



PLANNING & DEVELOPMENT ACT, 2000 (as amended)

Application for a Section 5 Declaration
Development / Exempted Development

1. Applicant's address/contact details:

Applicant	Matt Cleary Farm Ltd
Address	Ballyluskey, Ardcroney, Nenagh, Co. Tipperary
Telephone No.	
E-mail	[REDACTED]

2. Agent's (if any) address:

Agent	Brian England
Address	Stoneycree, Cloughjordan, Co. Tipperary
Telephone No.	[REDACTED]
E-mail	[REDACTED]
Please advise where all correspondence in relation to this application is to be sent;	
Applicant <input type="checkbox"/>	Agent <input checked="" type="checkbox"/>

3. Location of Proposed Development:

Postal Address or Townland or Location (as may best identify the land or structure in question)	Ballyluskey Ardcroney Nenagh Co. Tipperary
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**TIPPERARY CO. COUNCIL
RECEIVED**
13 AUG 2024
PLANNING SECTION
FILE NO.

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.)

Proposed Structure Class 9 - 'Other Structures' not falling under structures, 6.7 x 8.
Proposed Milk Silo - Details Enclosed, complying with exempted development guidelines
Proposed floor area of proposed works/uses: 6.93 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 <input type="checkbox"/>
	C. Other <input type="checkbox"/>	
Where legal interest is 'Other', please expand further on your interest in the land or structure	N/A	
If you are not the legal owner, please state the name and address of the owner	Name: Address: N/A.	

Signature of Applicant(s) ^{PP} Brian E. G. (Agent) Date: 12/08/2024

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:

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

FOR OFFICE USE ONLY

DATE STAMP

Fee Recd. € _____

Receipt No _____

Date _____

Received by _____



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigí Cheantar Bardasach
Charraig na Siúire,
An tSráid Nua,
Carraig na Siúire,
Co. Thiobraid Árann

Tipperary County Council,
Carrick-on-Suir Municipal
District Office,
New Street,
Carrick-on-Suir,
Co. Tipperary
E32 YV00

t 0818 06 5000
e customerservice
@tipperarycoco.ie
tipperarycoco.ie

TIPPERARY COUNTY COUN
Town Hall

MERCHANT ID: *****3520
TERMINAL ID: *****2004
DATE: 13/08/2024 TIME: 15:38
BATCH: 000380-003 INVOICE: 003233
RRN: 422614401218 AUTH NO.: 629357
Visa Debit SALE
*****7101 *

SALE AMOUNT €80.00

CUSTOMER NOT PRESENT

I agree to pay the above final amount
According to the card/merchant's issuer
agreement

CUSTOMER COPY



Tipperary County Council
Carrick on Suir Municipal District Office
New Street
Carrick on Suir
Co Tipperary

13/08/2024 15:38:44

Receipt No. : CARRICK/0/46632

BRIAN ENGLAND
STONEYACLE
CLOUGHJORDAN
CO. TIPPERARY

PLAN APPLICATION FEES 80.00
GOODS 80.00
VAT Exempt/Non-vatable
REF MATT CLEARY

Total : 80.00 EUR

Tendered :
Credit Card 80.00

Change : 0.00

Issued By : SINEAD FLAHERTY
From : CARRICK TOWN RECEIPTS DESK
Vat reg No 3259712MH

Brian England

Design and Draughting Services.
Stoneyacre, CloughJordan, Co.Tipperary.

Phone: 0505 42336.



*Planning Section,
Tipperary County Council,
Civic Offices,
Limerick Road,
Nenagh,
Co. Tipperary.*

*Our Ref.: Cleary Matt/024/01
Your Ref.:*

12th August 2024.

Dear Sir/Madam,

We submit an application for a Section 5 Declaration of Development / Exempted Development on behalf of Matt Cleary farms Ltd. In relation to the proposed installation of a Milk Silo adjacent to existing Milking Parlour.

The Milk Silo (Liscarrol S6600 – Brochure Enclosed) structure subject of the Section 5 Declaration is outlined in green on the farmyard plan and accompanying plans.

This structure being a structure falling under Class 9 – “Other Structures” not falling under structure specified in Class 6.7 or 8.

The floor area of the proposed structure is 6.73m², thereby not exceeding 300m².

The proposed structure is for the purposes of agriculture.

The existing area of structures under Class 9 within the farmyard is 24.21m² and therefore the cumulative structure area within the farmyard will not exceed 900m².

The structure is greater than 10m from public road.

The structure will not exceed 8m in height.

The structure is greater than 100m from any third party development.

The structure will be of a green/blue painted finish.

We request a Section 5 Exempted Declaration in relation to the proposed Milk Silo provision.

Yours Sincerely,

For and on behalf of the above,

Brian England

Brian England, BSc(Hons). ICIOB.



