



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**John McNamara
Enagh East
Kilkishen
Co. Clare
V95 HH99**

15th August 2025

Section 5 referral Reference R25-68 – John McNamara

Is the development of a farm yard manure pit development and if so, is it exempted development?

A Chara,

I refer to your application received on 28th 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

**Kieran O'Donnell
Administrative 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.: R25-68



Section 5 referral Reference R25-68

Is the development of a farm yard manure pit development and if so, is it exempted development?

AND WHEREAS, John McNamara has requested a declaration from Clare County Council on the said question.

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


- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Classes 6, 7, 8 and 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (d) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) The development of a farmyard manure pit at Enagh East, Kilkishen, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) The said development of a farmyard manure pit at Enagh East, Kilkishen, Co. Clare is not exempted development having regard to the meanings of descriptions of the Classes of Development provided for in Schedule 2, Part 3 of the Planning and Development Regulations, 2001 (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 construction of a farmyard manure pit at Enagh East, Kilkishen, Co Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Kieran O'Donnell
Administrative Officer
Planning Department
Economic Development Directorate

15th August 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:

86119

Reference Number:

R25-68

Date Referral Received:

28th July 2025

Name of Applicant:

John McNamara

Location of works in question:

Enagh East, Kilkishen, Co. Clare

Section 5 referral Reference R25-68 – John McNamara

Is the development of a farm yard manure pit development and if so, is it exempted development?

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Classes 6, 7, 8 and 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (d) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) The development of a farmyard manure pit at Enagh East, Kilkishen, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) The said development of a farmyard manure pit at Enagh East, Kilkishen, Co. Clare is not exempted development having regard to the meanings of descriptions of the Classes of Development provided for in Schedule 2, Part 3 of the Planning and Development Regulations, 2001 (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 Kieran O'Donnell, Administrative Officer, 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, Kieran O'Donnell, Administrative Officer, hereby declare that the construction of a farmyard manure pit at Enagh East, Kilkishen, Co Clare is considered development which is not exempted development.

Signed:



KIERAN O'DONNELL
ADMINISTRATIVE OFFICER

Date:

15th August 2025

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF:	R25-68
APPLICANT(S):	John McNamara
REFERENCE:	Whether the construction of a farmyard manure pit is or is not development and is or is not exempted development.
LOCATION:	Enagh East, Kilkishen, Co. Clare
DUE DATE:	22 nd August 2025

Site Location

The proposal site is located in a rural area approximately 2km south of Kilkishen. The site comprises an existing agricultural yard, sited downslope of the public road.

Recent Planning History

No recent planning applications on the proposal site.

Background to Referral

This Referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by John McNamara. He has ~~not~~ stated whether he is the owner of the site, but the application form indicates that the owner is aware of this Section 5 referral.

The applicant is seeking a Section 5 Declaration as to whether the construction of a farmyard manure pit at Enagh East, Kilkishen, Co. Clare is or is not development and is or is not 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.

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 6

Works consisting of the provision of any store, barn, shed, glass house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 7

Works consisting of the provision of a roofed structure for the housing of pigs, mink or poultry, having a gross floor space not exceeding 75 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 8

Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 9

Works consisting of the provision of any store, barn, shed, glasshouse or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

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

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

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

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

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

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

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

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

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

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

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

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

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

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

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

(xi) obstruct any public right of way,

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

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the construction of a farmyard manure pit at Enagh East, Kilkishen, Co Clare is or is not development and is or is not exempted development.

Particulars of Proposal

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

- | | |
|-----------------------------|------------------------|
| • Height | 1.2m |
| • Proposed Floor Area | 18m ² |
| • Distance from public road | Greater than 10 metres |
| • Distance from dwellings | Greater than 100m |

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

The referral relates to the construction of a farmyard manure pit. No drawings are provided, but based on the written description, it appears to be a standard, uncovered pit / dungstied structure. The proposed development is assessed in the context of the classes of *rural* exemptions available under Schedule 1, Part 3 of the Planning and Development Regulations.

- Classes 6 and 7 refer to the provision of roofed structures for the housing of specified animals. The development as proposed will be ancillary to existing agricultural buildings in the yard and will not, in itself, be used for the housing of animals. The proposal development is not therefore considered exempt in the context of these classes.
- Class 8 refers to the provision of structures such as roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards and milking parlours. The proposed shed does not fall within any of the named categories. The exemption also includes *any other structure of a similar character or description*.

