



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Declan Lyons
c/o Mike Lyons
Lyons Designs Architectural Services
14 Bellewood
Ballyneety
Co. Limerick**

11th January 2023

Section 5 referral Reference R22-84 – Declan Lyons

Are the following works exempted development; (a) Repairs to gravel slipway with concrete. (b) Repairs to wooden jetty. (C) Repairing gravel pathway with gravel. (d) Replacing wire fence with timber post and rail.

A Chara,

I refer to your application received on 9th December 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

**Josephine Connors
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 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No:

81071

Reference Number:

R22-84

Date Referral Received:

9th December 2022

Name of Applicant:

Declan Lyons

Location of works in question:

Ballynakilliew, Mountshannon, Co. Clare

Section 5 referral Reference R22-84 – Declan Lyons

Are the following works exempted development; (a) Repairs to gravel slipway with concrete. (b) Repairs to wooden jetty. (C) Repairing gravel pathway with gravel. (d) Replacing wire fence with timber post and rail.

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) Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended);
- (d) The works as indicated in submitted documents from the referrer;
- (e) The planning history of the site;
- (f) The inspection of the site by the Planning Authority and the nature of the works as carried out to date.

AND WHEREAS Clare County Council has concluded:

- (a) Repairs to gravel slipway with concrete, repairs to the wooden jetty, repairing the gravel pathway with gravel and replacing wire fencing with timber post and rail 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 repairs to the wooden jetty is exempted development having regard to Section 4(1)(h) of the Planning and Development Act, 2000 (as amended)
- (d) The said replacing of wire fencing with timber post and rail is exempted development having regard to Class 11 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended)
- (e) The said repairs to gravel slipway with concrete is not exempted development having regard to:

- a. The meanings of descriptions of the Classes of Development provided for in Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)
 - b. Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended), whereby the works 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,
- (f) The said repairing of the gravel pathway is not exempted development having regard to:
- a. Class 13 Schedule 2, Part 1 of the Planning and Development Act, 2001 (as amended) whereby the works consist of the construction of a private footpath and the width exceeds the 3m width limitation
 - b. Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended), whereby the works 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,

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 repairs to the wooden jetty and the replacement of wire fencing with timber post and rail at Ballynakilliew, Mountshannon, Co. Clare is considered development which is exempted development. Now therefore Clare County Council (Planning Authority), hereby decides that the repairs to gravel slipway with concrete and repairs to the gravel pathway with gravel is considered development which is not exempted development.

Signed:


GARETH RUANE
SENIOR EXECUTIVE PLANNER

Date:

11th January 2023

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

Reference No.: R22-84



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R22-84

Are the following works exempted development; (a) Repairs to gravel slipway with concrete. (b) Repairs to wooden jetty. (C) Repairing gravel pathway with gravel. (d) Replacing wire fence with timber post and rail.

AND WHEREAS, Declan Lyons 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) Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended);
- (d) The works as indicated in submitted documents from the referrer;
- (e) The planning history of the site;
- (f) The inspection of the site by the Planning Authority and the nature of the works as carried out to date.

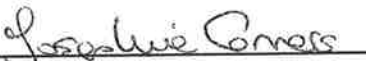
And whereas Clare County Council has concluded:

- (a) Repairs to gravel slipway with concrete, repairs to the wooden jetty, repairing the gravel pathway with gravel and replacing wire fencing with timber post and rail 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 repairs to the wooden jetty is exempted development having regard to Section 4(1)(h) of the Planning and Development Act, 2000 (as amended)
- (d) The said replacing of wire fencing with timber post and rail is exempted development having regard to Class 11 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended)
- (e) The said repairs to gravel slipway with concrete is not exempted development having regard to:
 - a. The meanings of descriptions of the Classes of Development provided for in Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)

- b. Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended), whereby the works 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,
- (f) The said repairing of the gravel pathway is not exempted development having regard to:
 - a. Class 13 Schedule 2, Part 1 of the Planning and Development Act, 2001 (as amended) whereby the works consist of the construction of a private footpath and the width exceeds the 3m width limitation
 - b. Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended), whereby the works 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,

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 of repairs to the wooden jetty and the replacement of wire fencing with timber and post rail at Ballynakilliew, Mountshannon, Co. Clare **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations. The repairs to the gravel slipway with concrete and the repairs to the gravel pathway with gravel **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.


Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate

11th January 2023

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION

| | |
|----------------------|---|
| FILE REF: | R22-84 |
| APPLICANT(S): | Declan Lyons |
| REFERENCE: | Whether (a) repairs to gravel slipway with concrete, (b) repairs to wooden jetty, (c) repairing gravel pathway with gravel and (d) replacing wire fence with timber post and rail is or is not development and is or is not exempted development. |
| LOCATION: | Ballynakillew, Mountshannon, Co. Clare |
| DUE DATE: | 13 th January 2023 |

Site Location

The site is located in a rural area between Mountshannon and Whitegate on the shores of Lough Derg. The site is accessed via a private laneway which runs along the lake shore, serving a number of dwelling houses and adjoining agricultural land.

