Validation Checklist

Lodgement Number : **LDG-069362-24**
Case Number: **ABP-318689-23**
Customer: **Patrick Carney**
Lodgement Date: **17/01/2024 11:17:00**
Validation Officer: **Daniel O'Connor**
PA Name: **Tipperary County Council**
PA Reg Ref: **2360763**
Case Type: **Normal Planning Appeal PDA2000**
Lodgement Type: **Observation / Submission**

Validation Checklist	Value
Confirm Classification	Confirmed - Correct
Confirm ABP Case Link	Confirmed-Correct
Fee/Payment	Valid – Correct
Name and Address available	Yes
Agent Name and Address available (if engaged)	Not Applicable
Subject Matter available	Yes
Grounds	Yes
Sufficient Fee Received	Yes
Received On time	Yes
Eligible to make lodgement	Yes
Completeness Check of Documentation	Yes

BP40 to issue to P.Carney ✓ KB
19/01.

Run at: 19/01/2024 11:24

Run by: Daniel O'Connor

S.37

File With

SECTION 131 FORM

Appeal No: ABP— 318689-23

Defer Re O/H: ☐

Having considered the contents of the submission dated/received 17/1/24 from Patrick Carney I recommend that section 131 of the Planning and Development Act, 2000 be/not be invoked at this stage for the following reason(s):

No new issues

Section 131 not to be invoked at this stage. ☑

Section 131 to be invoked — allow 2/4 weeks for reply. ☐

Signed: Daniel O Connor
EO

Date: 19/1/24

Signed:
SEO/SAO

Date:

M

Please prepare BP — Section 131 notice enclosing a copy of the attached submission.

To:

Task No:

Allow 2/3/4 weeks: BP

Signed:
EO

Date:

Signed:
AA

Date:

An Bord Pleanála

Planning Appeal Online Observation

Online Reference
NPA-OBS-003068

Online Observation Details

Contact Name	Lodgement Date	Case Number / Description
Patrick Carney	17/01/2024 21:34:49	318689

Payment Details

Payment Method	Cardholder Name	Payment Amount
Online Payment	Patrick Carney	€50.00

Processing Section

S.131 Consideration Required

☑ Yes — See attached 131 Form ☐ N/A — Invalid

Signed Daniel Ó Conaoi **Date** 19/1/24

EO

Fee Refund Requisition

Please Arrange a Refund of Fee of €

Lodgement No LDG—

Reason for Refund

Documents Returned to Observer ☐ Yes ☐ No

Request Emailed to Senior Executive Officer for Approval ☐ Yes ☐ No

Signed

EO

Date

Finance Section

Payment Reference ch_3OZgI3B1CW0EN5FC1WW0pFDa

Checked Against Fee Income Online

EO/AA (Accounts Section)

Amount €

Refund Date

Authorised By (1)

SEO (Finance)

Authorised By (2)

Chief Officer/Director of Corporate Affairs/SAO/Board Member

Date

Date

Patrick & Alma Carney
Carrig
Birr
Co. Tipperary.

17th January, 2023.

An Bord Pleanála,
64 Marlborough Street,
Dublin 1.
D01 V902.

Re: **Observation on Appeal submitted to An Bord Pleanála; An BP Ref: 318689-23**
-Tipperary County Council Planning Reference No. 236073
–The proposed Construction of a 7 Turbine Wind Farm, electrical sub-station, ancillary works, and associated grid connection, near Carrig, Birr Co. Tipperary.

Dear Bord Pleanála,

We refer to the First Applicant appeal against the Tipperary County Council decision of 16/11/2023 to refuse planning Permission for the above proposed development. We confirm that we made a submission on this planning application within the statutory 5-week period from date of lodgement and attach herewith acknowledgement and receipt of said submission.

We set out hereunder our observation on the First Applicant Appeal with some background documentation included in the Appendix.

