



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Mulkear Partnership  
(Kieran Mulcahy, Neil Mulcahy & Adam Kearney)  
c/o Pat Brehony  
14 Greenpark  
West Mullingar  
Co. Westmeath**

**19th July 2024**

**Section 5 referral Reference R24-52 – Mulkear Partnership (Kieran Mulcahy, Neil Mulcahy & Adam Kearney)**

Is (a) the erection of Temporary Fencing (1.8M Harris) to secure agricultural land from encroachment and (b) the provision of an agricultural road / hard-standing to allow maintenance of said lands at Station Road, Lahinch Development and if so is it exempted development?

A Chara,

I refer to your application received on 25/06/2024 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](http://www.pleanala.ie)

Mise, le meas

  
**Colette Coakley  
Assistant Staff Officer  
Planning Department  
Economic Development Directorate**

**An Roinn Pleanála  
An Stiúirthóireacht 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.: R24-52**



**Comhairle Contae an Chláir  
Clare County Council**

**Section 5 referral Reference R24-52**

**Is (a) the erection of Temporary Fencing (1.8M Harris) to secure agricultural land from encroachment and (b) the provision of an agricultural road / hard-standing to allow maintenance of said lands at Station Road, Lahinch Development and if so is it exempted development?**

**AND WHEREAS, Mulkear Partnership (Kieran Mulcahy, Neil Mulcahy & Adam Kearney) 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) Observations on site whereby no agricultural use was evident.
- (b) The planning history on site in particular Condition 2 of 98/ 49.
- (c) Sections 2,3, 4 of the Planning and Development Act 2000, as amended,
- (d) Section 254 of the Planning and Development Act 2000, as amended,
- (e) The Planning and Development Regulations 2001 as amended including Article 6 Part 1 Schedule 1, Class 11, Class 13, Class 16, and Part 3, Class 4, and classes 6 to 10 inclusive.
- (f) The details and drawing as indicated in submitted documents from the referrer.

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

- (a) The development consisting of erection of a temporary fence and the laying of hard stand are “works” and “development” which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- (b) The said development does not fall within the scope of the Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Article 6.
- (c) The development in question would materially contravene Condition 2 of 98/ 49 which required a timber fence to be erected on or clear of the Council’s Road alignment line and the area between the said line and the existing road boundary to be retained free of development and that the existing road boundary wall be retained until such time as the Council's alignment works are undertaken.
- (d) The applicant did not seek a license under Section 254 of the Planning and Development Act 2000, as amended,
- (e) The applicant did not submit details of the extent of duration of the temporary period referred to in the query.
- (f) There are no other provisions under the planning and Development Act or Regulations which would render the subject development as exempted development.

**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 (a) the erection of temporary fencing (to secure agricultural land from encroachment) and (b) the provision of an agricultural / hard standing to allow maintenance of said lands at Station Road, Lahinch, Co. Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

  
\_\_\_\_\_  
**Colette Coakley**  
**Assistant Staff Officer**  
**Planning Department**  
**Economic Development Directorate**

**19th July 2024**

**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: 83904

Reference Number: R24-52

Date Referral Received: 25/06/2024

Name of Applicant: Mulkear Partnership (Kieran Mulcahy, Neil Mulcahy & Adam Kearney)

Location of works in question: Station Road, Lahinch, Co. Clare

**Section 5 referral Reference R24-52 – Mulkear Partnership (Kieran Mulcahy, Neil Mulcahy & Adam Kearney)**

Is (a) the erection of Temporary Fencing (1.8M Harris) to secure agricultural land from encroachment and (b) the provision of an agricultural road / hard-standing to allow maintenance of said lands at Station Road, Lahinch Development and if so is it exempted development?

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

- (a) Observations on site whereby no agricultural use was evident.
- (b) The planning history on site in particular Condition 2 of 98/ 49.
- (c) Sections 2,3, 4 of the Planning and Development Act 2000, as amended,
- (d) Section 254 of the Planning and Development Act 2000, as amended,
- (e) The Planning and Development Regulations 2001 as amended including Article 6 Part 1 Schedule 1, Class 11, Class 13, Class 16, and Part 3, Class 4, and classes 6 to 10 inclusive.
- (f) The details and drawing as indicated in submitted documents from the referrer.

