

COMHAIRLE CLARE CONTAE AN CHLÁIR COUNTY COUNCIL

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Niall O'Halloran C/o Sean Corey Midwest Consultant Engineers Ltd **Ballygriffey South** Ruan, Ennis Co. Clare V95 XR99

28th July 2025

Section 5 referral Reference R25-56 - Niall O'Halloran

Is the division of lands into two separate properties development and if so, is it exempted development?

A Chara,

I refer to your application received on 1st July 2025 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 Coimisiún Pleanála of the required fee, refer a declaration for review by An Coimisiún 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'Gorm Staff Officer

Planning Department

Economic Development Directorate

An Roinn Pleanála An Stiúrthóireacht Forbairt Gheilleagrach

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

Planning Department **Economic Development Directorate**

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2









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

Reference No.: R25-56



Section 5 referral Reference R25-56

Is the division of lands into two separate properties development and if so, is it exempted development?

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

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) The details received from the referrer on 01st July 2025.

And whereas Clare County Council has concluded:

(a) The subject site comprises an existing dwelling and rear garden sheds which are proposed to be subdivided does not constitute "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended, having regard to the details of the referral, and therefore, does not constitute "development" as defined by the Planning & Development Act 2000 (as amended);

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

The proposed development consisting of the subdivision of the site at 3 Linnane Terrace, Kilrush Road, Ennis, Co. Clare <u>does not constitute development</u> as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

Anne O'Gorman Staff Officer

Planning Department

Economic Development Directorate

28th July 2025

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: 85991

Reference Number: R25-56

Date Referral Received: 1st July 2025

Name of Applicant: Niall O'Halloran

Location of works in question: 3 Linnane Terrace, Kilrush Road, Ennis,

Co. Clare

Section 5 referral Reference R25-56 - Niall O'Halloran

Is the division of lands into two separate properties 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) The details received from the referrer on 01st July 2025.

AND WHEREAS Clare County Council has concluded:

(a) The subject site comprises an existing dwelling and rear garden sheds which are proposed to be subdivided does not constitute "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended, having regard to the details of the referral, and therefore, does not constitute "development" as defined by the Planning & Development Act 2000 (as amended);

ORDER:

Whereas by Chief Executive's Order No. HR 343 dated 19th May 2025, Gordon Daly, 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 Garreth 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, Garreth Ruane, Senior Executive Planner, hereby declare that the subdivision of the site at 3 Linnane Terrace, Kilrush Road, Ennis, Co. Clare is not considered development.

Signed:

GARRETH RUANE

SENIOR EXECUTIVE PLANNER

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Date:

28th July 2025

CLARE COUNTY COUNCIL SECTION 5 DECLARATION OF EXEMPTION APPLICATION PLANNERS REPORT

FILE REF:

R25-56

APPLICANT(S):

Niall O'Halloran, 10 Gleann na Coille, Claremont, Claureen, Ennis, V95 W4FX

REFERENCE:

Is the division of lands in two separate properties development and if so, is it exempted

development?

LOCATION:

3 Linnane Terrace, Kilrush Road, Ennis, Co Clare

DUE DATE:

28th July 2025

Site Location

The subject site is located in Ennis, at 3 Linnane Terrace, Kilrush Road, on lands zoned 'Existing Residential'. The site is located at no. 3 Linnane Terrace, a terraced dwelling located in a residential area in Ennis town centre. The dwelling is located to the east of the town, within the Architectural Conservation Area. The site fronts onto the road with access to the rear via the north of the site. The rear of the site comprises a rear garden area and shed.

The site is not within a flood zone, is not located within any European Sites and nor are there any protected structures or recorded monuments in the vicinity of the site.

Recent Planning History

17/636 – Niall O'Halloran – for first floor extension as constructed to the rear of existing dwelling house, with all associated site works. Granted Permission.

Background to Referral

This referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by Niall O'Halloran, the owner of the subject site.

The applicant is seeking a Section 5 Declaration as to the following:

Is the division of lands in two separate properties development and if so, is it exempted development?

The applicant has stated that they are seeking to subdivide the property as indicated on the Site Layout Plan, into 2 no. sites – the existing dwelling marked 'A' and the rear garden area and shed marked 'B'. It is stated that the applicant intends to sell the dwelling on the lands marked 'A' and retain the rear garden space and shed marked 'B'. The referrer has also queried whether this would have any bearing on a previously granted permission (Ref: P17/636).

No details in respect of the area retained for private open space for the dwelling on the lands marked 'A' have been included. Further, no details in respect of any works proposed in order to physically sub-divide the property or for the intended use of the rear lands, i.e. whether this will be used in a commercial capacity, etc, have been included.

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.

S.4.—(1) The following shall be exempted developments for the purposes of this Act—

(h) 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.

Planning & Development Regulations, 2001, as amended

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

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 5

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Conditions & Limitations:

- 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
- 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
- 3. No such structure shall be a metal palisade or other security fence.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 6(b):

- (b) Any works within the curtilage of a house for—
- (i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,
- (ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.

Conditions & Limitations:

Related to (b)(ii) – Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller,

or

if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 9

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

Conditions & Limitations:

The height of any such structure shall not exceed 2 metres.

