



An  
Bord  
Pleanála

## Inspector's Report ACP-324036-26

### Questions

Is the structure under construction at 5 Dun Na Hinse, Ennis, Co. Clare as currently built development and if so, is it exempted development.

### Location

5 Dun na Hinse, Ennis, Co Clare

### Declaration

Planning Authority

Clare County Council

Planning Authority Reg. Ref.

R25-101

Planning Authority Decision

Constitutes Development and is not exempted development.

### Referral

Referred by

Tatjana Mervinska

Landowner

Hassan Jiad

Occupier

Hassan Jiad

Date of Site Inspection

23<sup>rd</sup> March 2026

Inspector

Carol Hurley

## **1.0 Site Location and Description**

- 1.1. The subject site is located at No. 5 Dun na Hinse, Ennis, Co. Clare. The property is a semi-detached single storey dwelling. The dwelling has a pitched roof with gable roof profile and a single storey hipped roof projection off the front elevation of the dwelling. External finishes consist of red brick banding to the lower level and render to the upper section.
- 1.2. The subject dwelling is at a slightly elevated position relative to the adjacent dwelling to the west.
- 1.3. The dwelling is located at the termination of a cul de sac and addresses the road with a north facing orientation. There is an area of open space to the northwest of the dwelling.
- 1.4. The area can be characterised as being established residential which is primarily accessed off the Lahinch Road to the north and internally via a spine road on a north-south axis.
- 1.5. The N85 road is located to the west of Dun na Hinse with the centre of Ennis located to the east

## **2.0 The Question**

- 2.1. The question referred to the Board by the adjacent property owner, Tatjana Merzvinska, which was the one asked of the Planning Authority, in accordance with Section 5(4) of the Planning and Development Act 2000 (as amended), is as follows:

Is the structure under construction at 5 Dun Na Hinse, Ennis, Co. Clare as currently built considered development and if so is it exempted development under the Planning and Development Act 2000.

## **3.0 Planning Authority Declaration**

- 3.1. Declaration

A declaration of exempted development was refused for the following reasons-

The works as carried out to the garage structure which is under construction and as permitted under PL Ref 22/409 constitute development which is not exempted development as the works as carried out are at variance to the drawings submitted with the application and therefore would contravene condition no. 1 and 2 of PL Ref 22/409.

There is no other provision in the Act or Regulations by which the development would be classified as exempted development

### 3.2. Planning Report

The planning report reflects the decision above and can be summarised as follows-

- Sets out the description of the site location, planning history, the background to the referral and the statutory provisions.
- Following inspection, it was noted that the garage under construction varies in appearance from that as permitted under PA Ref 22/409 by reason of;
  - i) The doors to the front elevation differ in height and are glass patio doors. They are not roller shutter doors.
  - ii) Internal walls have been constructed within the permitted structure.
  - iii) The overall height appears to be at slight variance to that permitted by 200-300mm.
- No objection is noted from a general planning perspective in terms of the works carried out however the provisions of Section 5 of the Act are clear; the Planning Authority are bound by the specifics of the Act/Regulations.
- The structure remains under construction and therefore the provisions of Section 4 (1)(h) are not relevant.
- There is no other provision in the Act or Regulations by which the development would be classified as exempt development.
- The Planning Authority considered the following;

- i) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended.
  - ii) The details as indicated in the submitted documents from the referrer.
  - iii) The planning history on the site and the conditions attached to PA Ref 22/409.
- The Planning Authority concluded the following;
    - i) The works carried out to the garage structure which is under construction and as permitted under PA Ref 22/409 constitute development which is not exempted development as the works carried out are at variance to the drawings submitted with the application and would contravene condition no.1 and condition no. 2.
    - ii) There is no other provision in the Act or Regulations by which the development would be classified as exempted development.