The named structures primarily relate to the feeding or milking of animals in an agricultural setting. I do not consider the proposed shed to be of a similar character to the named structures. I also note the limitations of the class require *inter alia* that effluent storage facilities adequate to serve the structure are required. This limitation implies that a structure constructed under the Class 8 exemption may require effluent storage facilities rather than being such a storage facility themselves. Based on these considerations, I do not consider the proposed development to be exempt in the context of the Class 8.

- Class 9 refers to works consisting of the provision of any store, barn, shed, glasshouse or other structure, not being of a type specified in class 6, 7 or 8. The limitations of the exemption state *no such structure shall be used for any purpose other than the purpose of agricultural or forestry but excluding the housing of animals or the storing of effluent*. The proposed shed will be use for the storage of manure and therefore is not considered exempt under the provisions of Class 9.

Having regard to the foregoing, the construction of a farmyard manure pit does not come within the meaning of descriptions for any of the Classes of Development provided for in Schedule 2, Part 3 of the Planning and Development Regulations

The construction of a farmyard manure pit is development which is not exempted development.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the construction a farmyard manure pit at Enagh East, Kilkishen, Co. Clare is or is not development and is or is not exempted development.

The Planning Authority in considering this referral had regard to:

- Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- Classes 6, 7, 8 and 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- The works as indicated in submitted documents from the referrer.

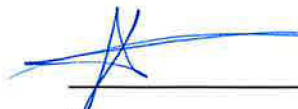
And whereas Clare County Council (Planning Authority) has concluded:

- the development of a farmyard manure pit at Enagh East, Kilkishen, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- The said development of a farmyard manure pit at Enagh East, Kilkishen, Co. Clare is not exempted development having regard to the meanings of descriptions of the Classes of Development provided for in Schedule 2, Part 3 of the Planning and Development Regulations, 2001 (as amended)

Now therefore Clare County Council (Planning Authority), hereby decides that the construction of a farmyard manure pit at Enagh East, Kilkishen, Co Clare is development and is not exempted development.


Executive Planner

Date: 11/08/2025



Senior Executive Planner

Date: 14/08/2025

Noted

KAD
14/08/25

Aisling Leahy



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

John McNamara
Enagh East
Kilkishen
Co. Clare
V95 HH99

29/07/2025

Section 5 referral Reference R25-68 – John McNamara

Is the development of a farm yard manure pit development and if so, is it exempted development?

A Chara,

I refer to your application received on 28th 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

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



COMHAIRLE

CONTAE
AN CHLÁIR



Clare County Council
Aras Contae an Chlair
New Road
Ennis
Co Clare



28/07/2025 15:33:55

Receipt No. L1CASH/0/382147
***** REPRINT *****

JOHN MCNAMARA
ENAGH EAST
KILKISHEN
CO. CLARE
V95 HH99
R25-68

COMHAIRLE

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

Total : 80.00 EUR

Tendered :
CHEQUES



Change :

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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



R25-68

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

FEE: €80

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

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	<p>John McNamara</p> <p>Enagh East</p> <p>Kilkishen</p> <p>Co. Clare</p> <p>V95 HH99</p>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	<p>NA</p> <p></p> <p></p> <p></p> <p></p>



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 development of a Fram Yard Manure Pit Exempt from planning

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

Proposed small manure pit, size 6m x 3m, height 1.2m, adjacent to existing
Slatted shed.

(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)

See location, 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:	<div>Enagh East</div> <div>Kilkishen</div> <div>Co. Clare</div> <div></div> <div>V95 H499</div>
(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?	<div>No</div> <div></div> <div></div> <div></div>
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	<div>No</div> <div></div> <div></div>
(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>	<div>NA</div> <div></div> <div></div>
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	<div>Yes</div>
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	<div>No</div>
(g) Were there previous planning application/s on this site? If so please supply details:	<div>No</div>
(h) Date on which 'works' in question were completed/are likely to take place:	<div>October 2025</div>

SIGNED:



DATE: 25/07/2025

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:.....			

