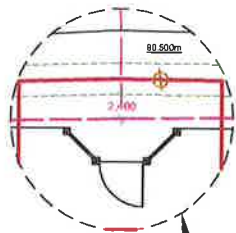
90 Minimum Metres Sight Distance to the South East

Sight distance taken 2.4 metres back from road edge

Sight line shown with --- in accordance with TD / 47 / 01

Eye Height = 1.150 metres

Object Height = 1.050 metres

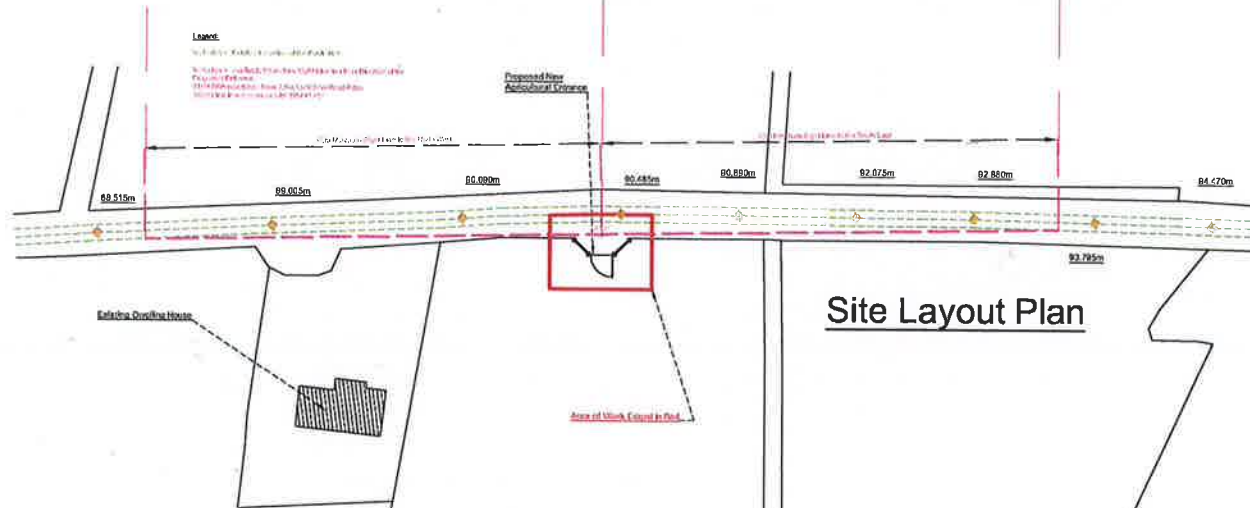
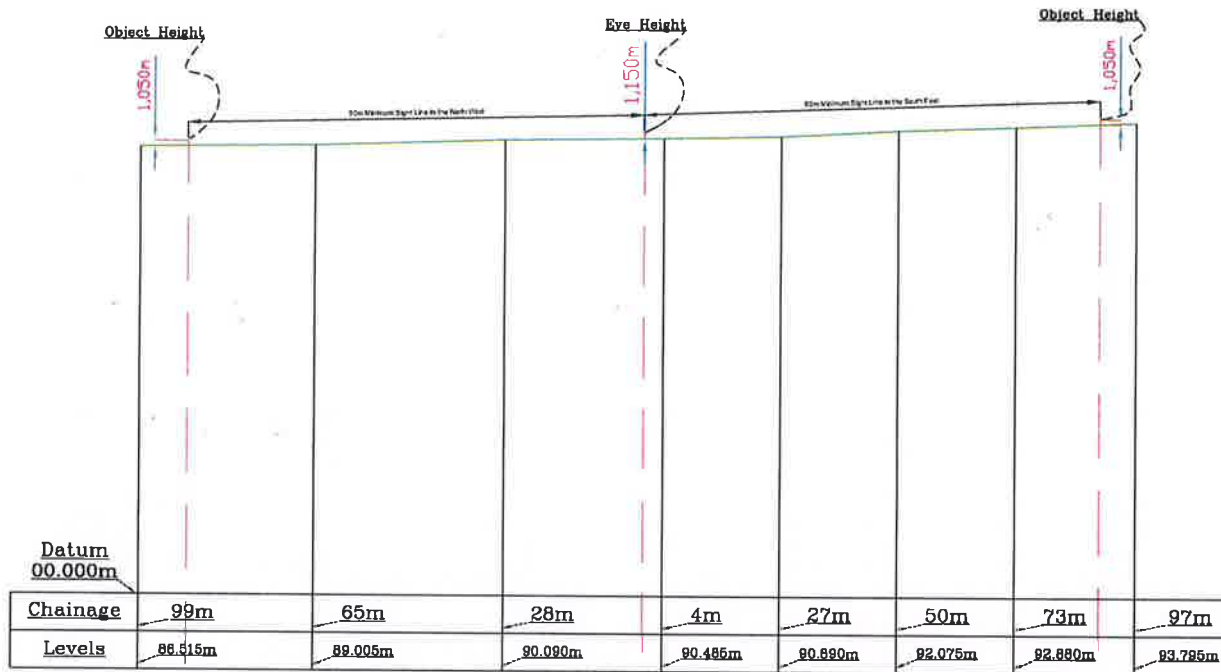


