



Tipperary County Council  
RECEIVED  
19 JUL 2024  
C S D  
Civic Offices, Clonmel

**PLANNING & DEVELOPMENT ACT, 2000 (as amended)**

**Application for a Section 5 Declaration**  
**Development / Exempted Development**

**1. Applicant's address/contact details:**

Applicant	JOE WILLIAMS
Address	KILTANKIN KILBEHENNY MITCHELSTOWN CO. TIPPERARY P67 AX25
Telephone No.	[REDACTED]
E-mail	[REDACTED]

**2. Agent's (if any) address:**

Agent	
Address	N/A
Telephone No.	
E-mail	
Please advise where all correspondence in relation to this application is to be sent;	
Applicant [ <input checked="" type="checkbox"/> ]	Agent [ <input type="checkbox"/> ]

**3. Location of Proposed Development:**

Postal Address or Townland or Location (as may best identify the land or structure in question)	KILTANKIN KILBEHENNY MITCHELSTOWN CO. TIPPERARY P67 AX25
---	--

TIPPERARY CO. COUNCIL  
RECEIVED  
19 JUL 2024  
PLANNING SECTION  
FILE NO. ....

Receipt No 183 513  
Issued 19 of 2024  
€80-00 Charge

Tipperary County Council  
RECEIVED  
19 JUL 2024  
CASH OFFICE  
Civic Offices, Clonmel

**4. Development Details:**

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

Open a field gateway onto boreen to gain access to field.
Current gateway is onto house lawn and is unsuitable for bringing machinery into field.
Field (~1½ acres) is beside dwelling house.
See attached for more details
Proposed floor area of proposed works/uses: N/A sqm

**5. Legal Interest of Applicant in the Land or Structure:**

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Occupier
	C. Other	
Where legal interest is 'Other', please expand further on your interest in the land or structure		
If you are not the legal owner, please state the name and address of the owner	Name: Address:	

Signature of Applicant(s) Joe Williams.

Date: 12 Jul 2024

**Note:** If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.

**GUIDANCE NOTES**

- (1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.
- (2) This application should be accompanied by **TWO COPIES** of the following documentation
- OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
  - Floor Plans & Elevations at a scale of not less than 1:200
  - Site layout plan indicating position of proposed development relative to premises and adjoining properties
  - Other details e.g. brochures, photographs if appropriate.

(All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)

- (3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

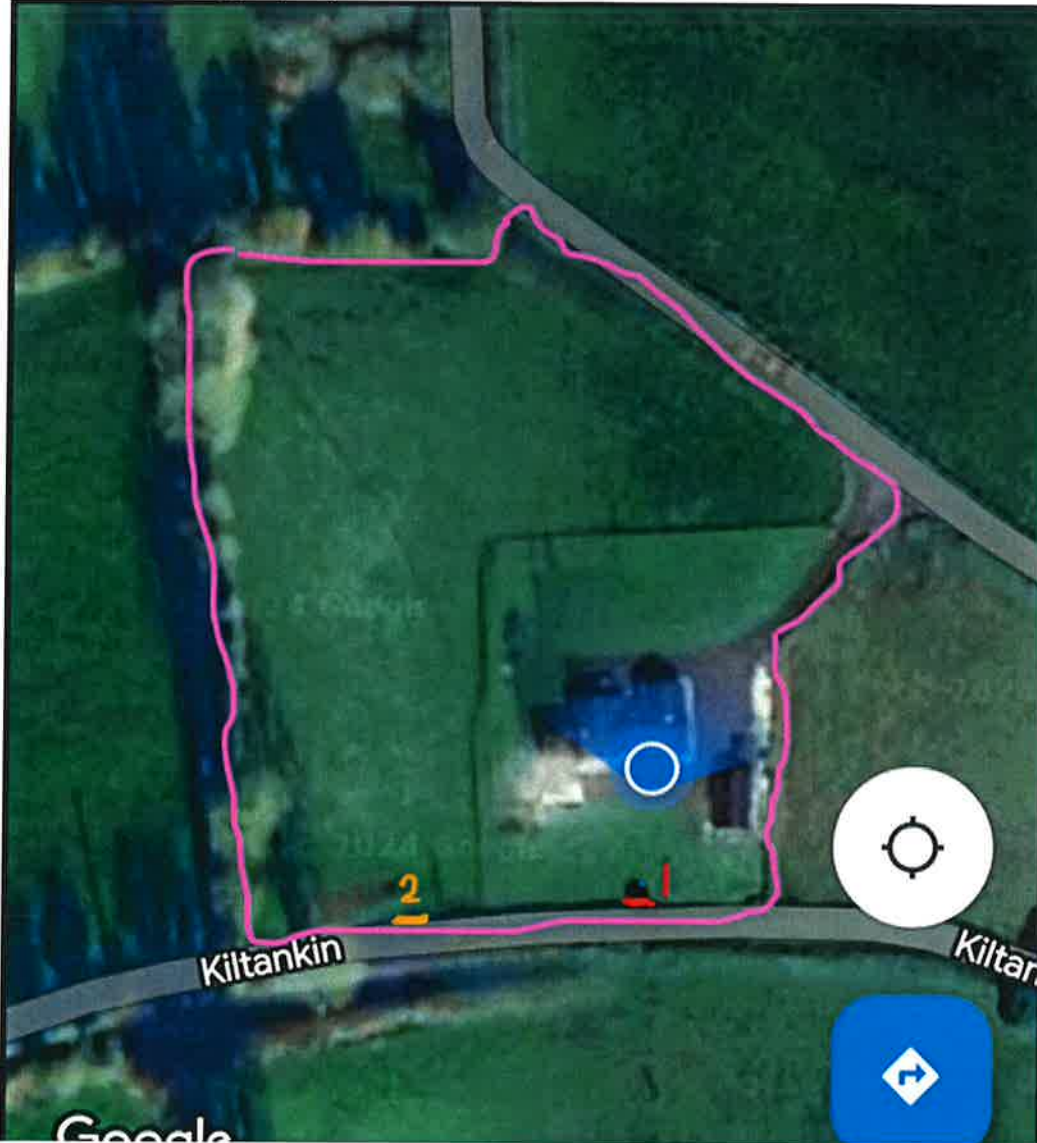
**This application form and relevant fee should be submitted to:**

<b>Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary</b>	<b><u>OR</u></b>	<b>Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary</b>
<b>Enquires:</b>		
<b>Telephone 0818 06 5000</b>		
<b>E-Mail <a href="mailto:planning@tipperarycoco.ie">planning@tipperarycoco.ie</a></b>		

<b>FOR OFFICE USE ONLY</b>	
	<b><u>DATE STAMP</u></b>
<b>Fee Recd. €</b> _____	
Receipt No _____	
Date _____	
Received by _____	

①

Background: My house is on 2 acres of my land,  $\frac{2}{3}$  of this area is field. Original field gate to field before building house now accesses onto back lawn. This isn't ideal for bringing tractors onto the field section of my property.



My property outlined in pink.

Red 1 is where current/old field gate is.

Yellow 2 is where I propose to erect new gate.

Request: I want to move the field gate approximately 35m west on current ditch at the back of house to gain direct access to the field section of my property. The road is a very quiet boren with only 1 house further up the road.

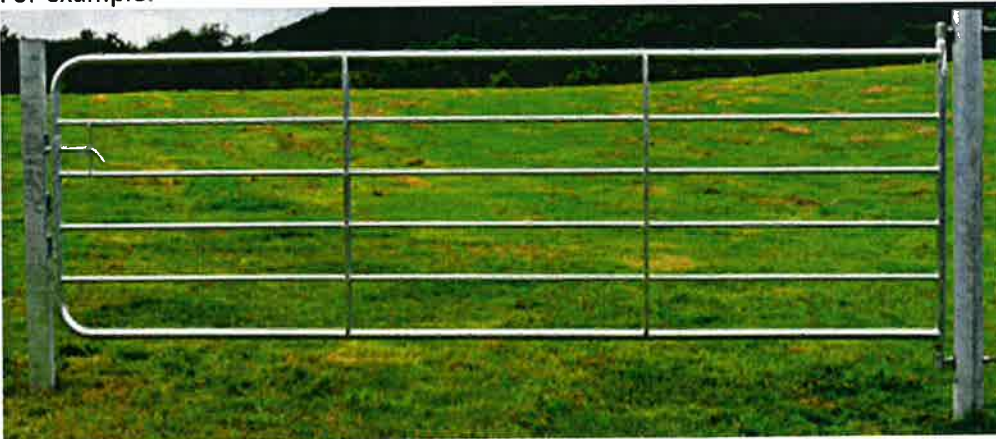
(2)



With a gate at a new location, I can get a tractor in for purposes of maintaining hedgerows and grass cutting etc.