### 3.3. Other Technical Reports

None on file

## 4.0 Planning History

### 4.1. Subject site

**PA Ref UD 25-081** – No details available.

**PA Ref 22409** – Permission granted on 21<sup>st</sup> July 2022 to Hasan Jiad for the construction of a rear extension to the existing dwelling, a home garage for the rear garden plus all ancillary site works (Development description as per the Statutory Notices) *Arc head chun sineadh cuil a thogail ar an teaghais ata ann cheana, garaiste baile chun gairdin cuil moide gach saothar coimhdeach laithreain ag an seoladh thuas*

Condition No. 2 required that the proposed garage to be single storey and that the maximum height shall not exceed 5.6m (as measured from the proposed finished floor level. The footprint and location on the site shall remain unchanged.

Revised plans were submitted to the Planning Authority on 29<sup>th</sup> July 2022 and by letter dated 10<sup>th</sup> August 2022 were deemed to be acceptable.

Condition No. 6 requires that the garage shall not be used for human habitation or any commercial activity or for any other purpose than a purpose incidental to the enjoyment of the dwelling.

**PA Ref 16604** – Permission refused on 2<sup>nd</sup> November 2016 to Hasan Jiad for the construction of a domestic garage and store plus all ancillary site works.

As per the provisions of the Ennis and Environs Development Plan 2008-2014 (as amended) the subject site is located on lands zoned as “Other Settlement Land” where it is the objective of the Council to conserve and enhance the quality and character of the area, to protect residential amenity and allow for development that is appropriate to the sustainable growth of the settlement.

Having regard to the design of the proposed garage and store, the scale and proposed floor area of the domestic garage and store relative to the floor area of the existing dwelling on this site and the overall plot size it is considered that the development as proposed would materially contravene the land use zoning objective at this location and would seriously injure the amenities of properties at this location.

Adjacent Site to the West

4 Dun Na Hinse

**PA Ref: 2560095** – Permission granted on 24<sup>th</sup> June 2025 to Tatjana Merzvinska & Vladimir Ignatchuk for the construction of a granny flat to the rear of the existing dwelling along with other ancillary works.

#### 4.2. Referral History

304075

The question arose as to whether the as constructed building, incorporating alterations to the elevations and changes in floor plans to that permitted, is or is not development and is or is not exempted development. The Board concluded that;

a) the changes to elevations and floor plans arose from a change of use of the building from office use to student accommodation, which involved the carrying out of works, and which was development.

(b) the development carried out differed from that for which planning permission was granted and the then An Board Pleanala was satisfied that the deviations from the permitted development area, when taken cumulatively, were significant and material, and were not immaterial or de minimis, and were not, therefore, within the scope of the development granted planning permission.

(c) the development that has taken place involved works included in a previous permission and not those in the implemented permission and were carried out prior to the works authorised by the implemented permission. In such circumstances and in accordance with case law (*Horne v Freeney*), the subject works could not avail of the exemption provided under Section 4(1)(h) of the Planning and Development Act, 2000, as amended.

(d) there were no other exemptions in the Planning and Development Act, 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such material deviations would constitute exempted development.

Reference was made to the judgement of *Horne v Freeney* in relation to Section 4(1)(h) whereby the applicant cannot avail of the exemption under Section 4(1)(h) of the Planning and Development Act 2000, as amended which does not apply to

development in the course of construction being undertaken under the aegis of a planning permission.

RL2737

The question arose as to whether a bay window to the rear and window to the side of a dwelling house, is or is not development and is or is not exempted development. The assessment considered that the bay window on the rear elevation would not be visible from the public road and therefore would not be inconsistent with the character of the structure on which it would be located and would not be inconsistent with the character of the neighbouring structures. In relation to the opaque window located on the side elevation the assessment concluded that this window would not be exempted development having regard to the scale relative to the permitted window which it replaced and also given that the window would be visible from the public road. However, the assessment noted the relevance of the judgement of *Horne v Freeney* which states that for any development to avail of exempted development rights in terms of Section 4(1)(h), it must have first been completed in full in accordance with its permission. Exemptions would only apply to a development fully completed in accordance with its permission.

