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CONTAE AN CHLÁIR | COUNTY COUNCIL

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**Michael Francis
Muckinish West
Ballyvaughan
Co. Clare**

18th July 2023

Section 5 referral Reference R23-47 – Michael Francis

Is the construction of a commercial entrance on the N67 at Muckinish West development and if so is it exempted development?

A Chara,

I refer to your application received on 28th June 2023 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

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

Mise, le meas

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

**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:

82089

Reference Number:

R23-47

Date Referral Received:

28th June 2023

Name of Applicant:

Michael Francis

Location of works in question:

Muckinish West, Ballyvaughan, Co. Clare

Section 5 referral Reference R23-47 – Michael Francis

Is the construction of a commercial entrance on the N67 at Muckinish West 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 Class 9 and Class 11 (b) Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (c) Article 9 (Restrictions on Article 6) of the Planning and Development Regulations 2001, as amended,
- (d) The details of the proposed works as indicated in submitted documents from the referrer as received by the Planning Authority on the 28th June 2023.

AND WHEREAS Clare County Council has concluded:

- (a) The proposed 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 development comes within the scope of Article 6(1) of the Planning and Development Regulations 2001, as amended, and also Class 9 and Class 11 (b) of Part 1 of Schedule 2 to those Regulations,
- (d) However the works relative to the entrance come within the restrictions on exempted development contained in Article 9(1)(a)(ii) of the Planning & Development Regulations 2001, as amended, as the entrance comprises the formation of a means of access to a public road the surfaced carriageway of which exceeds four metres in width and is located on a National Secondary Road. In addition works related to the entrance come within the restrictions on exempted development contained in Article 9(1)(a)(iii) of the Planning & Development Regulations 2001, as amended, as in the absence of site layout plans showing the extent of sight distance available from the entrance it has not been

satisfactorily demonstrated that the construction of the entrance would not endanger public safety by reason of traffic hazard or obstruction of road users.

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 development consisting of the construction of a commercial entrance on the N67 at Muckinish West, Ballyvaughan, Co. Clare is considered development which is not exempted development.

Signed:


GARETH RUANE
SENIOR EXECUTIVE PLANNER

A.G.

Date:

18th July 2023

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

Reference No.: R23-47



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R23-47

Is the construction of a commercial entrance on the N67 at Muckinish West development and if so is it exempted development?

AND WHEREAS, Michael Francis 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 –

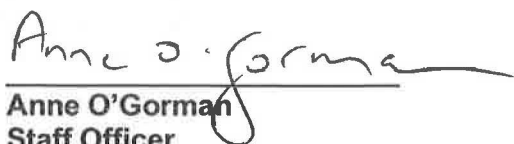
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 Class 9 and Class 11 (b) Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (c) Article 9 (Restrictions on Article 6) of the Planning and Development Regulations 2001, as amended,
- (d) The details of the proposed works as indicated in submitted documents from the referrer as received by the Planning Authority on the 28th June 2023.

And whereas Clare County Council has concluded:

- (a) The proposed 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 development comes within the scope of Article 6(1) of the Planning and Development Regulations 2001, as amended, and also Class 9 and Class 11 (b) of Part 1 of Schedule 2 to those Regulations,
- (d) However the works relative to the entrance come within the restrictions on exempted development contained in Article 9(1)(a)(ii) of the Planning & Development Regulations 2001, as amended, as the entrance comprises the formation of a means of access to a public road the surfaced carriageway of which exceeds four metres in width and is located on a National Secondary Road. In addition works related to the entrance come within the restrictions on exempted development contained in Article 9(1)(a)(iii) of the Planning & Development Regulations 2001, as amended, as in the absence of site layout plans showing the extent of sight distance available from the entrance it has not been satisfactorily demonstrated that the construction of the entrance would not endanger public safety by reason of traffic hazard or obstruction of road users.