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

- (a) The development consisting of erection of a temporary fence and the laying of hard stand are "works" and "development" which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- (b) The said development does not fall within the scope of the Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Article 6.
- (c) The development in question would materially contravene Condition 2 of 98/ 49 which required a timber fence to be erected on or clear of the Council's Road alignment line and the area between the said line and the existing road boundary to be retained free of development and that the existing road boundary wall be retained until such time as the Council's alignment works are undertaken.
- (d) The applicant did not seek a license under Section 254 of the Planning and Development Act 2000, as amended,

- (e) The applicant did not submit details of the extent of duration of the temporary period referred to in the query.
- (f) There are no other provisions under the planning and Development Act or Regulations which would render the subject development as exempted development.

**ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Helen Quinn, Senior Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Helen Quinn, Senior Planner, hereby declare that (a) the erection of temporary fencing (to secure agricultural land from encroachment) and (b) the provision of an agricultural / hard standing to allow maintenance of said lands at Station Road, Lahinch, Co. Clare is **considered development** which is **not exempted development**.

Signed:

  
HELEN QUINN  
SENIOR PLANNER

Date:

19th July 2024

## CLARE COUNTY COUNCIL

### SECTION 5 REFERRAL

<b>Reference No:</b>	<b>R24/ 52</b>
<b>Applicant:</b>	<b>Mulkear Partnership</b>
<b>Location:</b>	<b>Station RD Lahinch , Co.Clare</b>
<b>Proposal:</b>	<b>Whether the erection of temporary fencing (1.8m Harris) fencing to secure agricultural land from encroachment and (b) the provision of an agricultural / hard standing to allow maintenance of said lands at Station Rd Lahinch is development or is not development and is or is not exempted development.</b>
<b>Due Date:</b>	<b>22<sup>nd</sup> July 24</b>

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 as amended to determine whether or not the following constitutes exempted development.

**‘Whether the erection of temporary fencing (1.8m Harris) to secure agricultural land from encroachment and (b) the provision of an agricultural / hard standing to allow maintenance of said lands is or is not development and is or is not exempted development’.**

#### **Site location and Zoning**

The site is located within Lahinch on land zoned open space.

The site, with a stated area of 0.141 ha, is located on the L1086 (Station Road) within the zoned settlement of Lahinch. It is zoned ‘Open Space’ and is located on the northern side of the L1086, in front of Summer Cover housing estate.

The fencing is erected around the perimeter of the site, including along a public road.

## **Development details and specification**

The 'Harris' type mesh fencing is approximately 2m high and secured by rubber block fence footings and by concrete hoarding blocks. The fencing, with the exception of a short section left open for a pedestrian short cut, runs the length of the road frontage.

The application form accompanying the query advises that the subject lands were overgrown with bushes and overgrowth and harboured vermin. The applicant removed the overgrowth but this presented an issue with regard to open lands with no boundary and a need for a boundary to secure the lands from encroachment and trespass to comply with insurance requirements and also prevent dumping and prevent possible accidents resulting from people/ children wandering in on the property.

### **Planning History on site**

**98/ 49** - J & M Construction (Ennis) Ltd., Permission granted to construct 24 no. semi-detached two storey houses, 12 semi-detached dormer houses, 28 single storey houses including access roads and connect to ancillary services.

Condition no 2 states

*'A timber fence shall be erected on or clear of the Council's road alignment line indicated on revised layout received on 14 May 1998 and the area between the said line and the existing road boundary wall shall be retained free of development with the exception of the proposed site access road. The existing road boundary wall shall be retained until such time as the Council's alignment works are undertaken.'*

*'Reason: To make provision for future road improvements, in the interest of traffic safety and amenity.'*

Furthermore the proposed development would, if granted, materially contravene condition no. 2 of Pl. Ref 98/49 which expressly required the area of the subject site to be retained free of development.

**24/ 60099 Mulkear Partnership.** PERMISSION refused to construct a gymnasium & fitness-studio together with all ancillary site works and services to include parallel car parking, footpath, bicycle parking, site boundaries, landscaping, rain water harvesting, PV solar panels and connections to public utilities

Permission was refused for reasons relating to:

- open space zoning,
- haphazard development ,
- contravention of condition no. 2 of Pl. Ref 98/49 which expressly required the area of the subject site to be retained free of development,
- traffic hazard,
- prematurity by reference to the existing deficiency in the provision of sewerage facilities and water supply,
- contrary to objective 2.11, Storm Water Management, and Objective CDP 2.6 Flood Risk Assessment and Management and contrary to Objective CDP15.3 European sites of the Clare County Development Plan 2023-2029,
- and presence of unauthorised development on the site.