R312523

The question arose as to whether drawing no. DoE3, elevations/fenestration pattern is materially consistent with the granted planning PP/13/94 and 18/178 extension of duration. These works were undertaken during construction and the assessment therefore refers to the judgement of *Horne v Freeney* [1982] IEHC 20. This case set out that permission was indivisible and that the planning permission must be undertaken in its entirety. It is not possible to undertake alterations during construction just because those amendments would have been exempted once the building was completed. The assessment considered that in order to avail of an exemption under

Section 4(1)(h), the parent permission must first have been completed in full accordance with the authorising permission.

Consideration was also given to the work being 'de minimis'. Reference was made to the judgement in the case of Dunne Ltd v Dublin City Council which noted that the de minimis rule can only be applied where the deviation is 'so trivial or so technical or so peripheral or otherwise so insubstantial'. Reference was also made to the judgement in relation to Cork County Council v Cliftonhall Ltd. [2001] IEHC 85 which held that the question of material / non-material deviations should be approached from a practical and common sense perspective and with regard to whether the deviation is of such materiality that it would realistically impact on the rights or interests of third parties or be such as would affect planning considerations. In this case, it was considered by virtue of the nature and extent of the changes the works were considered to constitute a material deviation compared to the development permitted under PA Ref. 13/94 (and extended under PA.Ref.18/178) and as such were not considered to be 'de minimis'. The report of the Inspector noted that there is no provision in the Planning and Development Act 2000, as amended or the Planning and Development Regulations 2001, as amended which specifically exempts development where such development is carried out and incorporates slight deviations or otherwise from the information contained in the plans and particulars. The then Board concluded that the works carried out differs from that for which planning permission was granted and the Board were satisfied that the deviations from the permitted development were significant and material and not immaterial or de minimis. There are no exemptions in the Planning and Development Act, 2000, as amended or in the Planning and Development Regulations, 2001, as amended whereby such material deviations would consistent exempted development.

## **5.0 Policy Context**

### **5.1 Clare County Development Plan 2023-2029**

Ennis Municipal District Settlement Plans (Interim Version updated to incorporate Section 31 Ministerial Direction)

The subject site is zoned 'Existing Residential', the objective of which seeks to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and for uses that enhance existing residential communities. Existing residential zoned land may also provide for small scale home based employment where the primary residential use will be maintained.

## 5.2 Natural Heritage Designations

The proposed development is not located within or immediately adjacent to any European Site or other Natural Heritage Site.

The referral site is located c. 2.2km to the south and c. 2.1km to the southwest of Ballyallia Lake pNHA (000014), 2.2km to the northeast of Cahircalla Wood pNHA (001001), 2.4km to the southeast of Lough Cleggan pNHA (001331) and 2.8km to the northeast of Pouladatig Cave pNHA (000037).

The referral site is located 461m to the southwest of the Lower River Shannon Special Area of Conservation (002165), c. 2.8km to the northeast of Pouladatig Cave Special Area of Conservation (000037), c. 2.2km to the south of Ballyallia Special Area of Conservation (000014) and c. 3.2km to the north of Newhall and Edenvale Complex Special Area of Conservation (002091).

The referral site is located c. 2.2km to the south of Ballyallia Lough Special Protection Area (004041).

## 5.3 Environmental Impact Assessment

The subject development is not a project or class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

## 6.0 The Referral

### 6.1. Referrer's Case

The issues raised by the referrer, Tatjana Merzvinska, being the adjacent property owner to the west, can be summarised as follows-

- Refers to the planning history.
- Subsequent significant works were carried out which materially deviated from the approved drawings.
- Complaint was made and an enforcement case was opened by Clare County Council.
- Following the closure of the enforcement file, the referrer sought a Section 5 Declaration from Clare County Council.
- Refers to the contradiction between the Enforcement findings and Section 5 Declaration.
- No material change occurred to the physical development between the enforcement closure and the issuing of the Section 5 Declaration. The inconsistency between these two statutory positions has not been reconciled.
- The structure concerned was approved as a garage, the current layout is indicative of habitable accommodation.
- Scale, form and positioning are inconsistent with ancillary use.
- Proximity to the shared boundary which would not be acceptable for habitable development.
- These elements represent a material change of use and form, not a minor or technical deviation.
- The declaration correctly states there is no provision under the Planning and Development Act or Regulations by which the development could be considered exempted development.
- The practical consequence of this finding has not been addressed, a development which is not exempt and not in accordance with the granted permission cannot lawfully remain without further planning consent.

