

**Rosemarie McLaughlin**

3 David Road, Drumcondra, Dublin 9, D09H2V6

00353 876787323

rosie@rmlplanning.ie

<https://rmlplanning.ie/>**My Ref. A202****Tipperary County Council Ref. S5/22/26****AN BORD PLEANALA**LDG- 051519-22

ABP- \_\_\_\_\_

**22 APR 2022**Fee: € 220Type: cardTime: 16:09By: in person

22/04/2022

**RE: SECTION 5 REFERRAL**

Dear Secretary,


On behalf of my clients Mr Michael Power and Ms Margaret Ryan of Sallypark, Latteragh, Nenagh, Co. Tipperary, E45 WR64, and pursuant to section 5(3)(a) of the Planning and Development Act 2000 as amended, this is a referral of a declaration by a Tipperary County Council dated 4<sup>th</sup> April 2022, in relation to a question that arises as to what, is or is not development or is or is not exempted development at a site of former public house with residential accommodation and football pitch (on an overall site of c. 1.32 ha) at Seanins, Sallypark, Latteragh, Nenagh, Co Tipperary. The site the subject of the section 5 referral is in the ownership of Tipperary County Council.

The question that was stated to the Planning Authority was "*Whether the **change of use and works** on the site of former public house with residential accommodation and football pitch purchased by Tipperary County Council (on an overall site of c. 1.32 ha) at Seanins, Sallypark, Latteragh, Nenagh, Co Tipperary, E45 EE61, into a Council depot and offices is development and is or is not exempted development?* In the interest of clarity and to ensure that all matters were considered, including the cumulative development on the site, the known changes of use and works were itemised, and the details are included in the attached planning report.

Please find the following enclosures.

1. Cover letter (this letter)
2. Fee
3. Copy of decision letter from Planning Authority
4. Planning report with 4 appendices
  - Appendix 1 Email correspondence
  - Appendix 2 Freedom of Information document
  - Appendix 3 Spreadsheet
  - Appendix 4 Planning history document
5. USB with three short videos with audio

Yours sincerely,


**Rosemarie McLaughlin**



Date: 4 April 2022

Our Ref: S5/22/26

Civic Offices, Nenagh

Mr Michael Power & Ms Margaret Ryan  
C/O Rosemarie McLaughlin  
3 David Road  
Drumcondra  
Dublin 9

Dear Mr Power & Ms Ryan

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

I refer to your application for a Section 5 Declaration received on 8 March 2022 in relation to the following proposed works: -

**Change of use and works on site of former public house with residential development and football pitch purchased by Tipperary County Council into a council depot and offices at Sallypark, Latteragh, Co Tipperary**

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

- (a) Sections 2, 3, 4 and Section 179 of the Planning and Development Act, 2000, as amended.
- (b) Article 6, 9 and 80 of the Planning & Development Regulations 2001, as amended.
- (c) The former use of the site.
- (d) The current use of the site by Tipperary County Council as a depot used by the Nenagh Municipal District.
- (e) The nature and extent of development undertaken by Tipperary County Council.

Tipperary County Council has concluded that:

The **change of use** and **works** on the site of former public house with residential

SCANNED



(2)

development and football pitch located at Sallypark, Latteragh, Nenagh, Co. Tipperary into a council depot and offices used by Tipperary County Council is development within the meaning of the Planning and Development Act 2000, as amended and **is exempted development** pursuant to Section 4 (1) (aa) of the Planning and Development Act 2000, 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 faithfully

  
for **Director of Services**

SCANNED



## RML PLANNING

---

Rosemarie McLaughlin  
3 David Road,  
Drumcondra,  
Dublin 9  
D09H2V6  
0876787323

### REFERRAL OF DECLARATION REPORT

**Section 5(3) Planning and Development Act 2000 as amended.**

**Sallypark, Latteragh, Nenagh, Co. Tipperary**

**Tipperary County Council Reference S5/22/26**



DOCUMENT CONTROL SHEET			
Project Name	Section 5(3) Report. Referral on declaration		
Project Ref.	A202		
Prepared/Date	RML 12/4/202		
		Date	Comment
Revision	0	12/4/21	<i>Client review</i>
	1	21/4/21	<i>Final</i>

#### Confidentiality Statement

This report has been prepared for the exclusive use of the commissioning party and unless otherwise agreed in writing by the author Rosemarie McLaughlin, no other party may copy, reproduce, distribute, make use of, or rely on the contents of the report. No liability is accepted for any use of this report, other than for the purposes for which it was originally prepared and provided. Opinions and information provided in this report are on the basis of the author using due skill, care and diligence in the preparation of the same, and no explicit warranty is provided as to their accuracy. It should be noted and is expressly stated that no independent verification of any of the documents or information supplied to the author has been made.



## TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1	Summary of decision of Planning authority .....	2
1.2	Summary of referral on declaration.....	2
<b>2</b>	<b>SITE LOCATION AND OPERATIONAL DESCRIPTION.....</b>	<b>3</b>
2.1	Site location and context.....	3
2.2	Environmental context.....	6
2.3	Operational description and impact on adjacent property .....	6
2.4	Planning history.....	8
<b>3</b>	<b>RELEVANT PLANNING POLICY.....</b>	<b>9</b>
3.1	Noise.....	9
3.2	Lighting.....	10
3.3	Wastewater .....	10
3.4	Stormwater.....	10
3.5	Natura 2000 Sites and Protected Species .....	10
3.6	Tourism.....	11
3.7	Inland waters and riparian zones .....	11
3.8	Water framework.....	11
3.9	Strategic road network.....	11
3.10	Development management .....	11
3.11	Natural heritage .....	12
<b>4</b>	<b>LEGISLATIVE PROVISIONS AND APPLICATION .....</b>	<b>12</b>
4.1	Relevant legislation .....	12
4.2	Interpretation and definitions – primary legislation.....	12
4.3	Interpretation and definitions - secondary legislation .....	14
<b>5</b>	<b>SECTION 5 APPLICATION .....</b>	<b>15</b>
5.1	Does a question arise? .....	15
5.2	Is or is not development.....	15
5.3	Works .....	16
5.4	Material change in the use of any structures or other land .....	16
<b>6</b>	<b>CONTRAVENTION OF DEVELOPMENT PLAN NOT PERMITTED .....</b>	<b>16</b>
6.1	Nenagh Local Area Plan 2013-2019 .....	20
<b>7</b>	<b>APPROPRIATE ASSESSMENT .....</b>	<b>20</b>



<b>8</b>	<b>APPLICATION OF RELEVANT EXEMPTED PROVISIONS / ASSESSMENT OF RESTRICTIONS .....</b>	<b>25</b>
8.1	Potential Exemptions under PDA2000.....	25
8.2	Potential exemptions under PRR2001 .....	26
8.3	Schedule 2 PDR2001.....	30
<b>9</b>	<b>PART 8 .....</b>	<b>31</b>
<b>10</b>	<b>ENVIRONMENTAL IMPACT ASSESSMENT .....</b>	<b>32</b>
<b>11</b>	<b>CONCLUSION AND RECOMMENDATION .....</b>	<b>33</b>

**Appendix 1** Email correspondence

**Appendix 2** Freedom of Information document

**Appendix 3** Spreadsheet on Freedom of Information queries

**Appendix 4** Planning history document







## 1 Introduction

On behalf of my clients Mr Michael Power and Ms Margaret Ryan of Sallypark, Latteragh, Nenagh, Co. Tipperary, E45 WR64, and pursuant to section 5(3)(a) of the Planning and Development Act 2000 as amended, this is a referral of a declaration by a Tipperary County Council dated 4<sup>th</sup> April 2022, for review by the Board, in relation to a question that arises as to what, is or is not development or is or is not exempted development at a site of former public house with residential accommodation and football pitch (on an overall site of c. 1.32 ha) at Seanins, Sallypark, Latteragh, Nenagh, Co Tipperary.