23/ 60091 Mulkear partnership. Permission refused to construct a gymnasium/fitness centre with ancillary café and inclusive of roof mounted solar panels together with all ancillary site works and services including site entrance, circulation, bicycle and car parking, EV charging point, site boundaries, landscaping, rain water harvesting system and connections to public utilities.

Permission was refused for similar reasons as those set out above under 24/ 60099.

### **UD HISTORY ON SITE**

UD 24/13 Warning letter was served 22nd March 24 for

- construction of an entrance,
- creation of a hard standing area and associated ground works and
- erection of fencing.

### **Back ground**

- The applicant states that the purpose of the fence is to secure agricultural land from encroachment. Having inspected the site on a number of occasions ( 24/ 60099, 23/ 60091 and UD 24/ 013) I do consider this land is in active agricultural use or has



been in the recent past. There were no livestock present, and no crops or fodder planted. There was no livestock proof fencing, electric fencing, water troughs or any other items that would indicate past, ongoing or recent agricultural use. In addition the applicant advises in the application form that the site was overgrown so it is not clear how it could have been used for agriculture. The site is zoned open space and is located within a settlement and is surrounded by other zoned land and or existing developments.

- Similarly it is not clear how the provision of an agricultural road/ hard standing is genuinely being used for the maintenance of agricultural lands.
- The information submitted does not advise for what period the temporary fencing is to be in place.
- The query which places an emphasis on agriculture use is not evident on inspection and is not evident in the information about the site provided by the applicant under UD 24/ 13.
- Under UD 24/ 13, the applicant states the site was open to the public road along its entire frontage and as such no new entrances were created. I note that google maps street finder image from 2019 shows this was the case. There was no boundary in place along the road frontage. It is not clear how the lands could have been actively used for agricultural purposes without a proper roadside boundary being in place.
- Planning permission is not required for a temporary structure where they can be regularized under Section 254 of the Act. This matter could be regularised under Section 254 (1)(c) of the Act if the applicant lodged an application for a license for fencing along the public road. The merits or otherwise of the fencing could then be assessed from a pedestrian and traffic safety perspective. However the applicant has not availed of the provisions of this section of the Act.

### **Designations**

The site is zoned open space.

### **Legal Context**

**Section 2** of the Planning & Development Act, 2000, as amended, defines '**works**' as including '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 of a structure'.

**Section 3(1)** of the Act defines "**development**" except where the context otherwise requires as:

"The carrying out of any works on, over or under land or the making of any material change in the use of any structures or other land.

**Section 4(1)(h)** of the Act provides for exempted development as

"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 254** of the Act - 'Licences of appliances on public road' states that a person shall not erect, construct place or maintain a hoarding, fence or scaffold on under over or along a public road save in accordance with a licence granted by the Planning Authority under this section .

This section does not apply to :

- (a) An appliance apparatus, or structure which is authorised in accordance with a planning permission granted under Part III
- (b) a temporary hoarding fence of scaffold erected in accordance with a condition of permission granted under Part III.

Section 254 (7) states that developments carried out in accordance with a licence under this section of the Act shall be exempted development for the purposes of the Act.

**Planning and Development Regulations 2001, as amended**

**Article (6)(1)** of the Planning and Development Regulations 2001, as amended, 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 2.

**SCHEDULE 2 Article 6 PART 1- Sundry works – Class 11** describes classes of development which are exempted development, provided that such development complies with the conditions and limitations expressed at Column 2 for each class.

**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) or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Limitations

1. The height of the structure shall not exceed 1.2 or the height of the structure being replaced whichever is the greater and in any event shall not exceed 2m.
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’.

**SCHEDULE 2 Article 6 PART 1 Exempted Development General- Temporary structure and uses**

**Class 16 –**

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.

#### Conditions and limitation

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.

### **SCHEDULE 2 Article 6 PART 3- Exempted development –Rural – Class 4**

The construction , erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house.

#### Limitation

1. The height of the wall or fence, other than fence referred to in paragraph 2 shall not exceed 2m.
2. The height of any fence for the purposes of deer farming shall not exceed 3m.

**Part 3 Article 6 Exempted Development Rural - Classes 6 to Class 10 inclusive** refers for provisions of structures used for agricultural purposes but does not include provision of an agricultural road or hard standing .