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 construction of a commercial entrance on the N67 at Muckinish West, Ballyvaughan, Co. Clare constitutes development which is not exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

18th July 2023

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNER'S REPORT

FILE REF: R23-47
APPLICANT(S): Michael Francis
REFERENCE: Whether the construction of a commercial entrance on the N67 at Muckinish West is or is not development and is or is not exempted development .
LOCATION: Muckinish , County Clare
DUE DATE: 25th July 23.

Site Location

The subject site is located on the landward side of the N67 at Muckinish West .

The road fronting the site is a designated scenic route.

Planning History on Site

None on site

Background to Referral

This referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Michael Francis . The applicant is seeking a Section 5 Declaration as to whether the construction of a commercial entrance on the N67 at Muckinish West is or is not development and is or is not exempted development.

Particulars of Proposal

The particulars of the proposal and site are set out below:

- Completed application form.
- Two land registries entries in respect of two separate folios CE 8710 and CE 1144

The applicant advise that a new commercial entrance is sought for the deliveries for animal feed and general hardware materials. Trucks, large vans, tractor and trailers and small vehicles will also use this access point. The reason for this is that a new yard is being built for the storage of these items as the current yard is too small. The current entrance that is there is too small.

The location for the commercial entrance is shown as marked X on CE 8710F, and y shows the location of the dry store yard. The applicant is advising that he needs a safe entrance.

In the interest of clarity it is noted that the provision of a dry store yard does not form part of the Section 5 query.

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*.

Section 2

'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 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.

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.

Schedule 2, Article 6, Part 1 of the Planning and Development Regulations 2001 (as amended) sets out the following classes of exempted development:

Column 1 Description of Development	Column 2 Conditions & Limitations
Class 9 Sundry Works The construction , erection, renewal, or replacement other than within or bounding the curtilage of a house of any gate or gateway.	The height of any such structure shall not exceed 2m .

Column 1 Description of Development	Column 2 Conditions & Limitations
Class 11 <i>The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house of - .</i> (a) any fence (not being a hoarding or sheet metal fence), (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	1. <i>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.</i> 2. <i>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.</i>

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 comprise 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

Primary Legislation

Having regard to Section 2(1) of the Planning and Development Act 2001 (as amended), I consider that the proposed developments as outlined above, come within the scope of "works" and hence constitutes development in accordance with Section 3(1) of the Planning and Development Act 2001 (as amended).

The Regulations

Class 9 relates to the construction of a gate or gateway at a location other than within the curtilage of a house. The limitation on this is that the height any such structure shall not exceed 2m . No details of the height of the gateway have been submitted. No details of the layout of the entrance have been submitted.

Class 11 relates to the construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house of any fence, any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete. The limitations are that 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 and that 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.

In this instance the applicant proposes to 'construct a commercial entrance on the N67'. No details of the materials or height of the existing or proposed boundary treatment have been submitted.

Applying the above exemption to works proposed I consider that the proposed development comes within the scope of Class 9 and Class 11 (b) because they relate to the provision of walls and gateways at a location other than within or bounding the curtilage of a house. For exempted development to apply, all conditions and limitations of Class 9 and Class 11 (b) are required to be complied with. In this instance having regard to the assessment set out above I am not satisfied that the development complies with these limitation.

Article 9(1)(a) of Planning and Development Regulations 2001 (as amended) Development to which Article 6 relates shall not be exempted development for the purposes of the Act. The following are considered relevant to the assessment of this referral:

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

(b) 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. **There is no planning history on the subject site.***
- (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 proposed development will consist of the formation of a means of access to a public road the width of which is not specified but is understood be greater than 4m given that it is a National Secondary Road N67 .***

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users. **No details have been submitted to demonstrate the sightlines that would be available from the entrance or how the entrance would be laid out and constructed or tied in to existing boundaries. It is not possible to confirm having regard to the details received to date whether the proposed development would or would not 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. **N/A***

*(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. **N/A***

*(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. **N/A***

*(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 proposed site of development along a scenic route. It is considered that the proposed development as described in the referral, will not interfere with the***

character of the receiving landscape given that the predominant land use in the vicinity is agriculture.