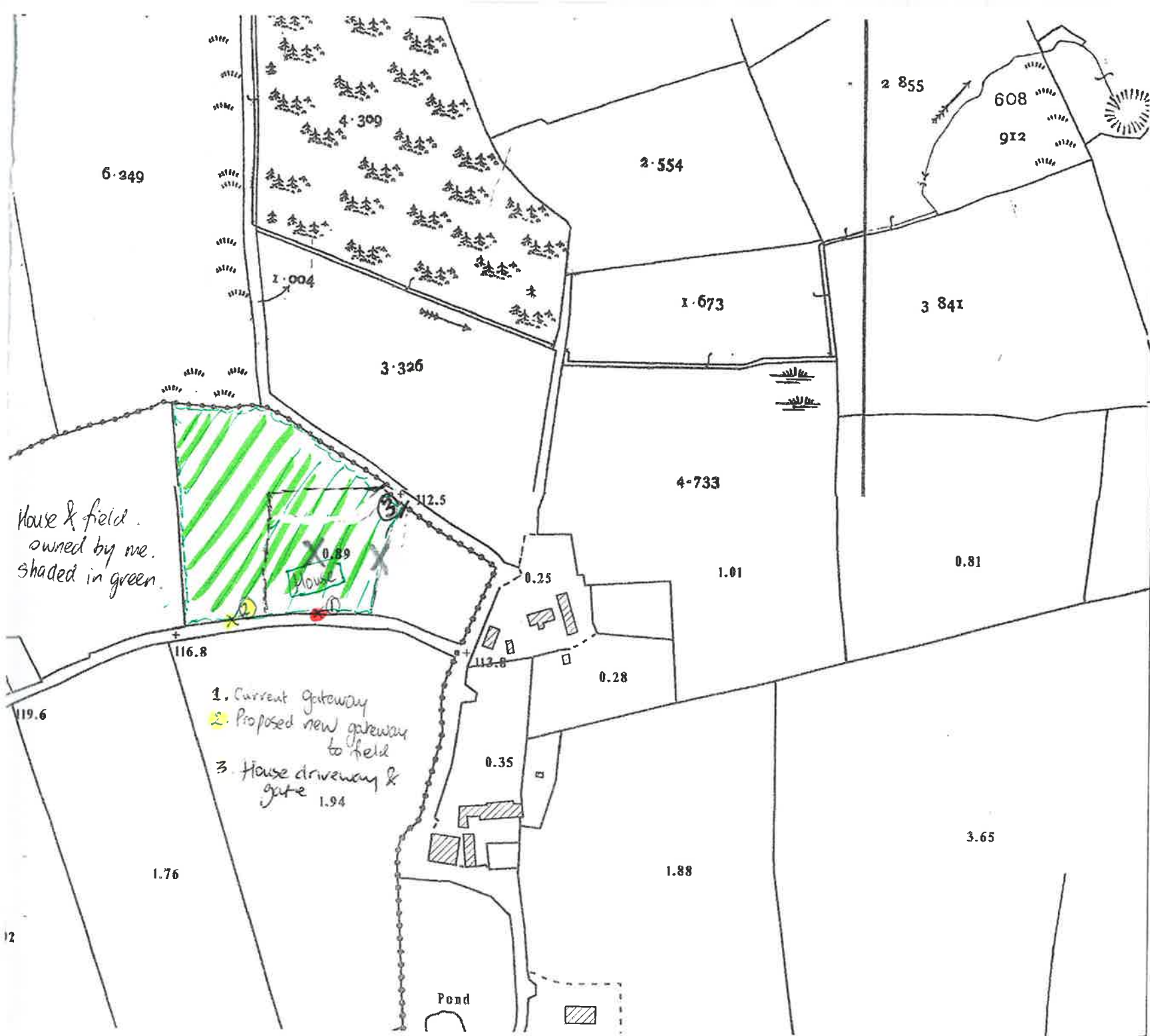
(~5m)

I propose to put a standard 16ft farm field gate at the new location with metal hanging pillars.  
For example:



With the new gate in place, I can permanently close current gate accessing onto lawn.

Joe Williams  
12 Jul 2024



**MAP SCALES**

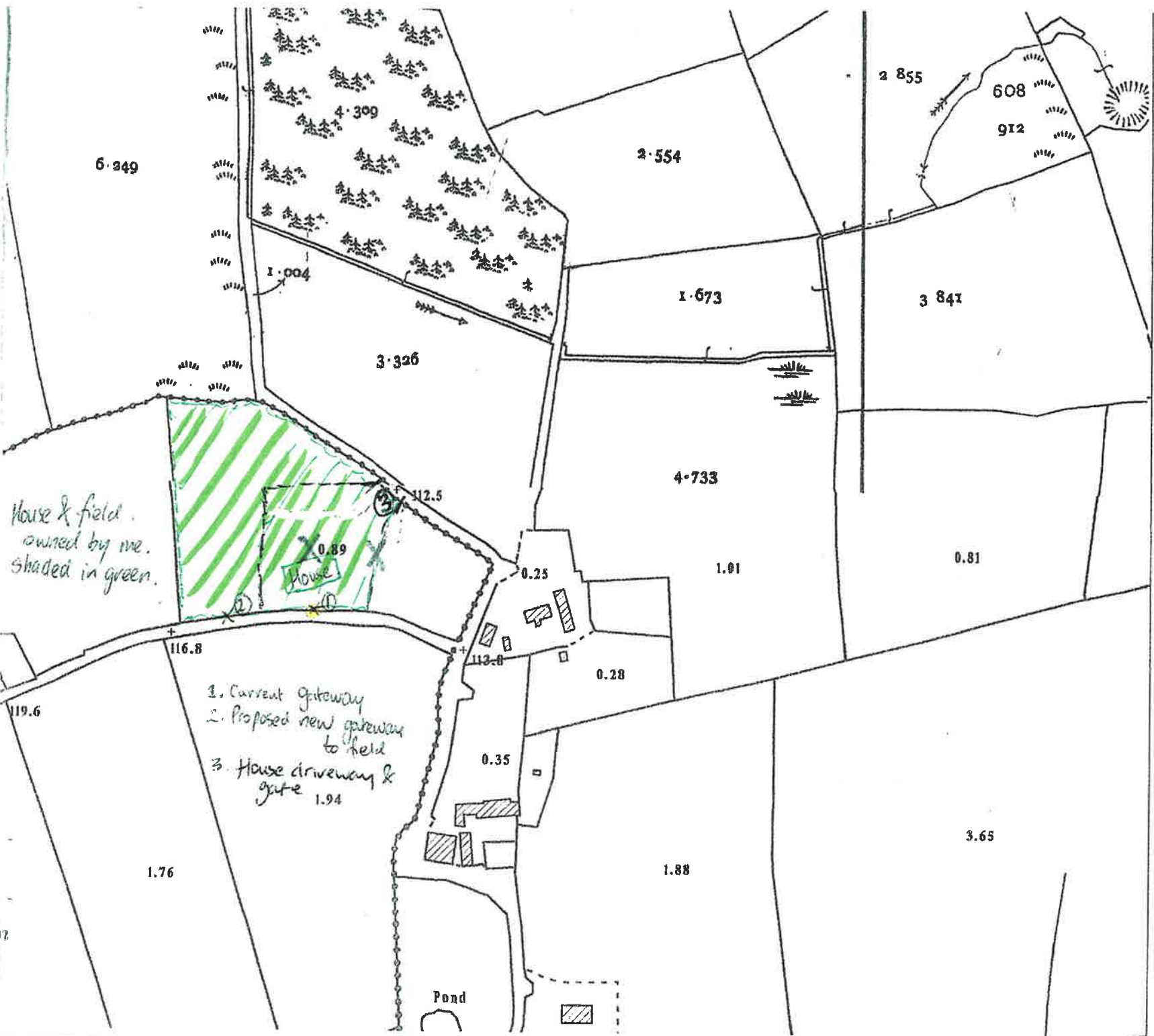
1:2500  
 5548-B      5548-C  
 5548-D

25inch  
 TY086-02    TY086-01



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House & field  
owned by me.  
shaded in green.

1. Current gateway
2. Proposed new gateway to field
3. House driveway & gate

**MAP SCALES**

1:2500  
5548-B      5548-C  
5548-D

25inch  
TY086-02    TY086-01



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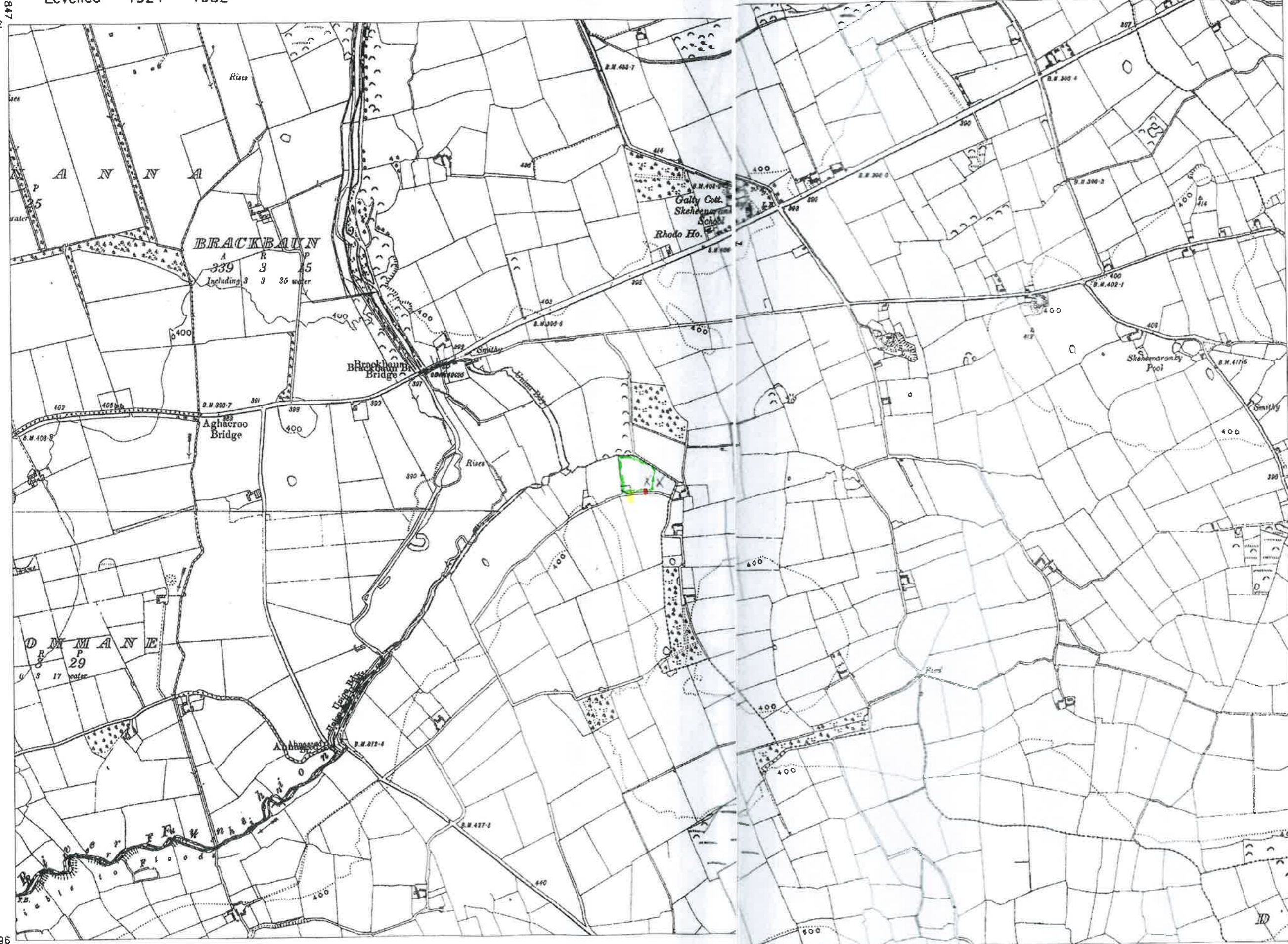
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a tharchur in aon fhoirm ná ar aon bhealach gan  
cead i scríbhinn roimh ré ó úinéirí an chóipchirt.  
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Surveyed 1841  
 Revised 1905 - 1932  
 Levelled 1924 - 1932