### **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.*

#### *Conditions and limitations*

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

**Article 9** of the Regulations sets out that Development to which article 6 relates shall not be exempted development for the purposes of the Act –

*(a) if the carrying out of such development would –*

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

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

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

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

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

*(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in*

*accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

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

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

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

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

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

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

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

### **Environmental Impact Assessment**

I do not consider that the proposed development falls within the mandatory requirements for an EIA as stated in EU Directive 85/337/EEC (as amended by Directive 97/11/EC, 2003/31/EC and 2009/31/EC). The proposed development is also not considered to fall within the sub-threshold criteria having regard to the third schedule to the European Communities Environmental Impact Assessment (Amendment) Regulations 1999 and in Schedule 7 of the Planning and Development Regulations 2001, as amended.

### **Appropriate Assessment**

See screening report attached

### **ASSESSMENT**

- The applicant states that the purpose of the fence is to secure agricultural land from encroachment. Having inspected the site on a number of occasions ( 24/ 60099, 23/ 60091 and UD 24/ 013) I do consider this land is in active agricultural use or has been in the recent past. There were no livestock present, and no crops or fodder planted. There was no livestock proof fencing, electric fencing, water troughs or any other items that would indicate recent agricultural use. In addition the applicant advises in the application form that the site was overgrown so it is not clear how it could have been used for agriculture. The site is zoned open space and is located within a settlement.
- Similarly it is not clear how the provision of an agricultural road/ hard standing is genuinely being used for the maintenance of agricultural lands.
- The information submitted does not advise for what period the temporary fencing is to be in place.
- The query which places an emphasis on agriculture use is not evident on inspection and is not evident in the information about the site provided by the applicant under UD 24/ 13.

- Under UD 24/ 13, the applicant states the site was open to the public road along its entire frontage and as such no new entrances were created. I note that google maps street finder image from 2019 shows this was the case. There was no boundary in place along the road frontage. It is not clear how the lands could have been actively used for agricultural purposes without a proper roadside boundary being in place.
- Planning permission is generally not required for a temporary structure where the provisions of Section 254 can apply. I note that the fencing in question is along a public road and that the temporary fencing is not associated with a grant of planning and therefore requires the benefit of a licence. Section 254 (7) states that developments carried out in accordance with a licence under this section of the Act shall be exempted development for the purposes of the Act. This matter could be regularised under Section 254 (1)(c) of the Act if the applicant lodged an application for a license for temporary fencing along the public road. The merits or otherwise of the fencing could then be assessed from a pedestrian and traffic safety perspective. However the applicant has not availed of the provisions of this section of the Act and **therefore the placing of the fence along the public road, notwithstanding its temporary nature, is not exempted development .**

- I note that the Roads Act 1993 makes the following provision at Section 10:

*(a) A person who, without  
lawful authority  
or the consent of  
a road  
authority—*

*(i) defaces a public road by writing or by any other means,*

*(ii) damages a public road,*

*(iii) excavates a public road,*

*(iv) (1) places or deposits any material or thing on a public road,*



*(II) permits dung or urine from an animal owned by him or any material or thing which falls from a vehicle owned or used by him, to be left on a public road, or*

*(III) does any other thing,*

*such that the material, thing, dung or urine or the doing of such other thing **is a hazard or potential hazard to persons using a public road or obstructs or interferes with the safe use of a public road** or the maintenance of a public road, shall be guilty of an offence.*

*(b) A consent under paragraph (a) may be given by the road authority subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.*

*(c) Where a person does anything in contravention of paragraph (a), **a road authority may remove any defacement, repair any damage, fill in any excavation, remove any material, thing, dung or urine or remove or reduce any hazard, potential hazard, obstruction or interference** and may recover from such person, as a simple contract debt in any court of competent jurisdiction, any costs reasonably incurred by it.*

**The Council has not acted under this provision at the time of writing this report.**

## Considerations

### Is or Is Not Development?

Section 2 (1) of the Act defines *“works as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”* I am satisfied that, in accordance with the above definition, the erection of a fence ( all be it temporary) is an act or operation and the laying of hard standing also comprises ‘works’ being an act of construction .

### Is or Is Not Exempted Development?

Having established that in respect of the temporary fencing that the ‘works’ proposed constitute development and that the laying of a hard standing area is construction and amount to ‘development’, the issue to be considered is whether the development is exempted development or not.