The question that was stated is as follows.

*“Whether the **change of use and works** on the site of former public house with residential accommodation and football pitch purchased by Tipperary County Council (on an overall site of c. 1.32 ha) at Seanins, Sallypark, Latteragh, Nenagh, Co Tipperary, E45 EE61, into a Council depot and offices is development and is or is not exempted development?”*

*In the interest of clarity and to ensure all matters are considered, including the cumulative development on the site, the known changes of use and works are itemised for the assistance of the planning authority in making a determination.*

*The **change of use** relates to the following.*

- (a) Change of use of site of former public house with residential accommodation into site for receipt, storage and distribution/transport of quarrying materials.*
- (b) Change of use of site of former public house with residential accommodation for receipt, storage and distribution/transport of waste materials.*
- (c) Change of use of site of former public house with residential accommodation to parking of articulated trucks, other heavy and light vehicles and cars.*
- (d) Change of use of site of former public house with residential accommodation building to offices and staff facilities.*
- (e) Change of use of site of former public house with residential accommodation to a facility for cleaning of vehicles (including those used for tar).*
- (f) Change of use of site of former public house with residential accommodation to facility for storage and distribution of various materials used by Tipperary County Council.*
- (g) Change of use of formerly open land to enclosed land.*

*The **works** relate to the following.*

- (h) Erection of steel galvanized fencing c 2.6 m high.*
- (i) Creation of new access and set back into site from Local road L6154 (access measures c. 6.5 m).*
- (j) Erection of four c. 9 m high floodlights.*
- (k) Erection of two connected container structures c. 52 sqm with a c. 4.5 m canopy.*
- (l) Erection of concrete slab c. 528 sqm for the purpose of storing materials.*
- (m) Works to former public house and residential accommodation.*
- (n) Piping of surface water into Nenagh river from subject site that stores and distributes waste materials and quarry content and where site includes the use of fuels, oils, lubricants, etc associated with the use.*



*Please note the reference to the former public house also includes the permitted car park to the rear (Planning Ref. 5111625)."*

Please note clarification on the question above.

The Planning Authority in the planning report do not consider that any waste is or has been stored on the site and this is disputed by the referrers.

The Planning Authority in the planning report do not consider that a new entrance was created and this is disputed by the referrers.

One high lighting standard has been erected, flood lights have been placed on the rear of the existing building and excavation and wiring has taken place for a second lamp standard.

Since making the section 5 reference, the Council have constructed a new footpath adjacent to the Local Road L6154.

Since making the section 5 reference, the Council have placed some new early planting inside the fencing.

### 1.1 Summary of decision of Planning authority

The following is the conclusion of the Council decision.

*"Tipperary County Council has concluded that:*

*The **change of use and works** on the site of former public house with residential development and football pitch located at Sallypark, Latteragh, Nenagh, Co. Tipperary into a council depot and offices used by Tipperary County Council is development within the meaning of the Planning and Development Act 2000, as amended and **is exempted development** pursuant to Section 4 (1) (aa) of the Planning and Development Act 2000, as amended."*

### 1.2 Summary of referral on declaration

It is submitted that Tipperary County Council have not correctly interpreted the relevant legislation in making the declaration and the change of use and works that have taken place are development and are not exempted development having regard to the following:

- a) Sections 2, 3, 4, 5, 177U, 178 and 179 of the Planning and Development Act, 2000, as amended including Part XAB;
- b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended;
- c) Parts 1 and 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended;
- d) The European Communities (Water Policy) Regulations 2003 as amended;
- e) The provisions of the Tipperary County Development Plan 2010 as amended;
- f) The provisions of the Nenagh Local Area Plan 2013-2019 as varied;
- g) The hydrological pathway of the Nenagh River to a Special Area of Conservation;
- h) The permitted Part 8 development in the vicinity of the site;
- i) The quarry in the vicinity of the site;
- j) The Water Framework Directive and status assigned to adjacent rivers;
- k) The purchase of the site and the monies expended to date;
- l) The submissions below and the impact on neighbouring property;
- m) The nature of the uses and works previously and currently on site;



- n) The Planning history on the site;
- o) The location of the site and the pattern of development in the area;
- p) The proper planning and sustainable development of the area.

In summary, the development that has occurred is not exempted development for several reasons which are detailed in the following sections of this report. The main reasons for the referral of the declaration are as follows.

- The change of use and works materially contravene the County Development Plan in contravention of section 178 of the Planning and Development Act, 2000 as amended and the Nenagh Local Area Plan.
- The development is not exempted development pursuant to section 4(4) of the Planning and Development Act, 2000 as amended as an appropriate assessment is required owing to the nature of the development and where the specific site conditions result in run-off to the Nenagh River which is a pathway to a Special Area of Protection and where the ground water vulnerability is designated as “*extreme*” and the river waterbodies risk projection is “*at risk*”.

In addition to the development not being exempted development under the primary legislation, the development fails to be excluded from the Part 8 process under the Planning and Development Regulations 2001, as amended for the following reasons.

- The development exceeds Euro 126,000.
- The development forms a new access onto a public road.
- The development fences and encloses lands habitually opened to the public for recreation purposes.
- The development endangers public safety by reason of traffic hazard or obstruction of road users.
- The development contravenes a previous condition.
- No change of use classes apply in the Planning and Development Regulations 2001 as amended.

## 2 Site location and operational description

### 2.1 Site location and context

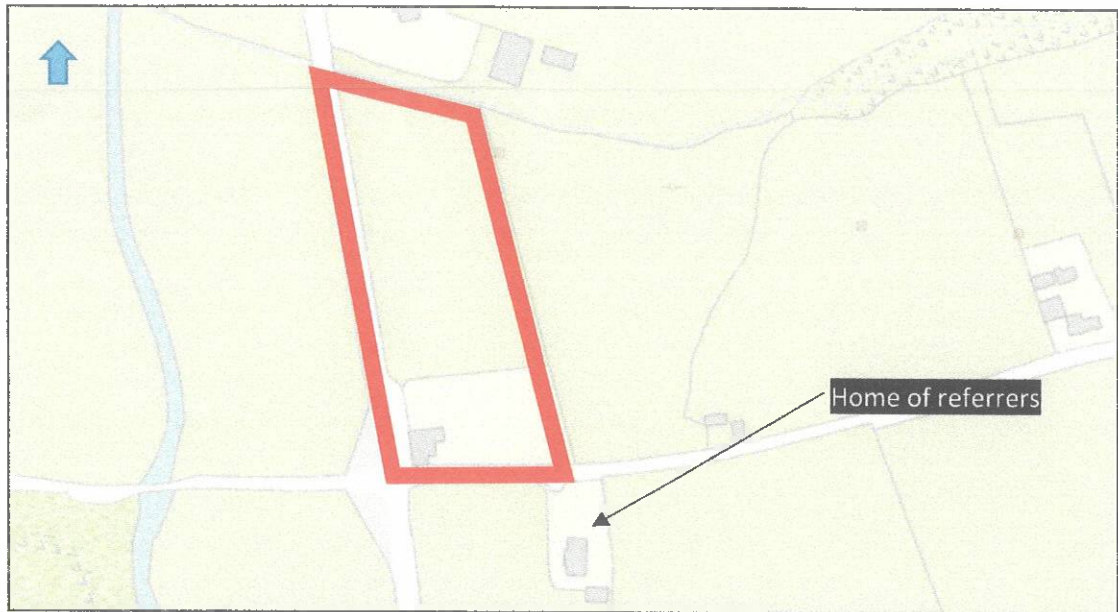
The site is located on the eastern side of the Regional Road 498 (Nenagh to Thurles) c 12 km south-east of Nenagh and is a rural area. The subject site is broadly rectangular in shape and measures c. 1.32 ha.