- The development causes significant overshadowing, loss of light and amenity and direct interference with the applicant's ability to develop their own permitted granny flat.
- The referrer was not provided with inspection reports supporting the enforcement closure, informed of the basis on which 'substantial compliance' was determined or afforded transparency in a matter that directly affects their property rights.
- Requests that An Coimisiun Pleanala review the declaration issued under R25-101, confirm that the development is unauthorised and clarify that such development cannot lawfully remain without appropriate planning permission obtained.

Submission is accompanied by:

- Copy of Section 5 Declaration (PA Ref R25-101)
  1. Statement of grounds in support of the referral.

#### 6.2. Planning Authority Response

None.

#### 6.3. Further Responses

#### 6.4. Response from Hassan Jiad, owner/occupier of No. 5 Dun na HInse, received on 18<sup>th</sup> March 2026 can be summarised as follows;

- Sets out the contended background to the submission by the referrer.
- Planning permission was sought and obtained for the extension and detached garage.
- During construction, a complaint was made to Clare County Council regarding a potential window being added to the western elevation. This was addressed under UD 25-081. Mr. Jiad responded to state that building location, height, elevational opes etc were all in keeping with the permission. The only minor change was the provision of some internal walls to better manage the space for storage, home gym and ancillary shower. Confirmation was provided that the building was not intended for residential use.
- Clare County Council closed the file following a site inspection.

- The referrer did not accept the findings of the Council and therefore submitted a Section 5 Declaration.
- In responding to the Section 5, Mr. Jiad advised the Council that he had changed the door type on the garage from a roller shutter type shown on the original design to a more aesthetically pleasing type. Mr. Jiad felt that the change of door type was not material and could be deemed minor in nature and therefore asked that the change be considered acceptable within the parameters of the original permission.
- The findings of the Section 5 advised that the change of door type was not exempted development and the choices available were to reinstate the original roller shutter type door or seek planning permission for the retention for the change, the applicant agreed to consider both options.
- Mr. Jiad contends that the referrers statement of grounds errs at Section 3.1 where it is stated that the Council contradicts themselves from the earlier UD Enforcement file. The fact is that the building, height, location, elevations and opes are all as permitted or in substantial compliance.
- The applicant is considering putting back in the roller shutter door or seeking retention permission for a more aesthetically pleasing design or door. This is the only change it is understood not to be exempted development as referenced by the Council in their January 7<sup>th</sup> finding on the Section 5 Notice. The applicant is unsure if by virtue of being referred to An Coimisiun Pleanala can a view be taken on whether the new door type may infact be exempted development and in keeping with the parameters of the parent permission.
- Requests An Coimisiun Pleanala to dismiss the claims made on the grounds that they are spurious and vexatious and alternatively and if in order, if An Coimisiun Pleanala might consider the new door type is a suitable and permitted alternative to the more industrious looking roller shutter doors and that the change is minor in nature and within the parameters of the original permission.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000, as amended

#### Section 2(1): Interpretation

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

“alteration” includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

(a) where the context so admits, includes the land on, in or under which the structure is situate...

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act (or under section 34 , 37G or 37N or 293 of this Act), being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 F26 (or under section 34, 37G, 37N or 293 of this Act), being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

#### Section 3(1): Development

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: Exempted development

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

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

### 7.2. Planning and Development Regulations 2001, as amended

#### Article 6: Exempted Development

‘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.’

#### Article 9 (1): Restrictions on exemption:

(1) 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,

(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.