I refer to Section 4(1)(h) of the Act which provides for exempted development as *“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.”*

While Section 4 (1) (h) generally is understood to relate to permanent structures and the subject query relates to a temporary fence and permanent hard standing, I consider because the applicant has not availed of the provisions of Section 254 of the Act and has not been granted a licence in this respect and having regard to the provisions of Section 254 (7) that the temporary fence is development and that the laying of hard stand is development .

I refer to Schedule 2 Article 6 , Part 1, class 11 ( Sundry works ) class 11 which states ‘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) or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

### Limitations

1. The height of the structure shall not exceed 1.2 or the height of the structure being replaced whichever is the greater and in any event shall not exceed 2m.

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'

- I note in relation to class 11 that it is not expressly stated that its application relates only in respect of urban areas. I make this distinction because Schedule 2 Article 6 PART 3- Exempted development –Rural – Class 4 makes similar provision for fencing of restricted height exclusively within rural areas. The proposal does not fall within the remit of Class 11 because the height of the proposed fence is 1.8m and the restriction on height is 1.2m. Also class 11 , it is assumed relates to permanent fencing and the proposed query relates to temporary fencing ( the duration of which is not stated by the applicant)
- The height restriction of 2m only relates to circumstances where a fence/ wall is being replaced. The proposed development is not a replacement of an existing fence and as such this class is not applicable.

I refer to SCHEDULE 2 Article 6 PART 3- Exempted development –Rural – Class 4 which states the construction , erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house.

#### Limitation

1. The height of the wall or fence, other than fence referred to in paragraph 2 shall not exceed 2m.

2. The height of any fence for the purposes of deer farming shall not exceed 3m.

I do not consider this class of exemption is relevant because it relates to fencing within rural area and the subject site being located in the zoned settlement of Lahinch is within an urban area.

I do not consider that query falls under the scope of Schedule 2 Article 6 part 1 'Temporary Structures and Uses' class 15 to class 20 (3) inclusive because there is no provision for temporary fencing within these classes.

I refer to Class 13 which allows for repair or improvement of an existing private roadway. However the proposed development does not fall within the scope of this class because the works do not constitute repair or improvement of an existing farm road.

I do not consider that query requires to be tested against Article 9 Restrictions on Exemption because the works does not fall under the provisions of Article 6 and associated conditions and limitations set out above.

I refer to the planning history on site and in particular to condition 2 of 98/49 which expressly required the area of the subject site to be retained free of development. While that Article 9 'Restrictions on Exemptions' contains the provision to de-exempt developments which contravene a condition of planning permission, Article 9 is only triggered when development to which Article 6 relate applies. In this instance the development in question falls outside the scope of the classes in Article 6 set out above and as such Article 9 is not relevant.

### **Conclusion**

Having inspected the site the Planning Authority does not consider that the query received is an accurate description of the circumstances on the site. There was no evidence on inspection that the land was in agricultural use. There were no livestock present, and no crops or fodder planted. There was no livestock proof fencing, electric fencing, water troughs or any other items that would indicate recent agricultural use. The applicant advises in the application form that the site was overgrown so it is not clear how it could have been used for agriculture. Furthermore there was no Dept. of Agriculture documentation, maps or Title Deeds submitted showing the farm landholding from which the subject site forms part.

The extent of the temporary period is not stated nor the date by which it will be removed.

The development ( fencing and hard standing) does not have the benefit of planning permission nor a Section 254 licence in the case of the fence along the road and is development which is not exempted development .

Neither does it fall within the scope of Article 6 - classes of exemption set out above.

### Recommendation

The following questions have been referred to the Planning Authority:

**Whether erection of temporary fencing (1.8m Harris) to secure agricultural land from encroachment and (b) the provision of an agricultural / hard standing to allow maintenance of said lands is or is not development and is or is not exempted development**

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

- (a) Observations on site whereby no agricultural use was evident.
- (b) The planning history on site in particular Condition 2 of 98/ 49
- (c) Sections 2,3, 4 of the Planning and Development Act 2000, as amended,
- (d) Section 254 of the Planning and Development Act 2000, as amended,
- (e) The Planning and Development Regulations 2001 as amended including Article 6 Part 1 Schedule 1 , Class 11, Class 13, Class 16, and Part 3, Class 4, and classes 6 to 10 inclusive.
- (f) The details and drawing as indicated in submitted documents from the referrer

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

- a) the development consisting of erection of a temporary fence and the laying of hard stand are “works” and “development” which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.

