



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

Oliver Haugh
Feenagh
Lissycasey
Ennis
Co. Clare

5th December 2025

Section 5 referral Reference R25-92 – Oliver Haugh

Is the removal / breaking of rocks protruding above earth development and if so, is it exempted development?

A Chara,

I refer to your application received on 10th November 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'Gorman
Staff Officer
Planning, Placemaking & Economic Development

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.: R25-92



Section 5 referral Reference R25-92

Is the removal / breaking of rocks protruding above earth development and if so, is it exempted development?

AND WHEREAS, Oliver Haugh 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) Section 177(U) 9, Part XAB of the Planning and Development Act 2000, as amended, (Appropriate Assessment).
- (c) Class 11 of Part 3, Schedule 2 Rural- '*Development consisting of the carrying out of drainage and/or reclamation of wetlands*' of the Planning and Development Regulations 2001, as amended.
- (d) Article 8B, 8C and Article 9 of the Planning and Development Regulations 2001, as amended.
- (e) The details and drawing as indicated in submitted documents from the referrer.

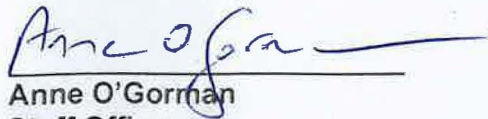
And whereas Clare County Council has concluded:

- (a) The development consisting of removal/ breaking of rocks protruding above the earth constitutes "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 falls outside the scope of exempted classes of development pertaining to works in rural areas as set out in the Regulations,
- (c) The said works by virtue of their potential to have significant effects on the qualifying interest of the adjoining European sites, namely the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA, do not come within the scope of the restrictions on exemptions set out under section 4(4) of the Planning and Development Act 2000, as amended, insofar as it is considered that the need for Appropriate Assessment cannot be excluded.

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 removal / breaking of rocks protruding above the earth at Lisheen, Ballynacally, Co. Clare constitutes development which is not exempted

development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in blue ink, appearing to read 'Anne O'Gorman', is written over a horizontal line.

Anne O'Gorman
Staff Officer
Planning, Placemaking & Economic Development

5th December 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: 86780

Reference Number: R25-92

Date Referral Received: 10th November 2025

Name of Applicant: Oliver Haugh

Location of works in question: Lisheen, Ballynacally, Co. Clare

Section 5 referral Reference R25-92 – Oliver Haugh

Is the removal / breaking of rocks protruding above earth 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) Section 177(U) 9, Part XAB of the Planning and Development Act 2000, as amended, (Appropriate Assessment).
- (c) Class 11 of Part 3, Schedule 2 Rural- '*Development consisting of the carrying out of drainage and/or reclamation of wetlands*' of the Planning and Development Regulations 2001, as amended.
- (d) Article 8B, 8C and Article 9 of the Planning and Development Regulations 2001, as amended.
- (e) The details and drawing as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) The development consisting of removal/ breaking of rocks protruding above the earth constitutes "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 falls outside the scope of exempted classes of development pertaining to works in rural areas as set out in the Regulations,
- (c) The said works by virtue of their potential to have significant effects on the qualifying interest of the adjoining European sites, namely the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA, do not come within the scope of the restrictions on exemptions set out under section 4(4) of the Planning and Development Act 2000, as amended, insofar as it is considered that the need for Appropriate Assessment cannot be excluded.

ORDER: Whereas by Chief Executive's Order No. HR 18 dated 7th October 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 removal / breaking of rocks protruding above the earth at Lisheen, Ballynacally, Co. Clare is considered development which is not exempted development.

Signed:


GARRETH RUANE
SENIOR EXECUTIVE PLANNER 

Date:

5th December 2025

SECTION 5 DECLARATION OF EXEMPTION APPLICATION

| | |
|----------------------|--|
| FILE REF: | R25-92 |
| APPLICANT(S): | Oliver Haugh |
| REFERENCE: | Whether the removal/ breaking of rocks protruding above the earth is considered development and, if so, is it exempted development. |
| LOCATION: | Lisheen, Ballynacally. |
| DUE DATE: | 5th December 25 |

Site Location

The site (folio CE 6442) is located at Lisheen Ballynacally and adjoins the Lower River Shannon SAC and the River Fergus and River Fergus Estuaries SPA. The site is in designated Heritage Landscape. The site is accessed from the R473.