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,
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@tipperarycoco.ie
tipperarycoco.ie

Date: 14th August 2024

Our Ref: S5/24/95

Civic Offices, Clonmel

**Matt Cleary Farm Ltd
C/o Brian England
Stoneycare
Cloughjordan
Co. Tipperary**

Re: Application for a Section 5 Declaration – the erection of a milk silo at Ballyluskey, Ardcroney, Nenagh, Co Tipperary.

Dear Sir/Madam

I acknowledge receipt of your application for a Section 5 Declaration received on 13th August, 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**

TIPPERARY COUNTY COUNCIL

Application for Declaration under Section 5

Planning & Development Act 2000, as amended
Planning & Development Regulations 2001, as amended

Planning Ref.: S5/24/95
Applicant: Matt Cleary Farm Ltd.
Development Address: Ballylusky, Ardcroney, Nenagh, Co. Tipperary
Proposed Development: Outdoor milk silo measuring 6.73sq.m.

1. GENERAL

On 13th August 2024 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 – 2010 as amended by Matt Cleary Farm Ltd. as to whether or not the following works constituted development and if so, whether same was exempted development:

Outdoor milk silo measuring 6.73sq.m.

2. STATUTORY PROVISIONS

The following statutory provisions are relevant to this referral case;

Section 2(1) of the Planning and Development Act, 2000, as amended, states as follows;

“In this Act, except where the context otherwise requires – “development” has the meaning assigned to it by Section 3 and development shall be construed accordingly.”

And,

“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) of the Planning and Development Act 2000, as amended, states as follows:-

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of 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 provides for Exempted Development and Section 4(1) sets out works which shall be exempted development for the purposes of the Planning and Development Act 2000, as amended.

Article 9 (1) (a) of the Planning and Development Regulations 2001, as amended sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act if the carrying out of works would-

(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

Article 6 (1) of the Regulations states the following:

“Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”

Schedule 2
PART 3
Exempted Development — Rural

Column 1 Description of Development	Column 2 Conditions and Limitations
<i>Agricultural Structures</i>	
<p style="text-align: center;">CLASS 8</p> <p>Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.</p>	<ol style="list-style-type: none"> 1. No such structure shall be used for any purpose other than the purpose of agriculture. 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate. 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and the Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution. 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road. 5. No such structure within 100 metres of any public road shall exceed 8 metres in height. 6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof. 7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

<p style="text-align: center;">CLASS 9</p> <p>Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.</p>	<ol style="list-style-type: none"> 1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent. 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate. 3. No such structure shall be situated within 10 metres of any public road. 4. No such structure within 100 metres of any public road shall exceed 8 metres in height. 5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof. 6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.
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3. ASSESSMENT

a. Site Location

The site is located on the L50791 in the townland of Ballylusky where there are existing agricultural buildings on the landholding.

b. Relevant Planning History

PI Ref: 201333

Retention permission granted in 2021 for the construction of a walled silage compound. Permission was also sought for the construction of an agricultural structure, to include, a building containing milking parlour/dairy/services rooms with ancillary installations including meal silo/bin, rainwater harvesting and water storage tanks. The construction of associated collecting and handling yards with a soil water collection tank and all associated siteworks.

c. Assessment

Section 2 (1) of the Planning and Development Act 2000, as amended, states as follows:-
“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....’

Section 3(1) of the Planning and Development Act 2000, as amended, provides that; 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.

The erection of a milk silo for storage of milk is now proposed.

A) “Is or is not Development”

Having considered all of the details and documentation on file with regards the question asked the Planning Authority is satisfied that the erection of a milk silo would involve “development” within the meaning of Section 3 of the Act.

B) “Is or is not Exempted Development”

The considerations under Section 5/16/60 and Section 5/19/59 assessed similar proposals against Class 8 of Schedule 2.

The map submitted with the declaration proposals and details on PI Ref 20/1333 show a silage compound located at the southwestern end of the farm yard, same has an area of 2,082 sq m. The silage storage area is a Class 8 structure and the proposed milk storage silo taken together with same would exceed the exemption limit set down under condition 2 of Class 8.

C) Is the exemption restricted under Article 9

In note no restrictions under Article 9 that would apply. This section is not applicable as an exemption under Class 8 of Part 2 cannot be confirmed.

D) Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

The proposal has been screened as to the requirements for AA and the screening assessment (attached) considers that the proposal does not impact on any Natura 2000 site.

The proposed development is not a type of development included for under Schedule 5 of the Planning and Development Regulations 2001, as amended. EIA is not required in respect of the development. See attached.

4. RECOMMENDATION

A question has arisen as to whether the following is development and is or is not exempted development;

The development of an Outdoor milk silo measuring 6.73sq.m. at Ballylusky, Ardcroney, Nenagh, Co. Tipperary.

Tipperary County Council, in considering this referral, had regard particularly to -

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended
- (b) Class 8, Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended

Tipperary County Council has concluded that –

The proposed development as presented on the drawings provided with the Declaration application, constitutes “development” within the meaning of the Planning and Development Act 2000, as amended and is **“not exempted development”**.

