

COMHAIRLE CONTAE AN CHLÁIR COUNTY COUNCIL

Registered Post

Deel Forestry Ltd Ardnaveigh Rathkeale Co. Limerick

RL 5660 3343 6TE

Your Client: Niamh O'Halloran

05th August, 2022

Section 5 referral Reference R22-55 - Niamh O'Halloran

Is the removal of 0.48ha of ash crop, due to ash dieback disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 27th July 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'Gorma **Staff Officer**

Planning Department

Economic Development Directorate

An Roinn Pleanála An Stiúrthóireacht Forbairt Gheilleagrach

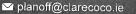
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

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.: R22-55



Section 5 referral Reference R22-55

Is the removal of 0.48ha of ash crop, due to ash dieback disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, Co. Clare, considered to be development and if so, is it exempted development?

AND WHEREAS, Niamh O'Halloran has requested a declaration from Clare County Council on the said question.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended:
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended:
- (c) Class 16 of Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended;
- (d) Article 8F of the Planning and Development Regulations 2001, as amended
- (e) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) The removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch 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 removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch is exempted development by virtue of Schedule 2, Part 3, Class 16 of the Planning and Development Regulations 2000 (as amended) and Article 8F of the Planning and Development Regulations 2000 (as amended)

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

The proposed development consisting of the removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, Co. Clare is development and is exempted development, as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

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Anne O'Gorman

Staff Officer

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Planning Department

Economic Development Directorate

05th August, 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:

80242

Reference Number:

R22-55

Date Referral Received:

27th July 2022

Name of Applicant:

Niamh O'Halloran

Location of works in question:

Liscullaun, Co. Clare

Section 5 referral Reference R22-55 – Niamh O'Halloran

Is the removal of 0.48ha of ash crop, due to ash dieback disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, 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) Class 16 of Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended;
- (d) Article 8F of the Planning and Development Regulations 2001, as amended
- (e) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) The removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch 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 removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch is exempted development by virtue of Schedule 2, Part 3, Class 16 of the Planning and Development Regulations 2000 (as amended) and Article 8F of the Planning and Development Regulations 2000 (as amended)

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 Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein.

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and

under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, Co. Clare is development and is exempted development.

Signed:

GARETH RUANE

SENIOR EXECUTIVE PLANNER

Ast

Date:

05th August, 2022

CLARE COUNTY COUNCIL SECTION 5 DECLARATION OF EXEMPTION APPLICATION PLANNERS REPORT

FILE REF:

R22-55

APPLICANT(S):

Niamh O' Halloran

REFERENCE:

Whether the removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch is or is not development and is or is not

exempted development.

LOCATION:

Liscullaun, Co Clare

DUE DATE:

19th August 2022

Site Location

The proposal site is located in a rural area approximately 1.4km west of O' Callaghan's Mills.

Recent Planning History

No previous planning applications on the proposal site or adjoining lands.

Background to Referral

This Referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by Niamh O' Halloran. She has stated that she is the owner of the lands to which this referral relates.

The applicant is seeking a Section 5 Declaration as to whether the removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch is or is not development and is or is not exempted development.

The site has an area of 0.48.

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)(i) of the Planning and Development Act 2000, as amended

The following shall be exempted development:

development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;

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

Notwithstanding paragraph (i) of subsection 1 and any regulation under subsection 2 development shall not be exempted development of an Environmental Impact assessment or an appropriate assessment of the development is required.

Section (4A) states of the Planning and Development Act 2000 (as amended)

Notwithstanding subjection 4 the Minister may make regulations prescribing development or any class of development that is:

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and
- (b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.]

Planning & Development Regulations, 2001, as amended

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

Article 8F of Planning and Development Regulations 2001 (as amended)

Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of –

- (a) the thinning, felling or replanting of trees, forests or woodlands,
- (b) works ancillary thereto,

shall be exempted development.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 16

The replacement of broadleaf high forest by conifer species.

Conditions and limitations:

The area involved shall be less than 10 ha.

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) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

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

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

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

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

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

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

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

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

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

(xi) obstruct any public right of way,

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

of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, Co. Clare is or is not development and is or is not exempted development.

Notwithstanding the provisions of Section 4(4) of the Act and Article 8 F of the Planning and Development Regulations, Section (4A) makes provision for the Minister to make regulations prescribing development or any class of development that is authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and as respects which an environmental impact assessment or an appropriate assessment is required to be exempted development for the purposes of the Planning Acts. In this instance Part 3 Exempted Development- Rural- Article 6, Class 16 states that the replacement of broadleaf high forest by conifer species is exempted development provided the area involved shall be less than 10 ha.

The total area proposed for replanting under this referral is 0.48ha.

In this regard it is noted that the proposed planting will require a licence (under the Forestry Act 2014) and the question of Environmental Impact Assessment and Appropriate Assessment in respect of the proposed development is dealt with through the Forestry Licence process.

Conclusion

Having regard to the information provided, it is considered that the removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun. Co. Clare constitutes both 'works' and 'development'. Regard has also been had to Section (4A) (Planning and Development Act 2000) and Class 16 (Part 3 Exempted Development-Rural- Article 6) of the Regulations made thereunder, which states that the replacement of broadleaf high forest by conifer species is exempted development when the area is less than 10 ha.

Recommendation

The following question has been referred to the Planning Authority:

Whether the removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, Co. Clare is considered to be development and if so, is it exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 16 of Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended;
- (d) Article 8F of the Planning and Development Regulations 2001, as amended
- (e) The works as indicated in submitted documents from the referrer.