## 8.0 Assessment

### 8.1. Introduction

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the structure concerned in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development within the meaning of the relevant legislation.
- 8.1.2. I have examined all the documentation on the file, inspected the site and have had regard to the legislative provisions set out in both the Planning and Development Act, 2000, as amended and the Planning and Development Regulations, 2001, as amended.
- 8.1.3. Based on the information available on file and on the previous planning application pertaining to the subject site I note that an extension to the subject dwelling and garage were previously permitted under PA Ref 22/409.
- 8.1.4. The Planning Authority assert that the structure remains under construction and the provisions of 4(1)(h) are not relevant. There is no other provision in the Act or Regulations by which the development would be classified as exempted development. The works carried out to the garage structure are at variance to the drawings submitted with the application and therefore would contravene condition no. 1 and 2 of PA Ref 22/409. The Planning Authority concluded that the works were development and were not exempted development.

- 8.1.5. The Referrer contends that there was a contradiction between Enforcement findings and the Section 5 Declaration. The structure exhibits characteristics consistent with residential use. It is requested that An Coimisiun Pleanala review the Declaration issued (R25-101) and confirm that the development at 5 Dun na Hinse is unauthorised. It is also requested to clarify that such development cannot lawfully remain without the appropriate planning permission obtained in accordance with the Planning and Development Acts.
- 8.1.6. From site visit and comparison of the approved plans, I note that the deviations include;
- Provision of glazed doors in place of the permitted roller shutter doors on the front (north elevation).
  - Construction of internal partition walls.
  - The installation of roof lights within the roof slope and construction of flooring and studwork would be indicative of the provision of a first-floor level. At time of site visit there were no stairs in place.
  - Installation of pipework consistent with internal plumbing.
  - Installation of a meter box on the western elevation.
- 8.1.7. I note that the report of the Planning Authority submits that the overall height of the structure appears to be at slight variance to that permitted by c. 200-300mm but does not provide any further confirmation of the height.
- 8.2. Is or is not development
- 8.2.1. The initial question that arises is, whether the amendments that have been undertaken is or is not development.
- 8.2.2. Section 2 of the Planning and Development Act 2000, as amended, defines works as 'any act or operation or construction, excavation, demolition, extensions, alteration or renewal'.
- 8.2.3. Section 3(1)(a) of the Act, defines development as the carrying out of any works, in on over or under land or the making of any material change in use of any land or structures situated on land...'

- 8.2.4. The act of undertaking works associated with the construction of the garage structure therefore constitutes development.
- 8.3. Is or is not exempted development
- 8.3.1. Section 4 of the Planning and Development Act, 2000, as amended sets out certain forms of development which shall be exempted development. Additionally, Schedule 2 of the Planning and Development, Regulations, 2001, as amended sets out forms of development which are exempted development within specific context.
- 8.3.2. I note that Clare County Council opened an Enforcement Case in relation to the works being undertaken at 5 Dun na Hinse, Ennis, Co. Clare. This case was subsequently closed which resulted in the submission of the Section 5 Declaration by the referrer to the Planning Authority. Notwithstanding the declaration issued by Clare County Council which concluded that the works were development and were not exempted development. The applicant in the case, being the adjacent landowner referred the decision to An Comisiun Pleanála for review.
- 8.3.3. At time of my site visit, both the extension to the dwelling and the garage structure were not complete and were still in the construction phase.
- 8.3.4. In this regard I refer the Commission to the case of *Horne v Freeney* [1982] IEHC 20. This case was focussed on internal alterations that had been undertaken during the course of construction. In this case it was held that permission was indivisible. Mr. Justice Murphy considered that it was not possible to undertake alterations during construction simply because the variation would have been exempted once the building was completed. Having regard to this judgement, I do not consider that Section 4 (1) of the Planning and Development Act 2000, as amended, would confer an exemption for the works to avail of an exempted development under Section 4(1)(h), the parent development must first have been completed in full accordance with its authorising permission.
- 8.3.5. In relation to the height of the structure, the report of the Planning Authority states that the overall height of the structure appears to be at slight variance to that permitted by 200-300mm but provides no further confirmation in respect of the height. I note that the Planning Authority issued compliance in respect of the requirements of Condition No. 2 associated with PA Ref 22409 which required a reduction in the height from that originally proposed. The plans associated with this compliance submission were not

available to view. From review of the Site Map associated with PA Ref 22409 (enclosed with the subject file) the finished floor level (FFL) of the extension is stated to match that of the main dwelling at +10.3. The FFL of the garage is stated to be +10.4, no ground levels are indicated. From site visit I note that the ground levels appear to have been lowered however I also note that no 'as constructed' plans demonstrating height and finished floor levels are available to enable measurement for comparison purposes.