# Record PLACE

132 11772

7772



DESCRIPTION

MAP SCALES

6inch  
 TY086 LK058  
 CK011 LK060+06



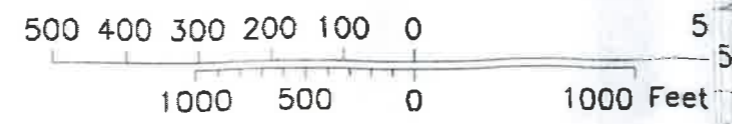
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5196 187847

Scale: - 1:10560  
 Scála: - 1:10560



Plot Ref. No. 17810\_1\_11  
 Plot Date 02-AUG-2002

115196 191332





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Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary

E91 N512

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
An tAonach,  
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Civic Offices, Nenagh,  
Co. Tipperary

E45 A099

t 0818 06 5000  
e customerservice  
@tipperarycoco.ie

tipperarycoco.ie

Date: 19<sup>th</sup> July 2024    Our Ref: S5/24/89    Civic Offices, Clonmel

**Joe Williams,  
Kiltankin,  
Kilbehenny,  
Mitchelstown,  
Co. Tipperary.**

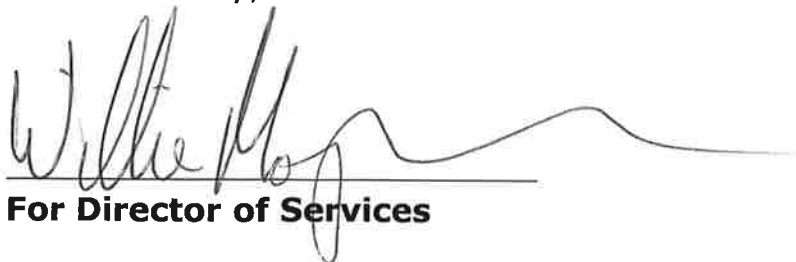
**Re: Application for a Section 5 Declaration to open a field gateway onto breen to gain access to field current gateway is onto house lawn and is unsuitable for bringing machinery into field. The field (1/12 acres) is beside dwelling house at Kiltankin, Kilbehenny, Mictchelstown, Co. Tipperary**

Dear Sir/Madam,

I acknowledge receipt of your application for a Section 5 Declaration received on 19<sup>th</sup> July, 2024 in connection with the above.

I wish to advise that you will be notified of a decision on your application in due course.

Yours faithfully,



**For Director of Services**

**Declaration on Exempted Development under Section 5 of the Planning and Development Act 2000**

---

**Declaration Reference No.:** S5/24/89

**Query:** Whether the creation of an agricultural entrance onto the L-7321 is development and if so, does it constitute exempted development.

**Location:** Kiltankin, Kilbehenny, Co. Tipperary

**Querist:** Joe Williams

**Owner/Occupier:** Joe Williams

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## 1 Introduction

### 1.1 Query

- 1.1.1 A question has arisen pursuant of Section 5 of the Planning and Development Act 2000 (as amended) as to whether or not the creation of an agricultural entrance onto the L-7321 at Kiltankin, Kilbehenny, Co. Tipperary is development and if so, if it constitutes exempted development

## 2 Site Location and History

### 2.1 Site location

- 2.1.1 The subject site at Kiltankin, Kilbehenny, Co. Tipperary is located approximately 4.3km to the north of the village of Ballyporeen. This is a predominately rural area, with limited development in the immediate vicinity of the site.
- 2.1.2 The site is located in the open country side as defined in the Tipperary County Development Plan 2022. There is a dwelling on site.

### 2.2 Planning History

On site

09/145 . one-and-a-half-storey dwelling, detached domestic garage, septic tank, Puraflo effluent treatment system, entrance and associated works including bored well - Granted

Adjoining

09/146 two-storey dwelling, detached domestic garage, septic tank, Puraflo treatment system, entrance and associated works including bored well - Granted

Figure 1 Planning history



### **3 Legislative Context**

#### **3.1 Planning and Development Act 2000 (as amended)**

- 3.1.1 According to **Section 2(1)** of the **Planning and Development Act (as amended)**, the definition of “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.
- 3.1.2 According to **Section 3(1)** of the **Planning and Development Act (as amended)**, “development” means, save where the context otherwise requires, the carrying out of works on, in or under land or the making of any material change in the use of any structures or other land.
- 3.1.3 **Section 4** of the same Act lists works that would be considered exempted development. Section 4 also conveys power on the Minister to make regulations to provide for any class of development to be exempted development for the purposes of the Act

#### **3.2 Planning and Development Regulations 2001 (as amended)**

- 3.2.1 **Article 6(1)** 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 conditions and limitations specified in Column 2 of said Part 1 opposite the mention of that class in said Column 1.
- 3.2.2 In relation to this specific case, the provisions of **Class 9** are considered relevant. Class 9 allows as ‘sundry works’ the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway, subject to the condition limiting the height of such structure to not exceed 2 metres.
- 3.2.3 **Article 9** of said Regulations lists a series of restrictions on exemptions. Of particular note are the provisions of Articles 9 (1)(a) (ii and iii), which relates to the creation of access points onto a public road and Article 9(1)(a)(viiiB) which de exempts developments that require an appropriate assessment because it would likely have an effect on the integrity of a European designated site

### **4 Assessment**

#### **4.1 Works Proposed**

- 4.1.1 For the purpose of this Declaration, the work, to which the query relates, is,
- The creation of a new agricultural access point (including gates) onto lands in, Kiltankin, Kilbehenny, Co. Tipperary.

#### **4.2 Is it development?**

- 4.2.1 Having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended), it is considered that the proposal as set out in paragraph 4.1.1 above, does constitute development as it does involve the carrying out of works on the subject land.

### 4.3 Is it exempted development?

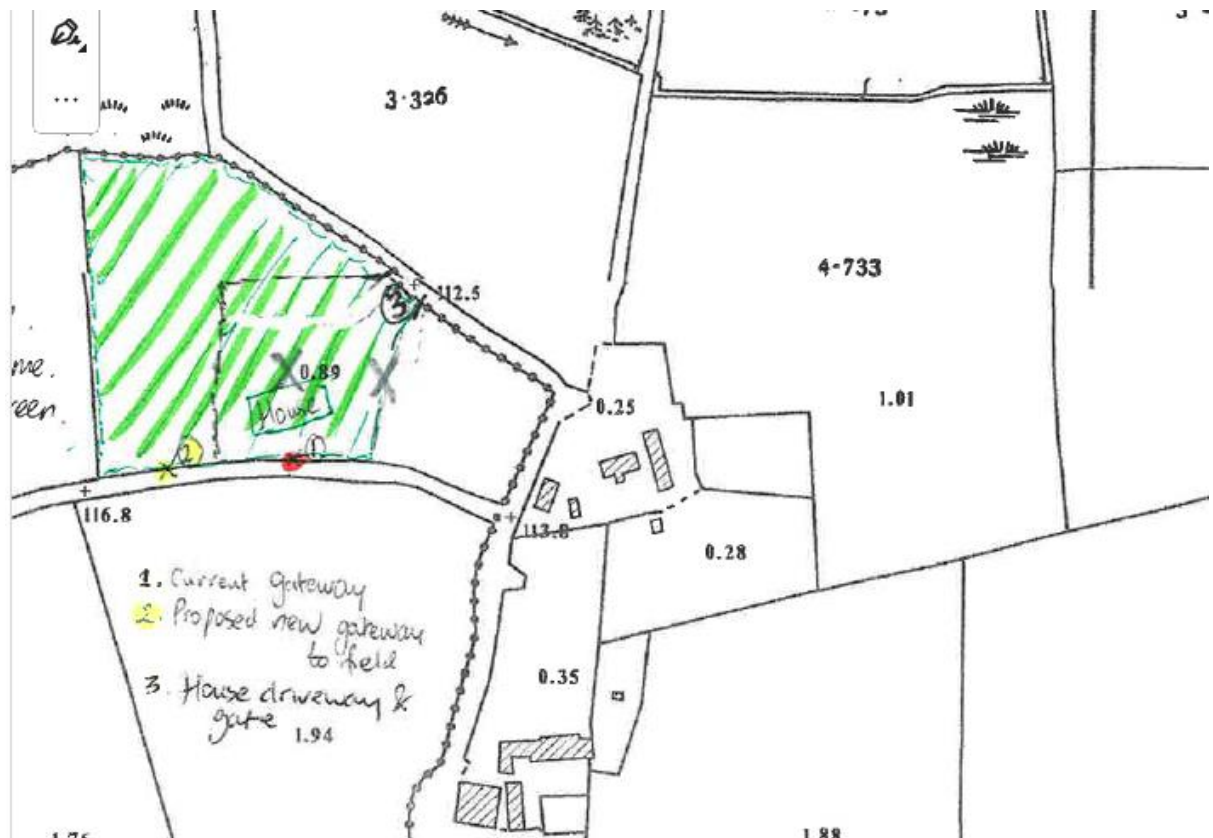
4.3.1 In order for a development to be considered “exempted development”, a specific exemption must exist for the works proposed. As noted in para. 3.2.2 above, Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended), allows for the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway, subject to the condition limiting the height of such structure to not exceed 2 metres.

Figure 2 Permitted site layout



4.3.2 The applicant is proposing to create a gateway onto agricultural lands, adjacent to his dwelling, from the L-7321.

Figure 3 Location of Proposed gate



4.3.3 As this gateway is not within or bounding the curtilage of a house, the proposal could therefore be considered exempt under class 9 subject to the restrictions set out under Article 9.