Enlarged Entrance Detail  
(Scale 1 / 500)

### Legend:

Indicates = Existing Location of the Public Road

Indicates = Available 90 metres Sight Line in either Direction of the Proposed Entrance.  
Sight Distance taken from 2.4m back from Road Edge  
Sight Line in accordance with TD / 47 / 01



Site Layout Plan

(C) Copyright - Drawings for Planning Purposes Only

Title - Proposed Site Layout Plan Indicating Minimum Sight Lines

Project - Proposed New Dwelling & Private Garage

Client - Martina O'Loughlin

Address - Bansa, Darragh, Co. Clare.

Scale - 1:1,000

Size - A3

PND BUILDING CONSULTANCY LTD.  
Registered Building Surveyors & Quantity Surveyors  
Kilrush House, Frances Street, Kilrush, Co. Clare.  
Tel: 087 976 5226  
Email: pnd@pndconsultancy.com

M/21/77/SLD

DP-01 22.05.22

P N D 1:01

CLARE  
COUNTY COUNCIL

15 JUL 2022

Received  
Planning Section





COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Martina & Breeda O'Loughlin**  
**Mahonburgh**  
**Inch**  
**Ennis**  
**Co. Clare**  
**V95 VN0N**

RL 5660 3329 4 IE

27/06/2022

**Section 5 referral Reference R22-38 – Martina & Breeda O'Loughlin**

Is the opening of a new agricultural entrance off a secondary road at Bansha, Darragh, Co. Clare considered to be development and if so, is it exempted development?

A Chara,


I refer to your application received on 13th June 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, you are requested to submit a revised Site Layout Plan which demonstrates the following:

- (a) The sightline availability at the proposed access in accordance with the requirements of the Appendix 1 of Volume 1 of the Clare County Development Plan 2017-2023 (as varied).
- (b) You are advised that the proposal site is located approximately 1.5km from Knockanira House Special Area of Conservation which is a known roost of the Lesser Horseshoe Bat species, and it is an objective under CDP14.11(c) of the County Development Plan to ensure that there is no net loss of treelines and hedgerows within 3km of known roosts. Therefore, having regard to Article 9 (vii)(b) of the Planning and Development Regulations 2001, as amended, you are requested to outline the full extent of the works required to the existing roadside boundary to achieve the required sight distances and the extent of tree/hedgerow removal proposed.

Please submit your response to the Planning Authority in writing, also quoting your reference number R22-38, to the postage address at the bottom of this correspondence. Alternatively, please email your response to [planoff@clarecoco.ie](mailto:planoff@clarecoco.ie), also quoting reference R22-38.

Mise, le meas

  
**Ann 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 1**

<b>FILE REF:</b>	R22-38
<b>APPLICANT(S):</b>	Martin & Breeda O'Loughlin
<b>REFERENCE:</b>	Whether the opening of a new agricultural entrance off a secondary road at Bansha Darragh is or is not development and is or is not exempted development.
<b>LOCATION:</b>	Bansha, Darragh, County Clare
<b>DUE DATE:</b>	07 <sup>th</sup> July 2022

**Site Location**

The site is located in a rural area to the south west of Darragh. It is to the west of the LS8262 local secondary road and comprises the roadside boundary of an agricultural field. The level of the field is below the road. The roadside boundary comprises a row of trees that are setback from the roadside edge. There is a dwelling to the north of the site. The road fronting the site is narrow and has good vertical and horizontal alignment. The site is located in the "*Western Corridor Working Landscape*".

**Recent Planning History**

**Onsite**

None.

**Environs**

None.