The proposal does not satisfy condition/limitation no. 2 attached to Class 8, Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended

Signed: Sara Jane Condon
Assistant Planner

Date: 30th August 2024

Signed: Jonathan Flood
A/Senior Executive Planner

Date: 2/9/2024

HABITATS DIRECTIVE APPROPRIATE ASSESSMENT (AA) SCREENING REPORT

STEP 1. Description of the project/proposal and local site characteristics:

(a) File Reference No:	S5/24/95
(b) Brief description of the project or plan:	Milk silo
(c) Brief description of site characteristics:	Farmyard on site
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	n/a

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
002241 Lough Derg North East Shore SAC	https://www.npws.ie/protected-sites/sac/002241	Within 10km	None	N
000647 Kilcarren-Firville Bog SAC	https://www.npws.ie/protected-sites/sac/00647	Within 15km	None	N
001683 Liskeen Fen SAC	https://www.npws.ie/protected-sites/sac/001683	Within 15km	None	N
004058 Lough Derg (Shannon) SPA	https://www.npws.ie/protected-sites/spa/004058	Within 10km	None	N

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 	Development does not include any major construction works.

<p>Operational phase e.g.</p> <ul style="list-style-type: none"> • Direct emission to air and water • Surface water runoff containing contaminant or sediment • 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 	It is considered that there is no real likelihood of any significant effects on European Sites in the wider catchment area.
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In-combination/Other	No likely significant in-combination effects
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(b) Describe any likely changes to the European site:

<p>Examples of the type of changes to give consideration to include:</p> <ul style="list-style-type: none"> • 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 	<p>None.</p> <p>The significant distance between the proposed development site and any European Sites, and the very weak and indirect ecological pathway is such that the proposal will not result in any likely changes to the European sites that comprise part of the Natura 2000 network</p>
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(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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.

On the basis of the information on file, which is considered adequate to undertake a screening determination and having regard to: the nature and scale of the proposed development, the intervening land uses and distance from European sites, the lack of direct connections with regard to the Source-Pathway-Receptor model, it is concluded that the proposed development, individually or in-combination with other plans or projects, would not be likely to have a significant effect on the above listed European sites or any other European site, in view of the said sites' conservation objectives.

An appropriate assessment is not, therefore, required.

Conclusion:

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission

(iii) Significant effects are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
Signature and Date of Recommending Officer:	<i>Sara Jane Condon</i> 30 th August 2024	

APPENDIX 2

**EIA Pre-Screening
Establishing a development is a 'sub-threshold development'**

File Reference:	S5/24/95		
Development Summary:	Milk Silo		
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 Part A		
A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1, of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)			
<input type="checkbox"/> Yes, specify class _____		EIA is mandatory No Screening required	
<input checked="" type="checkbox"/> No		Proceed to Part B	
B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2, of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)			
] No, the development is not a project listed in Schedule 5, Part 2		No Screening required	
] Yes the project is listed in Schedule 5, Part 2 and meets/exceeds the threshold, specify class (including threshold): _____		EIA is mandatory No Screening required	
] Yes the project is of a type listed but is <i>sub-threshold</i> : _____		Proceed to Part C	
C. If Yes, has Schedule 7A information/screening report been submitted?			
Yes, Schedule 7A information/screening report has been submitted by the applicant		Screening required Determination	
No, Schedule 7A information/screening report has not been submitted by the applicant		Preliminary Examination required	
Signature and Date of Recommending Officer:	<i>Sara Jane Condon</i>	Date:	30 th August 2024



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
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Co. Thiobraid Árann

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E91 N512

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Tipperary County Council,
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Date: 5th September, 2024

Our Ref: S5/24/95

Civic Offices, Nenagh

Matt Cleary Farm Ltd
C/O Brian England
Stoneycare
Cloughjordan
Co. Tipperary

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

Dear Mr Cleary,

I refer to your application for a Section 5 Declaration received on 13th August, 2024, in relation to the following proposed works:

Outdoor milk silo measuring 6.73sq.m at Ballylusky, Ardcroney, Nenagh, 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 and 3 of the Planning and Development Act, 2000, as amended
- (b) Class 8, Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended

Tipperary County Council has concluded that –

The proposed development as presented on the drawings provided with the Declaration application, constitutes “development” within the meaning of the Planning and Development Act 2000, as amended and is **“not exempted development”**.

The proposal does not satisfy condition/limitation no. 2 attached to Class 8, Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended

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: **S5/24/95** **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 4th 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 Matt Cleary Farm Ltd., C/O Brian England, Stoneycare, Clooghjordan, Co. Tipperary, re: Construction of an Outdoor milk silo at Ballylusky, Ardcroney, Nenagh, Co. Tipperary is a development and is not exempted development.

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

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended
- (b) Class 8, Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended

Tipperary County Council has concluded that –

The proposed development as presented on the drawings provided with the Declaration application, constitutes "development" within the meaning of the Planning and Development Act 2000, as amended and is **"not exempted development"**.

Signed: 

Date: 05/09/2024

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