The development which is the subject of this referral is located on lake-side (southeast) of the access road. The associated dwelling house is on the northwest side of the lane. The residential element of the property is does not form part of this referral.

The site comprises an area of the lake margin which has been fenced with post and rail fencing. A gravel path leads to the water where there is a jetty structure, small concrete slipway, lights and electricity pillars.

Planning History

UD07-219 Warning Letter issued to Declan Lyons re: the construction of a jetty.

The application removed the unauthorised structure, and no further enforcement action was warranted at the time.

To the Northwest

P18/799 – Declan and Gemma Lyons – granted permission for development which will consist of the modification and extension of the existing bungalow. The extension shall include three bay windows to the front of the existing bungalow, and the addition of a gym, WC and store at lower ground level. The application includes for the replacement of the existing septic tank with a new on-site secondary waste water treatment unit and packaged tertiary polishing filter, and includes for all associated site works

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Declan Lyons. He states that he is the owner of the property.

The applicant is seeking a Section 5 Declaration as to whether (a) repairs to gravel slipway with concrete, (b) repairs to wooden jetty, (c) repairing gravel pathway with gravel and (d) replacing wire fence with timber post and rail is or is not development and is or is not exempted development.

The following information is provided by the applicant (in summary):

- There has been a gravel slipway at this location since the 1970s which consisted of a gravel sloped entrance to the lake with stone borders. The gravel slipway was subject to constant erosion and repair. Recent repairs were undertaken in 2021 where cement was placed on the slipway to prevent further erosion and improve pedestrian safety. The slipway is approximately 1.2m in width.
- The wooden jetty has been present on the site since 1976. Over its lifetime the jetty has been repaired numerous times due to general wear and tear and storm damage. In 2021 the applicant replaced the old timber decking boards with new timber decking boards. The size of the jetty has not been changed or altered since it was constructed.
- The gravel pathway has been present since the 1970s and has not been altered. New loose gravel has been placed over the existing gravel due to weather damage. The length and width of the path is unchanged.
- An electric fence surrounding the property has been replaced with timber post and rail fencing

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 2(1) of the *Planning and Development Act 2000, as amended* also states:

"land" includes any structure and any land covered with water (whether inland or coastal)

'Wetlands' are defined in Article 5(1) of the *Planning and Development Regulations 2001, as amended* as follows:

"Wetlands" means natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.

Section 4(1)(h) of the Planning and Development Act. 2000 (as amended)

The following shall be exempted developments for the purposes of this Act—

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

Section 4(1)(j) of the Planning and Development Act. 2000 (as amended)

The following shall be exempted developments for the purposes of this Act—

development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 11

The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of— (a) any fence (not being a hoarding or sheet metal fence), or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

- 1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.*
- 2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.*

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 13

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

- 1. The width of any such private footpath or paving shall not exceed 3 metres.*

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 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 Schedule 2 opposite the mention of the relevant 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,

(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,

(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,

(vii) 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 (a) repairs to gravel slipway with concrete, (b) repairs to wooden jetty, (c) repairing gravel pathway with gravel and (d) replacing wire fence with timber post and rail is or is not development and is or is not exempted development.

Particulars of the Development

The works are specified as follows:

- Repairs to slipway and change of surface material
- Repair of wooden jetty
- Repair of gravel pathway
- Replacing a wire fence with timber post and rail fencing.

Assessment of the following elements of the works:

- Repairs to gravel slipway

The applicant has indicated that there was an existing gravel slipway at this location for a considerable length of time. It is stated that the finishes of the slipway have been changed from gravel to concrete because the gravel surface was subject to erosion. The area of the slipway is small. The applicant has stated that it is 1.2m wide and the submitted drawings indicate that it is approximately 4m in length. The applicant has stated that the size of the slipway has not been increased.

I am not satisfied that there has been a slipway at this location since the 1970s as stated by the applicant. The site was photographed in 2007 as part of the investigation of enforcement issues on the landholding. There was no slipway at the current location at that time. I consider the slipway to be of more recent construction.

The provision of concrete slipway does not come within the meaning of descriptions for any of the Classes of Development provided for in Schedule 2, Part 1 or Part 3 of the Planning and Development Regulations

The slip is development which is not exempted development.



Figure 1: Location of slipway 19/11/07



Figure 2: Slipway and side wall 21/12/2022

Assessment of the following elements of the works:

- Repair of the wooden jetty

There has been a jetty at this location for a considerable length of time. The applicant has indicated that the jetty has been there since at least the 1970s. The applicant has replaced the decking timbers on the jetty and has stated that no other works have been carried and the size of the structure has not increased. The jetty visible on historic aerial photographs of the area appears to be a similar size as the structure present on the site.