**Background to Referral**

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Martin & Breeda O'Loughlin who are the stated owners of the site. They are seeking a Section 5 Declaration as to whether the opening of a new agricultural entrance off a secondary road at Bansha Darragh is or is not development and is or is not exempted development.

## Statutory Provisions

### Planning and Development Act, 2000 (as amended)

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

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

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

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

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

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

Under Article 9 (1) of the same Regulations, *development to which Article 6 relates shall not be exempted development for the purposes of the Act:*

- (a) *if the carrying out of such development would –*
  - (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
  - (ii) *consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
  - (iii) *endanger public safety by reason of traffic hazard or obstruction of road users,*
  - (iv) *interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*

*(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

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

*(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

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

*(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

*(xi) obstruct any public right of way,*

*(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.*

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

**Particulars of the Development**

On the date of the site visit on the 22<sup>nd</sup> May 2022 I noted that there was no access in place. The metaled surface of the road is less than 4 metres in width.

**Planning Exemption Assessment**

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

Article 9 of the Planning and Development Regulations 2001, as amended outlines restrictions on exempted development, and these are assessed below (for both the dwelling extension and the garage):

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*

Not applicable.

- (ii) *consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

The road is less than 4 metres in width.

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

Visibility at the access in line with the requirements of the Clare County Development Plan 2017-2023 (as varied) is not demonstrated on the information received. Further information is required on this issue.

- (iv) *interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*

It is considered that the proposal would not interfere with the character of this Western Corridor Working Landscape.

- (v) *consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or*

*electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

This is not applicable in this instance.

- (vi) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

Not applicable.

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

This is not applicable in this instance.

- b. *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

The site is located outside of any European Site designation. The site is 1.5km from Knockanira House SAC of which the qualifying interest is the Lesser Horseshoe Bat. Based on my onsite observations the extent of roadside boundary removal is unclear and therefore it is unclear if there would be a loss of a linear feature and/or connectivity for this species. Further information is required on this issue.

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

Not applicable.

- (viii) *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

Not applicable.

- (ix) *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

T

his is not applicable in this instance.

- (x) *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

This is not applicable in this instance.

- (xi) *obstruct any public right of way,*

This is not applicable in this instance.

- (xii) *further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.*

This is not applicable in this instance.

### **Recommendation**

I recommend that the applicant be requested to submit the following FURTHER INFORMATION:

1. You are requested to submit a revised Site Layout Plan which demonstrates the following:


(a)

The sightline availability at the proposed access in accordance with the requirements of the Appendix 1 of Volume 1 of the Clare County Development Plan 2017-2023 (as varied).

(b)

You are advised that the proposal site is located approximately 1.5km from Knockanira House Special Area of Conservation which is a known roost of the Lesser Horseshoe Bat species and it is an objective under CDP14.11(c) of the County Development Plan to ensure that there is no net loss of treelines and hedgerows within 3km of known roosts. Therefore, having regard to Article 9 (vii)(b) of the Planning and Development Regulations 2001, as amended, you are requested to outline the full extent of the works required to the existing roadside boundary to achieve the required sight distances and the extent of tree/hedgerow removal proposed.

  
Executive Planner  
Date: 27<sup>th</sup> June 2022

  
Senior Executive Planner  
Date: 27/06/22




## 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**

<b>Planning File Reference</b>	R22-38
<b>Applicant Name</b>	O'Loughlin
<b>Development Location</b>	Bansha Darragh
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No
<b>Description of the project (To include a site location map):</b>	
Agricultural access	
	

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

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

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

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Knockanira House SAC	Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]	1.5

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 and species.	Is the development within 1km of a European site with terrestrial based habitats or species?	Yes
3	Impacts on designated marine habitats and species.	Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs	No
4	Impacts on birds in SPAs	Is the development within 1km of a Special Protection Area	nO
5	Indirect effects	Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site? Is any emission from the	See FI request

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

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

		<i>development (including noise) likely to impact on an adjacent habitat or species?</i>	
--	--	--	--

**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.

Appropriate Assessment Screening Determination	
Planning File Reference	R22-38
Proposed Development	Agricultural access
Development Location	Bansha Darragh
European sites within impact zone	As per report
Description of the project	
Agricultural Access	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
As per report	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
See FI request	
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	
NPWS website Plans and particulars received GIS mapping database	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) <sup>3</sup>	
(b) There is no potential for significant effects to European Sites <sup>3</sup>	See FI request
(c) The potential for significant effects to European Site(s) cannot be ruled out <sup>4</sup>	
(d) Significant effects to European sites are certain or likely or	

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

<sup>4</sup> In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf)

Alternatively, where other planning concerns arise the proposal could be refused planning permission.

where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010 <sup>5</sup>	
Completed By	John O'Sullivan
Date	27 <sup>th</sup> June 2022

---

<sup>5</sup> The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.