Planning History on Site

None

UD History

UD25/ 38 ON foot of a written complaint the Planning Authority carried out an inspection for enforcement purposes. The third parts complaint pertained to:

- Agricultural reclamation works adjoining the Shannon estuary.
- Rock breaking for 4 months
- Infilling/ reprofiling/ rock breaking adjoining the SAC and SPA.

The inspection concluded the following works were be caried out and an enforcement notice served 19th August 25 for :

Land clearance and reclamation works, rock braking, infilling of land and importation of fill material in close proximity to the lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended)
The referral question is as follows- .

Whether the removal/ breaking of rocks protruding above the earth is considered development and, if so, is it 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*.

Section 2(1) – Interpretation

In this Act, except where the context otherwise requires –

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.

‘works’ are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

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

Section.3.(1)In this Act,

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(2)(a)

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

Section 4 (4)

Notwithstanding paragraphs (a), (i), (ia) and (i) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 177U(9)

In deciding upon a declaration or referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a

screening for Appropriate Assessment in accordance with the provisions of this section.

Planning and 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.

Part 3 Exempted Development – Rural Article 6

Land reclamation – Class 11

Development consisting of the carrying out of drainage and / or reclamation of wetlands.

Conditions and limitations.

- 1. The area to be affected shall not exceed 0.1ha.*
- 2. Where development has been carried out within a farm holding under this class, the total of any such development taken together with the area of any previous such development within a farm holding should not exceed the limit set out in 1. Above.*

Article 8 B

Works consisting of field drainage for agriculture, other than drainage and / or reclamation of wetlands shall be exempted development.

Article 8 C

Land reclamation works (other than reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Article 9

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,*

(iia) 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.

Technical Reports Received

EAO Report 26th November 25

I have reviewed the file as submitted by the applicant together with internal reports received from Clare County Council and all relevant information pertaining to the site and the surrounding hinterland including all previous applications associated with the property.

In assessing this Section 5 request, I have had regard to two key elements namely what is the "development concerned" and would it trigger the requirement for appropriate assessment should an application for permission been made for the "development concerned". The development concerned in this case relates to **the removal/breaking of rocks protruding above earth**. However, on review of the documentation submitted it is clear that the lands in question are also the subject of unauthorised development with enforcement proceedings associated with UD25-0038 which is outlined in the application form accompanying the Section 5 request.

In considering the second element as to whether the "development concerned" would trigger the requirement for appropriate assessment, the Local Authority is required to undertake a notional screening exercise. The following should be considered as part of this notional screening by the Planning Officer:

- The proximity of the nearest European sites (Lower River Shannon SAC (Site Code: 002165) and the River Shannon and Fergus Estuaries SPA (Site Code: 004077) which are located directly adjacent to the lands where the works have taken place and for which there is potential for direct effects together with in-direct effects.
- There is a potential for impacts on surface water quality arising from the excavation works which has already taken place and/or continue to take place which could lead to significant effects on the Qualifying Interest Features and Special Conservation Interests of the associated European sites.
- The key concern for the Competent Authority is the effect such works will have had on the Special Conservation Interests of the SPA. The rock breaking and removal of rock is a key source of disturbance which is identified in the site-specific Conservation Objectives for the River Shannon and River Fergus Estuaries SPA.