- b) The said development does not fall within the scope of the Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Article 6.
- c) The development in question would materially contravene Condition 2 of 98/ 49 which required a timber fence to be erected on or clear of the Council's road alignment line and the area between the said line and the existing road boundary to be retained free of development and that the existing road boundary wall be retained until such time as the Council's alignment works are undertaken.
- d) The applicant did not seek a license under Section 254 of the Planning and Development Act 2000, as amended,
- e) The applicant did not submit details of the extent of duration of the temporary period referred to in the query.
- f) There are no other provisions under the planning and Development Act or Regulations which would render the subject development as exempted development

Now therefore Clare County Council (Planning Authority), hereby decides (a) the erection of temporary fencing (to secure agricultural land from encroachment) and (b) the provision of an agricultural / hard standing to allow maintenance of said lands at Station Rd is development and is not exempted development .

Signed E.W. Coey

E.P.

Date 15-07-24

Signed Helen Quinn

~~S.E.P.~~ / S.P.

Date 15-07-24

## Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	Section 5 R24/ 52
(b) Brief description of the project or plan:	Temporary retention of Harris type fencing and hard standing area. Undeveloped land zoned open space
(c) Brief description of site characteristics:	Undeveloped land zoned for open space and not actively farmed
(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 <sup>1</sup>	Distance from proposed development <sup>2</sup> (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N

Inagh River estuary SAC	Salicornia and other annuals colonising mud and sand [1310]	348 km	Potentially yes via storm drain which is located	Yes
	Atlantic salt meadows (Glaucopuccinellietalia maritimae) [1330]		east of the subject site but under the control of the applicant .	
	Mediterranean salt meadows (Juncetalia maritimi) [1410]			
	Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120]			
	Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]			

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

<sup>2</sup> 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"> <li>● Vegetation clearance</li> <li>● Demolition</li> <li>● Surface water runoff from soil excavation/infill/landscaping (including borrow pits)</li> <li>● Dust, noise, vibration</li> <li>● Lighting disturbance</li> <li>● Impact on groundwater/dewatering</li> <li>● Storage of excavated/construction materials</li> <li>● Access to site</li> <li>● Pests</li> </ul>	<p>none</p>
<p>Operational phase e.g.</p> <ul style="list-style-type: none"> <li>● Direct emission to air and water</li> <li>● Surface water runoff containing contaminant or sediment</li> <li>● Lighting disturbance</li> <li>● Noise/vibration</li> <li>● Changes to water/groundwater due to</li> </ul>	<p>none</p>

drainage or abstraction <ul style="list-style-type: none"> <li>• Presence of people, vehicles and activities</li> <li>• Physical presence of structures (e.g. collision risks)</li> <li>• Potential for accidents or incidents</li> </ul>	
In-combination/Other	none

(b) Describe any likely changes to the European site:	
Examples of the type of changes to give consideration to include: <ul style="list-style-type: none"> <li>• Reduction or fragmentation of habitat area</li> <li>• Disturbance to QI species</li> <li>• Habitat or species fragmentation</li> <li>• Reduction or fragmentation in species density</li> <li>• Changes in key indicators of conservation status value (water or air quality etc.)</li> <li>• Changes to areas of sensitivity or threats to QI</li> <li>• Interference with the key relationships that define the structure or ecological function of the site</li> </ul>	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.

Having regard to nature of works (erection of temporary fence and laying of hard stand and the absence of effluent or run of arising, the separation distance between the subject site and nearest SAC 345m, the proposed works are not likely to have significant effects on European site(s) in view of its conservation objectives

Conclusion: The proposed development is not likely to have significant effects 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.

Request NIS

Refuse planning permission

Signature and Date of  
Recommending Officer:

Ellen Carey.  
**Name: Ellen Carey E.P.**

12/07/24

Signature and Date of the  
Decision Maker:



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Mulkear Partnership**  
**(Kieran Mulcahy, Neil Mulchay & Adam Kearney)**  
c/o Pat Brehony  
14 Greenpark  
West Mullingar  
Co. Westmeath

25/06/2024

**Section 5 referral Reference R24-52 – Mulkear Partnership (Kieran Mulchay, Neil Mulchay & Adam Kearney)**

Is (a) the erection of Temporary Fencing (1.8M Harris) to secure agricultural land from encroachment and (b) the provision of an agricultural road /hard-standing to allow maintenance of said lands at Station Road, Lahinch Development and if so is it exempted development?