R22-38

















COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Martina & Breeda O'Loughlin**  
**Mahonburgh**  
**Inch**  
**Ennis**  
**Co. Clare**  
**V95 VN0N**

**13/6/2022**

**Section 5 referral Reference R22-38 – Martina & Breeda O'Loughlin**

Is the opening of a new agricultural entrance off a secondary road at Bansha, Darragh, Co. Clare considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 13th June 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.

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) 6821616  
Fax No. (065) 6892071  
Email: [planoff@clarecoco.ie](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://www.clarecoco.ie)



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

**FEE: €80**

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

**1. CORRESPONDENCE DETAILS.**

(a) Name and Address of person seeking the declaration

Martina & Breeda O'Loughlin  
Mahonburgh  
Inch Ennis  
Co Clare  
V95 VNON

(b) Telephone No.:

(c) Email Address:

(d) Agent's Name and address:

N/A



**2. DETAILS REGARDING DECLARATION BEING SOUGHT**

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

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

Is the opening of a New Agriculture entrance off a secondary road at Bamba, Derragh, Co. Clare development and if so is it exempted development.

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

The Department of Agriculture Food and Marine has requested that this plot of ground is made more accessible to meet BPS requirement. For this reason we are seeking this Declaration to opening a new entrance for Agriculture purposes.

- (c) List of plans, drawings etc. submitted with this request for a declaration:

*(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)*

1. Site Layout Plan
2. Typical Plan & Elevation of Proposed Entrance
3. Land Registry Compliant Map

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Banoha Darragh Co Clare
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWNERS
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	YES
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	NO
(g) Were there previous planning application/s on this site? If so please supply details:	NO
(h) Date on which 'works' in question were completed/are likely to take place:	Once this declaration is issued June/July 2022

SIGNED: Martina O'Leary  
Breeda O'Loughlin

DATE: 11<sup>th</sup> June, 2022  
11<sup>th</sup> June, 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:

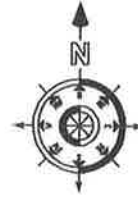
Planning Department,  
Economic Development Directorate,  
Clare County Council  
Aras Contae an Chlair,  
New Road,  
Ennis,  
Co. Clare  
V95DXP2

- (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

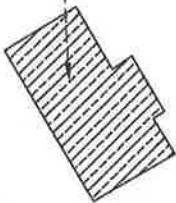
### **FOR OFFICE USE ONLY**

Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:.....			