- Human activities should only occur at levels that do not adversely affect breeding populations of species which are Special Conservation Interests of this site.
- Given the site also has a hydrological connectivity to the European sites this is sufficient to trigger the requirement for appropriate assessment given that the threshold for Screening is low by providing that a planning authority must determine that an appropriate assessment is required if it cannot be excluded, on the basis of objective information, that the project, individually or in combination with other plans or projects, will have a significant effect on a European site. Case C-258/11, *Sweetman & Ors. V An Bord Pleanála & Ors.*, Advocate General Sharpton considered that the test is set at a lower level and that the question is simply whether the plan or project concerned is capable of having an effect¹.
- The Section 5 request contains no analysis or information in relation to the assimilative capacity of the receiving environment coupled with the clear potential for both direct and in-direct effects to arise it is not possible for Clare County Council to conclude a Finding of No Significant Effects.
- Based on the information received as part of the Section 5 request, the analysis as outlined above and taking all unauthorized development for this site into consideration I am not satisfied that Clare County Council as the competent authority can screen out the requirement for appropriate assessment and therefore the development would not be deemed exempt from the requirement for planning permission.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the removal/ breaking of rocks protruding above the earth is considered development and, if so, is it exempted development

Particulars of the Development

The applicant advises that he wishes to strip back the soil, remove or break rock and then put soil back leaving the soil level. This work is being done to prevent damage to machinery, tractors and quads and to prevent scrub growing back over rocks as no area can be grazed or cut. The area marked blue is the section of the land holding where the works are being carried out.

Assessment;

The following question has been referred to the Planning Authority:

Whether the removal/ breaking of rocks protruding above the earth is considered development and, if so, is it exempted development.

While the query relates only to the removal and breaking of rock, it would appear from the UD file 25/ 38 that the nature of works being / or have been carried out are more extensive. It is noted that the landholding contains **scrub and wet grassland habitat types** (J. Fossit) and also contain a drain/ stream that flows across the centre of the holding and drains directly to the SAC and SPA. Having regard to the definition of works and development above the information submitted by the referrer and the UD file, 25/38, I consider that the works carried out to date constitute both works and development.

I refer Class 11 Rural- *'Development consisting of the carrying out of drainage and / or reclamation of wetlands'*. While the works may be considered a form of reclamation and works may have been carried out in an area where a wet land type occurred on the holding, it appears from the folio map submitted that the area to which the works relate is significantly greater than 0.1ha. As such it is considered that the works do not fall within the scope and limitation of the this class because of the condition and limitation pertaining to the restricted area (0.1ha) within which they must fall if they are to be considered exempted development. The works therefore constitute development which is not exempted development.

I refer to the provisions of Article 8 (c) whereby it is stated that land reclamation works (other than reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development. As stated previously the land holding contains sections of scrub and wet grassland habitat. It is not clear if the works in question encroach onto these habitats. Notwithstanding the provisions of Article 8 (c), the Act provides under Section 177 (U) 9, that the Planning Authority, in deciding upon a declaration or referral under section 5 of this Act it shall where appropriate, conduct a screening for Appropriate Assessment in accordance with the provisions of this section.

I refer to the report received from the EA and the AA screening report attached.

Having regard to the proximity of the subject site to European sites, the direct hydrological pathway linking the subject site to the adjoining SAC and SPA, the potential for disturbance to wintering birds on the estuary by virtue of noise and disturbance, Clare Co. Council as the competent authority for the purposes of Appropriate Assessment, cannot screen out the requirement for appropriate assessment and therefore the development would not be deemed exempt from the requirement for planning permission.

Conclusion

Having regard to the above it is considered that the proposed development constitutes both 'works' and 'development' which are not exempted development.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the removal/ breaking of rocks protruding above the earth is considered development and, if so, is it exempted development

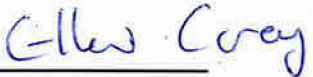
The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Section 177(U) 9, Part XAB of the Planning and Development Act 2000, as amended, (Appropriate Assessment).
- (c) Class 11 of Part 3, Schedule 2 Rural- 'Development consisting of the carrying out of drainage and/or reclamation of wetlands' of the Planning and Development Regulations 2001, as amended.
- (d) Article 8B, 8C and Article 9 of the Planning and Development Regulations 2001, as amended.
- (e) 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 removal/ breaking of rocks protruding above the earth constitutes "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 falls outside the scope of exempted classes of development pertaining to works in rural areas as set out in the Regulations,
- c) the said works by virtue of their potential to have significant effects on the qualifying interest of the adjoining European sites, namely the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA, do not come within the scope of the restrictions on exemptions set out under section 4(4) of the Planning and Development Act 2000, as amended, insofar as it is considered that the need for Appropriate Assessment cannot be excluded.