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

- (a) if the carrying out of such development would -
- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act
- (ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,
- (vii) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new

development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

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

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

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

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

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

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

(xi) obstruct any public right of way,

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

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to the following:

Is the division of lands in two separate properties development and if so, is it exempted development?

Planning and Development Act, 2000 (as amended)

In accordance with Sections 2 and 3(1) of the Planning and Development Act 2000 (as amended) (hereafter referred to as 'the Act'), this declaration is only seeking to determine whether the division of lands into two separate properties is development, and if so, is it exempted development. The act of the division of lands in itself does not fall under the definitions of works or development as outlined in the Act, and therefore, it is considered that this proposal does not fall under the definition of 'works' and is not characterised as 'development'.

While it is also noted that no detail has been provided in respect of any works which may be undertaken to physically divide the property, this question was not sought within this Section 5 referral and is not considered in this referral report.

Further, the use of the sheds to the rear has not been provided by the referrer, nor has it been indicated whether the use of this land be changed as a result of the sub-division, nor whether the existing dwelling would include the minimum private open space required for a dwelling. However, as outlined above, such have not been included in this referral and therefore are not assessed or considered. Should the applicant require further clarification on same, a separate referral would be required.

It is my view that the subdivision of the site folios *only*, would not constitute works and is not development, in accordance with Section 3(1) of the Planning Act 2000 (as amended).

Recommendation

The following questions have been referred to the Planning Authority:

Is the division of lands in two separate properties development and if so, is it exempted development?

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) The details received from the referrer on 01st July 2025.

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

(a) The subject site comprises an existing dwelling and rear garden sheds which are proposed to be subdivided does not constitute "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended, having regard to the details of the referral, and therefore, does not constitute "development" as defined by the Planning & Development Act 2000 (as amended);

Now Therefore, Clare County Council (Planning Authority) in exercise of the powers conferred on it by section 5 (2) of the 2000 Act, has concluded that the subdivision of the site is **not development**.

Áine Bourke

Executive Planner

Date: 24/07/2025

Gareth Ruane

Senior Executive Planner

Buyed on the defails

Date: 25/04/25



COMHAIRLE CLARE CONTAE AN CHLÁIR COUNTY COUNCIL

Niall O'Halloran C/o Sean Corey Midwest Consultant Engineers Ltd Ballygriffey South Ruan, Ennis Co. Clare V95 XR99

01/07/2025

Section 5 referral Reference R25-56 - Niall O'Halloran

Is the division of lands into two separate properties development and if so, is it exempted development?

A Chara,

I refer to your application received on 1st July 2025 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

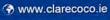
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Planning Department
Economic Development Directorate

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2













ANCHLAIR



Clare County Council Aras Contae an Chlair New Road

Ennis Co Clare

Co Clafe OMHAIRLE

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NIALL O'HALL ORAN HLAIR
C/O SEAN COREY HLAIR
MIDWEST CONSULTANT ENGINEERS
BALLYGRIFFEY SOUTH
RUAN, ENNIS, CO. CLARE

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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

R25-56

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Combain Council
Clare Council
Clare Council

0 1 JUL 2025

Received

Planning Section

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	NIALL O MALLORAN 10 GLEANN NA COILLE CLAREMOUNT, CLAUREEN, ENNIS, CO. CLARE			
(b) Telephone No.:				
(c) Email Address:	*,			
(d) Agent's Name and address:	SEAN CORTY MIDWEST CONSULTANT ENGINEERS LT. BALLYGRIFFEY SOUTH RUAN, ENNIS CO. CLARE (V95 XR 99)			

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?						
PROPERTIES CONSIDERED EXEMPTED DEVELOPME						
- PROPERTIES CONSTIDERED EXEMPTED DECEMPTE						
(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.						
MY CHENT WISHES TO DIVIDE THE PROPERTY						
KNOWN AS 3 LINNANE TERRACE, KILDUSH ROA						
INTO TWO SEPERATE FOLIOS. HE INTENDS						
SELL OFF THE MOUSE (MARKED A AND						
OUTLINED IN RED) ON THE ATTACHED TOLATE						
AND RETAIN THE LANDS AND SHED (MA)						
BON THE ATTACHED LAGOUT PLAN. WE						
WISH TO ASCERTAN IF THIS CONSTITUTES						
ESCEMPTED DEVELOPMENT AND IF IT MAS						
ANY BEARING ON PLANNING PERMISSIE						
PIT 1309						
(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)						
1) SITE LOCATION MAP - SITE OUTLINE IN RED. 2) SITE LAYOUT PLAN						
2) SITE LAYOUT FLAN						

	3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT					
(a)	Postal Address of the Property/Site/Building for which the declaration sought:	3 LINNANE TERRACE KILRUSH ROAD ENNIS CO. CLARE (V95 PGNX)				
(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):	FULL OWNER.				
(d)	If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.	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? If so please supply details:	No.				
(g)	Were there previous planning application/s on this site? If so please supply details:	4ES - PM 1309 /117-63				
(h)	Date on which 'works' in question were	AUG 2025.				

SIGNED: _

DATE: 30-6-2025.

P.P. NIALL O MALLORAN,

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

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

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

FOR OFFICE USE ONLY			
Date Received:		Fee Paid:	
Date Acknowledged:	***************************************	Reference No.:	
Date Declaration made:		CEO No.:	
Decision:			