- 8.3.6. I also note that the property owner of No. 5 Dun na Hinse requests that the Commission might consider if the new door type is a suitable alternative to the industrious looking roller shutter door. The property owner further requests that the Commission consider that the change is minor in nature and within the parameters of the original granted permission. In this regard I also refer to *Cork County Council v Cliftonhall Ltd.* [2001] IEHC 85 which sets out clarity around the determination of what constitutes material/nonmaterial deviations from the terms of existing permissions. In this case it was held that the question of material/nonmaterial deviations should be approached from a practical and common-sense perspective, and with regard to whether the deviation is of such materiality that it would realistically impact on the rights or interest of third parties or be such as would affect planning considerations. Noting the nature and extent of the changes, which includes the change in door type and the internal block wall partitions and pipe work, I consider that the alternative works, constitutes a material deviation compared to the development permitted under PA Ref. 22/409 and I would not consider that such works are 'de minimis'.
- 8.3.7. Furthermore, there is no provision in the Planning and Development Act 2000, as amended, or the Planning and Development Regulations, 2001, as amended, which specifically exempts development where such development is carried out and incorporates slight deviations or otherwise from the information contained in the plans and particulars submitted as part of the planning application.
- 8.3.8. To conclude, having regard to the case of *Horne v Freeney* [1982] IEHC 20, where it was held that in order to avail of exempted development under Section 4(1)(h) that the parent development must first have been completed in full accordance with its authorising permission and to the nature and extent of the development, which I do not consider to be de minimis and in the absence of provision in the Planning and Development Act 2000, as amended or the Planning and Development Regulations,

2001, as amended, which specifically exempts development incorporating slight deviations from the information contained in the plans and particulars submitted as part of the planning application, I consider that the development which is the subject of this referral is not exempted development.

8.3.9. I also refer to the Restrictions on Exemptions which are set out above. The restrictions provided in Article 9 of the Planning and Development Regulations 2001, as amended, relate exclusively to Article 6 of the Planning and Development Regulations, 2001, as amended which subsequently refers to classes of development specified in Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended. As such I note that consideration of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, would not be affected by Article 9. In this regard I consider that Article 9 is not relevant in this instance. Furthermore, and as previously stated there are no provisions under the Planning and Development Regulations 2001, as amended which would afford an exemption for the works which are the stated subject of this referral. I confirm that there are no other relevant exempted development provisions in the Act or Regulations by which the development would be classified as exempted development.

8.3.10. I note the referrers request for An Coimisiun Pleanala to confirm that the development is unauthorised. In this regard I note that unauthorised development is a matter for the Planning Authority and not a matter for An Coimisiun Pleanala. The purpose of An Coimisiun Pleanala in relation to the referral of a Section 5 is to ascertain what is and is not development and if development, whether that development is exempted development or not.

8.3.11. I note the referrers contention regarding procedural fairness from Clare County Council. The procedures of the local authority are not a matter for An Coimisiun Pleanala.

8.3.12. The referrer also contends that the amendments being undertaken impact upon the amenity of the referrers site, being to the west of 5 Dun na Hinse. As previously noted, the purpose of this referral is not to determine the acceptability or otherwise of the structure concerned in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development within the meaning of the

relevant legislation. Assessment on amenity is undertaken as part of an application for planning permission under Section 34 of the Planning and Development Act, 2000, amended.

## 9.0 EIA Screening

9.1. The subject development is not a project or class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

## 10.0 **Appropriate Assessment (AA) Screening**

10.1. I have considered case ACP-324036-26 in light of the requirements S177U of the Planning and Development Act, 2000, as amended.

