

COMHAIRLE CONTAE AN CHLÁIR CLARE COUNTY COUNCIL

**Registered Post** 

Ward & Burke c/o Niall Lohan Ballysally Business Park Railway Rd, Charleville Co. Cork P56 HE19

29th August, 2023

#### Section 5 referral Reference R23-58 – Ward & Burke

Is the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare (R469) development and if so, is it exempted development?

A Chara,

I refer to your application received on 3rd August 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 <u>www.pleanala.ie</u>

Mise, le meas

Garreth Ruane Senior Executive Planner Planning Department Economic Development Directorate

An Roinn Pleanála An Stiúrthóireacht Forbairt Gheilleagrach Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2 Planning Department Economic Development Directorate Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2







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

Reference No.: R23-58



Comhairle Contae an Chláir Clare County Council

#### Section 5 referral Reference R23-58

Is the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare (R469) development and if so, is it exempted development?

**AND WHEREAS, Ward & Burke** 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, as amended, and

(b) Articles 6, 8 and 9 of the Planning and Development Regulations, 2001 (as amended)

(c) The planning history of the site

(d) The location of the site partially on lands zoned as 'Buffer' and within Flood Zone A of the Development Plan.

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

The Planning Authority notes that the existing compound was constructed as part of the Ennis Flood Relief Works and availed of the exempted development provisions under Article 8 of the Planning and Development Regulations 2001, as amended, which related inter alia to incidental works associated with the scheme.

Accordingly, the proposed use of the construction compound by the applicant does not fall within the exempted provisions of Article 8 as it does not relate to the flood relief works

In addition, the proposed use of the compound does not come within the exempted development provisions of Class 16 or 58 of Schedule 2, Part 1 to the Planning and Development Regulations 2001, as amended,

On the basis of the details submitted to date it is considered that the provision of a hard standing area by reason of its proximity to the *Lower River Shannon Special Area of Conservation (SAC)* would require an Appropriate Assessment and as such the restrictions on exempted development as per Article 9(1)(b)(viiB) of the Planning & Development Regulations, 2001, as amended, would apply in this instance.

There are no other provisions of the Planning Acts or does not come within any of the other exempted development provisions of the Act or Regulations





**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 use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare is <u>considered development</u> which <u>is not exempted development</u> as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations. A planning application would be required for this proposed development. as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

#### Advice Note:

A planning application would be required to be submitted to Clare County Council to facilitate the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface. Any application should be accompanied by an Appropriate Assessment screening.

Garreth Ruane Senior Executive Planner Planning Department Economic Development Directorate

29th August, 2023

# **CLARE COUNTY COUNCIL**

# SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

# **DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT**

R23-58

Chief Executive's Order No:

Location of works in question:

82303

Reference Number:

Date Referral Received:

Name of Applicant:

Ward & Burke

3rd August 2023

Quin Road, Ennis, Co. Clare

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#### Section 5 referral Reference R23-58 – Ward & Burke

Is the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare (R469) 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, as amended, and

(b) Articles 6, 8 and 9 of the Planning and Development Regulations, 2001 (as amended)

(c) The planning history of the site

(d) The location of the site partially on lands zoned as 'Buffer' and within Flood Zone A of the Development Plan.

# AND WHEREAS Clare County Council has concluded:

The Planning Authority notes that the existing compound was constructed as part of the Ennis Flood Relief Works and availed of the exempted development provisions under Article 8 of the Planning and Development Regulations 2001, as amended, which related inter alia to incidental works associated with the scheme.

Accordingly, the proposed use of the construction compound by the applicant does not fall within the exempted provisions of Article 8 as it does not relate to the flood relief works

In addition, the proposed use of the compound does not come within the exempted development provisions of Class 16 or 58 of Schedule 2, Part 1 to the Planning and Development Regulations 2001, as amended,

On the basis of the details submitted to date it is considered that the provision of a hard standing area by reason of its proximity to the *Lower River Shannon Special Area of Conservation (SAC)* would require an Appropriate Assessment and as such the restrictions on exempted development as per Article 9(1)(b)(viiB) of the Planning & Development Regulations, 2001, as amended, would apply in this instance.



Signed:



There are no other provisions of the Planning Acts or does not come within any of the other exempted development provisions of the Act or Regulations.

- **ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to 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 use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare is <u>considered development</u> which <u>is not exempted</u> <u>development</u>. A planning application would be required for this proposed development.

GARETH RUANE SENIOR EXECUTIVE PLANNER

Date: 29th August, 2023

# CLARE COUNTY COUNCIL SECTION 5 DECLARATION OF EXEMPTION APPLICATION PLANNERS REPORT

FILE REF:	R23-58
APPLICANT(S):	Ward & Burke
REFERENCE:	Is the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare (R469) development and if so, is it exempted development?
LOCATION:	Quin Road, Ennis, Co. Clare
DUE DATE:	30 <sup>th</sup> August 2023

# Site Location

The site is located on the northern side of the Quin Road (R439) in the townland of Clonroad More approximately 1km southeast of Ennis town centre. The site is located to directly east of the River Fergus. The site to which this referral relates is zoned Commercial (western area) and Buffer Zone (eastern area) in the Clare County Development Plan 2023-2029. The site is also located within Flood Zone A as per the Clare County Development Plan 2023-2029.