A Chara,

I refer to your application received on 25/06/2024 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

**Caroline Fahy**  
**Planning Department**  
**Economic Development Directorate**

24/60099.  
23/60091.  
ppi 21/175.  
O.S. 5. open space.

**An Roinn Pleanála**  
**An Stúirthóireacht 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

---

25/06/2024 15:47:33

Receipt No. : L1CASH/0/365984  
\*\*\*\*\* REPRINT \*\*\*\*\*

MULKEAR PARTNERSHIP ADAM KEARNEY  
C/O PAT BREHONY  
14 GREENPARK WEST  
MULLINGAR  
CO. WESTMEATH  
R24-52

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

Total : 80.00 EUR

Tendered :  
CREDIT CARDS 80.00

Change : 0.00

Issued By : L1CASH - Patricia Quinlivan  
From : MAIN CASH OFFICE LODGEMENT AF  
Vat reg No.0033043E

R24-52

P07

**CLARE COUNTY COUNCIL  
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,  
Economic Development Directorate,  
Clare County Council,  
New Road, Ennis,  
Co. Clare.  
V95DXP2

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



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

**FEE: €80**

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

**1. CORRESPONDENCE DETAILS.**

(a) Name and Address of person seeking the declaration	Mulkear Partnership (Kieran Mulcahy, Neil Mulcahy & Adam Kearney)  70 O'Connell Street, Limerick
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	Pat Brehony  14 Greenpark West, Mullingar, Co. Westmeath

**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 (a) the erection of Temporary Fencing (1.8m Harris) to secure agricultural land from encroachment and (b) the provision of an agricultural road / hard-standing to allow the maintenance of said lands at Station Road, Lahinch 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 subject lands at Station Road were overgrown with bushes and overgrowth and harboured vermin.  
We removed the overgrowth but this presented an issue with regard to open lands with  
no boundary and a need for a boundary to secure the lands from encroachment and trespass  
to comply with insurance requirements and also prevent dumping and prevent possible accidents  
resulting from people / children wandering in on the property.

(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 attached



3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Lands fronting 'Summercove' at Station Rd, Lahinch, Co. Clare   
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO   
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Owners  
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A   
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	warning letter UD24-013
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	2 No. Applications 24/60099 & 23/60091
(h) Date on which 'works' in question were completed/are likely to take place:	