1. Refusal Reason - Ornithology

MKO refer to the legal obligations throughout their appeal. They have however failed to highlight the legal obligations in relation to protection of Annex 1 species and their habitats.

In their appeal MKO have excluded the EU Habitats Directive and the EU Birds directive as items which must be considered when deciding on this proposed development and instead imply that only the Climate Action plans should be considered. MKO have also presented a new ornithology study to try to show that the wildlife count is less than they stated in their original study, and they have not addressed the fact that this development will destroy habitat of Annex 1 species and kill Annex 1 species. If the conservation efforts in this site are successful, we can expect to see an increased wildlife count and therefore the expected number of Annex 1 birds killed would be greater than 203, which is the figure from the original planning documents.

The MKO appeal response does not adequately address the impact on ornithology and has not provided evidence beyond reasonable doubt that they will not harm Annex 1 species or their habitat. In fact they still do not dispute the fact that they expect to kill hundreds of Annex 1 specimen during the operational lifetime of the windfarm. Their appeal has not addressed the fact that their proposed development would damage this site, which is part of an interconnect between surrounding SACs/SPAs and the success of these SACs is reliant on maintaining and improving these interconnect areas. 54 of the 110 species in the target species list in "Appendix 7-1 – Species list" have been observed and recorded in this area, either by MKO(31 species observed, incl 9 that are of special importance to the local SPAs) as part of their study or by locals using the Merlin App(as advised by NPWS). The turbines are planned much closer together than the distances recommended in the 2006 guidelines and this will make it more likely for bird strikes to occur.

2. Refusal Reason - Planning Policy

MKO suggest that the only area of contention is the County Development Plan(CDP). This area is designated unsuitable for windfarm development in the CDP as this type of development would interfere with the primary focus of this area, which is conservation. The state already own land adjoining the proposed site and the NPWS are active in this area, which is evident by the fact that Arragh More Bog(which is directly adjacent to the proposed site) was recently assigned SAC status. This area is already contributing towards our obligations in relations to the Habitats Directive. The proposed windfarm would not have a significant impact on the wind energy targets and with so many windfarms already in this area a balance is required. This area should continue to be prioritized for conservation.

MKO refer to 3 cases in relation to ABP determining if a proposed development is SID. In all cases the proposed windfarms were >50MW, which is significantly larger than the proposed development, and the consultation with ABP was in pre-planning and not as part of an appeal where permissions was already refused by the County Council:

- ABP-315851-23 – this is >50MW and ABP were contacted pre-planning.
- ABP-307058-20 – this is 52.8MW and ABP were contacted pre-planning.
- ABP-312224-21 – this is 50.4MW and ABP were contacted pre-planning.

MKO refer to 4 windfarm applications where ABP has granted material contravention:

- 315365 – this is not comparable to this proposed development. No adjacent NHA or SACs. Not identified as an interconnect. No Annex 1 habitats recorded within the site or study area.
- 221656 – there are no SACs immediately adjacent to the site
- 240394 – I am unable to find this case on the ABP website.

- 301852 – while the Lower River Shannon SAC is adjacent to the site it is not comparable to the proposed development site. The proposed site is an interconnect which is heavily used by Annex 1 and amber listed species. As previously mentioned, 9 species that are of special importance to the local SPAs were observed as part of the MKO studies. And an estimated 203 annex 1 specimen would be killed over the operational lifetime of the proposed windfarm. MKO have not provided sufficient evidence or mitigation measures to ensure these birds and their habitats will not be affected by the proposed development.