The site is bounded to the west by the R498 and to the south by a Local Road L6154. Directly opposite this local road is the family home of Mr Power and Ms Ryan who are making this section 5(3) referral. To the east of the site are adjacent agricultural lands. The site is bounded to the north by Sallypark Stream that flows west into the Nenagh River. The stream and river are part of the EPA Code IE\_SH\_25N010200, **NENAGH\_030**. The water framework directive status of this watercourse 2013-2018 has fallen to “moderate” in the last monitoring record and the category of river waterbodies risk projection is “at risk”. The site slopes gently from east to west. An open ditch bounds the site on the regional road with the exception of the former public house area.



A large operational quarry is located c 300 m to the east of the subject site.

Fig. 1 Site location Source: MyPlan



The folio reference is TY24261F and Tipperary County Council of Civic Offices, Clonmel, County Tipperary is registered as the full owner from 20<sup>th</sup> September 2020.

The last use on the site was residential and prior to that public house with residential above. The site also incorporates a previously used Irish Football Association (IFA) football pitch. Historical maps indicate this was the site of Latteragh Post Office.

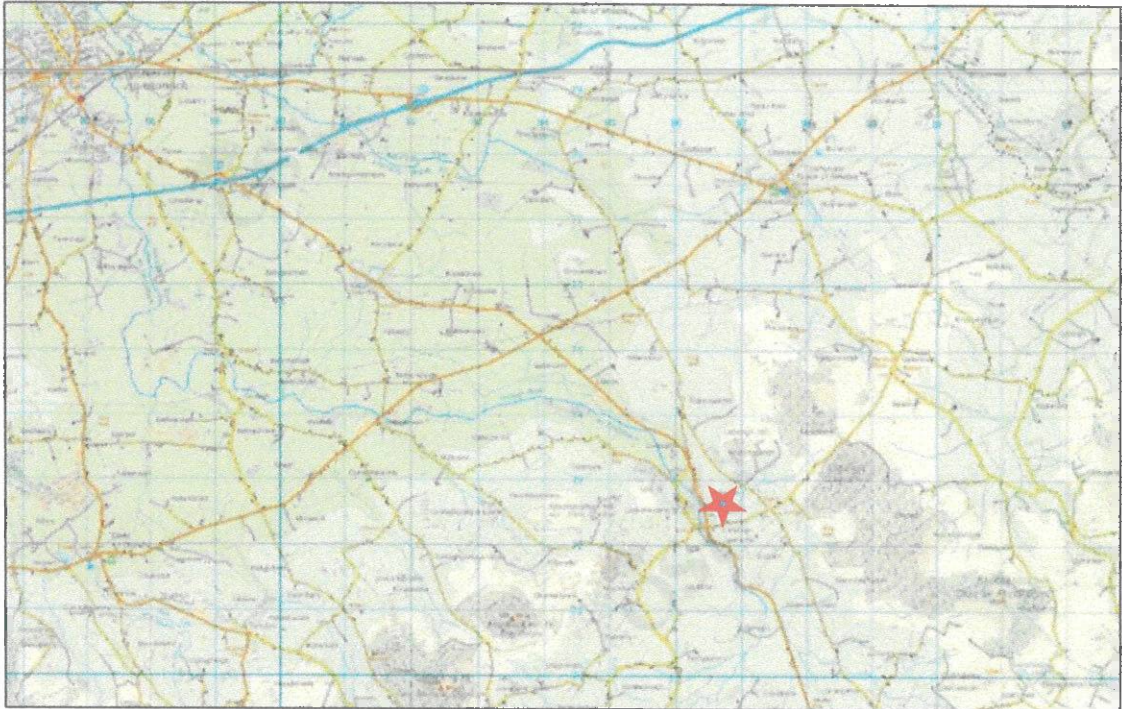
Works have been carried out to the former public house. New fencing and gates have been erected. A new access has been formed with gates onto the local road. Double gates within the fencing have been provided into the former football field. A new footpath has recently been constructed (since the section 5 was made to the Council).

The Local Road bounding the south of the site forms part of the Ormond Way hiking trail which connects from the Latteragh Crossroads to the Nenagh River. This route is way marked and forms part of the of the Beara-Breifne way.

<https://www.sportireland.ie/outdoors/walking/trails/ormond-way>



**Fig. 2** Site location context: Source MyPlan



**Plate 1** Seanin's pub for sale



**Plate 2** Works carried out by Tipperary County Council to strcuture and change of use





## 2.2 Environmental context

Subsoils on the site are identified on EPA mapping as Alluvium undifferentiated and Sandstone and shale till (Lower Paleozoic).

The Aquifer Category is PI, Category Description *Poor Aquifer - Bedrock which is Generally Unproductive except for Local Zones*.

Ground water vulnerability is designated as *Extreme* in GSI mapping.

The site is bounded by what is known as the Sally Park stream (**NENAGH\_030**) on the northern boundary. That flows into the Nenagh river (**NENAGH\_030**) which is less than 100 m to the east of the subject site which is within the catchment of the Lower Shannon. See figure 3.

The ecological status of **NENAGH\_030** has been reduced to moderate from good in the last assessment River Waterbody WFD Status 2013-2018IE\_SH\_25N010200. The WFD projection is *AT RISK*.

There is a hydrological connection between the subject site (northern boundary) and Lough Derg (Shannon) Special Protection Area (SPA) (Site Code: 004058) and the Lower River Shannon Special Area of Conservation (SAC) (Site Code: 002165) via the Sallypark Stream which is part of the Nenagh River. The salmon population of the SAC are known to spawn in the Nenagh River.

**Fig. 3** Site outlined in red (approximate). Source EPA. Watercourse in red.



## 2.3 Operational description and impact on adjacent property

The site currently operates as a Council depot, offices, staff facilities, vehicle parking, vehicle washing, storage of road sweeping waste collected by Council and distribution thereafter, storage of quarry materials and other materials and distribution thereafter. The site contains a new structure (two new containers connected with a canopy), new boundary fencing, new access off L6154, new lighting, new concrete pad, and ancillary works. The c 528 sqm concrete



slab is c 33 m from the referrers house and c 6 from the boundary of the property. Surface water is discharged into the ground and to the Nenagh River from the site (see gully at entrance).

Correspondence from the Council to the referrers (email dated 6th May 2021) states that the depot may be used at nights and/or weekends in addition to daytimes/weekdays. There are no restrictions on the hours of operation. See appendix 1.

The Planning report that based the declaration includes the following statement as to the current arrangement at the Council Depot.