Now therefore Clare County Council (Planning Authority), hereby decides that the removal/breaking of rocks protruding above the earth at Lisheen, Ballynacally, Co. Clare is development and is not exempted development.


Ellen Carey
Executive Planner
Date: 4/ Dec 25.


Garreth Ruane
Senior Executive Planner
Date: 04/12/25.

Appropriate Assessment & Determination

| STEP 1. Description of the project/proposal and local site characteristics: | |
|---|---|
| (a) File Reference No: | Section 5 R 25/ 92 |
| (b) Brief description of the project or plan: | Rock breaking/land reclamation |
| (c) Brief description of site characteristics: | Fields in agricultural use, scrub and wet glass land , rock outcropping |
| (d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW | None |
| (e) Response to consultation: | None |

| STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives. | | | | |
|--|---|--|---|-------------------------------------|
| European Site (code) | List of Qualifying Interest/Special Conservation Interest ¹ | Distance from proposed development ² (km) | Connections (Source-Pathway-Receptor) | Considered further in screening Y/N |
| Lower River Shannon SAC | <p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> | Adjacent and directly hydrologically connected | Yes via stream running through land holding outfalling to the SAC and SPA | Yes |

Perennial
vegetation of
stony banks
[1220]

Vegetated sea
cliffs of the
Atlantic and Baltic
coasts [1230]

Salicornia and
other annuals
colonising mud
and sand [1310]

Atlantic salt
meadows (*Glauco
Puccinellietalia
maritimae*) [1330]

Mediterranean
salt meadows
(*Juncetalia
maritimi*) [1410]

Water courses of
plain to montane
levels with the
*Ranunculus
fluitans* and
*Callitriche-
Batrachium*
vegetation [3260]

Molinia meadows
on calcareous,
peaty or clayey-
silt-laden soils
(*Molinion
caeruleae*) [6410]

Alluvial forests
with *Alnus
glutinosa* and
Fraxinus excelsior
(*Alno-Padion,
Alnion incanae*,

| | | | | |
|---|--|----------|----------|--|
| | <p>Salicion albae) [91E0]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Tursiops truncatus (Common Bottlenose Dolphin) [1349]</p> <p>Lutra lutra (Otter) [1355]</p> | | | |
| River Fergus and River Shannon Estuaries SPA | <p>Cormorant (Phalacrocorax carbo) [A017]</p> <p>Whooper Swan (Cygnus cygnus) [A038]</p> <p>Light-bellied Brent Goose (Branta bernicla hrota) [A046]</p> <p>Shelduck (Tadorna tadorna) [A048]</p> | As above | As above | |

Teal (*Anas crecca*)
[A052]

Pintail (*Anas*
acuta) [A054]

Scaup (*Aythya*
marila) [A062]

Ringed Plover
(*Charadrius*
hiaticula) [A137]

Golden Plover
(*Pluvialis*
apricaria) [A140]

Grey Plover
(*Pluvialis*
squatarola)
[A141]

Lapwing (*Vanellus*
vanellus) [A142]

Knot (*Calidris*
canutus) [A143]

Dunlin (*Calidris*
alpina) [A149]

Black-tailed
Godwit (*Limosa*
limosa) [A156]

Bar-tailed Godwit
(*Limosa*
lapponica) [A157]

Curlew
(*Numenius*
arquata) [A160]

Redshank (*Tringa*
totanus) [A162]

Greenshank
(*Tringa nebularia*)
[A164]

Black-headed Gull
(*Chroicocephalus*

| | | | |
|---------------------------------------|--|--|--|
| ridibundus) [A179] | | | |
| Wigeon (Mareca penelope) [A855] | | | |
| Shoveler (Spatula clypeata) [A857] | | | |
| Wetland and Waterbirds [A999] | | | |
| | | | |