Instead, it would be more appropriate to use the following cases from 2023 as reference when considering this proposed development as they have more in common with the proposed site:

Case	CoCo Decision	ABP Decision	ABP Reason Summary
309937	Refused	Refused	peatland. Extensive work. Large area of hen harrier foraging ground lost. CDP.
311044	Refused	Refused	Against CDP + area of significant ornithological value
314600	Refused	Refused	Against CDP. peatland
314662	Refused	Refused	Against CDP. Peatland
312599	Refused	Refused	no NIS, peatland, against CDP
313007	Refused	Refused	Against CDP, ornithology
310789	Conditional	Refused	many, peatland, whooper swan
310788	Conditional	Refused	many. peatland, ornithology

3. **Additional items related to the appeal**

I agree with the TippCoCo decision reasons for refusing the development and also feel that they left out some other very important reasons in their final decision:

- this area is used by locals for mindfulness and improving their mental health and recreation activities that improves their physical health. This will be taken away from locals if the development is approved.
- 2 of the turbines significantly encroach the local road and will be intimidating to road users, with no alternative route available.

- This road through bog was never intended for frequent traffic. It is not suitable to take diverted traffic during construction as it is narrow, has dangerous blind bends and no verge with ditches/drains on both sides of the road in many places.
- The hydrology report failed to identify 2 natural springs(one is a national monument) close to one of the turbines and failed to apply the appropriate buffer zones or explain how they can ensure that the hydrology related to these springs will not be affected when they drive piles 22m into the bedrock in this area.

There are many other valid objection reasons submitted against the original planning application and their cumulative effect should be taken onboard when making the final decision.

In their appeal MKO have stated that they are fully compliant with the 2006 guidelines and they expect to be compliant with the next set of guidelines as they have taken the 2019 draft guidelines into consideration in their plan. However, this contradicts information in their original application where they acknowledge that the proposed plan would breach the light-flicker and noise thresholds. Objections to the original application also showed that the setback distances were incorrectly calculated by MKO and would therefore not be in compliance with the 2019 draft guidelines. And the spacial distance guidelines(from the 2006 guidelines) have been completely ignored. MKO are proposing to put 7 turbines in an area that the guidelines suggest should have a maximum of 4 turbines. This not only increases the risk of disturbance to local residents through wake effect in relation to light flicker, noise and vibrations but also the increased likelihood of bird collisions. It is not clear if the increased wake effect has been modelled in any of the calculations. The fact that there are so many breaches shows that this development is unviable and again reinforces the fact that the CDP is correct when saying this area is "unsuitable for further windfarm development". I included maps in my original objection and I have also added them to the Appendix below.

Furthermore, MKO have stated that ABP have an obligation to approve this development. I would counter this by saying if Ireland is to achieve our climate targets then MKO have an obligation to propose developments in areas other than those designated unsuitable for windfarm development. ABPs obligation is to take all policies and directives, and the CDPs which deliver on those policies and directives, into account when making their decision.