*"Nenagh Municipal District have confirmed the following works were undertaken following the purchase of the lands:*

- *The site was developed into a works depot for the Nenagh Municipal District South-East Area. There are 7 outdoor staff assigned to the depot.*
- *The existing building was modified internally to provide showers, changing room and kitchen for the staff. The windows were replaced and heating system improved.*
- *The compound was secured with fencing and a concrete slab cast for the storage of bulk road making materials.*
- *The depot is used for the storage and distribution of road making materials and construction materials.*
- *The depot is used by commercial and private vehicles.*
- *Occasional cleaning of vehicles occurs.*
- *The access to the site was improved.*
- *floodlights were erected for site security and safety*
- *containers with a canopy were placed on site and used in connection with the site use as a Council depot.*

*Nenagh Municipal District have confirmed the expenditure on the works undertaken at the site to be €113,968.48 (note this figure includes minor maintenance works). Nenagh Municipal District have confirmed that a new entrance was not developed (existing entrance that previously served the pub was used and improved) and that piping of surface water into the Nenagh river was/is not undertaken."*

Please note that the works outlined above in the planning report quoted above are different to the email from the Director of Roads to the referrer on 6 May 2021, please see Appendix 1 where it states *"It was purchased so that it could be used as a compound for the contractor constructing the new section (4.3km) of the Nenagh – Thurles road at Latteragh and also in the longer term as a roads depot for Tipperary County Council."*

The Director in the email reiterated the intention for the site and went on to state *"An Bord Planala confirmed the road scheme and it is anticipated that we will have a contractor on site to work on this badly needed road improvement towards the middle of next year(2022). The works are anticipated to last for about 2.5 to 3 years and there is no doubt that the depot/compound will be busy during this period. We do not anticipate that there will be night works but the contractor is likely to work long hours during the construction period."*

The statement above is noted and is further addressed in section 8 below as all the figures for the site have not been provided.

### **2.3.1 Impact from development on referrers**

It is noted the Board is not assessing the development that has taken place in terms of planning merit. The following information is to provide context of the development and the impact on



neighbouring property and is relevant to the provisions of the application of the County Development Plan.

The operations on the site create ongoing considerable noise levels owing to the tipping of quarried materials and heavy vehicle movements on the site. The noise levels have been measured by Mr Power with a decibel reader as 80DbA. The noise levels are also continuous from articulated vehicles and from reversing alarms. The noise continues into the late evening. The noise is so loud, so continuous, so repeated, and of such duration and pitch that it is unbearable to them and has damaged the residential amenity of both inside and outside of their home. The noise is occurring at such times that is a severe nuisance and annoyance. The noise levels are causing harmful negative effects on the human health of the referrers and their children in that the noise disturbs sleep, study, play and general normal residential activity. The previously quiet area in open country that was undisturbed by noise has been transformed by the activity and processing that is being carried on the subject site.

The operations generate significant dust from the materials dumped on the site from articulated vehicles and in the removal of same from the site.

The operation created a significant nuisance of light spillage into the home and garden from the high-level, lighting and standard. These lights have been on sensors causing ongoing light pollution. After ongoing complaints from the referrers, the sensor lighting is currently turned off but remains on site and can be reactivated. Please see plate 3.

The planning report states that *"The lands are not used for the disposal of waste."* My clients contend that the operation retain waste materials from road cleaning vehicles stored on the site. The mounds are then removed (presumably but it is unknown to which licensed place of disposal). Please see plate 4.

The site creates a traffic hazard and obstruction of road users owing to the queuing of articulated and other vehicles on the regional and local road. Vehicles arrive when the site is not open and must park on the road or in the layby at the referrer's home. This is exacerbated by the location of a local school bus stop opposite the subject site where parents also park to collect children. Prior to the current development, parents parked at the rear of the premises which was open and not fenced. This surfaced area to the rear of former pub was also used for parking in relation to the football pitch activities. This impact on residential amenity has not been addressed in the planning report.

## 2.4 Planning history

*Tipperary Planning Ref. 5111625.*

Permission was granted in 1985 for an extension to the licenced premises and a car park.

The conditions are relevant to the assessment by the Board as Art 9. (1)(a)(i) of the PDR2001 provides development to which article 6 relates shall not be exempted development where such would contravene a condition attached to a permission. In this case there are clear conditions regarding the boundary wall and the access to the site which are at significant variance to the recent works carried out. See appendix 4.



Fig.4 Extract from Planning Ref. 5111625

THE FOLLOWING REASONS:-

CONDITIONS	REASONS
(1) A 1.0 m. high post and chain fence to be provided along the line A - B as shown on the attached 1:2500 map.	(1) In the interest of traffic safety.
(2) The existing high ditch shown B - C on the attached 1:2500 map to be cut and maintained to a maximum height of 1.0 m.	(2) In the interest of traffic safety.
(3) The existing boundary wall abutting the minor road, as shown X - Y on the attached 1:2500 map, shall be removed. A new wall maximum height 1.0 m. shall be erected and recessed 3 m. from the line of the existing wall.	(3) In the interest of traffic safety.
(4) The entrance to the car park to be recessed 5 m. with wing walls splayed at 45 degrees. The maximum height of said walls to be 1.0 m.	(4) In the interest of traffic safety.

### 3 Relevant planning Policy

The North Tipperary County Development Plan 2010 as varied applies at the time of writing this report and at the time of the planning authority decision on the question. The North Tipperary County Development Plan 2010 as varied applied at the time of change of use and works that took place and therefore is the applicable plan for assessment purposes unlike a section 34 planning application or strategic development assessment. This is analogous to assessing exempted development against the Act and Regulations that were in place at the time the project was carried out.

The draft plan is currently in public consultation on proposed material amendments (until May 22<sup>nd</sup> 2022, stage 3).

#### 3.1 Noise

The County Plan 2010 as varied provides the following.

*"Noise pollution not addressed in the Noise Action Plan may arise as a result of development including quarries, industrial facilities and wind turbines etc. The Council will manage noise emissions that may arise from such developments through the planning process and in line with the relevant guidelines and standards for such developments. A noise impact assessment may be required in support of such developments."*



**Policy TI12: Noise Emissions.** *It is the policy of the Council to ensure that new development does not result in significant noise disturbance and to ensure that all new developments are designed and constructed to minimise noise disturbance in accordance with the provisions of the Noise Action Plan 2013, the Development Management Standards set out in Chapter 10 and relevant standards and guidance that refer to noise management."*

The Noise Action plan has been updated (2018) and includes the following statement "Tipperary County Council will seek to address environmental noise from major roads in the county, will endeavour to maintain satisfactory noise environments where they exist and will have regard to acoustical planning in the planning process (within the confines of the Planning and Development Act, 2000 as amended) to endeavour to ensure that future developments include provisions to protect the population from the effects of environmental noise in the interests of residential amenity and public health."

### 3.2 Lighting

*"The Council recognises the need for artificial lighting as a means to contribute to a safe and secure night-time environment; however, the Council also recognises the impacts of light pollution, glare and light spillage and its impact on the visual, environmental and residential amenities of surrounding areas.*

**Policy TI13: Light Pollution.** *It is the policy of the Council to ensure that new development does not result in significant disturbance as a result of light pollution and to ensure that all new developments are designed and constructed to minimise the impact of light pollution on the visual, environmental and residential amenities of surrounding areas in accordance with the provisions of the Development Management Standards set out in Chapter 10."*

### 3.3 Wastewater

**"Policy TI7: Wastewater Treatment and Disposal in Settlement Centres**

[.....]