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

(a) The removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch 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 removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch is exempted development by virtue of Schedule 2, Part 3, Class 16 of the Planning and Development Regulations 2000 (as amended) and Article 8F of the Planning and Development Regulations 2000 (as amended)

Now therefore Clare County Council (Planning Authority) hereby decides that the removal of 0.48ha of ash crop, due to Ash Dieback Disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, Co. Clare is development and is exempted development.

A/Senior Planner

Date:

SEP NUJOS/22



COMHAIRLE CLARE CONTAE AN CHLÁIR COUNTY COUNCIL

Deel Forestry Ltd Ardnaveigh Rathkeale Co. limerick

Your Client: Niamh O'Halloran

27/07/2022

Section 5 referral Reference R22-55 - Niamh O'Halloran

Is the removal of 0.48ha of ash crop, due to ash dieback disease, and replacement of same with a mix of Sitka Spruce and Japanese Larch at Liscullaun, Co. Clare, considered to be development and if so, is it exempted development?

A Chara.

I refer to your application received on 27th July 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

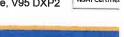
Planning Department

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 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

	CORRESPONDENCE DETA	ILS.
(a)	Name and Address of person seeking the declaration	Niamh O' Halloran
		Gortnagonnella
		Broadford
		Co Clare
	1	
(b)	Telephone No.:	
(c)	Email Address:	
(d)	Agent's Name and address:	Deel Forestry Ltd
		Ardnaveigh
		Rathkeale
		Co. Limerick
		· · · · · · · · · · · · · · · · · · ·
		SECTIO

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 removal of Ash Diseased Ash Plantation replanted with SS & JL an exempt development/					
(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.					
My plantation at Liscullaun Co Clare has been inspected by the Forestry Service and has been deemed					
to be infected with Ash Die Back disease. I am currently applying for the Ash Die Back replanting					
scheme and this scheme requires that I remove the infected Ash and replant the area. I wish to replant					
this area with SS & JL on foot of the advice we received from our Forestry Advisor					
(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)					

	3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT						
(a)	Postal Address of the Property/Site/Building for which the declaration sought:	Liscullaun					
	witten the declaration sought.	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	NO					
	by the Planning Authority?						
(c)	Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Owner					
(d)	If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:	N/A					
	Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.						
(e)	Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	I am the owner					
(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? <i>If so please supply details:</i>	Please see Forest Service Contract C					
(h)	Date on which 'works' in question were completed/are likely to take place:	August 2022					

SIGNED: Name Halla-

DATE: 20.07.2022

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 Countil
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

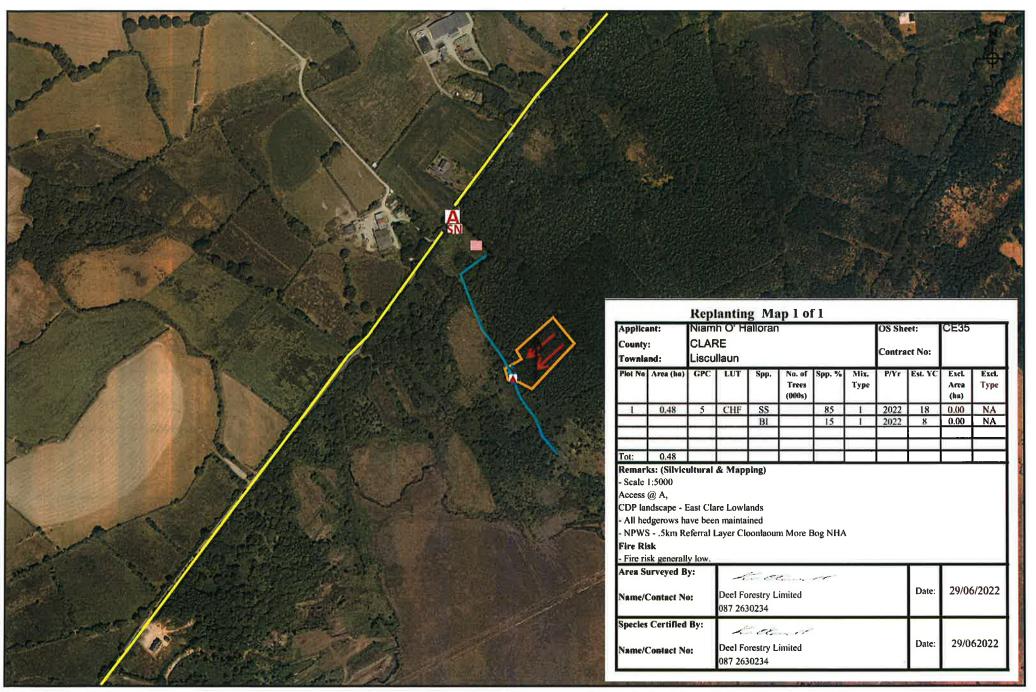
- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information 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:	*******************************		



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Contract: N O' HalloranScale 1:5000



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COMHAIRLE

CONTAE



Clare County Council Aras Contae an Chlair New Road Ennis

Co Clare

27/07/2022 10:11:59

Receipt No. L1CASH/0/335928
***** REPRINT *****

NIAMH O'HALLORAN
C/O DEEL FORESTRY LTD.,
ARDNAVEIGH
RATHKEALE
CO. LIMERICK ALP LE
R22-55

CONTAE

SECTION 5 REFERENCES GOODS 80.00 VAT Exempt/Non-vatable

80.00

Total:

80.00 EUR

Tendered : CHEQUES

80.00

Change

0.00

Issued By L1CASH - Noelette Barry

From : MAIN CASH OFFICE LODGEMENT AF

Vat reg No.0033043E