(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,
N/A.

(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.

N/A.

(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,

Having regard to the nature of the works proposed, the AA screening determination on file, the proposed development is not considered to require an NIS / (stage two AA), as the proposed works either alone or in combination with other plans / or projects will not have significant effects on the integrity of any European site in light of their conservation objective. See screening report attached.

(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.

N/A.

(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,

It is noted that the proposed works will not enclose land habitually open to or used by the public during the 10 years.

(xi) obstruct any public right of way,

The applicant has not indicated that there are any rights of way at the subject site.

Having regard to the details received by the Planning Authority I consider that the proposed development complies with the provisions of Class 9 and Class 11(b) of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended) including conditions and limitations. However having regard to the provisions of Article 9(1)(a) (ii) of Planning and Development Regulations 2001 (as amended), whereby development consisting of or comprising 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, it is noted that the road fronting the site is greater than 4m in width and as such the development is not exempted development. Furthermore having regard to the provisions of Article 9(1)(a) (iii) of Planning and Development Regulations 2001 (as amended), whereby development which would endanger public safety by reason of traffic hazard or obstruction of road users is not exempted development, it is noted that no sight distance drawings have been submitted to demonstrate that the proposed entrance will not give rise to a traffic hazard.

In addition it is not clear if a national monument would be adversely affected by the proposed works.

Environmental Impact Assessment

In assessing this application I have had regard to the provisions of EU Directive 2014/52/EU (which amends EU Directive 2011/92/EU), and which has been transposed into Irish legislation by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (SI No. 296 of 2018). The subject development does not fall within the mandatory requirements for EIA as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. I therefore consider that the proposal constitutes a sub-threshold development and note the requirements of Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended. As such having regard to the nature and scale of the proposed development and the nature of the receiving environment I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Appropriate Assessment

Having regard to the nature and scale of the works as proposed under the details contained in this Section 5 referral, no Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects, on the adjoining European Site. The appropriate assessment screening report and determination is attached to this report.

Conclusion

Having regard to the foregoing assessment, it is concluded that the development as proposed comprising the construction of a commercial entrance gate is development and is not exempted development, having regard to Article 6, Class 9 and Class 11 (b) of Part 2, Schedule 2 of the Planning and Development Regulations 2001 (as amended) and having regard to Article 9 (1) (a) (ii) , (iii), (vii) and (vii A) .

Recommendation

The following question has been referred to the Planning Authority:

Whether the construction of a commercial entrance on the N67 at Muckinish West 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 Class 9 and Class 11 (b) Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended
- (c) Article 9 (Restrictions on Article 6) of the Planning and Development Regulations 2001, as amended
- (d) The details of the proposed works as indicated in submitted documents from the referrer as received by the Planning Authority on the 28th June 23 .

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

- (a) the proposed 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 development comes within the scope of Article 6(1) of the Planning and Development Regulations 2001, as amended, and also Class 9 and Class 11 (b) of Part 1 of Schedule 2 to those Regulations,
- (d) However the works relative to the entrance come within the restrictions on exempted development contained in Article 9(1)(a)(ii) of the Planning & Development Regulations 2001, as amended, as the entrance comprises the formation of a means of access to a public road the surfaced carriageway of which exceeds four metres in width and is located on a

National Secondary ^{road} ~~RD~~. In addition works related to the entrance come within the restrictions on exempted development contained in Article 9(1)(a)(iii) of the Planning & Development Regulations 2001, as amended, as in the absence of site layout plans showing the extent of sight distance available from the entrance it has not been satisfactorily demonstrated that the construction of the entrance would not endanger public safety by reason of traffic hazard or obstruction of road users

Now therefore Clare County Council (Planning Authority), hereby decides the development consisting of the construction of a commercial entrance on the N67 at Muckinish West is development and is not exempted development.

Ellen Cooney
Executive Planner
Date: 17-07-23 .

Ellen
Senior Executive Planner
Date: 18/07/23 .

Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	Section 5 R23/ 44
(b) Brief description of the project or plan:	Whether the development and if so is it exempted development.
(c) Brief description of site characteristics:	Entrance on the N67
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	None

STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.				
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
Galway bay Complex SAC 000628	Annex I habitats: <input checked="" type="checkbox"/> Mudflats and sandflats not covered by seawater at low tide [1140] <input checked="" type="checkbox"/> *Coastal lagoons [1150] <input checked="" type="checkbox"/> Large shallow inlets and bays [1160] <input checked="" type="checkbox"/> Reefs [1170] <input checked="" type="checkbox"/> Perennial vegetation of stony banks [1220] <input checked="" type="checkbox"/> <i>Salicornia</i> and other annuals	567 to the north west	None	No

	<p>colonising mud and sand [1310]</p> <p>☐ Atlantic salt meadows (Glaucopuccinetalia maritimae) [1330]</p> <p>☐ Mediterranean salt meadows (Juncetalia maritima) [1410]</p> <p>☐ *Turloughs [3180]</p> <p>☐ <i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130]</p> <p>☐ Semi-natural dry grasslands and scrubland facies on calcareous grasslands (Festuco-Brometalia)(*Important orchid sites) [6210]</p> <p>☐ Calcareous fens with <i>Cladium mariscus</i> and species of the Caricion davallianae [7210]</p> <p>☐ Alkaline fens [7230]</p> <p>Annex II Species</p> <p>☐ Otter <i>Lutra lutra</i> [1355]</p> <p>☐ Harbour seal <i>Phoca vitulina</i> [1365]</p>			
Inner Galway Bay SPA	<p>Great northern diver <i>Gavia immer</i> [A003] wintering</p> <p>☐ Cormorant <i>Phalacrocorax carbo</i> [A017] wintering + breeding</p> <p>☐ Grey heron <i>Ardea cinerea</i> [A028]</p> <p>☐ Light-bellied brent goose <i>Branta</i></p>	567 to the north west	None	No

bernicle hrota [A046]

wintering

☐ Wigeon *Anas*

Penelope [A050] -

wintering

☐ Teal *Anas crecca*

[A052] wintering

☐ Shoveler *Anas*

clypeata [A056]

wintering

☐ Red-breasted

merganser *Mergus*

serrator [A069]

wintering

☐ Ringed plover

Charadrius hiaticula

[A137] wintering

☐ Golden plover

Pluvialis apricaria

[A140] wintering

☐ Lapwing *Vanellus*

vanellus [A142]

wintering

☐ Dunlin *Calidris alpina*

[A149]

wintering

☐ Bar-tailed godwit

Limosa lapponica

[A157] wintering

☐ Curlew *Numenius*

arquata [A160]

wintering

☐ Redshank *Tringa*

tetanus [A162]

wintering

☐ Black-headed gull

Chroicocephalus

ridibundus [A179]

wintering

☐ Common gull *Larus*

canus [A182]

wintering

☐ Sandwich tern *Sterna*

sandvicensis

[A191] breeding

	<p>☑ Common tern <i>Sterna hirundo</i> [A193] breeding</p> <p>☑ Wetland and water birds [A999]</p>			
Moneen Mountain SAC	<p>Annex I habitats: •</p> <p>*Turloughs [3180] • Alpine and boreal heaths [4060] •</p> <p><i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130]</p> <p>• Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130] • Semi-natural dry grasslands and scrubland facies on calcareous grasslands [6210] •</p> <p>Petrifying springs with tufa formation (Cratoneurion) [7220] • *Limestone pavements [8240] Annex II Species • Marsh fritillary <i>Euphydryas aurinia</i> [1065] • Lesser horseshoe bat <i>Rhinolophus hipposideros</i> [1303]</p>	424m to the south west	None	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 	<ul style="list-style-type: none"> • Surface water runoff from soil • Demolition of existing boundary

- Impact on groundwater/dewatering
- Storage of excavated/construction materials
- Access to site
- Pests

Operational phase e.g.