#### **Recent Onsite Planning History**

228009 – Clare County Council – Retention of (a) 4500m2 of hardstanding surface. (b) Permission for the construction of a 400m2 concrete slab. (c) Permission for the removal of existing single gate and steel beam posts and installation of new double gates. (d) Permission for the modifications to existing site entrance. (e) All associated site works in accordance with the Habitats Directive, Appropriate Assessment Screening has been carried out on the project. Environmental Impact Assessment (EIA) screening determination has been made and Clare County Council concludes that there is no real likelihood of significant effects on the environment arising from the proposed development and as such an EIA is not required – Withdrawn

# Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Ward & Burke.

The applicant is seeking a Section 5 Declaration as to whether the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare (R469) development and if so, is it exempted development?

Part of the site (the western part) was used for the storage of plant and machinery associated with the Ennis South Flood Relief Scheme. The use of this site for these purposes was considered exempt under Article 8 of the Planning & Development Regulations, 2001, as amended which states the following:

"Works specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by, on behalf of, or in partnership with, the Commissioners, with such additions, omissions, variations and deviations or other works incidental thereto, as may be found necessary by the Commissioners or their agent or partner in the course of the works, shall be exempted development."

#### **Statutory Provisions**

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

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

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

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

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

Section 4 (g) of the Planning and Development Act states that the following shall be exempted developments for the purposes of this Act—:

"development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;"

#### <u>Assessment</u>

Development as carried out on site only relates to works developed under the flood relief scheme where Article 8 allowed for such additions to the work programmes to facilitate developments of this kind.

The proposed works to be undertaken by a third-party contractor on behalf of Irish Water will be at various sites around Ennis town centre. The subject site is to be used for the storage of plant and machinery only.

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

#### CLASS 16 of Part 1 of Schedule 2 states that

"The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out. Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act."

"Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act."

# CLASS 58 of Part 1 of Schedule 2 states that:

Development by Irish Water, for the purpose of the provision of water services, consisting of one or more of the following:

- (a) the inspection, maintenance, repair, renewal or removal of pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes, kiosks, intakes, overhead wires, meters and other apparatus, including the excavation of any street or other land for that purpose;
- (h) the installation of plant or equipment within the curtilage of an existing water services site only in so far as is necessary to avert serious risks to public health or critical failure of infrastructure;

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

limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

However, Article 9 of Planning & Development Regulations, 2001, as amended states:

9. (1) 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 —

(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.

(1) Having reviewed the file, I consider that the storage of materials and equipment would not be considered exempt under the provisions of Class 16 of Part 1 of Schedule 2 Planning & Development Regulations, 2001, as amended. "Adjoining" is not defined in the Planning and Development Regulations. However, according to the Oxford English Dictionary, "adjoining" is defined as "next to or joined to something". It is considered that the lands on which the construction compound is located does not constitute lands adjoining the site on which the development of the Irish Water/Uisce Éireann upgrades are being carried out. I also consider that as the works are not to be undertaken by Irish Water/Uisce Éireann and will instead be carried out a third-party contractor that the provisions in Class 58 of Part 1 of Schedule 2 do not apply and therefore, it cannot be considered exempted development.

Nevertheless, any development considered to be exempted development under the provisions of Article 6 would be deemed not exempt under Article 9(1)(a)(viiB) due to the site's proximity of the site to the Lower River Shannon SAC and the unknown effect of any development on the integrity of a nearby European Site.

A portion of lands within the site are currently greenfield lands, some of which is within lands zoned in the Clare County Development Plan 2023-2029 as Buffer Zone. I am satisfied that the change of use of the subject site from undeveloped greenfield lands to that of an extensive construction compound would constitute a material change of use as it gives rise to a significant intensification of activities from a planning perspective. The construction compound would therefore, be considered to constitute development.

(2) Having reviewed the file, I consider that the proposal for the creation of a hardcore surface at Quin Road, Ennis, Co. Clare (R469) would not fall within the definition of works which are exempt under the provisions of Article 6 Part 1 of Schedule 2 of the Planning & Development Regulations, 2001, as amended.

#### **Conclusion**

WHEREAS a question has arisen as to whether the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare (R469) development and if so, is it exempted development?

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

(a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and

(b) Articles 6, 8 and 9 of the Planning and Development Regulations, 2001 (as amended)

(c) The planning history of the site

(d) The location of the site partially on lands zoned as 'Buffer' and within Flood Zone A of the Development Plan.