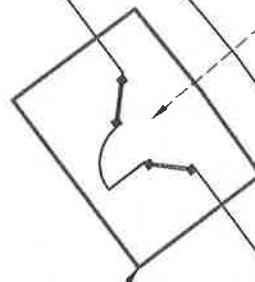




Existing Dwelling House



Proposed New  
Agricultural Entrance



Area of Work Edged in Red

# Site Layout Plan

(C) Copyright - Drawings for Discussion Purposes Only

**Title -** Proposed Site Layout Plan  
**Project -** Proposed Agricultural Entrance

**Client -** Martina O'Loughlin  
**Address -** Bansha, Darragh, Co. Clare.

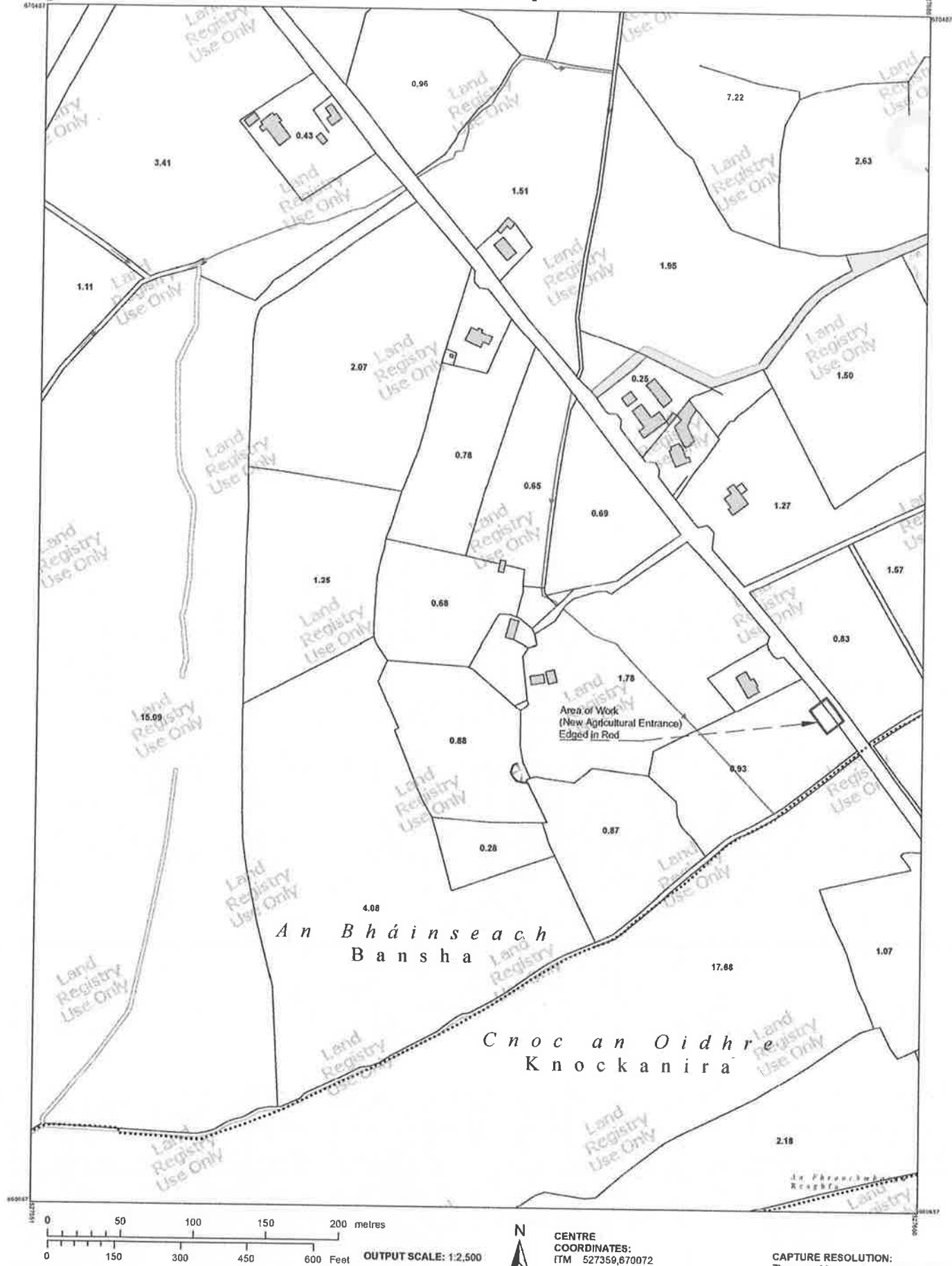
**Scale -** 1:500  
**Size -** A3

PND BUILDING CONSULTANCY LTD.  
Registered Building Surveyors &  
Quantity Surveyors  
Kilrush House, Frances Street,  
Kilrush, Co. Clare.  
Tel: 087 976 5226  
Email: padraig@pndconsultancy.com

M/21/77/SL  
DP-01  
22.05.22



## Land Registry Compliant Map



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**COORDINATES:**  
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ORDER NO.:  
50181848\_2