- ¹ Short paraphrasing and/or cross reference to NPWS is acceptable – it is not necessary to reproduce the full text on the QI/SCI.
- ² If the site or part thereof is within the European site or adjacent to the European site, state here.

| STEP 3. Assessment of Likely Significant Effects | |
|--|---|
| (a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings: | |
| Impacts: | Possible Significance of Impacts: (duration/magnitude etc.) |
| Construction phase e.g. <ul style="list-style-type: none"> • Vegetation clearance • Demolition • Surface water runoff from soil excavation/infill/landscaping (including borrow pits) • Dust, noise, vibration • Lighting disturbance • Impact on groundwater/dewatering • Storage of excavated/construction materials • Access to site • Pests | <ul style="list-style-type: none"> • Vegetation clearance • Surface water runoff from soil excavation/infill/landscaping (including borrow pits) • Dust, noise, vibration • Lighting disturbance • Impact on groundwater/dewatering • Storage of excavated/construction materials • Access to site Pests |
| Operational phase e.g. <ul style="list-style-type: none"> • Direct emission to air and water • Surface water runoff containing contaminant or sediment | None |

- Lighting disturbance
- Noise/vibration
- Changes to water/groundwater due to drainage or abstraction
- Presence of people, vehicles and activities
- Physical presence of structures (e.g. collision risks)
- Potential for accidents or incidents

In-combination/Other

None

(b) Describe any likely changes to the European site:

Examples of the type of changes to give consideration to include:

- Reduction or fragmentation of habitat area
 - Disturbance to QI species
 - Habitat or species fragmentation
 - Reduction or fragmentation in species density
 - Changes in key indicators of conservation status value (water or air quality etc.)
 - Changes to areas of sensitivity or threats to QI
 - Interference with the key relationships that define the structure or ecological function of the site
- Disturbance to QI species
 - Habitat or species fragmentation
 - Reduction or fragmentation in species density
 - Changes in key indicators of conservation status value (water or air quality etc.)
 - Changes to areas of sensitivity or threats to QI
 - Interference with the key relationships that define the structure or ecological function of the site

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

☒ Yes ☐ No

Step 4. Screening Determination Statement

The assessment of significance of effects:

Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

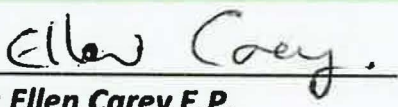
The development concerned in this case relates to **the removal/breaking of rocks protruding above earth**. However, on review of the documentation submitted it is clear that the lands in question are also the subject of unauthorised development with enforcement proceedings associated with UD25-0038 which is outlined in the application form accompanying the Section 5 request.

In considering the second element as to whether the “development concerned” would trigger the requirement for appropriate assessment, the Local Authority is required to undertake a notional screening exercise. The following should be considered as part of this notional screening by the Planning Officer:

- The proximity of the nearest European sites (Lower River Shannon SAC (Site Code: 002165) and the River Shannon and Fergus Estuaries SPA (Site Code: 004077) which are located directly adjacent to the lands where the works have taken place and for which there is potential for direct effects together with in-direct effects.
- There is a potential for impacts on surface water quality arising from the excavation works which has already taken place and/or continue to take place which could lead to significant effects on the Qualifying Interest Features and Special Conservation Interests of the associated European sites.
- The key concern for the Competent Authority is the effect such works will have had on the Special Conservation Interests of the SPA. The rock breaking and removal of rock is a key source of disturbance which is identified in the site-specific Conservation Objectives for the River Shannon and River Fergus Estuaries SPA. Human activities should only occur at levels that do not adversely affect breeding populations of species which are Special Conservation Interests of this site.
- Given the site also has a hydrological connectivity to the European sites this is sufficient to trigger the requirement for appropriate assessment given that the threshold for Screening is low by providing that a planning authority must determine that an appropriate assessment is required if it cannot be excluded, on the basis of objective information, that the project, individually or in combination with other plans or projects, will have a significant effect on a European site. Case C-258/11, *Sweetman & Ors. V An Bord Pleanála & Ors.*, Advocate General Sharpston considered that the test is set at a lower level and that the question is simply whether the plan or project concerned is capable of having an effect¹.
- The Section 5 request contains no analysis or information in relation to the assimilative capacity of the receiving environment coupled with the clear potential for both direct and in-direct effects to arise it is not possible for Clare County Council to conclude a Finding of No Significant Effects.
- Based on the information received as part of the Section 5 request, the analysis as outlined above and taking all unauthorized development for this site into consideration I am not satisfied that Clare County Council as the competent authority can screen out the requirement for appropriate assessment and