SIGNED: Pat Buehly

DATE: 24-06-2024

**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

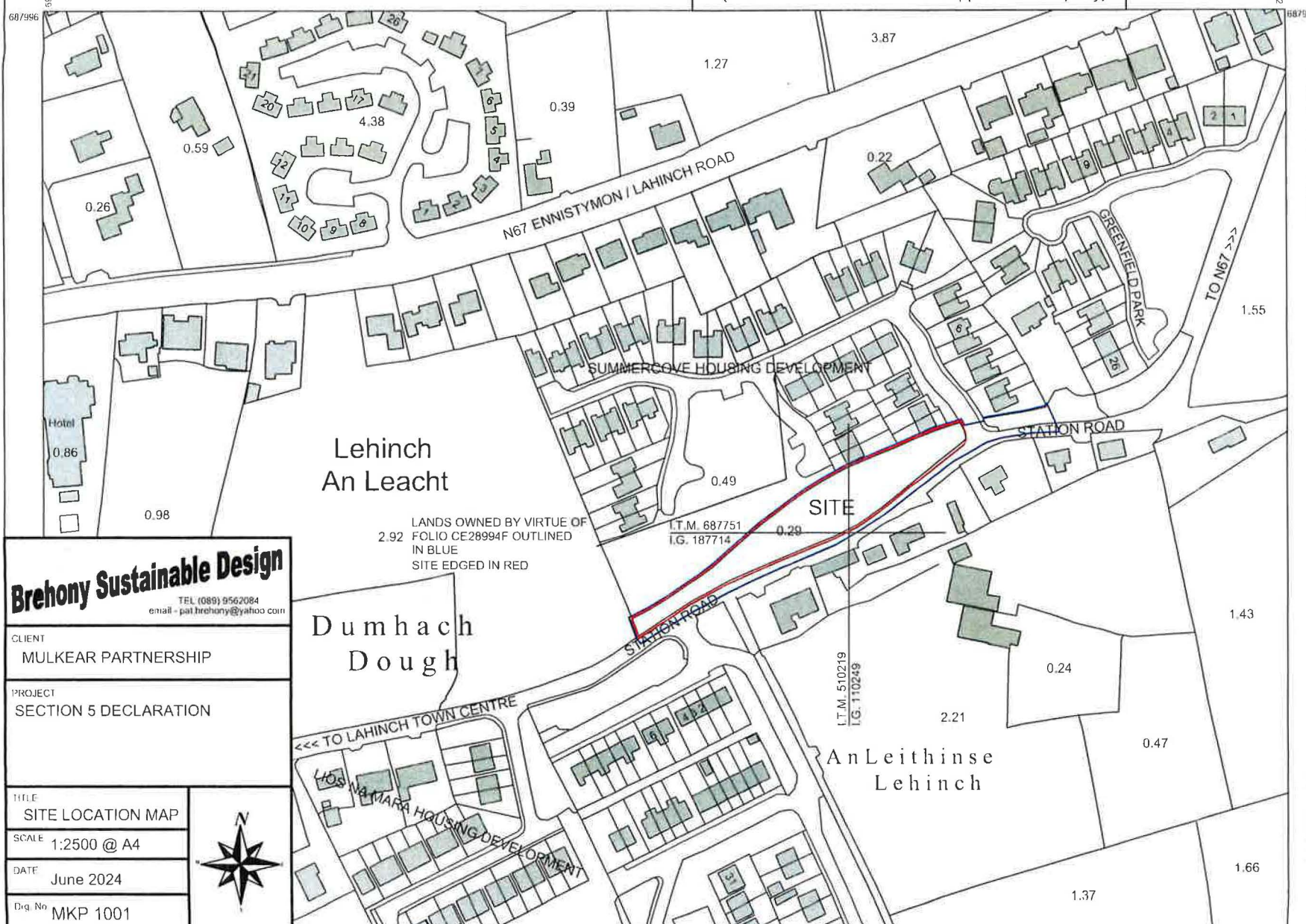
- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information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

# OSI Place Map

COPYRIGHT LICENSE No CYAL50350131  
 © National Mapping Division of Tailte Éireann  
 (Licence No. of Director of Applicant Company)



CENTRE  
 COORDINATES:  
 ITM 510131,687781

PUBLISHED: 15/03/2022  
 ORDER NO.: 50256544\_1

MAP SERIES: 1:2,500  
 MAP SHEETS: 4083-C, 4083-D

COMPILED AND PUBLISHED BY:  
 Ordnance Survey Ireland,  
 Phoenix Park,  
 Dublin 8,  
 Ireland.

Unauthorised reproduction  
 infringes Ordnance Survey Ireland  
 and Government of Ireland  
 copyright.

All rights reserved.  
 No part of this publication may  
 be copied, reproduced  
 or transmitted in any form  
 or by any means without the prior  
 written 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.

© Suirbhéireacht Ordánais Éireann,  
 2022  
 © Ordnance Survey Ireland, 2022  
[www.osi.ie/copyright](http://www.osi.ie/copyright)

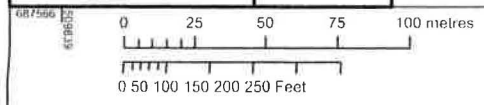
LEGEND:  
<http://www.osi.ie>;  
 search 'Large Scale Legend'

**Brehony Sustainable Design**  
 TEL (089) 9562084  
 email - pat.brehony@yahoo.com

CLIENT  
 MULKEAR PARTNERSHIP

PROJECT  
 SECTION 5 DECLARATION

TITLE  
 SITE LOCATION MAP  
 SCALE 1:2500 @ A4  
 DATE June 2024  
 Dwg No MKP 1001



LANDS OWNED BY VIRTUE OF  
 FOLIO CE28994F OUTLINED  
 IN BLUE  
 SITE EDGED IN RED

I.T.M. 687751  
 I.G. 187714

I.T.M. 510219  
 I.G. 110249

OUTPUT SCALE: 1:2,500

CAPTURE RESOLUTION:  
 The map objects are only accurate to the  
 resolution at which they were captured.  
 Output scale is not indicative of data capture scale.  
 Further information is available at:  
<http://www.osi.ie>; search 'Capture Resolution'