Replacing the decking timbers is works for the maintenance and improvement of the structure which do not material affect the appearance of the structure. These works are exempt under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

Assessment of the following elements of the works:

- Repair of the gravel path

The applicant has stated that there was an existing path at this location leading from the private laneway service the site to the jetty. The path is evident on all available aerial photos.

The applicant states that they have not altered the width or location of the pathway. However, I do not consider this assertion to be correct. Photos on file UD07/219 clearly show the pathway and it was significantly narrower at that time than the path currently on the site.

The drawings submitted with the application indicate that the upgraded path is 3.9m wide which exceeds the limitations of Class 13 of Schedule 2, Part 1 of the Planning and Development Regulations. There is also concern in relation to the impact of the pathway upgrade on European site. This is discussed further later in this report.

The works to the pathway are development which is not exempted development



Figure 3: path leading to shoreline 19/11/2007



Figure 4: Path leading to shoreline 21/12/2022

Assessment of the following elements of the works:

- Replacement fencing

The applicant has indicated that the site boundaries and gravel pathway were formerly delineated by wire fencing which was in a poor condition. The wire fencing has been replaced with timber post and rail fencing. The height of the fencing has not been stated but having both inspected the site and crossed the fencing to access the site, I am satisfied that the 1.2m limitation has not been exceeded and that the replacement fencing is exempt under the provisions of Class 11 of Schedule 2, Part 1 of the Planning and Development Regulations.

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

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

The proposal does not contravene a condition of any previous permission

(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,

No access points onto the public road network are affected by the proposal.

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

The proposal does not create a traffic hazard or obstruct road users in the area.

(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,

The proposal site is not located in a solar safeguard zone.

(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,

Not applicable to the proposal

(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

Not applicable to this proposal

(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.

The works have been undertaken in a Heritage Landscape, as designated in the Clare County Development Plan 2017-2023 (as varied). The works undertaken are low-lying. While there will be some visibility of same from the lake, the works are not obtrusive in the landscape and do not have a negative impact on the character of the area.

(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,

Not applicable to this proposal

(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,

There are no known archaeological features in the vicinity of the proposal site.

(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,

The Planning Authority, as the competent authority in the appropriate assessment process, has been unable to reach a determination that the proposed development, alone and in-combination with other plans and projects, will not have a significant effect on European sites.

An appropriate assessment screening report and determination is attached to this report.

(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."

The development works are located within the Lough Derg pNHA. Based on the information current available to the Planning Authority, it is unclear if the works have had an impact on the pNHA.

(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 to this proposal

(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,

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,

Not applicable in this instance

(xi) obstruct any public right of way,

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.

The development site is not within an Architectural Conservation Area.

Recommendation

The following questions have been referred to the Planning Authority:

Whether (a) repairs to gravel slipway with concrete, (b) repairs to wooden jetty, (c) repairing gravel pathway with gravel and (d) replacing wire fence with timber post and rail at Ballynakillew, Mountshannon, Co. 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) Schedule 2, Part 1 of the Planning and Development Regulations 2001, ~~as amended~~;
- (d) The works as indicated in submitted documents from the referrer;
- (e) The planning history of the site;
- (f) The inspection of the site by the Planning Authority and the nature of the works as carried out to date.

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

- (a) Repairs to gravel slipway with concrete, repairs to the wooden jetty, repairing the gravel pathway with gravel and replacing wire fencing with timber post and rail 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 repairs to the wooden jetty is exempted development having regard to Section 4(1)(h) of the Planning and Development Act, 2000 (as amended)
- (d) The said replacing of wire fencing with timber post and rail is exempted development having regard to Class 11 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended)
- (e) The said repairs to gravel slipway with concrete is not exempted development having regard to:
 - a. The meanings of descriptions of the Classes of Development provided for in Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)
 - b. Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended), whereby the works 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,
- (f) The said repairing of the gravel pathway is not exempted development having regard to:
 - a. ~~Class 13 Section 3(3)~~ of the Planning and Development Act, 2000 (as amended) whereby the works consist of the construction of a private footpath and the width exceeds the 3m width limitation
 - b. Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended), whereby the works comprise development in relation to which a

Schedule 2, Part 1

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,

Now therefore Clare County Council (Planning Authority), hereby decides that:

- Repairs to the wooden jetty; and
- Replacement of wire fencing with timber post and rail


is development and is exempted development.