4.3.4 Of relevance to this Declaration are the provisions of Articles 9 (1)(a) (ii and iii). Under these provisions, development is not exempted development if it consists of the formation of an access to a public road the surface carriageway of which exceeds 4 metres in width or if it presents as a traffic hazard.

4.3.5 From the drawings submitted, it is not possible to determine the width of the L-2215 at the point that the entrances are proposed. The width measures in excess of 4m from the GIS system. In addition, no details of the sightlines to be provided at the entrance are provided. As such, it is not possible to consider if these entrances would present as a traffic hazard.

#### 4.4 Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

4.4.1 The subject site is located c. 3.7 kms from the Lower River Suir SAC, 4.1 kms from the Galtee Mountains SAC and 9.4 kms from the Blackwater River (Cork/Waterford) SAC.

4.4.2 The proposed development is located in a rural area and comprises of the creation of a new entrance to agricultural lands.

4.4.3 Having regard to:

- the small scale nature of the development,

- the location of the development relevant to the closest European site (lower River Suir,
  - The intervening land uses between the subject site and the SAC and
  - the consequent absence of a direct pathway to these European sites,
- it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.
- 4.4.4 The proposed development has been subject to a preliminary examination to determine the requirement for EIA. EIA is not required in respect of the development. See attached.

## **5 Conclusion**

### **5.1 Query**

- 5.1.1 A question has arisen as to whether the creation of a new agricultural gateway onto lands in Kiltankin, Kilbehenny, Co. Tipperary, is or is not exempted development.
- 5.1.2 Part 5 of the Planning and Development Act 2000 (as amended) requires a Planning Authority to make a declaration on any question that arises as to what is or is not development. In determining this query, the Planning Authority 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 and,
  - Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended and,
  - the nature and scale of the proposed use, as outlined in submissions on file by the owner/occupier

### **5.2 Determination**

- 5.2.1 Having considered the information received, the Planning Authority is not in a position to determine if the works proposed constitute exempted development.
- 5.2.2 The querist is to be advised as follows;

In order for the works proposed to be considered exempted development the Planning Authority needs to be satisfied that that the proposal does not consist of or comprise 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, or would endanger public safety by reason of traffic hazard or obstruction of road users.

To that end, the applicant is requested to submit details of the width of the L-7321 at the point the entrance is proposed. In addition, the applicant is requested to provide a site layout plan outlining the sightlines available at the entrance point.



Signed: *Paul Killeen*  
Paul Killeen  
District planner

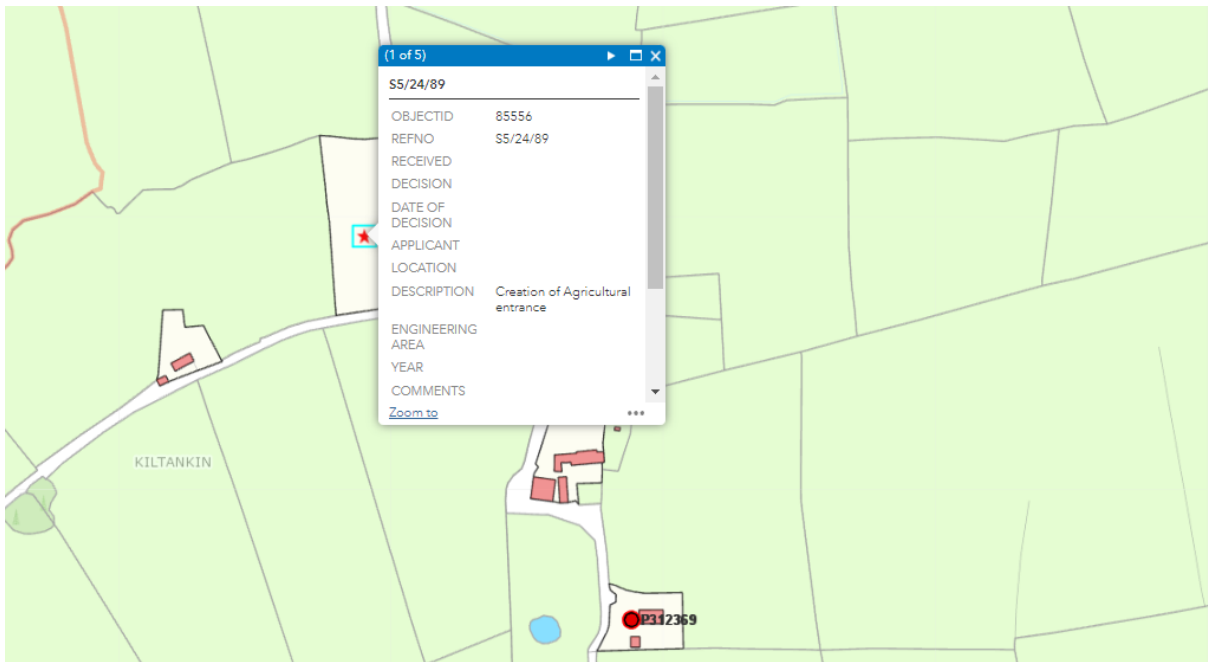
Date: 08/08/24

*C. Conway*  
Signed: Senior Executive Planner

Date: 09.08.2024

EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/24/89
Development Summary:	Creation of agricultural gateway
Was a Screening Determination carried out under Section 176A-C?	<input type="checkbox"/> Yes, no further action required  <input checked="" type="checkbox"/> No, Proceed to <b>Part A</b>
<b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
<input type="checkbox"/> Yes, specify class _____	<b>EIA is mandatory</b>  No Screening required
<input checked="" type="checkbox"/> No	Proceed to <b>Part B</b>
<b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) <b>and</b> does it meet/exceed the thresholds? (Tick as appropriate)	
<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2	<b>No Screening required</b>
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 <b>and</b> meets/exceeds the threshold, specify class (including threshold): _____	<b>EIA is mandatory</b>  No Screening required
<input type="checkbox"/> Yes the project is of a type listed <b>but</b> is <i>sub-threshold</i> : _____	Proceed to <b>Part C</b>
<b>C. If Yes</b> , has Schedule 7A information/screening report been submitted?	
<input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant	<b>Screening Determination required</b>
<input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant	<b>Preliminary Examination required</b>

Figure 4 Site entered on planning register





Comhairle Contae Thiobraid Árann  
Tipperary County Council

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Oifigi Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann  
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Co. Tipperary  
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e customerservice  
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tipperarycoco.ie

Date: 12<sup>th</sup> August 2024

Our Ref: S5/24/89

Civic Offices, Nenagh

**Joe Williams**  
**Kiltankin**  
**Kilbehenny**  
**Michelstown**  
**Co. Tipperary**

**Re: Application for a Section 5 Declaration – the creation of an agricultural entrance onto the L-7321 at Kiltankin, Kilbehenny, Co. Tipperary**

Dear Sir,

I refer to an application received from you on 17<sup>th</sup> July, 2024, requesting a Declaration from this Planning Authority as to whether or not certain works constitute development within the meaning of the Planning and Development Act 2000, as amended.

In order for the works proposed to be considered exempted development the Planning Authority needs to be satisfied that that the proposal does not consist of or comprise 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, or would endanger public safety by reason of traffic hazard or obstruction of road users.

To that end, the applicant is requested to submit details of the width of the L-7321 at the point the entrance is proposed. In addition, the applicant is requested to provide a site layout plan outlining the sightlines available at the entrance point.

**Further consideration of your request for a declaration cannot be considered until the above information is received.**

Yours faithfully,

  
for **Director of Services**



**Sight Line Assessment**

**Y-Distance Sightline Check for Direct Accesses to Non-National Rural Public Roads**

**Table 6.2: Design Speeds and associated Y-Distances**

Mandatory Speed Limit km/h	Design Speed (operational Speed) km/h	Rural Non-National Road Y-Distance (m)	Urban Non-National Road Y-Distance (m)
30	40	N/A	33
40	50	70	45
50	60	90	59
60	70	120	72
80	85	160	N/A
100	100	215	N/A

Road Number: \_\_\_\_\_

Check box for road type:

National Road  Regional Road  Local Road

**Mandatory Speed** limit for road: \_\_\_\_\_ (km/h)

Y- Distance required in Table 4 based on **Mandatory Speed** limit: \_\_\_\_\_ (m)

Y- Distance available from proposed entrance (as measured): Left \_\_\_\_\_ (m) Right \_\_\_\_\_ (m)

If a lower **Operational Speed** is proposed to be used in lieu of the **Mandatory Speed** please complete the table below.

Speed Measurement over a distance of 1000m (500m either side of proposed entrance).

	Approach From Left Direction (secs)	Approach From Right Direction 2 (secs)
Run 1		
Run 2		
Run 3		
Average Time for runs		
Speed (m/s)		
Operational Speed (km/h) (to convert m/s to km/h multiply by 3.6)		



Date of Survey \_\_\_\_\_ Time of Survey \_\_\_\_\_

Y- Distance corresponding to Operational Speed (taken from Table 4 above):

Left \_\_\_\_\_ (m) Right \_\_\_\_\_(m)

**Note: The minimum Y-Distance on a Rural Non-National Road shall be 70m, corresponding to an Operational Speed of 50km/h.**

Justification for use of a lower speed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Survey completed by: \_\_\_\_\_  
\_\_\_\_\_

**Guidance Note:**

The Y-Distance will, by default, be that corresponding to the Mandatory Speed limit for that road, ie National Roads generally have a speed limit of 100km/h, Regional and Local Roads generally have a speed limit of 80km/h. Only in exceptional circumstances may a lower speed be proposed to determine the Y-Distance. The use of a lower speed must be justified by the Applicant in the Planning Application. The sightlines should always be indicated on the drawings accompanying the Application. This should include the sightline corresponding to the Mandatory Speed limit as well as any proposed sightline, if different. These should be indicated in different colours for clarity, with the distances indicated on the drawing.

When carrying out a speed survey, the driver should drive normally within the traffic flow or at a comfortable speed for the road geometry. Driving at an inappropriately slow speed for the purpose of reducing the Y-Distance will not be accepted.