10.2. The site is located is located 461m to the southwest of the Lower River Shannon Special Area of Conservation (002165), c. 2.8km to the northeast of Pouladatig Cave Special Area of Conservation (000037), c. 2.2km to the south of Ballyallia Special Area of Conservation (000014) and c. 3.2km to the north of Newhall and Edenvale Complex Special Area of Conservation (002091).

10.3. The appeal site is located c. 2.2km to the south of Ballyallia Lough Special Protection Area (004041).

10.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

10.5. The reason for this conclusion is as follows:

- Location-distance from nearest European site.
- The nature and scale of development.
- The absence of any ecological pathway from the development site to the nearest European Site.

10.6. I conclude, on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

10.7. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## 11.0 Recommendation

I recommend that the Commission should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the structure under construction at 5 Dun Na Hinse, Ennis, Co. Clare as currently built is or is not development or is or is not exempted development

**AND WHEREAS:** Tatjana Merzvinska and Vladimir Ignatchuk, 4 Dun na Hinse, Ennis, Co. Clare requested a declaration on this question from Clare County Council and the Council issued a declaration on 7<sup>th</sup> January 2026 stating that the matter was development and was not exempted development:

**AND WHEREAS:** Tatjana Merzvinska, 4 Dun na Hinse, Ennis, Co. Clare referred this declaration for review to An Coimisiun Pleanála on the 19<sup>th</sup> January 2026

**AND WHEREAS:** An Coimisiun Pleanála, in considering this referral, had regard particularly to –

- a) section 2(1), 3(1), 4(1)(h), 4(4) of the Planning and Development Act, 2000, as amended,
- b) article 6(1) and article 9(1) of the Planning and Development Regulations 2001, as amended

- c) the planning and development history of the site,
- d) the submission of the Planning Authority,
- e) the report of the Planning Inspector:

**AND WHEREAS** An Coimisiún Pleanála has concluded that:

- (a) The development as proposed constitutes development.
- (b) The referral concerns the following changes which have been undertaken during the course of the construction works, installation of glazed doors, construction of internal partition walls, installation of rooflights, construction of studwork and flooring at first floor level, internal pipework and installation of a meter box which comprises works and therefore comes within the scope of the definition of development as set out in Section 3 of the Planning and Development Act 2000, as amended.
- (c) The development carried out differs from that for which planning permission was granted under PA Ref 22/409 and the Commission is satisfied that the deviations from the permitted development are significant and material, and are not immaterial or de minimis, and are not, therefore, within the scope of the development granted permission.
- (d) There are no exemptions in the Planning and Development Act, 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such material deviations would constitute exempted development.
- (e) The works which are the subject of this referral are not likely to have significant effects on any European sites.
- (f) The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended and therefore are not subject to EIA requirements.

**NOW THEREFORE:** An Coimisiun Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the alterations to the garage structure under construction, being the installation of glazed doors, construction of internal partition walls, installation of rooflights, construction of studwork and flooring at first floor level, internal pipework and installation of a meterbox undertaken during the course of construction is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Carol Hurley  
Planning Inspector  
5<sup>th</sup> May 2026

EIA Pre Screening

<b>Case Reference</b>	ACP-324036-26
<b>Proposed Development Summary</b>	Is the structure under construction at 5 Dun Na Hinse, Ennis, Co. Clare as currently built development and if so, is it exempted development
<b>Development Address</b>	5 Dun Na Hinse, Ennis, Co. Clare
<b>In all cases check box /or leave blank</b>	
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	State the Class here
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	

<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.  <b>No Screening required.</b>	No Screening required.
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.  <b>EIA is Mandatory. No Screening Required</b>	
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.  <b>Preliminary examination required. (Form 2)</b>  <b>OR</b>  <b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b>	

**4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?**

Yes <input type="checkbox"/>	<b>Screening Determination required (Complete Form 3)</b>
No <input checked="" type="checkbox"/>	<b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_