Now therefore Clare County Council (Planning Authority), hereby decides that:

- Repairs to gravel slipway with concrete; and
- Repairs to the gravel pathway with gravel

is development which is not exempted development


Name: Caroline Balfe
Executive Planner
Date 10/01/2023


Name: Garreth Ruane
Senior Executive Planner
Date 10/01/23

Appropriate Assessment & Determination

| STEP 1. Description of the project/proposal and local site characteristics: | |
|---|--|
| (a) File Reference No: | R22-84 |
| (b) Brief description of the project or plan: | (a) repairs to gravel slipway with concrete, (b) repairs to wooden jetty, (c) repairing gravel pathway with gravel and (d) replacing wire fence with timber post and rail at Ballynakillew, Mountshannon, Co. Clare |
| (c) Brief description of site characteristics: | <p>Located on the lake shore and lake margins.</p> <p>Jetty and slipway are at the shoreline</p> <p>Pathway traverses the lake margins. Lands are either side of the pathway are poorly drained with surface water ponding</p> <p>Fencing surrounds the landholding.</p> <p>Lands are low-lying and slope gently towards the water</p> |
| (d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW | NPWS |
| (e) Response to consultation: | No response received |

STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.

Having regard to the nature and scale of the proposed development and the sensitive lakeshore setting, the likely zone of impact of the proposed development is approximately 5km.

| European Site (code) | List of Qualifying Interest/Special Conservation Interest ¹ | Distance from proposed development ² (km) | Connections (Source-Pathway-Receptor) | Considered further in screening Y/N |
|-----------------------------|--|--|--|-------------------------------------|
| Lough Derg (Shannon) SPA | <ul style="list-style-type: none"> • Cormorant <i>Phalacrocorax carbo</i> [A017] breeding + wintering • Tufted duck <i>Aythya fuligula</i> [A061] wintering + breeding • Goldeneye <i>Bucephala clangula</i> [A067] wintering + breeding • Common tern <i>Sterna hirundo</i> [A193] Breeding • Wetlands and Waterbirds [A999] | 0.00km | <p>Direct connectivity between the proposal site and the SPA.</p> <p>Parts of the development are within the SPA</p> | Yes |
| Slieve Aughty Mountains SPA | <ul style="list-style-type: none"> • Hen Harrier <i>Circus cyaneus</i> [A082] breeding • Merlin <i>Falco columbarius</i> [A098] breeding | 2.35km | <p>No connectivity due to the separation distance to the SPA and the nature of the proposed development site which does not offer optimum habitat for the Special Conservation Interests of the SPA.</p> | No |

¹ Short paraphrasing and/or cross reference to NPWS is acceptable – it is not necessary to reproduce the full text on the QI/SCI.

² If the site or part thereof is within the European site or adjacent to the European site, state here.

STEP 3. Assessment of Likely Significant Effects

- (a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:

| Impacts: | Possible Significance of Impacts: (duration/magnitude etc.) |
|--|--|
| <p>Construction phase e.g.</p> <ul style="list-style-type: none"> • Vegetation clearance • Demolition • Surface water runoff from soil excavation/infill/landscaping (including borrow pits) • Dust, noise, vibration • Lighting disturbance • Impact on groundwater/dewatering • Storage of excavated/construction materials • Access to site • Pests | <p>Construction phase is complete.</p> <p>Footpath has been widened in an area of the lake margin. Vegetation clearance was required.</p> <p>Potential for habitat fragmentation, noise, disturbance of protected species and surface water run-off impacts on water quality.</p> <p>The works may have caused displacement of species from foraging within close proximity to the site of the works for an unknown period of time.</p> <p>Creation of slipway required works on water's edge / in the water. Potential for impacts on water quality and species disturbance.</p> |
| <p>Operational phase e.g.</p> <ul style="list-style-type: none"> • Direct emission to air and water • Surface water runoff containing contaminant or sediment • Lighting disturbance • Noise/vibration • Changes to water/groundwater due to drainage or abstraction • Presence of people, vehicles and activities • Physical presence of structures (e.g. collision risks) • Potential for accidents or incidents | <p>Potential for lighting disturbance (lights alongside pathway).</p> <p>Disturbance from greater presence of people and increased usage due to enhancement of facilities.</p> <p>Potential for permanent displacement of species due to lighting and/or increased activity at this location in Lough Derg which forms an integral part of the SPA.</p> |
| In-combination/Other | <p>The development took place on the lakeshore and involved alterations to riparian habitat and potential fragmentation of habitat. While not part of the current Section 5 declaration, following a site visit it was apparent that large boulders have also been placed along the riparian zone of the lake in recent years. These works in conjunction with the works which form the content of this declaration have the potential for significant effects on the Special Conservation Interests of the SPA not least from the potential impacts on water quality during construction.</p> |

Significant clearance of vegetation has also occurred in the wider landholding as delineated on the submitted maps and drawings.

In-combination effects on European sites cannot be ruled out.

(b) Describe any likely changes to the European site:

Examples of the type of changes to give consideration to include:

- Reduction or fragmentation of habitat area
- Disturbance to QI species
- Habitat or species fragmentation
- Reduction or fragmentation in species density
- Changes in key indicators of conservation status value (water or air quality etc.)
- Changes to areas of sensitivity or threats to QI
- Interference with the key relationships that define the structure or ecological function of the site

Changes to water quality

Increase disturbance and displacement of Special Conservation Interests

Habitat fragmentation and removal

Direct loss of riparian vegetation.