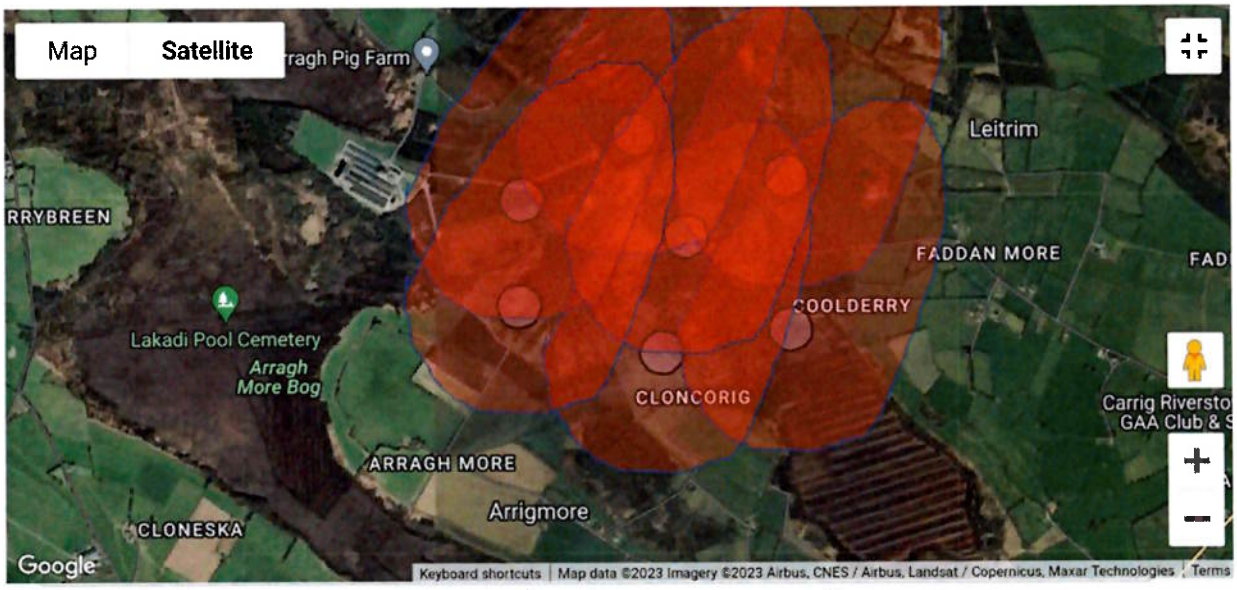
Yours faithfully

Patrick Carney

Alma Carney

Appendix

MAP1 – my own sieve analysis. This excludes the microwave link and buffer, which imagine have confirmed is not affected by the proposed turbine locations. Note, I've used 740m buffer to houses although it should be 786m.



MAP2 – ovals show the recommended separation distances between turbines as per the 2006 guidelines

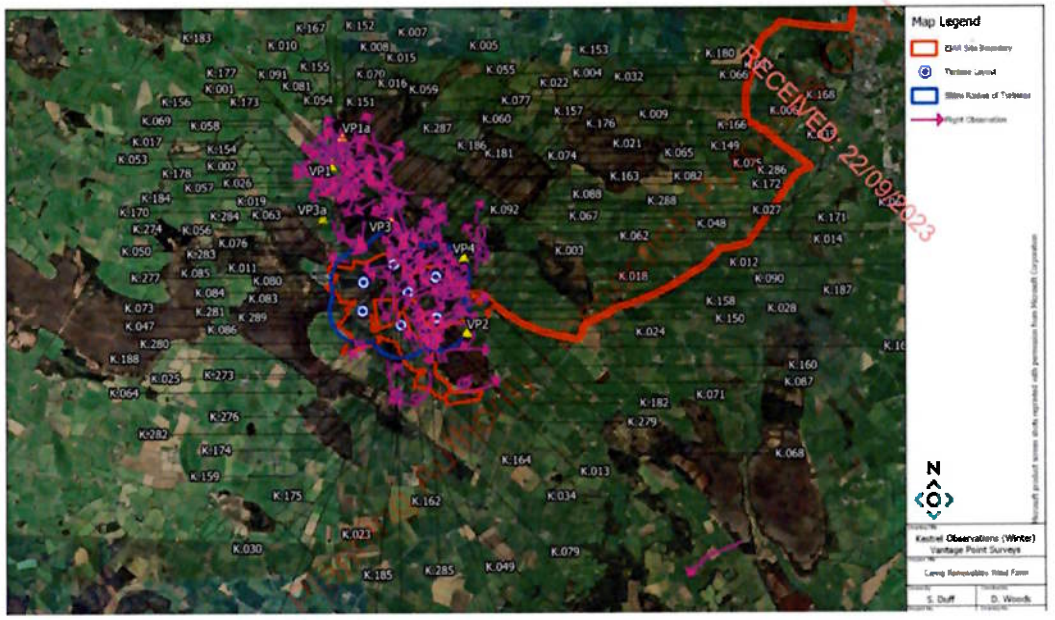
EIAR 7-1 species list – the 54 species highlighted in green have been observed in this area as part of the MKO study or by locals using the Merlin App.