- 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

None

In-combination/Other

None

(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

None

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

☐ Yes ☒ No

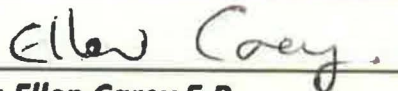
Step 4. Screening Determination Statement

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 comprise the construction of an entrance gate on the N67. Having regard to the separation distance to the European sites and the absence of direct hydrological connection the proposed development is not likely to have significant effects on European site(s) in view of its conservation objectives.

Conclusion: No significant effects are envisaged on European site(s) in view of its conservation objectives.

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" 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 type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
Signature and Date of Recommending Officer:	17/ 07 /23	<div style="text-align: center;">  Name: Ellen Carey E.P. </div>
Signature and Date of the Decision Maker:		



COMHAIRLE | CLARE
CONTAC AN CIILÁIR | COUNTY COUNCIL

**Michael Francis
c/o Brian Foudy
Carmody St
Clonroad Beg
Co. Clare
V95 F720**

28/06/2023

Section 5 referral Reference R23-47 – Michael Francis

Is the construction of a commercial entrance on the N67 at Muckinish West development and if so is it exempted development?

A Chara,

I refer to your application received on 28th June 2023 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

**Brian Fahy
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
Aras Contae an Chlair
New Road
Ennis
Co Clare

28/06/2023 14:42:01

Receipt No. L1CASH/0/351133
***** REPRINT *****

MICHAEL FRANCIS
MUCHNISH WEST
BALLYVAUGHAN
CO. CLARE

R23-47

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

Total : 80.00 EUR

Tendered :
CREDIT CARDS 80.00

Change : 0.00

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



R23-47

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	<p>Michael FRANCIS</p> <p>MUCKNISH WEST</p> <p>BALLYVAUGHAN</p> <p>Co CLARE</p>
(b) Telephone No.:	<p>() - - - - -</p>
(c) Email Address:	<p>.</p>
(d) Agent's Name and address:	<p>Brian Faudy</p> <p>Carmody St</p> <p>Clonroad Beg</p> <p>Ennis</p> <p>Co Clare</p>



V95 F720

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 construction of a commercial entrance
exempted development on the N67 at muckinish west

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

A ~~NEW~~ commercial entrance is sought for deliveries
for animal feed and general hardware materials.
Trucks, large vans and small will use this
access point. Also tractors & trailers.
The reason for this is we are building a
new yard for storage of these items as the
current yard is too small. The
current entrance that is there is much
too small.

(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)*

I have marked X on the map as to the
location of the commercial entrance on CE8710F
I marked Y where the dry store yard will be

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	MUCKINISH WEST BALLYVAUGHAN 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):	I am the owner and i need a new safe entrance
(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>	I am the owner
(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:	There are none
(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:	NOVEMBER/December

SIGNED: M. FinnisDATE: 25-6-23

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:	



The Property Registration Authority An tÚdarás Clárúcháin Maoine

Land Registry Sealed and Certified Copy Folio (& Filed Plan)

Thomas
Francis
Muckinish west

Ballyvaughan
Clare, h91HY0E

This page forms part of the official document. Do not detach.

Folio Number:

Application Number: P2023LR076522W

Your Reference: Commercial Entrance

This document comprises an office copy of the Land Registry record for the above mentioned folio/filed plan as of the date appearing.

Details of **dealings pending** (if any) on the enclosed folio/filed plan are listed in the **Schedule** below.


An officer duly authorised by the Property Registration Authority.



Schedule

Notes:

1. Filed plans should be read in conjunction with the Register. The description of the land in the Register or on the filed plan is not conclusive as to the boundaries or extent of the land (see Section 85 of the Registration of Title Act 1964, as substituted by Section 62 of the Registration of Deeds and Title Act, 2006).
2. Filed plans greater than A3 in size may be provided as separate A3 tiles with an overlap and print gutter. When aligning the tiled sheets, customers are advised to use the underlying topographical detail.
3. On receipt of this record, please check to verify that all the details contained therein are correct. If this is not the case, please return the document to the Property Registration Authority immediately.