Tipperary County Council shall determine whether the appropriate speed and sight distance has been used for each planning application.

DIRECTOR OF SERVICES  
TIPPERARY COUNTY COUNCIL  
CIVIL OFFICES  
NENAGH  
Co. TIPPERARY

JOE WILLIAMS  
KILTANKIN  
KILBEHENNY  
MITCHELSTOWN  
Co. TIPPERARY  
P67 AX25  
joewilliams13@gmail.com  
086-8620900

Date: 01 SEP 2024  
Ref: S5/24/89.



Dear Sir/Madame.

Please find enclosed requested information detailed in letter dated 12<sup>th</sup> Aug 2024.

The width of road where proposed gate will be located is ~2.7m of surfaced carriageway.

Other requested details enclosed.

Please let me know if you require any further information.

Yours Sincerely  
Joe Williams.



Sight Line Assessment

Y-Distance Sightline Check for Direct Accesses to Non-National Rural Public Roads

Table 6.2: Design Speeds and associated Y-Distances			
Mandatory Speed Limit	Design Speed (operational Speed)	Rural Non-National Road	Urban Non-National Road
km/h	km/h	Y-Distance (m)	Y-Distance (m)
30	40	N/A	33
40	50	70	45
50	60	90	59
60	70	120	72
80	85	160	N/A
100	100	215	N/A

Road Number: L-7321

Check box for road type:

National Road  Regional Road  Local Road

Mandatory Speed limit for road: 80 (km/h)

Y- Distance required in Table 4 based on Mandatory Speed limit: 160 (m)

Y- Distance available from proposed entrance (as measured): Left 70 (m) Right 70 (m)

If a lower Operational Speed is proposed to be used in lieu of the Mandatory Speed please complete the table below.

Speed Measurement over a distance of 1000m (500m either side of proposed entrance).

	Approach From Left Direction (secs)	Approach From Right Direction 2 (secs)
Run 1	111s	132s
Run 2	117s	128s
Run 3	118s	127s
Average Time for runs	115s	129s
Speed (m/s)	8.7m/s	7.75m/s
Operational Speed (km/h) (to convert m/s to km/h multiply by 3.6)	31 km/h	28 km/h





Date of Survey 01 Sep 2024 Time of Survey 11am

Y- Distance corresponding to Operational Speed (taken from Table 4 above):

Left N/A (m) Right N/A (m)

**Note: The minimum Y-Distance on a Rural Non-National Road shall be 70m, corresponding to an Operational Speed of 50km/h.**

Justification for use of a lower speed: This is a very quiet road with very little traffic. There is only 1 house (2 cars) beyond the proposed new field entrance. The road is not used as a through road. All other traffic is agricultural vehicles. The road tarred surface width is ~2.7m. The practical speed on this road is approximately 30km/hr due to the road being narrow. The proposed new gateway will not pose a traffic safety risk.

Survey completed by: Joe Williams 01 Sep 2024.

#### Guidance Note:

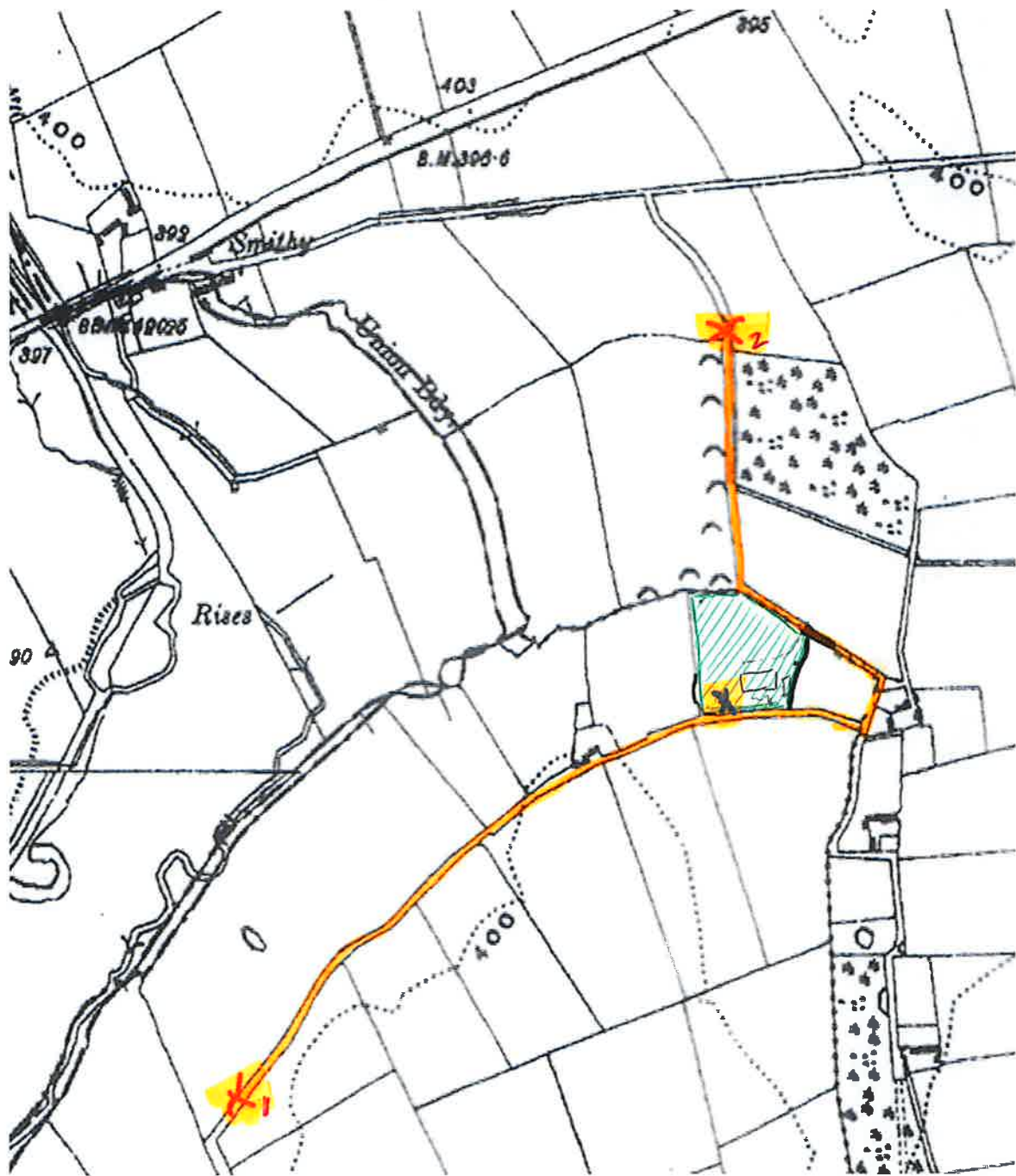
The Y-Distance will, by default, be that corresponding to the Mandatory Speed limit for that road, ie National Roads generally have a speed limit of 100km/h, Regional and Local Roads generally have a speed limit of 80km/h. Only in exceptional circumstances may a lower speed be proposed to determine the Y-Distance. The use of a lower speed must be justified by the Applicant in the Planning Application. The sightlines should always be indicated on the drawings accompanying the Application. This should include the sightline corresponding to the Mandatory Speed limit as well as any proposed sightline, if different. These should be indicated in different colours for clarity, with the distances indicated on the drawing.

When carrying out a speed survey, the driver should drive normally within the traffic flow or at a comfortable speed for the road geometry. Driving at an inappropriately slow speed for the purpose of reducing the Y-Distance will not be accepted.

Tipperary County Council shall determine whether the appropriate speed and sight distance has been used for each planning application.

OPERATIONAL SPEED ASSESSMENT.

Ref 55/24/89



X Proposed New Gateway.

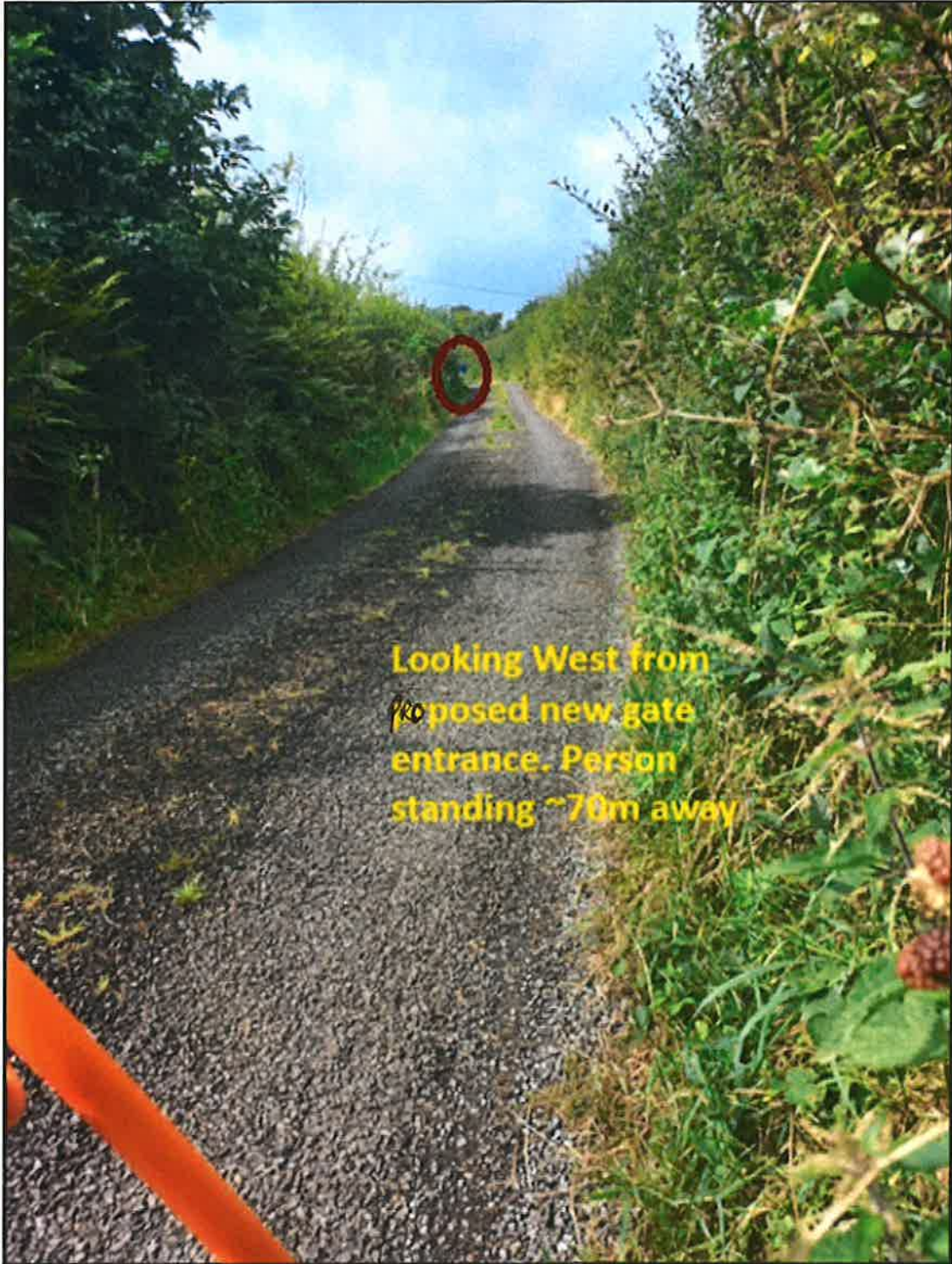
X<sub>1</sub> 500m Westward from new Gateway.