therefore the development would not be deemed exempt from the requirement for planning permission.

Conclusion: It is considered that the developments carried out which are the subject of this Section 5 Query are **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 type="checkbox"/> | The proposal can be screened out: Appropriate assessment not required. |
| (ii) It is uncertain whether the proposal will have a significant effect on a European site. | <input type="checkbox"/> | <input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission |
| (iii) Significant effects are likely. | <input checked="" type="checkbox"/> | <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission |
| Signature and Date of Recommending Officer: | <div> Name: Ellen Carey E.P.</div> 4 th December 25 | |
| Signature and Date of the Decision Maker: | | |

Ellen Carey

From: Sheila Downes
Sent: Wednesday 26 November 2025 16:06
To: Planning Office
Cc: Ellen Carey
Subject: R25-92

To: Area Planner

From: Sheila Downes Environmental Assessment Officer

Date: 26th November 2025

Re: Is the removal/breaking of rocks protruding above earth development and if so, is it exempt.

Section 5 Ref: R25/92

I have reviewed the file as submitted by the applicant together with internal reports received from Clare County Council and all relevant information pertaining to the site and the surrounding hinterland including all previous applications associated with the property.

In assessing this Section 5 request, I have had regard to two key elements namely what is the "development concerned" and would it trigger the requirement for appropriate assessment should an application for permission been made for the "development concerned". The development concerned in this case relates to **the removal/breaking of rocks protruding above earth**. However, on review of the documentation submitted it is clear that the lands in question are also the subject of unauthorised development with enforcement proceedings associated with UD25-0038 which is outlined in the application form accompanying the Section 5 request.

In considering the second element as to whether the "development concerned" would trigger the requirement for appropriate assessment, the Local Authority is required to undertake a notional screening exercise. The following should be considered as part of this notional screening by the Planning Officer:

- The proximity of the nearest European sites (Lower River Shannon SAC (Site Code: 002165) and the River Shannon and Fergus Estuaries SPA (Site Code: 004077) which are located directly adjacent to the lands where the works have taken place and for which there is potential for direct effects together with in-direct effects.
- There is a potential for impacts on surface water quality arising from the excavation works which has already taken place and/or continue to take place which could lead to significant effects on the Qualifying Interest Features and Special Conservation Interests of the associated European sites.
- The key concern for the Competent Authority is the effect such works will have had on the Special Conservation Interests of the SPA. The rock breaking and removal of rock is a key source of disturbance which is identified in the site-specific Conservation Objectives for the River Shannon and River Fergus Estuaries SPA. Human activities should only occur at levels that do not adversely affect breeding populations of species which are Special Conservation Interests of this site.
- Given the site also has a hydrological connectivity to the European sites this is sufficient to trigger the requirement for appropriate assessment given that the threshold for Screening is low by providing that a planning authority must determine that an appropriate assessment is required if it cannot be excluded, on the basis of objective information, that the project, individually or in combination with other plans or projects, will have a significant effect on a European site. Case C-258/11, *Sweetman & Ors. V An Bord Pleanála & Ors.*, Advocate General Sharpston considered that the test is set at a lower level and that the question is simply whether the plan or project concerned is capable of having an effect¹.