*The Council may consider, on a site specific basis, on-site waste water treatment proposals in cases where a connection to a municipal treatment plant has been demonstrated to be unfeasible or in settlements which are not served by treatment plants. Developments shall be subject to the criteria set out below: (a) Small Business, Community and Public Developments: the development shall be served by an on-site treatment system which demonstrates compliance with the Waste Water Treatment Manual: Treatment System for Small Communities, Business, Leisure Centres and Hotels, EPA, 1999 (or any amendment thereof)"*

### 3.4 Stormwater

**"Policy TI9: Storm Water Disposal.** *It is the policy of the Council to require the implementation of Sustainable Drainage Systems (SuDS) as an integral part of the design of new developments to reduce the generation of storm water run-off, and to ensure that all storm water generated is disposed of on-site or is attenuated and treated prior to discharge to an approved storm water system."*

### 3.5 Natura 2000 Sites and Protected Species

**"Policy LH6: Natura 2000 Sites and Protected Species.** *It is the policy of the Council to ensure the protection, integrity and conservation of existing and candidate Natura 2000 sites and Annex I*



and II species listed in EU Directives. Where it is determined that a development may independently, or cumulatively, impact on the conservation values of Natura 2000 sites, the Council will require planning applications to be accompanied by a Natura Impact Statement in accordance with 'Appropriate Assessment of Plans and Projects, Guidelines for Planning Authorities', (DEHLG 2009) or any amendment thereof".

### 3.6 Tourism

**"Policy LH4: Public Rights of Way and Way-Marked Ways** It is the policy of the Council to preserve and protect existing public rights-of-way and waymarked ways which give access to lakeshores, mountains, riverbanks or other places of natural beauty or recreational, tourism or heritage amenity, and to create new formal public rights-of-way as appropriate."

### 3.7 Inland waters and riparian zones

**"Policy LH8: Inland Waters and Riparian Zones.** It is the policy of the Council to protect the ecological status and quality of watercourses. In order to maintain the natural function of existing ecosystems associated with water courses and their riparian zones and to encourage sustainable public access to waterbodies, the Council will require an undisturbed edge or buffer zone to be maintained, where appropriate, between new developments and riparian zones of water bodies.

Having consideration to the above, new development that requires access to ecologically sensitive waters will be directed to locations where access is already available. Any development in a watercourse and/or its riparian zone will be required to take appropriate measures to ensure the protection and conservation of habitats that may be impacted on by development proposals."

### 3.8 Water framework

**"Policy LH12: Water Framework Directive and River Basin Management Plans** It is the policy of the Council to protect and improve the county's water resources and support an integrated and collaborative approach to local catchment management in order to ensure the successful implementation of the River Basin Management Plans (or any review thereof)."

### 3.9 Strategic road network

**"Policy TI3: Strategic Road Network** It is the policy of the Council to avoid the creation of any additional access points from new development or the **generation of increased traffic** from existing accesses to Strategic Routes, subject to the following policy exceptions: [.....]" *Bold my emphasise.*

The R498 is identified as a strategic route in figure 9.2 of the County plan. No exceptional circumstances arise.

### 3.10 Development management

**"Policy DM1: Development Standards** It is the policy of the Council to require proposed development to comply with the relevant standards identified in Chapter 10 Development Management Standards."



**"10.9.2 Traffic and Transport Assessments**

*The Council in accordance with the Traffic and Transport Assessment Guidelines, NRA, 2014, and any amendment thereof, will require the submission of a Traffic and Transport, Impact Assessment (TTIA) for large scale developments or developments that may impact on the carrying capacity or public safety of the road network. TTIA's will also be required where there is a 10% increase in traffic"*

**3.11 Natural heritage**

Listed View 11: 'Views north and south of the R498 from Bouladuff through Borrisoleigh to Latteragh'.

The R498 is situated between 'Secondary Amenity Areas' Slievephelim Complex to the east and Devils Bit Mountain to the west.

**4 Legislative provisions and application****4.1 Relevant legislation**

The Planning and Development Act 2000, as amended (PDA2000) and the Planning and Development Regulations 2001 (PDR2001) apply in seeking a whether a question is development and is or is not exempted development.

**4.2 Interpretation and definitions – primary legislation**

Section 2 of the PDA2000 provides statutory interpretations relevant to a section 5 referral as follows:

**"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;

**"exempted development"** has the meaning specified in section 4;

**"industrial building"** means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

**"industrial process"** means any process which is carried on in the course of trade or business, other than agriculture, and which is—

- (a) for or incidental to the making of any article or part of an article, or
- (b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph,

[.....]

**"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 use"** means, in relation to land, use commenced on or after 1 October 1964, being a use which is a **material change in use of any structure or other land** and 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 [ .....]

**"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) [ .....]

**"use"**, in relation to land, does not include the use of the land by the carrying out of any works thereon;

**"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. (Bold my emphasis).

Section 3 of the PDA2000 defines development as follows:

3.—(1) In this Act, "development" means, except where the context otherwise requires, the carrying out of **any works on, in, over or under land or the making of any material change in the use of any structures or other land.**

Section 4 of the PDA2000 relates to the exempt development categories and those that may be relevant to this referral are as follows:

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

[ ..... ]

**(aa) development by a local authority in its functional area;**

[ ..... ]

(e) development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road;

(f) development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;

[ ..... ]

(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;

[ ..... ]



Section 5 of the PDA2000 provides the details of the process of a declaration and referral on development and exempted development and facilitates a review by An Bord Pleanála of the determination.

*"5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter."*

The declaration may be referred to the Board under section 5(3) of the PDA2000 as in this case. Restrictions on development by local authorities is provided in the Act.

Section 178 (1) (a) of PDA2000 states, *"The council of a county shall not affect any development in its functional area which contravenes materially the development plan."*

Section 179 (1)(a) provides for regulations where the *"The Minister may prescribe a development or a class of development for the purposes of this section where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such development or class of development there should, in relation to any such development or development belonging to such class of development, be compliance with the provisions of this section and regulations under this section."* (Bold my emphasis).

Section 4(4) of the PDA2000 provides that development shall not be exempted from development if an EIA or an AA of the development is required.

(bold my emphasis)

#### 4.3 Interpretation and definitions - secondary legislation

Pursuant to Article 80 of the PDR2001 as amended provide a number of prescribed classes of development, referred to as "proposed development", for the purposes of section 179 of the Act and the relevant subsections include:

[.....]

(h) the use of land, or the construction or erection of any installation or facility, for the disposal of waste, not being—

(i) development which comprises or is for the purposes of an activity in relation to which a waste licence is required or

(ii) development consisting of the provision of a bring facility which comprises not more than 5 receptacles

[.....]

(k) any development **other than those specified in paragraphs (a) to (j)**, the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.

(Bold my emphasis).

Any development by a Local Authority where an EIA or an AA is required, follows a Part X process to An Bord Pleanála. Local Authority own development where an EIA or AA is not required and comes within the classes in Article 80 follows the Part 8 process of public consultation.



#### 4.3.1 Restrictions on exemptions

In addition to the restrictions on the exemption in the PDA2000, namely Section 178 (1) where the council of a county shall not affect any development in its functional area which contravenes materially the development plan, a number of other restrictions on exemptions apply.

Section 4(4) provides an exemption does not apply if an Appropriate Assessment is required.

Article 6 of the PDR2001 provides that subject to the restrictions on exemptions in Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development, provided that such development complies with the conditions and limitations specified in column 2. Article 9 of the PDR2001 provides restrictions on exemptions and Article 10 provides development that consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development subject to a list of restrictions.

Article 9(1) includes the following relevant criteria where if the carrying out of such development would— (bold my emphasis)

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (ii) *consist of or 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,*
- (iii) *endanger public safety by reason of traffic hazard or obstruction of road users,*
- (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,*
- [....]
- (x) *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

## 5 Section 5 application

### 5.1 Does a question arise?

Applying section 5 of the PDA2000, in this case, it is submitted that a **question** has arisen. The Planning Authority have responded to the question. The referrer considers that the change of use and works that have taken place on the site is development, is not exempted development for the reasons outlined below (and is a material contravention of development plan policies.)