Land Registry**County Clare****Register of Ownership of Freehold Land****Part 1 (A) - The Property**

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

For parts transferred see Part 1 (B)

No.	Description	Official Notes
1	The property shown coloured RED as Plan(s) 1142 on the Registry Map, containing 18.8938 Hectares, situate in the Townland of MUCKINISH WEST, in the Barony of BURREN, in the Electoral Division of ABBEY.	From Sch. No. 28265

Land Registry**County Clare****Part 1(B) - Property
Parts Transferred**

No.	Prop No:	Instrument:	Date:	Area (Hectares) :	Plan:	Folio No:

Land Registry**County Clare****Part 2 - Ownership****Title ABSOLUTE**

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
1	<div data-bbox="196 757 360 817">19-DEC-1989 89CR07337</div> <div data-bbox="432 757 1318 817">ANTHONY FRANCIS of MUCKINISH, BALLYVAUGHAN, COUNTY CLARE is full owner.</div> <div data-bbox="555 835 1401 887">Note: Anthony Francis otherwise known as Michael Anthony Francis.</div>

Land Registry

County Clare

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	<p>The property is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.</p>
2	<p>The property is subject to a Land Purchase Annuity.</p>
3	<p>31-MAY-1941 1540/5/41</p> <p>The right of Ellen Francis (widow) of Muckinish Ballyvaughan County Clare to be supported.</p> <p>Cancelled D2008WR027794U 20-JUN-2008</p>
4	<p>08-APR-2008 D2008WR016234Y</p> <p>Charge for present and future advances repayable with interest. THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND is owner of this charge.</p>

526510 mE, 710640 mN

The Property
Registration Authority
An tÚdarás
Clárúcháin Maoine



Folio:

This map should be read in conjunction with the folio.

Registry maps are based on OSi topographic mapping. Where registry maps are printed at a scale that is larger than the OSi published scale, accuracy is limited to that of the original OSi map scale.

For details of the terms of use and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see www.prai.ie.

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(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold

Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- Soak Pit

A full list of burdens and their symbology can be found at: www.landdirect.ie

The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent. (see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.





The Property Registration Authority An tÚdarás Clárúcháin Maoine

Land Registry Sealed and Certified Copy Folio (& Filed Plan)

Thomas
Francis
Muckinish west

Ballyvaughan
Clare, h91HY0E

This page forms part of the official document. Do not detach.

Folio Number:
Application Number: P2023LR076521V
Your Reference: Commercial Entrance

This document comprises an office copy of the Land Registry record for the above mentioned folio/filed plan as of the date appearing.

Details of **dealings pending** (if any) on the enclosed folio/filed plan are listed in the **Schedule** below.


An officer duly authorised by the Property Registration Authority.



Schedule

Notes:

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3. On receipt of this record, please check to verify that all the details contained therein are correct. If this is not the case, please return the document to the Property Registration Authority immediately.

Land Registry**County Clare****Folio****Register of Ownership of Freehold Land****Part 1(A) - The Property**

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	<p>The property shown coloured RED as Plan(s) 50 on the Registry Map, containing 2.372 Hectares, situate in the Townland of MUCKINISH WEST, in the Barony of BURREN, in the Electoral Division of ABBEY.</p> <p>The registration does not extend to the mines and minerals.</p>	From

Folio 111

No.	Prop No:	Instrument:	Date:	Area (Hectares) :	Plan:	Folio No:

Folio :

Land Registry

County Clare

Folio

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	<p>The property is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.</p>

526160 mE, 710200 mN

The Property
Registration Authority
An tÚdarás
Clárúcháin Maoine



Folio:

This map should be read in conjunction with the folio.

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(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold

Burdens (may not all be represented on map)

- Right of Way / Wayleave
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- Soak Pit



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