- The Section 5 request contains no analysis or information in relation to the assimilative capacity of the receiving environment coupled with the clear potential for both direct and in-direct effects to arise it is not possible for Clare County Council to conclude a Finding of No Significant Effects.
- Based on the information received as part of the Section 5 request, the analysis as outlined above and taking all unauthorized development for this site into consideration I am not satisfied that Clare County Council as the competent authority can screen out the requirement for appropriate assessment and therefore the development would not be deemed exempt from the requirement for planning permission.

Kind Regards
Sheila

1. Opinion of Advocate General Sharpston of 22 November 2012.

Sheila Downes
Environmental Assessment Officer

BScEnv. Dip GIS. MSc. AdvDipPEL. MCIWEM. C.WEM. CSci.

Planning, Placemaking & Economic Development

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

T: 065 6846499 | M: 087 9914048 | E: sdownes@clarecoco.ie | W: www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

Tá an t-eolas atá sa ríomhphost seo, agus in aon cheangaltán leis, rúnda, agus is d'aird agus d'úsáid an fhaighteora nó na bhfaighteoirí amháin nó eintiteas ainmnithe thuas atá sé. Murar tusa faighteoir beartaithe an ríomhphost seo nó aon chud de, níor chóir duit an teachtaireacht seo a úsáid, a nochtadh, a chóipeáil, a dháileadh nó a choinneáil. Más rud é gur trí bhotún a fuair tú an ríomhphost seo cuir sí in iúl don tseoltóir gan mhoill.

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COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Oliver Haugh
Feenagh
Lissycasey
Ennis
Co. Clare

10/11/2025

Section 5 referral Reference R25-92 – Oliver Haugh

Is the removal / breaking of rocks protruding above earth development and if so, is it exempted development?

A Chara,

I refer to your application received on 10th November 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
Clerical Officer

Planning, Placemaking & Economic Development

An Roinn Pleanála
An Stiúarthóireacht 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



CONTAE
AN CHLÁIR



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

10/11/2025 10:28:52

Receipt No. : L1CASH/0/386773
***** REPRINT *****

OLIVER HAUGH
FEENAGH
LISSYCASEY
CO. CLARE
R25-92

CONTAE
AN CHLÁIR

| | |
|------------------------|-------|
| 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 - Geraldine Melican
From : MAIN CASH OFFICE LODGEMENT AF
Vat reg No.0033043E

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



R25-92

**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

OLIVER WAUGH
FEENAGH
LISSYCARHA
ENNIS
Co. CLARE

(b) Telephone No.:

(c) Email Address:

(d) Agent's Name and address:



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 REMOVAL / BREAKING OF ROCKS PROTRUDING ABOVE
 EARTH DEVELOPMENT AND IF SO IS IT EXEMPT

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

THE LAND I OWN AT LISKEEN HAVE
 ROCKS PROTRUDING ABOVE THE FIELD LEVEL
 I WANT TO STRIP BACK SOIL REMOVE OR
 BREAK ROCK AND THEN PUT SOIL BACK
 LEAVING THE FIELD LEVEL.

REASONS

1. PREVENT DAMAGE TO MOWERS AND OTHER
 FARM MACHINES
2. REMOVE THE DANGER OF TRACTOR / QUAD
 DRIVING OVER ROCK AND OVERTURNING
3. PREVENT SCRUB GOING BACK OVER ROCKS
 AS NOW AREA CAN BE GRAZED OR CUT

- (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)

FARM IS FOLIO AREA MARKED
 IN BLUE IS AREA BEING DONE

| 3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT | |
|---|---|
| (a) Postal Address of the Property/Site/Building for which the declaration sought: | LISKEEN BALYNACALLY ENNIS 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): | 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: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i> | |
| (e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?: | |
| (f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i> | UD 25003P LETTER. |
| (g) Were there previous planning application/s on this site? <i>If so please supply details:</i> | No. |
| (h) Date on which 'works' in question were completed/are likely to take place: | ON GOING. |

SIGNED:



DATE:

9/11/25.

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: | |

Folio No.

LISHEEN

529466, 667381

1 : 2500

Lisheen

Islands

Clare