### 5.2 Is or is not development

Section 3 of the PDA2000 provides that “development” means, 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**. This referral is considered development pursuant to the definition in relation to works and change of use as below. It is considered new development that has taken place without any planning process. (Bold my emphasis)



### 5.3 Works

The relevant interpretation of “works”, “alteration” and “use” are outlined above in section 4.2 above.

“Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.” The Council purchased the site and constructed the following:

- Fencing and gates
- Lighting
- Concrete slab
- Two containers with a canopy
- New entrance and gates
- Alterations to building

There can be no doubt that **development has been carried out** pursuant to section 3 of the PDA2000. If the internal works to the existing structure may or may not be considered alterations that are consistent with the character of the structure but this does not include the change of use, see section below.

### 5.4 Material change in the use of any structures or other land

The changes of use are outlined in section 1.

In summary, a change of use from public house including car park/residential use and football pitch has occurred to the following:

- Office and staff facility
- Storage and distribution of quarry material
- Storage and distribution of waste material (the Council denies any waste is stored on site)
- Storage and distribution of other materials relating to Council works
- Vehicle parking and vehicle cleaning
- Enclosures from open lands to enclosed lands

There can be no doubt that **development has been carried out** pursuant to section 3 of the PDA2000.

## 6 Contravention of development plan not permitted

In the submission to the Planning Authority, the reference specifically raised this issue that a local authority shall not materially contravene the development plan. The planning report does not respond to the legislative imperative that the “*The council of a county shall not affect any development in its functional area which contravenes materially the development plan.*” The planning report quotes section 179 of the Planning and Development act 2000 as amended but fails to quote the preceding section 178.

A single sentence in the planning report states “*I have reviewed the policies and objectives of the North Tipperary County Development Plan 2010, as varied and I am satisfied the development does not materially contravene the North Tipperary County Development Plan 2010, as varied.*”



The overarching principle of local authority own development is that the local authority may never contravene materially the development plan. This is emphasised by the mandatory requirement of “shall not”.

In *Carman’s Hall Community Interest Group & Ors V Dublin City Council* [2017] IEHC 544, the High Court noted in its ruling, that even where works constitute exempt development, and even if an emergency situation for the purposes of Section 179(6)(b) of the Act occurs, that does not entitle the local authority to undertake development in contravention of its own development plan. The Court considered that there is an obligation on the local authority to consider whether or not a proposed development contravenes the Plan. This has not been considered in the planning report or in the reasons for the decision. The duty to give reasons is long established.

Recent jurisprudence that has evolved over the strategic housing developments has illustrated a light trigger for the material contravention of the Development plan. This position has been adopted by An Bord Pleanála who regularly have refused development on the grounds that development materially contravenes a development plan and such has not been advertised in accordance with the regulations. This has been informed by the numerous judicial review proceedings on the issue of material contraventions of development and local plans. The Courts and the Board have taken strict interpretations of matters materially contravening a Development Plan.

The relevant development plan provisions are outlined in detail above in section 3.

It is submitted that the change of use and works that have occurred on the site **materially contravene** the development plan. A summary table is provided below which assesses the relevant policy against the developments carried out.

In ABP-308540-20 Reference, the Inspector albeit in a different set of circumstances to the instant case stated, “*Therefore Section 4(1)(f) is limited by the operation of Section 178 of the Act.*” In the instant case, the planning authority conclude that development “*is exempted development pursuant to Section 4 (1) (aa) of the Planning and Development Act 2000, as amended*” yet they failed to address in the planning report the operation and applicability of Section 178 of the Act and the relevant specific policies therein.

**Table 1** Application of County Development Plan policy to subject site.

Policy	Application to the subject site
TI12 Noise	See section 3.1. In summary, the noise is so loud, so continuous, so repeated, and of such duration and pitch that is unbearable to the referrers and their family and has damaged the residential amenity of both inside and outside of their home. The referrers have made submissions to the local authority about the impacts from noise. It is considered that a material contravention has occurred.
TI13 Light pollution	See section 3.2. In summary, the operation creates a nuisance of light spillage into the home and garden from the high-level, lighting. These lights have been on sensors causing ongoing light pollution. The referrers have made repeated attempts with the Council to have this matter resolved and presently while the sensor lighting is not on, the light standards and lighting have not been removed and the neighbouring properties have no protection from the lighting be re-activated. Please see plate 3 below. It is considered that a material contravention has occurred.



TI17 Wastewater disposal	<p>The site is not served by a treatment plant and therefore TI17(a) applies to "Public Developments". The refers have sought information about what development has taken place on the site but there does not appear to be any improvement in the old septic tank arrangement that served the site has not been upgraded.</p> <p>If this was a private development, would the Council seek any changes in accordance with this objective? If so, has that standard been applied in the instant case? As it has not been applied, a material contravention has occurred.</p>
TI19 Stormwater disposal	<p>New development has occurred on the site. Surface water which is now significantly different in composition to the situation before the council developed the site is discharged from the site to ground upslope of the Nenagh river and and via a gully at the entrance on the road where the trucks idle while waiting to enter the site into the Nenagh river. No SUDs have been developed on the site. The Planning report states <i>"The District Engineer has confirmed the surface is unbound and water drains freely into the subgrade. It is noted there is one road gully on the public road outside the entrance which drains water from the road to the nearby River Nenagh. No drainage works have been carried out on the site to date."</i> A drain bounds the regional road and the Sally Park stream the northern boundary.</p> <p>The site is used for heavy machinery and vehicles that use tar have been cleaned on the site. This is confirmed in the planning report. The site stores and distributes quarry and other materials in an open format. (The Planning report states no waste is on site). A new large concrete stand has been placed on the site. The change of use on the site is significant and has significant environmental impacts. The policy to ensure that all storm water generated is disposed of on-site or is attenuated and treated prior to discharge to an approved storm water system has not been implemented despite the nature and use of the site. Surface runoff from the car park and new concrete slab/ footpath with significant intensification of use and type of use will wash into the watercourse.</p> <p>A Guide to the Protection of Watercourses through the use of Buffer Zones, Sustainable Drainage Systems, Instream Rehabilitation, Climate / Flood Risk and Recreational Planning A Guideline Developed by Inland Fisheries Ireland 2021 has not been incorporated into the Draft Development Plan.</p> <p>It is considered that a material contravention has occurred.</p>
LH6: Natura 2000 Sites and Protected Species	<p>It is the policy of the Council to ensure the protection, integrity and conservation of candidate Natura 2000 sites. The policy requires a determination that if the development "independently, or cumulatively, impact" on the conservation values of Natura 2000 sites, the Council will require planning applications to be accompanied by a NIS. This issue is dealt with in detail in section 7. The proposed development owing to its location and pathway to a Natura 2000 site requires an NIS. The Council as the CA did not assess the development correctly and a material contravention has occurred.</p>
LH12 Water framework	<p>It is the policy of the Council to protect and improve the county's water resources. The AA screening in the planning report states twice <i>"Potential for development to impact on water quality in Nenagh River and SAC is limited"</i>.</p>