(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?

☒ Yes ☐ No



Step 4. Screening Determination Statement

The assessment of significance of effects:

Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

The proposal development, alone and in-combination with existing development on the site has the potential to have a significant effect on European sites for reasons including (but not limited to), impacts on water quality, increase noise and activity on the shoreline, habitats disturbance and habitat fragmentation.

Conclusion:

| | Tick as Appropriate: | Recommendation: |
|---|---|---|
| (i) It is clear that there is no likelihood of significant effects on a European site. | <input type="checkbox"/> | The proposal can be screened out: Appropriate assessment not required. |
| (ii) It is uncertain whether the proposal will have a significant effect on a European site. | <input type="checkbox"/> | <input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission |
| (iii) Significant effects are likely. | <input checked="" type="checkbox"/> | <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission |
| Signature and Date of Recommending Officer: |  10/01/2023 | |
| Signature and Date of the Decision Maker: |  10/01/23 | |

R22-84











P07

CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR

R22-84

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

1. CORRESPONDENCE DETAILS.

| | |
|--|--|
| (a) Name and Address of person seeking the declaration | DECLAN LYONS BALLYNAKILLEW MOUNTSHANNON Co. CLARE |
| (b) Telephone No.: | |
| (c) Email Address: | |
| (d) Agent's Name and address: | MIKE LYONS LYONS DESIGNS ARCHITECTURAL SERVICES 14 BELLEWOOD BALLYNEETY Co. LIMERICK |



2. DETAILS REGARDING DECLARATION BEING SOUGHT

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

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

ARE THE FOLLOWING WORKS EXEMPTED DEVELOPMENT; (a) REPAIRS TO GRAVEL SLIPWAY WITH CONCRETE. (b) REPAIRS TO WOODEN JETTY (c) REPAIRING GRAVEL PATHWAY WITH GRAVEL (d) REPLACING WIRE FENCE WITH TIMBER POST AND RAIL.

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

(a) 1970's GRAVEL SLIPWAY HAS BEEN ERODED AND REPAIRED ONLY USING GRAVEL AND CEMENT. ITS DIMENSIONS (~1200mm) WERE UNALTERED.

(b) 1976 WOODEN JETTY HAS BEEN REPAIRED FOLLOWING STORM DAMAGE TO DECKING BOARDS. NEW TIMBER BOARDS REPLACED DAMAGED BOARDS. THE JETTY DIMENSIONS REMAIN UNALTERED.

(c) 1970's GRAVEL PATHWAY BETWEEN WOODEN BORDERS HAS NOT BEEN ALTERED. NEW LOOSE GRAVEL HAS BEEN PLACED OVER EXISTING GRAVEL DUE TO WEATHER DAMAGE.

(d) ELECTRIC WIRE AND TIMBER POST FENCE HAS BEEN REPLACED WITH TIMBER POST AND RAIL FENCING DUE TO HIGH RISK TO PEDESTRIANS AND VISITORS ALIKE.

NOTE: ALL DEVELOPMENTS HAVE BEEN IN PLACE SINCE 1970's.

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

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

SITE LOCATION MAP

SITE LAYOUT PLAN

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

| | |
|---|--|
| (a) Postal Address of the Property/Site/Building for which the declaration sought: | <u>BALLYNAKILLEN</u> <u>MOUNTSHANNON</u> <u>CO. CLARE</u> <u>V94 AEW9</u> |
| (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? | <u>NO.</u> |
| (c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details): | <u>OWNER</u> |
| (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> | <u>N/A</u> |
| (e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?: | <u>YES</u> |
| (f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i> | <u>YES. REF: UD 21-112</u> |
| (g) Were there previous planning application/s on this site? <i>If so please supply details:</i> | <u>NO.</u> |
| (h) Date on which 'works' in question were completed/are likely to take place: | <u>1970's. REPAIRS ONGOING SINCE THEN UP TO DECEMBER 2021.</u> |

SIGNED: DATE: 2/12/22

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: | |



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

WARNING LETTER

**PURSUANT TO
SECTION 152(1) OF THE PLANNING AND DEVELOPMENT ACT
2000, (AS AMENDED)**

Declan Lyons
Ballynakillew
Mountshannon
Co. Clare

Date 24th, January 2022

Our Ref: UD21-112

RE: Lands at Ballynakillew, Mountshannon, Co. Clare

A Chara,

I am informing you that it has come to the attention of the Planning Authority, Clare County Council, that unauthorised development may have been, is being or may be carried out, namely:

1. **The construction of a concrete slip way and wooden jetty within the Lough Derg Special Protection Area and the construction of wooden fencing and a pathway without the benefit of planning permission.**

On lands at Ballynakillew, Mountshannon, Co. Clare

Accordingly, this Warning Letter, pursuant to the provisions of Section 152(1) of the Planning and Development Act, 2000, as amended, is hereby issued to

Declan Lyons, *the owner of the lands.*

Any person served with this Warning Letter may make submissions or observations in writing to the planning authority, Clare County Council, regarding the alleged unauthorised development not later than four weeks from the date of the service of this Warning Letter.