X<sub>2</sub> 500m Eastward from new Gateway.

Joe Williams 01 Sep 2021

SIGHTLINE WESTWARDS

Ref 55/24/89



J Williams 01 Sep 2024

SIGHTLINE EASTWARDS

Ref 55/24/89

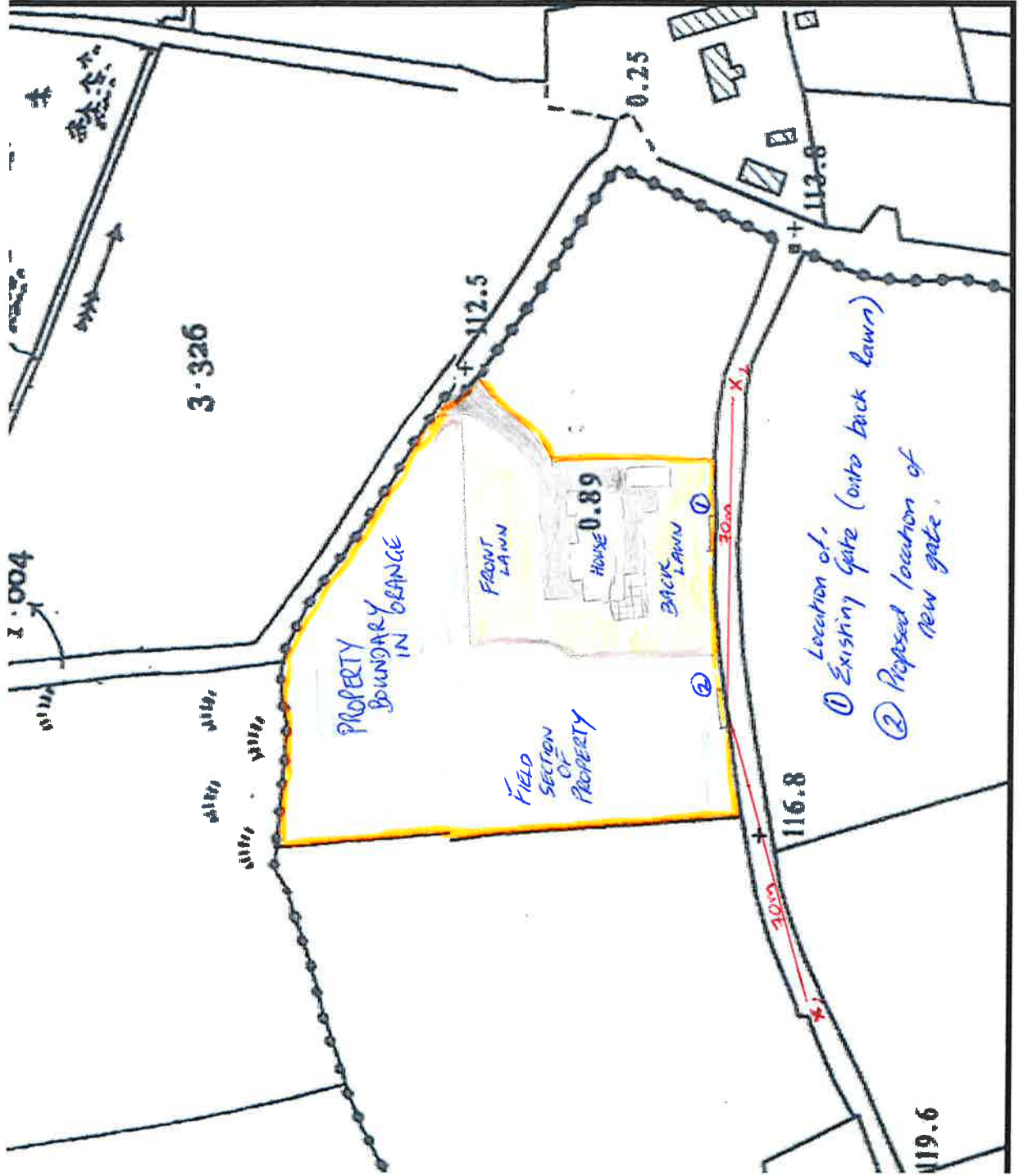


Looking East from proposed  
new gate entrance. Person  
standing ~70m away

Justinian 01 Sep 2024

SITE LAYOUT PLAN

Ref 55/24/89



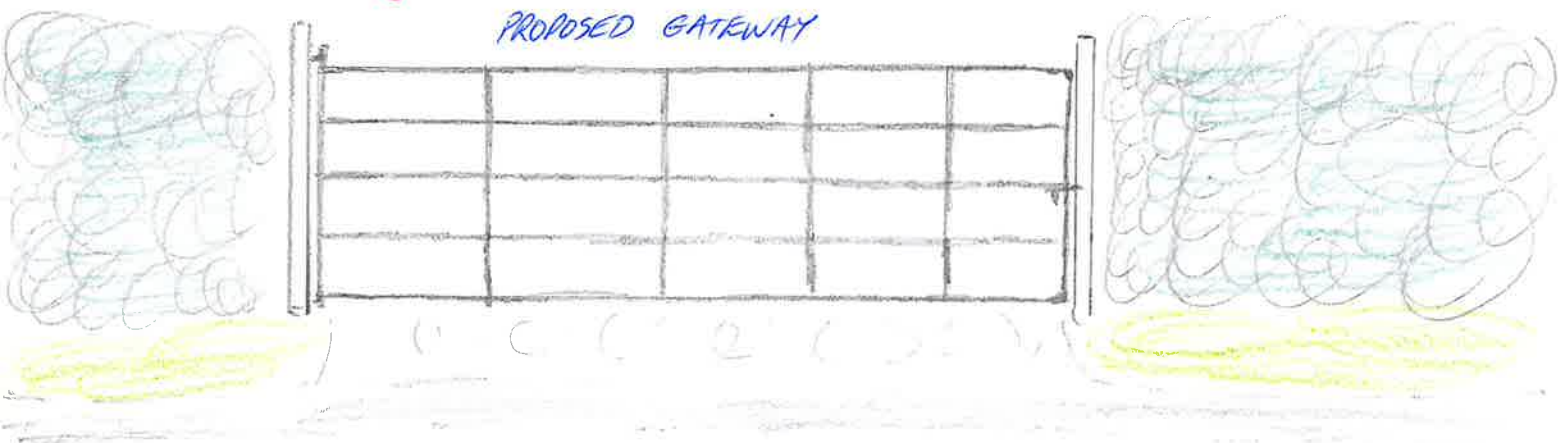
Joe Williams 01 Sep 2024

SITE LAYOUT PLAN.