	<p>The Planning report does not address, dust, groundwater contamination, runoff etc.</p> <p>The new development in the absence of mitigation does not protect and improve the water resources. Article 4(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishes a framework for Community action in the field of water policy – the Water Framework Directive (“WFD”) i.e. to ensure non-deterioration and the achievement of good surface water status when granting approval for a development affecting a surface water body.</p> <p>Article 4 (1)(a) of the WFD provides, inter alia, that for surface waters:  “(i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water...  (ii) Member States shall protect, enhance and restore all bodies of surface water... with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V ...”</p> <p>The obligations under the WFD have not been taken into account. The duty is on the local authority to carry out the assessment under the WFD. The nature of the change of use and works that have taken place, the absence of SUDs and impact on the 2 arms of the rivers have not been addressed. The Council confirmed in the planning report that no drainage works have taken place.</p> <p>The planning report states <i>It is noted there is one road gully on the public road outside the entrance which drains water from the road to the nearby River Nenagh.</i> An examination of the folio shows this gully within the boundary of the site.</p> <p>The change of use of the site to one with ongoing use by heavy vehicles, cleaning of vehicles, increased hard surfacing (new concrete slab/ new footpath), the nature of the materials openly stored causes polluted surface water to be discharged from the site and the road into the watercourses. The WFD established a legal obligation to protect and restore the quality of European water bodies.</p> <p>It is considered that a material contravention has occurred and a breach of the WFD.</p>
T13 Strategic road network Policy DM1 / section 10.9.2	<p>The new development generates considerably increased traffic to a designated strategic route. No exceptional circumstances arise. Further this is a designated way marked walking route (Ormond Way).</p> <p>It is considered that a material contravention has occurred.  This new large-scale development requires a TTIA.  It is considered that a material contravention has occurred.</p>
LH4: Public Rights of Way Way-	<p>The Ormond Way which is a marked way, is located on the part of the site that has been fenced and a new access was created to the development. The walking route was previously a lightly trafficked rural road. It is considered that a material contravention has occurred.</p>



Marked Ways	
----------------	--

Plate 3 Illustration of high-level lighting on site from sitting room window of referrers



#### 6.1 Nenagh Local Area Plan 2013-2019

The Nenagh LAP is not indicated on the Council website as being extended but the planning authority and the Board are currently assessing development against it and therefore it is assumed to apply. While the subject site is outside the boundary, objectives extend to the Nenagh river and tributaries as below.

*Strategic Objective 7: To ensure that the water quality of the **Nenagh River and its tributaries**, groundwater and public sources of drinking water are improved and protected from pollution.*

The development that has occurred does not secure the WFD status of the Nenagh river as assigned and increases the risk of pollution. A material contravention of the LAP has occurred.

### 7 Appropriate Assessment

Section 4(4) of the PDA2000 provides that development shall not be exempted from development if an EIA or an AA of the development is required.

The correspondence to the referrers indicates that no planning processes were carried out in relation to this project in advance of the development. No AA screening has been carried out by the Planning Authority as Competent Authority (CA) in advance of the project being carried out. The AA screening on the section 5 reference is not the same as the requirement for an AA screening in advance of a project. Further, the AA screening on the section 5 only relates to the question asked, not the entire project as envisioned by the Council on the entire site as that is



unknown the referrer but is loosely described in the correspondence. It may be noted that the Council are selling three existing depots and it is reasonable to assume those uses will transfer to this site.

The High Court decision in *Carville and Ors -v-Dublin City Council [2021] IEHC 544* has set the standard for local authority own development that if development is to proceed, the requirements of the EIA Directive and the Habitats Directive must be addressed and complied with.

The Habitats Directive (92/43/EEC and the associated Birds Directive (2009/147/EC) are transposed into Irish legislation by Part XAB of the PDA2000 and the Birds and Natural Habitats Regulations 2011. The legislative provisions for appropriate assessment screening for planning applications are set out in Section 177U of the PDA2000.

The European Communities (Birds and Natural Habitats) Regulations 2011 as amended, Regulation 42(1) requires that the competent authority must carry out a screening for appropriate assessment of a plan or project, for which a public authority wishes to undertake or adopt. Further, a public authority shall carry out a screening for Appropriate Assessment **before** consent for a plan or project is given, or a decision to undertake or adopt a plan or project is taken. Section 177U of the PDA2000, *'A screening for appropriate assessment shall be carried out by the competent authority to assess, in view of best scientific knowledge, if that Land use plan or proposed development, individually or in combination with another plan or project is likely to have a significant effect on the European site'*. If significant effects cannot be excluded based on objective information by the CA, without extensive investigation or the application of mitigation, a project should be considered to have a likely significant effect and appropriate assessment should be carried out.

An AA screening should take into account the direct, indirect and in-combination impacts. The Board should be aware that there is a large quarry c. 400m to the northeast of site and a consented part 8 road development including a permitted compound.

The new development that has taken place on the site has changed the nature of the site and has intensified the use of the site. The operations that are carried on include use by heavy vehicles, open storage of materials (including salt see Appendix 1) and cleaning of heavy vehicles that use tar. A question has also arisen around the use of the site for the storage of waste from street cleaning. Dust prevention measures for the tipping of quarried materials and storage of same has not been carried out.

No drainage systems have been put in place and no bunding for oil/fuel. No petrol interceptor has been put in place to protect the river or subsoils. Despite being surfaced, the planning report states the surface is unbound and *"water drains freely into the subgrade. It is noted there is one road gully on the public road outside the entrance which drains water from the road to the nearby River Nenagh. No drainage works have been carried out on the site to date."*

No dust minimization measures are on site.

The site is upslope from the Nenagh River a distance of less than 100 m to the east and is bounded but the Sallypark stream on the site to the north and an open ditch to the west.

The risk of contamination of groundwater depends on three elements:

- the source afforded by a potentially polluting activity;
- the vulnerability of groundwater to contamination;
- the potential consequences of a contamination event.



In this regard, the source is the Nenagh river which is a tributary of the Lower River Shannon SAC. The potential polluting activity is the new development on site. The vulnerability of the groundwater is *extreme* and the potential consequences are contamination of the groundwater and the pollution of the Nenagh River which is a direct hydrological pathway to the SAC and a river requiring protection under the WFD. The site is large and has only been partially developed to date. Any further development to the north of the site on the pitch will result in further development which is not a clean process to come even closer to the river. The river is categorised under the WFD at projected *at risk* and has been downgraded from good to moderate in the last assessment. Further, the site is defined as a *Poor Aquifer*.

'Suspended sediments' i.e. silt, mud or other fine sediment that becomes dissolved in water can contaminate either from rainfall or groundwater seepage from rainfall on soil/sediment stockpiles, or from the tyres / tracks of construction vehicles. Concrete and cement products are highly toxic to fauna, particularly fish and a large concrete slab has been constructed without mitigation in place.

The planning report AA screening includes the statement "*Potential for development to impact on water quality in Nenagh River and SAC is limited.*" Contrary to this, it is contended that the potential for development to impact on water quality in Nenagh River is very high given the location and nature of development, the lack of SUDs measures and the lack of bunding etc. The lack of assessment of the status of the river and the potential run off is a critical error in the AA screening. The report goes on to state that "*the site surface is permeable (in the main) and the majority of infiltration from site is to ground*" yet failed to address that the ground water vulnerability as designated. The fact that the site is considered permeable and upslope (and adjoining) the river which leads to the SAC should be a red flag in an AA screening.

The OPR Practice Note PN01 *Appropriate Assessment Screening for Development Management* 2021 advises that the zone of influence of a proposed development is the geographical area over which it could affect the receiving environment in a way that could have significant effects on the Qualifying Interests of a European site. This should be established on a case-by-case basis using the Source-Pathway-Receptor framework and not by arbitrary distances (such as 15 km).