When the Planning Authority considers that unauthorised development has been, is being or may be carried out, an Enforcement Notice may be issued requiring its recipient to cease or not to commence unauthorised development, or to proceed with development in accordance with the related permission.

Officials of the Planning Authority may at all reasonable times enter on the land for the purposes of inspection.

Any person who has carried out or is carrying out unauthorised development shall be guilty of an offence pursuant to Section 151 of the Planning and Development Act, 2000, as amended. I am obliged to inform you that the possible penalties involved where there is a conviction for such an offence are that a person shall be liable:

1. on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.
- or
2. on conviction on indictment to a fine not exceeding €12,697,380.78 or to imprisonment for a term not exceeding 2 years, or to both.

Where an unauthorised development involves the construction of an unauthorised structure, the minimum fine is:

- 1 on summary conviction, the estimated cost of the construction of the structure or €2,500, whichever is less:
 - or
 - 2 on conviction on indictment, the estimated cost of the construction of the structure or €12,697.38 for each day, whichever is less,
- except where the person convicted can show to the court's satisfaction that he, she, or it, does not have the necessary financial means to pay the minimum fine.

Failure to comply with an Enforcement Notice is an offence contrary to Section 154(8) of the Planning and Development Act, 2000, as amended.

The penalties upon conviction for an offence contrary to Section 154(8) are the same as for Section 151, set out above.

In addition, any costs reasonably incurred by the Planning Authority in relation to enforcement proceedings may be recovered from a person on whom an Enforcement Notice is served or where Court action is taken.

If you have any queries in relation to the above, please contact the **Planning Enforcement Section** on **(065) 6821616**.

I await any written submissions or observations you may have regarding the alleged unauthorised development, not later than four weeks from the date of the service of this Warning Letter.

Mise le meas,



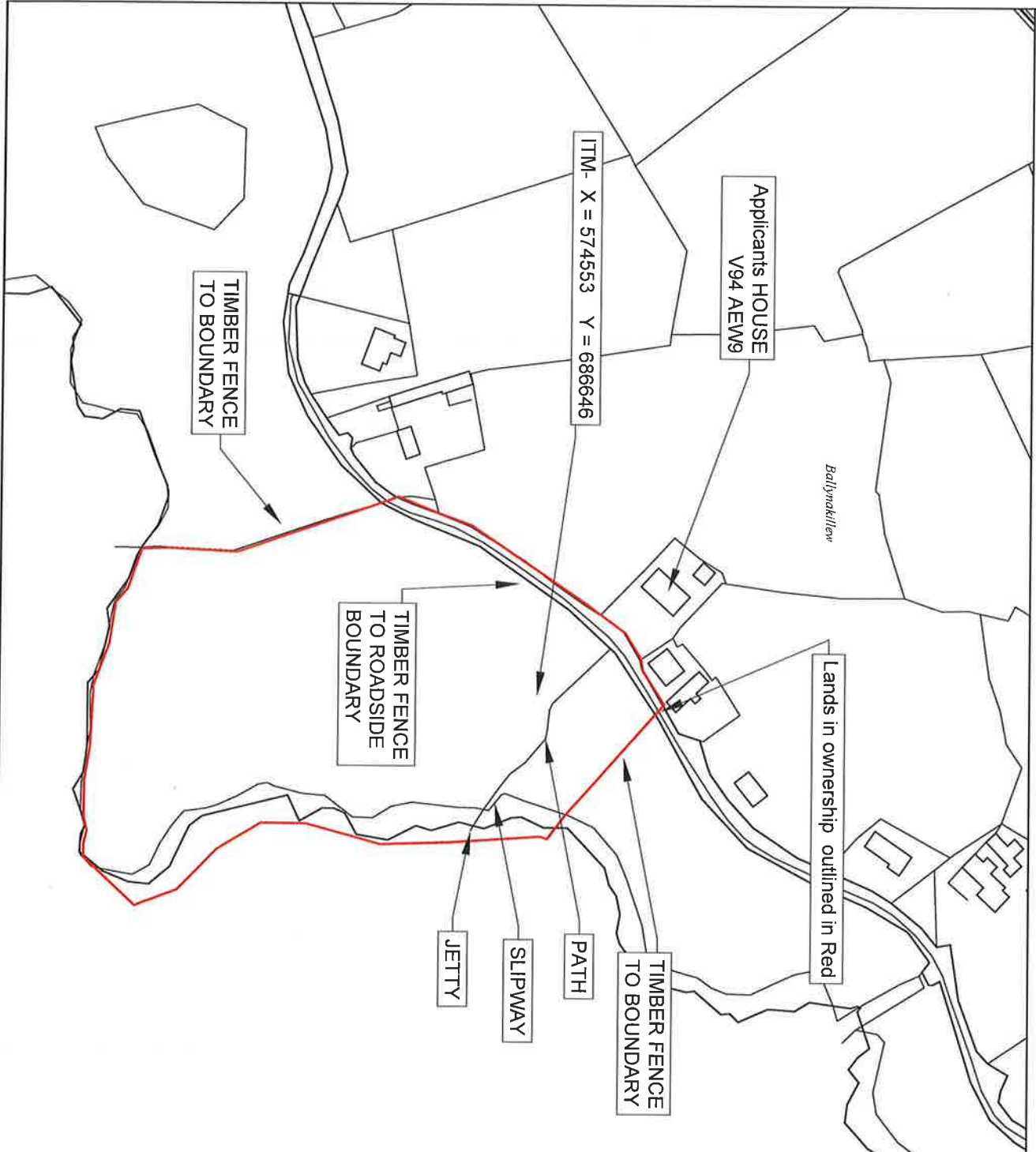
Aileen Nagle
Staff Officer
Planning Department