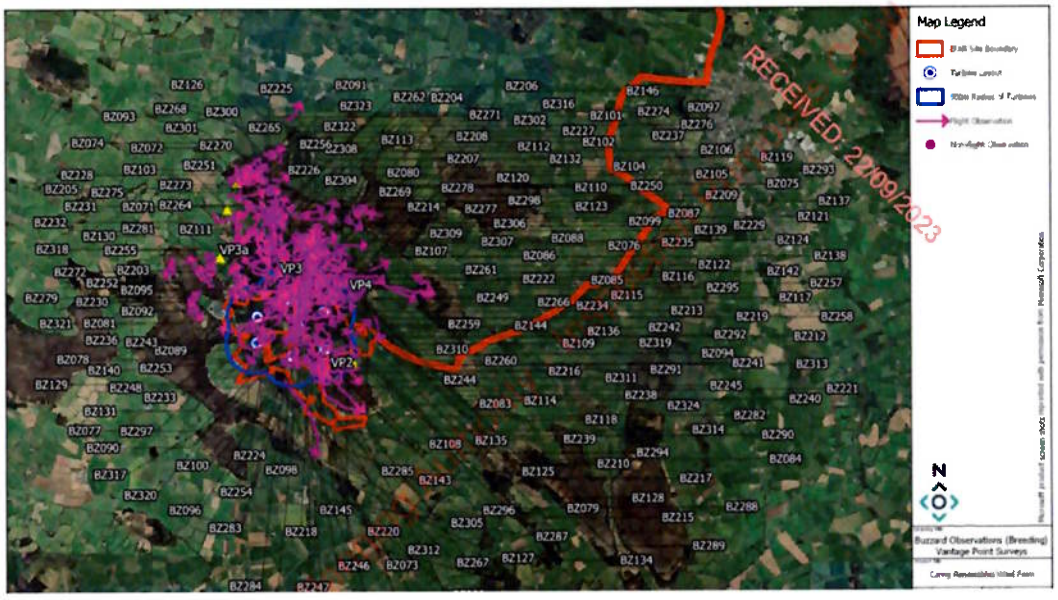
Species	Latin Name	Target Sp. Y/N
Golden Plover	*Pluvialis apricaria*	Y
Hen Harrier	*Circus cyaneus*	Y
Kingfisher	*Alcedo atthis*	Y
Little Egret	*Egretta garzetta*	Y
Merlin	*Falco columbarius*	Y
Peregrine	*Falco peregrinus*	Y
Red Kite	*Milvus milvus*	Y
White-tailed Eagle	*Haliaeetus albicilla*	Y
Whooper Swan	*Cygnus cygnus*	Y
Lapwing	*Vanellus vanellus*	Y
Shoveler	*Spatula clypeata*	Y
Black-headed Gull	*Chroicocephalus ridibundus*	Y
Cormorant	*Phalacrocorax carbo*	Y
Pintail	*Anas acuta*	Y
Teal	*Anas carolinensis*	Y
Greenland White-fronted Goose	*Anser albifrons flavirostris*	Y
Barn Owl	*Tyto alba*	Y
Curlew	*Numenius arquata*	Y
Kestrel	*Falco tinnunculus*	Y
Snipe	*Gallinago gallinago*	Y
Woodcock	*Scolopax rusticola*	Y
Bullfinch	*Pyrrhula pyrrhula*	Y
Long-eared Owl	*Asio otus*	Y
Sparrowhawk	*Accipiter nisus*	Y
Goldcrest	*Regulus regulus*	Y
Grey Wagtail	*Motacilla cinerea*	Y
Meadow Pipit	*Anthus pratensis*	Y
Pochard	*Aythya ferina*	Y
Redshank	*Tringa totanus*	Y
Redwing	*Turdus iliacus*	Y
Snipe	*Apus apus*	Y
Yellowhammer	*Emberiza citrinella*	Y
Barn Swallow	*Hirundo rustica*	N
Barnacle Goose	*Branta leucopsis*	N
Blackbird	*Turdus merula*	N
Blackcap	*Sylvia atricapilla*	N
Blue Tit	*Cyanistes caeruleus*	N
Brambling	*Fringilla montifringilla*	N
Brent Goose	*Branta bernicla*	N
Bullfinch	*Pyrrhula pyrrhula*	N
Chaffinch	*Fringilla coelebs*	N
Chiffchaff	*Phylloscopus collybita*	N