**PUBLISHED:**  
30/03/2021

**MAP SERIES:**  
1:5,000  
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MAP SHEETS:  
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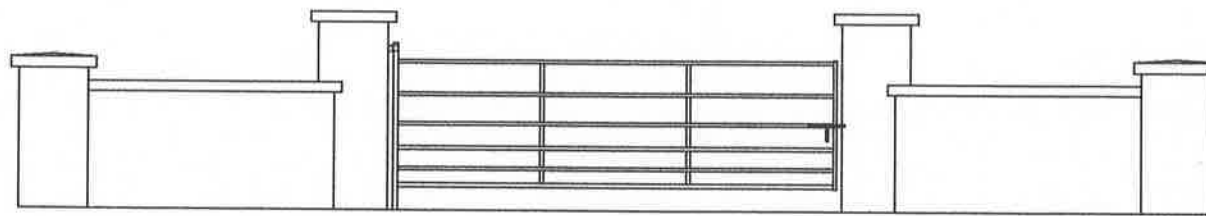
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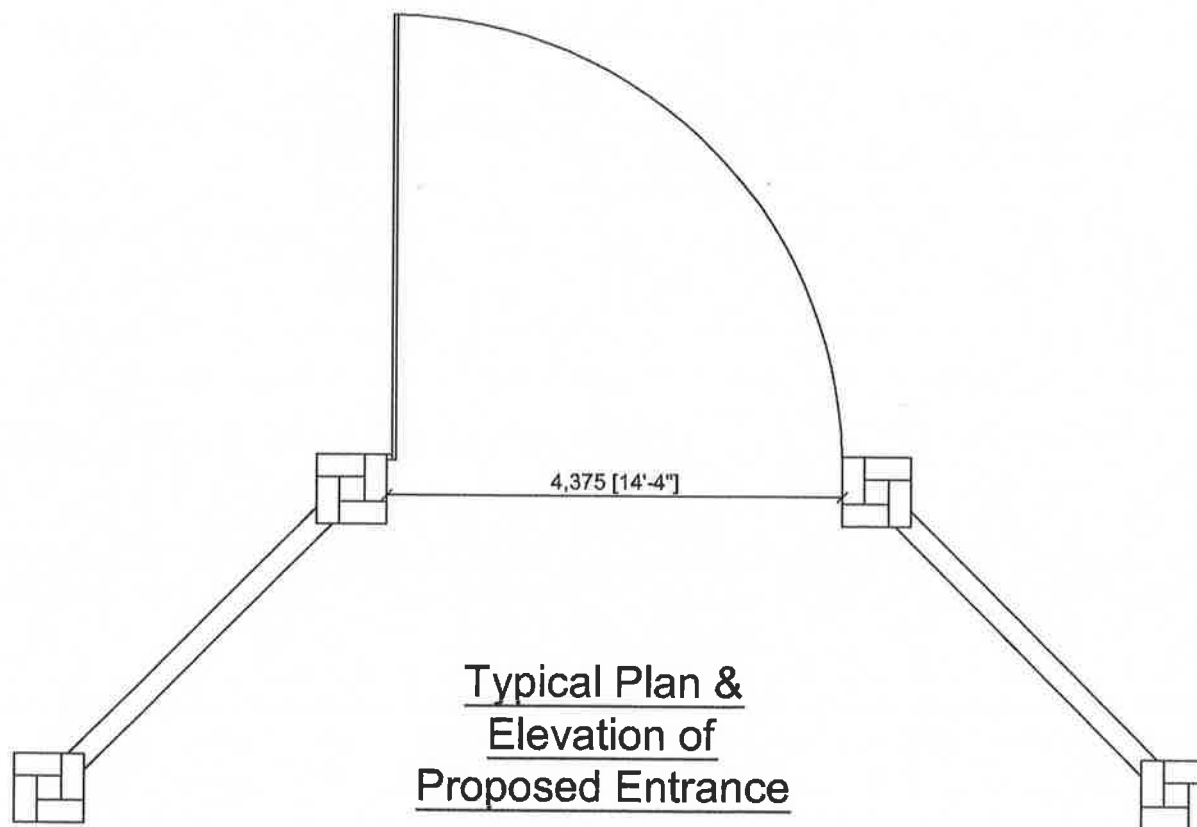
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1,125 [3'-8"]



1,800 [5'-11"]



Typical Plan &  
Elevation of  
Proposed Entrance

(C) Copyright - Drawings for Discussion Purposes Only

**Title -** Proposed Plan & Elevation

**Project -** Proposed New Agricultural Entrance

**Client -** Martina O'Loughlin

**Address -** Bansha, Darragh, Co. Clare.

**Scale -** 1:50

**Size -** A3

PND BUILDING CONSULTANCY LTD.  
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Kilrush House, Frances Street, Kilrush, Co. Clare.  
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P N D

# CONTAE AN CHLÁIR



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Aras Contae an Chlair  
New Road  
Ennis  
Co Clare

13/06/2022 12:54:10

Receipt No. : L1CASH/0/333877  
\*\*\*\*\* REPRINT \*\*\*\*\*

MARTINA & BREEDA O'LOUGHLIN  
MAHONBURGH  
INCH  
ENNIS  
CO CLARE  
R22-38

## AN CHLÁIR

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

Total :

80.00 EUR

Tendered :  
CHEQUES

80.00

Change :

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