SITE LOCATION MAP

SITE outlined in red 2.7 ha

planning map

Map prepared by
mike lyons
lyons designs
architectural services
ballyneety
co. limerick



OSi License no 50305915

Description:
Digital Landscape Model (DLM)
Clip Extent / Area of Interest (AOI):
LTX.LLY= 574564 6402.686622 2415
LRX.LRY= 574847 6402.686622 2415
ULX.ULY= 574268 6402.686652 2415
URX.LRY= 574847 6402.686652 2415
Projection / Spatial Reference:
Projection= IRENET95_Insh_Transverse_Mercator
Centre Point Coordinates:
X.Y= 574556 1402.686637 2415
Reference Index:
Map Series | Map Sheets
1:5,000 | 4158
Version= 1.4
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permission of the copyright owners.
The representation on this map of a road, track
or footpath is not evidence of the existence of a
right of way.
Ordnance Survey maps never show legal property
boundaries, nor do they show ownership of physical
features.



Declan Lyons
Ballynakilliew,
Mountshannon
Co. Clare.

ITM- X = 591894 Y = 644962
OS Sheet - 4158

Scale- 1:2,500
Ratio 1:2,500



Order Confirmation

Ordnance Survey Ireland
Phoenix Park, Dublin 8
D08 F6E4
VAT No. IE 4748790P
custserv@osi.ie
+353-1-802-5300

Order #: 50305915

Order Date: 2 Dec 2022, 14:22:07

Sold to:
mike lyons
lyons designs
14 Bellewood
14 Bellewood
limerick, Limerick, v94 e63c
Ireland
T: 0872768650

Payment Method

Pay by Credit or Debit Card

| SKU | Product | Price | Qty | Subtotal |
|--|---------------|--------|-----|----------|
| 471018 | Planning Pack | €95.00 | 1 | €116.85 |
| 574556,686637, A4, 1:2,500, Landscape, AutoCAD DWG 2013, ITM | | | | |

Subtotal: €95.00

Tax: €21.85

Grand Total: €116.85



**LYONS DESIGNS
ARCHITECTURAL
SERVICES.**

14 Bellewood
Ballyneety
Co. Limerick
Ireland

02nd December 2022

T: 087 2768650
mike@ldas.ie

Planning Department,
Economic Development Directorate,
Áras Contae an Chláir,
New Road., Ennis,
Co. Clare. V94 DXP2.

Re: Request For A Declaration On Development And Exempted Development (Section 5 of the Planning & Development Act 2000 (as amended) following receipt of Warning Letter- Section 152(1) Planning and Development Act 2000, (as amended) Ref: UD-21-112

Lands at Ballynakillew, Mountshannon, Co. Clare.

Dear Sir, Madam,

With regard to the above referenced Warning Letter dated **24th January 2022, REF: UD-21-112**, we can confirm that we have been engaged to act on behalf of the owner of the site, Declan Lyons.