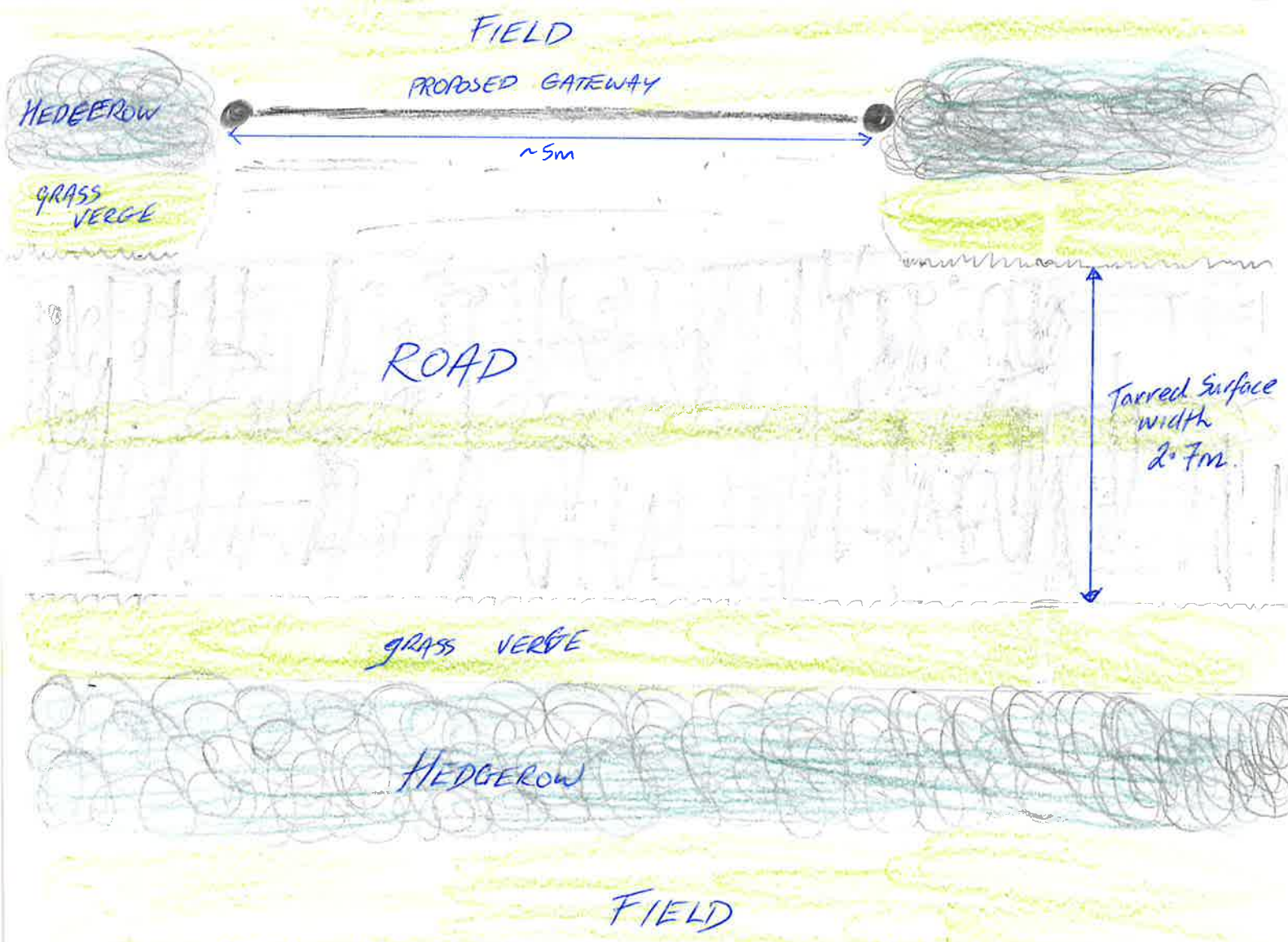
Ref SS/24/89

J. Williams 01 Sep 2024

VIEW OF PROPOSED GATE FROM ROAD



OVERHEAD VIEW OF PROPOSED GATE





**Comhairle Contae Thiobraid Árann**  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann  
Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary  
E91 N512

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
An tAonach,  
Co. Thiobraid Árann  
Tipperary County Council,  
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[tipperarycoco.ie](http://tipperarycoco.ie)

Date: 3<sup>rd</sup> September, 2024

Our Ref: S5/24/89

Civic Offices, Nenagh

**Joe Williams**  
**Kiltankin**  
**Kilbehenny**  
**Michelstown**  
**Co. Tipperary**

**Re: Application for a Section 5 Declaration re the creation of an agricultural entrance onto the L-7321 at Kiltankin, Kilbehenny, Co. Tipperary**

Dear Mr Williams

I acknowledge receipt of Further Information received on 3<sup>rd</sup> September, 2024 in connection with the above.

I wish to advise that you will be notified of a decision on your application in due course.

Yours sincerely

for **Director of Services**

**Declaration on Exempted Development under Section 5 of the Planning and Development Act 2000**

---

**Declaration Reference No.:** S5/24/89

**Query:** Whether the creation of an agricultural entrance onto the L-7321 is development and if so, does it constitute exempted development.

**Location:** Kiltankin, Kilbehenny, Co. Tipperary

**Querist:** Joe Williams

**Owner/Occupier:** Joe Williams

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## 1 Introduction

### 1.1 Query

- 1.1.1 A question has arisen pursuant of Section 5 of the Planning and Development Act 2000 (as amended) as to whether or not the creation of an agricultural entrance onto the L-7321 at Kiltankin, Kilbehenny, Co. Tipperary is development and if so, if it constitutes exempted development

## 2 Site Location and History

### 2.1 Site location

- 2.1.1 The subject site at Kiltankin, Kilbehenny, Co. Tipperary is located approximately 4.3km to the north of the village of Ballyporeen. This is a predominately rural area, with limited development in the immediate vicinity of the site.
- 2.1.2 The site is located in the open country side as defined in the Tipperary County Development Plan 2022. There is a dwelling on site.

### 2.2 Planning History

On site

09/145 . one-and-a-half-storey dwelling, detached domestic garage, septic tank, Puraflo effluent treatment system, entrance and associated works including bored well - Granted

Adjoining

09/146 two-storey dwelling, detached domestic garage, septic tank, Puraflo treatment system, entrance and associated works including bored well - Granted

Figure 1 Planning history



### **3 Legislative Context**

#### **3.1 Planning and Development Act 2000 (as amended)**

- 3.1.1 According to **Section 2(1)** of the **Planning and Development Act (as amended)**, the definition of “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.
- 3.1.2 According to **Section 3(1)** of the **Planning and Development Act (as amended)**, “development” means, save where the context otherwise requires, the carrying out of works on, in or under land or the making of any material change in the use of any structures or other land.
- 3.1.3 **Section 4** of the same Act lists works that would be considered exempted development. Section 4 also conveys power on the Minister to make regulations to provide for any class of development to be exempted development for the purposes of the Act

#### **3.2 Planning and Development Regulations 2001 (as amended)**

- 3.2.1 **Article 6(1)** 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 conditions and limitations specified in Column 2 of said Part 1 opposite the mention of that class in said Column 1.
- 3.2.2 In relation to this specific case, the provisions of **Class 9** are considered relevant. Class 9 allows as ‘sundry works’ the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway, subject to the condition limiting the height of such structure to not exceed 2 metres.
- 3.2.3 **Article 9** of said Regulations lists a series of restrictions on exemptions. Of particular note are the provisions of Articles 9 (1)(a) (ii and iii), which relates to the creation of access points onto a public road and Article 9(1)(a)(viiiB) which de exempts developments that require an appropriate assessment because it would likely have an effect on the integrity of a European designated site

### **4 Assessment**

#### **4.1 Works Proposed**

- 4.1.1 For the purpose of this Declaration, the work, to which the query relates, is,
- The creation of a new agricultural access point (including gates) onto lands in, Kiltankin, Kilbehenny, Co. Tipperary.

#### **4.2 Is it development?**

- 4.2.1 Having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended), it is considered that the proposal as set out in paragraph 4.1.1 above, does constitute development as it does involve the carrying out of works on the subject land.

### 4.3 Is it exempted development?

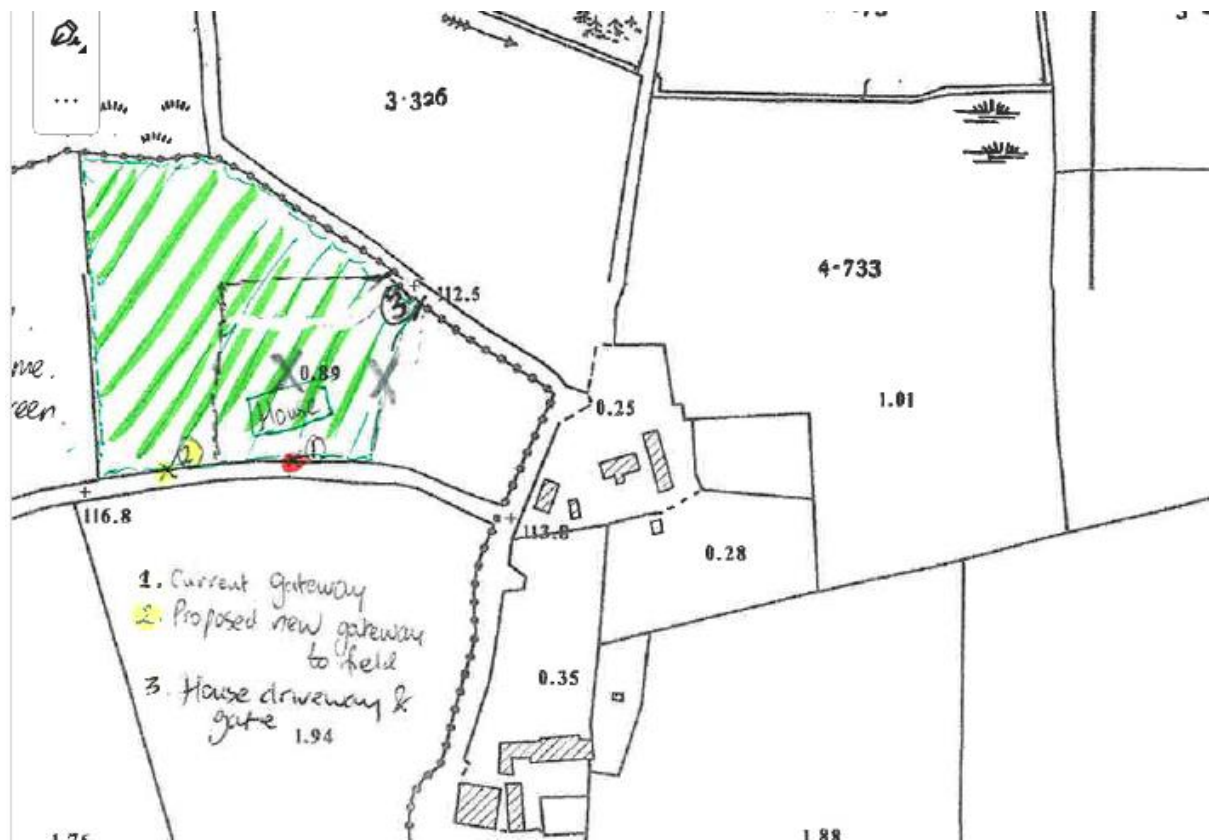
4.3.1 In order for a development to be considered “exempted development”, a specific exemption must exist for the works proposed. As noted in para. 3.2.2 above, Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended), allows for the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gateway, subject to the condition limiting the height of such structure to not exceed 2 metres.

Figure 2 Permitted site layout



4.3.2 The applicant is proposing to create a gateway onto agricultural lands, adjacent to his dwelling, from the L-7321. The proposed gate is shown to be a 5 bar agricultural gate.

Figure 3 Location of Proposed gate



4.3.3 As this gateway is not within or bounding the curtilage of a house, the proposal could therefore be considered exempt under class 9 subject to the restrictions set out under Article 9.