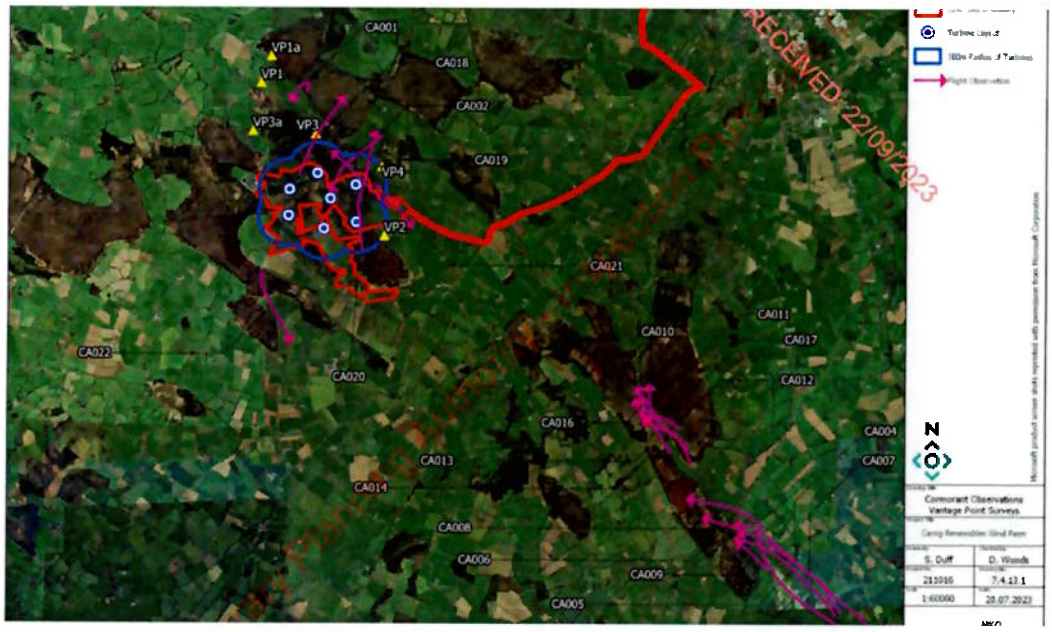
Species	Latin Name	Target Sp. Y/N
Coal Tit	*Periparus ater*	N
Collared Dove	*Streptopelia decaocto*	N
Common Gull	*Larus canus*	N
Common Redpoll	*Acanthis flammea*	N
Coot	*Fulica atra*	N
Crossbill	*Loxia curvirostra*	N
Curlew	*Curlew cinerea*	N
Dunnock	*Prunella modularis*	N
Fieldfare	*Turdus pilaris*	N
Goshawk	*Accipiter gentilis*	N
Goldcrest	*Regulus regulus*	N
Goldfinch	*Carduelis carduelis*	N
Grasshopper Warbler	*Locustella naevia*	N
Great Black-backed Gull	*Larus marinus*	N
Great Crested Grebe	*Podiceps cristatus*	N
Great Tit	*Parus major*	N
Great White Egret	*Ardea alba*	N
Green Woodpecker	*Picus viridis*	N
Greenfinch	*Chloris chloris*	N
Greenshank	*Tringa nebularia*	N
Grey Heron	*Ardea cinerea*	N
Greylag Goose	*Anser anser*	N
Herring Gull	*Larus argentatus*	N
Hooded Crow	*Corvus cornix*	N
House Martin	*Delichon urbicum*	N
House Sparrow	*Passer domesticus*	N
Jackdaw	*Corvus monedula*	N
Jay	*Garrulus glandarius*	N
Lesser Black-backed Gull	*Larus fuscus*	N
Lesser Redpoll	*Carduelis flammea cabaret*	N
Linnet	*Linaria cannabina*	N
Little Grebe	*Tachybaptus ruficollis*	N
Long-tailed Tit	*Aegithalos caudatus*	N
Magpie	*Pica pica*	N
Mallard	*Anas platyrhynchos*	N
Marsh Harrier	*Circus aeruginosus*	N
Mediterranean Gull	*Larus melanocephalus*	N
Mistle Thrush	*Turdus viscivorus*	N
Moorhen	*Gallinula chloropus*	N
Mute Swan	*Cygnus olor*	N
Pheasant	*Phasianus colchicus*	N
Pied Wagtail	*Motacilla alba yarrellii*	N
Pink-footed Goose	*Anser brachyrhynchus*	N