This Warning Letter stated that unauthorised development may have been, is being or may be carried out, namely;

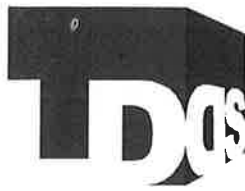
1. *The construction of a concrete slip way and wooden jetty within the Lough Derg Special Protection Area and the construction of a wooden fence and a pathway without the benefit of planning permission.*

In response to the warning letter received, we have attached a **Request For A Declaration On Development And Exempted Development (Section 5 of the Planning & Development Act 2000 (as amended))**. Within this request, the following questions have been asked of the Planning Authority to confirm if these works are considered Development and if so are considered Exempted Development, namely:

a) *Concrete slip way*

The slip way at the lake edge has been in existence since before 1970. The slip way consisted of a gravel sloped entrance to the lake with stone borders approximately 1200mm wide. Over the past 50+ years, the gravel has been eroded and receding up the slip along with degrading the jetty. The slip has been constantly repaired due to gravel been washed away and debris encroaching and blocking the slip way limiting its safe use. Recent repairs took place in late 2021 where gravel and cement were placed over the slip way thus preventing further erosion of the slip and the adjacent jetty. This has enhanced/improved the safety of the use of this slip way by pedestrians and aids in preventing future erosion to the slip and jetty.

www.ldas.ie



b) Wooden Jetty

To the applicants knowledge, this wooden jetty has been in existence since before 1976. Over its lifetime, the jetty has been repaired due to general wear and tear and storm damage. This has been essential in order to maintain the safe use of the jetty. Recent repairs took place in late 2021 where old timber decking boards have been replaced with new timber decking boards. The size of the jetty has not been changed or altered since it has been constructed.

c) Wooden Fence

The existing electric fence with timber posts fell into disrepair and posed a health and safety issue to users. Animals in the adjoining fields were able to roam along the path and into either field at either side of the pathway thus making it unsafe to use the jetty and slip. In order to make this amenity safe, the rusted electric fence and rotten timber posts were replaced with an environmentally friendly native timber post and rail stock proof fence. The width of the fenced area/pathway was not changed or altered since it has been constructed pre 1970's.

We respectfully submit that the erection of the wooden fence would be exempted development under Class 4 Part 3 Schedule 2.

d) Pathway

The gravel pathway had been constructed in the 1970's and was formed using timber edge boards with porous gravel hardcore infill. Over time, the pathway has been eroded to such a condition that it was unsafe to walk upon. The gravel on this pathway has been 'topped-up' using local gravel stone over the years and made safe to travel upon by pedestrians.

The most recent repairs to this pathway took place in 2021 where local gravel was placed on top of the existing gravel path. The pathway was in no way changed in length or width.

We respectfully submit that the repairs of the pat would be exempted development under Class 13 Part 1- second schedule

Having reviewed the various correspondence between the owner and the enforcement section of the Council what is unclear is whether the local authority acknowledge that the Jetty, slipway path and fence were in existence before the recent repairs took place.

We have reviewed google earth pro and below is an image of the area from 2009... The path and jetty are clearly identifiable on this. Refer to fig 1 overleaf.



Fig 1.

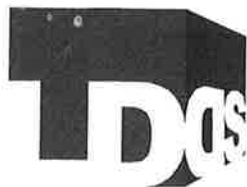
The owner has acted in good faith in carrying out the repairs last year. In saying this the owner would like to regularize the situation, hence the preparation of this Section 5 application.

Please do not hesitate to contact me if you have any further questions or queries regarding this We would welcome the opportunity to discuss each of the items in detail should this be allowed under the application process.

Please address correspondence to the under signed.

Attached

- Fee- €80
- Application form
- Copy of initial Warning letter (for reference)
- Site location map
- OSI receipt being the license to use the maps
- Site Layout plan- scale 1:500@a2.

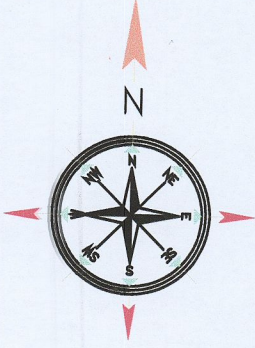


LYONS DESIGNS
ARCHITECTURAL
SERVICES.

Yours sincerely,

 (Agent)

Mike Lyons (Bsc Arch Tech)



Ballynakillew

Applicants HOUSE
V94 AEW9

EXISTING PASSING BAY
ON PRIVATE ROAD

Lands in ownership outlined in Red

TIMBER POST AND RAIL
STOCKPROOF FENCE
TO ROADSIDE
BOUNDARY

GATE

GRAVEL PATH

TIMBER POST AND RAIL
STOCKPROOF FENCE
TO ROADSIDE
BOUNDARY

CONCRETE SLIPWAY

JETTY

TIMBER POST AND RAIL
STOCKPROOF FENCE
TO ROADSIDE
BOUNDARY

Water line

Lake

Water line

Lake



| | | | | |
|--------------------------------------|---|--|-----------|---|
| lyons designs architectural services | | 14 bellewood ballyneety co. limerick | drawn: | mike lyons T: 087 2768650 E: mike@ldas.ie |
| project: | Section 5 application- repair to path/ jetty | drawing title: | date: | 02/12/2022 |
| client: | Declan Lyons Ballynakillew Mounshannon, Co. Clare | Site layout plan | scale: | 1:500@A2 |
| | | | stage: | SECTION_5 |
| | | | sheet no. | P02 |