4.3.4 Of relevance to this Declaration are the provisions of Articles 9 (1)(a) (ii and iii). Under these provisions, development is not exempted development if it consists of the formation of an access to a public road the surface carriageway of which exceeds 4 metres in width or if it presents as a traffic hazard.

4.3.5 From the drawings submitted, it is not possible to determine the width of the L-2215 at the point that the entrances are proposed. The width measures in excess of 4m from the GIS system. In addition, no details of the sightlines to be provided at the entrance are provided. As such, it is not possible to consider if these entrances would present as a traffic hazard.

#### 4.4 Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

4.4.1 The subject site is located c. 3.7 kms from the Lower River Suir SAC, 4.1 kms from the Galtee Mountains SAC and 9.4 kms from the Blackwater River (Cork/Waterford) SAC.

4.4.2 The proposed development is located in a rural area and comprises of the creation of a new entrance to agricultural lands.

4.4.3 Having regard to:

- the small scale nature of the development,
  - the location of the development relevant to the closest European site (lower River Suir,
  - The intervening land uses between the subject site and the SAC and
  - the consequent absence of a direct pathway to these European sites,
- it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.
- 4.4.4 The proposed development has been subject to a preliminary examination to determine the requirement for EIA. EIA is not required in respect of the development. See attached.

## **5 Further information**

### **5.1 Request for Further information**

5.1.1 The following further information was sought on the 12th of August 2024,

In order for the works proposed to be considered exempted development the Planning Authority needs to be satisfied that that the proposal does not consist of or comprise 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, or would endanger public safety by reason of traffic hazard or obstruction of road users.

To that end, the applicant is requested to submit details of the width of the L-7321 at the point the entrance is proposed. In addition, the applicant is requested to provide a site layout plan outlining the sightlines available at the entrance point.

5.1.2 The applicant replied on the 3<sup>rd</sup> of September 2024.

### **5.2 Assessment**

5.2.1 The applicant confirmed the width of the L-7321 to be less than 4 metres.

5.2.2 The applicant submitted photographs and drawings illustrating the 70 metre sightlines at the entrance. The applicant submitted a speed survey demonstrating that the operational speed of the local road is 31 Km per hour. As such, a reduction in the 160 m sightline can be considered.

## 6 Conclusion

### 6.1 Query

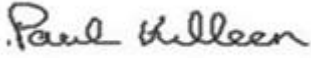
- 6.1.1 A question has arisen as to whether the creation of a new agricultural gateway onto lands in Kiltankin, Kilbehenny, Co. Tipperary, is or is not exempted development.
- 6.1.2 Part 5 of the Planning and Development Act 2000 (as amended) requires a Planning Authority to make a declaration on any question that arises as to what is or is not development. In determining this query, the Planning Authority 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 and,
  - Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended and,
  - the nature and scale of the proposed use, as outlined in submissions on file by the owner/occupier

### 6.2 Determination

- 6.2.1 Having considered the further information received, the Planning Authority has determined that;
- The construction of a new agricultural gateway at Kiltankin, Kilbehenny, Co. Tipperary onto the L-7321,

constitutes works and development and is considered to be “exempted development”, as same avails of the exemption set out under Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and is not limited by the restrictions set out under Article 9 of the same Regulations.

**Advice Note: The height of the agricultural gate shall not exceed 2m above ground level.**

Signed:   
\_\_\_\_\_  
Paul Killeen  
District planner

Date: 13/09/24

Signed:   
Senior Executive Planner

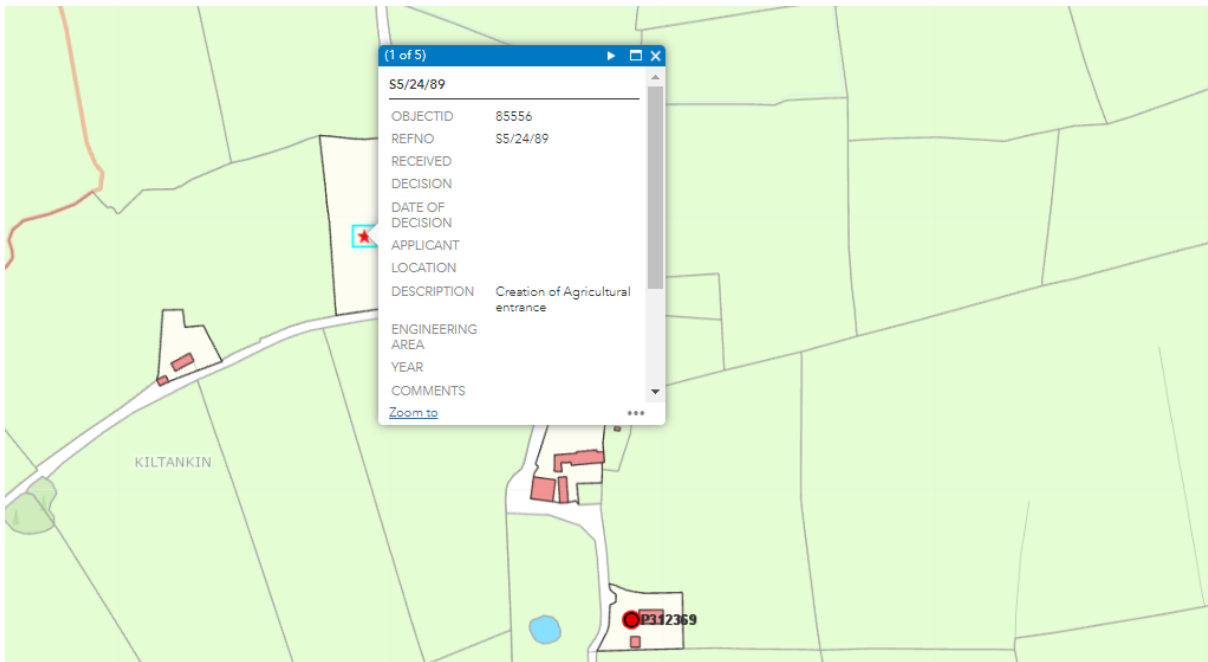
Date: 18.09.2024





EIA Pre-Screening	
Establishing a development is a 'sub-threshold development'	
File Reference:	S5/24/89
Development Summary:	Creation of agricultural gateway
Was a Screening Determination carried out under Section 176A-C?	<input type="checkbox"/> Yes, no further action required  <input checked="" type="checkbox"/> No, Proceed to <b>Part A</b>
<b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
<input type="checkbox"/> Yes, specify class _____	<b>EIA is mandatory</b>  No Screening required
<input checked="" type="checkbox"/> No	Proceed to <b>Part B</b>
<b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) <b>and</b> does it meet/exceed the thresholds? (Tick as appropriate)	
<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2	<b>No Screening required</b>
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 <b>and</b> meets/exceeds the threshold, specify class (including threshold): _____	<b>EIA is mandatory</b>  No Screening required
<input type="checkbox"/> Yes the project is of a type listed <b>but</b> is <i>sub-threshold</i> : _____	Proceed to <b>Part C</b>
<b>C. If Yes</b> , has Schedule 7A information/screening report been submitted?	
<input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant	<b>Screening Determination required</b>
<input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant	<b>Preliminary Examination required</b>

Figure 4 Site entered on planning register





Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary

E91 N512

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
An tAonach,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Nenagh,  
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Date: 19<sup>th</sup> September, 2024

Our Ref: S5/24/89

Civic Offices, Nenagh

**Joe Williams**  
**Kiltankin**  
**Kilbehenny**  
**Mictchelstown**  
**Co. Tipperary**

**Re: Declaration under Section 5 of the Planning and Development Act 2000**

Dear Mr Williams,

I refer to your application for a Section 5 Declaration received on 19<sup>th</sup> July, 2024 and response received on 3<sup>rd</sup> September, 2024 in relation to the following proposed works:

**Whether the creation of an agricultural entrance onto the L-7321 is development and if so, does it constitute exempted development at Kiltankin, Kilbehenny, Co. Tipperary.**

**WHEREAS** a question has arisen as to whether the proposed development is or is not exempted development:

**AND WHEREAS** Tipperary County Council, in considering this referral, had regard particularly 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 and,
- c) Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended and,
- d) the nature and scale of the proposed use, as outlined in submissions on file by the owner/occupier

Having considered the further information received, the Planning Authority has determined that;

- The construction of a new agricultural gateway at Kiltankin, Kilbehenny, Co. Tipperary onto the L-7321,

constitutes works and development and is considered to be "**exempted development**", as same avails of the exemption set out under Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and is not limited by the restrictions set out under Article 9 of the same Regulations.

Advice Note: The height of the agricultural gate shall not exceed 2m above ground level.

**NOTE:** Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours sincerely

*Geraldine Quinn*

for **Director of Services**

**Original**

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/24/89**      **Delegated Employee's Order No:** \_\_\_\_\_

**SUBJECT: Section 5 Declaration**

I, Sharon Kennedy, Director of Services, Tipperary County Council, by virtue of the powers delegated to me in accordance with the provisions of Section 154 of the Local Government Act 2001, as amended by Schedule 1, Part 1 of the Local Government Reform Act 2014 under Chief Executive's Order No. 37256 dated 4<sup>th</sup> March, 2024, hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 from Joe Williams, Kiltankin, Kilbehenny, Michelstown, Co. Tipperary, re: the creation of an agricultural entrance onto the L-7321 at Kiltankin, Kilbehenny, Co. Tipperary is development and is exempted development.

**AND WHEREAS** Tipperary County Council, in considering this referral, had regard particularly to –

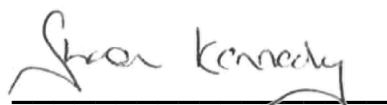
- a) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended and,
- c) Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended and,
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Having considered the further information received, the Planning Authority has determined that,

- The construction of a new agricultural gateway at Kiltankin, Kilbehenny, Co. Tipperary onto the L7321,

constitutes works and development and is considered to be "**exempted development**", as same avails of the exemption set out under Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and is not limited by the restrictions set out under Article 9 of the same Regulations.

**Signed:**



**Sharon Kennedy**  
**Director of Services**  
**Planning and Development (including Town Centre First),**  
**Emergency Services and Emergency Planning and**  
**Tipperary/Cahir/Cashel Municipal District**

**Date: 19/09/2024**