Species	Latin Name	Target Sp. Y/N
Raven	*Corvus corax*	N
Reed Bunting	*Emberiza schoeniclus*	N
Ringed Plover	*Charadrius hiaticula*	N
Robin	*Erithacus rubecula*	N
Rook	*Corvus frugilegus*	N
Ruff	*Philomachus pugnax*	N
Sand Martin	*Riparia riparia*	N
Sedge Warbler	*Acrocephalus schoenobaenus*	N
Siskin	*Carduelis spinus*	N
Skylark	*Alauda arvensis*	N
Snow Goose	*Anser caerulescens*	N
Song Thrush	*Turdus philomelos*	N
Spotted Flycatcher	*Muscicapa striata*	N
Starling	*Sturnus vulgaris*	N
Stock Dove	*Columba oenas*	N
Stonechat	*Saxicola rubicola*	N
Treecreeper	*Certhia familiaris*	N
Tufted Duck	*Aythya fuligula*	N
Water Rail	*Rallus aquaticus*	N
Whimbrel	*Numenius phaeopus*	N
Whitethroat	*Sylvia communis*	N
Wigeon	*Anas penelope*	N
Willow Warbler	*Phylloscopus trochilus*	N
Woodpigeon	*Columba palumbus*	N
Wren	*Troglodytes troglodytes*	N

Sample of Species observation maps from EIAR 7-4 Survey Data, showing the volume of observations in the direct collision path of the turbines.







Letter of confirmation

LGMA

An Chomhairleoireacht Bainistíocht Riosca Áitiúil
Local Government Management Agency

Submission No.: 150000007891

Date of Issue:
24/10/2023 04.30pm

THIS IS AN IMPORTANT DOCUMENT

KEEP THIS DOCUMENT SAFELY. YOU WILL BE REQUIRED TO PRODUCE THIS ACKNOWLEDGEMENT TO AN BORD PLEANALA IF YOU WISH TO APPEAL THE DECISION OF THE PLANNING AUTHORITY. IT IS THE ONLY FORM OF EVIDENCE WHICH WILL BE ACCEPTED BY AN BORD PLEANALA THAT A SUBMISSION OR OBSERVATION HAS BEEN MADE TO THE PLANNING AUTHORITY ON THE PLANNING APPLICATION.

Tipperary County Council

PLANNING APPLICATION REFERENCE No: 2360763

A submission/observation in writing, has been received from P Carney on 24/10/2023 in relation to the above planning application.

The appropriate fee of €20 has been paid. (Fee not applicable to prescribed bodies)

The submission/observation is in accordance with the appropriate provisions of the Planning and Development Regulations 2001 and will be taken into account by the planning authority in its determination of the planning application.

Yours faithfully,
Tipperary County Council