AND WHEREAS Clare County Council has concluded the following:

- (1) The Planning Authority notes that the existing compound was constructed as part of the Ennis Flood Relief Works and availed of the exempted development provisions under Article 8 of the Planning and Development Regulations 2001, as amended, which related inter alia to incidental works associated with the scheme.
- (2) Accordingly, the proposed use of the construction compound by the applicant does not fall within the exempted provisions of Article 8 as it does not relate to the flood relief works
- (3) In addition, the proposed use of the compound does not come within the exempted development provisions of Class 16 or 58 of Schedule 2, Part 1 to the Planning and Development Regulations 2001, as amended,
- (4) On the basis of the details submitted to date it is considered that the provision of a hard standing area by reason of its proximity to the Lower River Shannon Special Area of Conservation (SAC) would require an Appropriate Assessment and as such the restrictions on exempted development as per Article 9(1)(b)(viiB) of the Planning & Development Regulations, 2001, as amended, would apply in this instance.
- (5) There are no other provisions of the Planning Acts or does not come within any of the other exempted development provisions of the Act or Regulations

**NOW THEREFORE** Clare County Council in exercise of its powers conferred on it by Section 5(2) of the Planning & Development Act 2000 (as amended) hereby decides that the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare (R469) is considered to be development, but it is not considered to be exempted development. A planning application would be required for this proposed development.

#### Advice Note:

A planning application would be required to be submitted to Clare County Council to facilitate the use of lands as a temporary storage compound for materials and equipment, to include

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creating a hardcore surface. Any application should be accompanied by an Appropriate Assessment screening.

Assistant Planner Date: 29/08/2023

GA •

Senior Executive Planner Date: 29/08/2023



# COMHAIRLE CONTAE AN CHLÁIR

CLARE COUNTY COUNCIL

Ward & Burke c/o Niall Lohan Ballysally Business Park Railway Rd, Charleville Co. Cork P56 HE19

#### 04/08/2023

# Section 5 referral Reference R23-58 - Ward & Burke

Is the use of lands as a temporary storage compound for materials and equipment, to include creating a hardcore surface at Quin Road, Ennis, Co. Clare (R469) development and if so, is it exempted development?

A Chara,

I refer to your application received on 3rd August 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



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P07 Request for a Declaration on Development and Exempted Development (March 2017)

# 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



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#### 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 DETA	uls.
(a) Name and Address of person seeking the declaration	WARD & BURKE, BALLYSALLY BUSINESS PARK, RAILWAY RD, CHARLEVILLE, Co. CORK, P56 HE19.
(b) Telephone No.:	· · ·
(c) Email Address:	
(d) Agent's Name and address:	NIALL LOHAM, BALLYSALLY BUSIMESS PARM, RAILWAY RO, CHARLEVILLE, Co. COLM, P56 HE19 CO. COLM, P56 HE19
	CUMPE - 3 AUG 2023 PLANNING SECTION

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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 USE OF LAMOS AS A TEMORARY STORAGE COMPOUND FOR MATERIALS
AND EQUIPMENT, TO INCLUDE CREATING A HARDCORE SURFACE AT QUIN ROAD ENVIS,
CO. CLARE (R469) DEVELOPMENT AND IF SO, IS IT EXEMPTED DEVELOPMENT?
(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.
THE PURPOSE OF THIS TEMPORALY STORAGE COMPOUND IS
TO BE SOLELY UTILISED FOR EXEMPTED DEVELOPMENT
PROJECTS BEING DELIVERED UNDER THE MULTI SUIPLIER
FRAMEWOLK FOR THE PROVISION OF WATER AND WASTEWATER
NETWORK SERVICES AND WORKS TO UISCE ÉIREANN, EXAMPLES
OF PROJECTS ARE NAMED BUT ARE NOT LIMITED TO; SARSFIELD
RO, EMMIS; GORT RO, EMMIS: QUIM RO BRIDGE CROSSING, Etc.
DETAILS OF PLANMED WORKS WILL BE SHARED AND CONTINUALLY
UPDATED ON WATES. // WWW. Wates. ie/projects. CONTRACT WORKS
ARE SCHEDULED TO COMMENCE ON 4th SEPTEMBER 2023
FOR A FOUR YEAR PERIOD TO FACILITATE INFRASTRUCTURE
NETWOLK UPGRADES. THE TEMPORAM STORAGE COMPOUND
WILL BE SECULED FOR THE DURATION OF THE WORKS AND
WILL BE REIMSTATED TO ITS ORIGINAL CONDITION ON
COMPLETION. (c) List of plans, drawings etc. submitted with this request for a declaration:

(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)

- PLEASE REFER TO THE ATTACHED MAP

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT					
(a)	Postal Address of the Property/Site/Building for which the declaration sought:	Quim LOAD, EMMIS, 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):	N/A			
(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: Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.	CLARE MARTS, QUIN ROAD, EMMIS, CO. CLARE.			
(e)	Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes.			
(f)	Are you aware of any enforcement proceedings connected to this site? If so please supply details:	No.			
g)	Were there previous planning application/s on this site? <i>If so please supply details:</i>	PLANNING REF: 228009.			
h)	Date on which 'works' in question were completed/are likely to take place:	14 08 23.			
GN	VED: Dial la	DATE: 31 07/23			

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P07 Request for a Declaration on Development and Exempted Development (March 2017)

# **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  $\in$  80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

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

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- (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:	 	