In any other development of this nature that the planning authority would assess, it submitted that best practice would require an AA. There is considerable case law on the light trigger where significant effects are certain, unlikely or uncertain. The OPR has stated in the guidance on AA screening (2021) "*The test for appropriate assessment are based on a 'likelihood' (read as 'possibility') of a potential significant effect occurring and not on certainty. This test is based on the precautionary principle.*" The Board is requested to take the precautionary principle in this referral and determine that an AA is required.

The planning authority have completed a screening exercise that is at variance with the OPR recommended template. While it is open to the planning authority to create their own template, it is not open to the planning authority to omit a key element of an AA screening which is *the in-combination* effects based on the legislative requirements. The in-combination effects must examine plans or projects that are completed, approved but not started or uncompleted, projects proposed, i.e. for which an application for approval or consent has been made, proposals in adopted plans, and in finalised draft plans formally published or submitted for consultation or adoption. The in-combination effects at the minimum should include, the consented Part 8 new road, the quarry and the Draft Development Plan.



**Plate 4** Gully at entrance to site ( please note oil leaks on surface)



In *Eoin Kelly v. An Bord Pleanála* [2019] IEHC 84, the findings of the High Court were:

*"68. It seems to me that for present purposes, the following principles applicable to the screening stage for appropriate assessment (stage 1 screening) can be derived from Article 6(3) of the Habitats Directive, as interpreted and applied by the CJEU, and from s.177U of the 2000 Act, as interpreted and applied by the Irish courts:*

*(1) The threshold test in Article 6(3) of the Habitats Directive and s.177U (1) of the 2000 Act is that an appropriate assessment will be required if the proposed development is "likely to have a significant effect" on the protected site (i.e. a "European site" under part XAB of the 2000 Act), **either individually or in combination with other plans or projects**. That this is the threshold test is clear from the decision of the High Court (Finlay Geoghegan J.) in *Kelly* (at para. 40), as approved by the Supreme Court in *Connelly* (at para. 8.14).*

*(2) It is not necessary, in order to trigger the requirement to proceed to stage 2 appropriate assessment, that the proposed development will "definitely" have significant effects on the protected site **but such a requirement will arise if it is a "mere probability"** that such an effect exists (*Waddenzee*, para.41). This was developed by the CJEU in *Waddenzee* (at para.43) where the court stated that the requirement to carry out an appropriate assessment will be satisfied if there is a "probability or a risk" that the development will have "significant effects" on the protected site."*

*Bold my emphasis.*



**Plate 5** Discharge pipe into Nenagh river from gully at site entrance

The in-combination effects raise at least the likelihood and more than a mere probability that effects exist from the nature of the development that has taken place without any proper AA or planning processes applied in advance of the development.

Furthermore, rather than conducting an assessment of *Likely Significant Effects*, the planning authority have only assessed the *possible impacts* arising from the project. The planning authority template has not distinguished between the 'impact' which is the source ( ie Source-Pathway-Receptor) and the 'effect' which is how it relates to the conservation objectives.

**Table 2-** Example of OPR screening not adhered to

OPR template Operational phase e.g.	
	PA assessment
Direct emission to air and water	Not addressed in screening by PA despite submission
Surface water runoff containing contaminant or sediment	Not addressed in screening by PA despite submission
Lighting disturbance	Not addressed in screening by PA despite submission
Noise/vibration	Not addressed in screening by PA despite submission
Changes to water/groundwater due to drainage or abstraction	Not addressed in screening by PA despite submission
Presence of people, vehicles and activities	Not addressed in screening by PA despite submission
Physical presence of structures (e.g. collision risks)	Not addressed in screening by PA despite submission
Potential for accidents or incidents	Not addressed in screening by PA despite submission
<b>In-combination/Other</b>	Not addressed in screening by PA despite submission

The subject site may also be considered an indirect hydrological link to the Slievefelim to Silvermines Mountains SPA c 5.2 km to the east.

Where it cannot be excluded beyond reasonable scientific doubt at the Screening stage, that a proposed plan or project, individually or in combination with other plans and projects, would have a significant effect on the conservation objectives of a European site, an Appropriate Assessment is required. It is submitted that the Planning Authority have not demonstrated the "*beyond reasonable scientific doubt*" at the Screening stage and an AA is required.



The Waddenzee case C-127/02 held the precautionary principle means that where the most reliable information available leaves obvious doubt as to the absence of significant effects, the project cannot be screened out and an appropriate assessment must be carried out. The Board will carry out an AA screening as the CA on the section 5 question.

The Board is also requested to consider that only a portion of the site that has been purchased by the Council is currently being used to date yet the entire purchased site may be utilised under the Council's interpretation of the section 5 questions. Gates have been placed on the northern fencing bounding the former football field for access to that section of the site and there is a direct hydrological link from this section of the site to the SAC.

## 8 Application of relevant exempted provisions / assessment of restrictions

In the interest of providing all information to the Board, the following detail is provided.

### 8.1 Potential Exemptions under PDA2000.

The relevant potential exemptions and an assessment against the restrictions are set out below. The Board will be aware that only one of the criteria in the restrictions to exemptions needs to apply in order for development not to be exempted development.

#### 8.1.1 *Development by a local authority in its functional area*

Section 4(1)(aa) of the PDA2000 exempts development by a local authority in its functional area;

##### *Assessment*

The exemption under 4(1)(aa) does not apply because of the following.

- The development materially contravenes the several development plan policies as set out in section 3 and Table 1. The Planning Authority failed to address section 178 of PDA2000.
- The project requires Appropriate Assessment as detailed in section 7 above.

#### 8.1.2 *Local authority works required for a new road or maintenance/repair of a road*

Section 4(1)(e) PDA2000 exempts development consisting of the carrying out by a local authority of any **works** required for the construction of a new road or the maintenance or improvement of a road. This item is included owing to the conflicting statements from the Council as to the purpose of the site.

##### *Assessment*

The exemption does not apply because of the following.

- The development materially contravenes the several development plan policies as set out in section 3 and Table 1.
- The project requires Appropriate Assessment.

The exemption also does not apply because-

- This exemption specifically applies to "works" only and not "change of use". Had the legislature intended a change of use to be included, it simply would have said "development" as a catch-all definition in accordance with sections 2 and 3 of the PDA2000. The proposed use was stated in writing by email dated 6th May 2021 to the referrers that the site "was purchased so that it could be used as a compound for the contractor constructing the new section (4.3km) of the Nenagh -Thurles road at Latteragh



and also in the longer term as a roads depot for Tipperary County Council". See Appendix 1. This use is not exempted development and the Council have not carried out a proper planning process.

- A part 8 adopted by Councilors in 2017 identified a compound for the new road in a different location on Fig.3.4. See section 9 below for details on the Part 8. That compound site clearly did not have residential uses adjacent. It was stated that the lands would be acquired by a temporary CPO. Had the subject site been identified as a compound for Part 8, it would have been included in the documentation and the appropriate AA and EIA screening on the use and impact on the neighbouring property would have been carried out. Public consultation would have taken place. This did not occur. The assessments never included the subject site and referred to the football pitch as in situ. The loss of an amenity would be an issue for screening. The Part 8 did not refer to a change of use of existing lands.

### 8.1.3 Works to interior or external appearance

Section 4(1)(h) exempts 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;

#### Assessment

The exemption does not apply because of the following.

- The development materially contravenes the several development plan policies as set out in section 3 and Table 1.
- The project requires Appropriate Assessment as detailed in section 7 above.

The exemption also does not apply because:

- This exemption specifically applies to "works" and not "change of use". Should the Board consider the works to the public house and residential accommodation under 4(1)(h), the change of use cannot fall under this exemption. The use of the structure is unauthorised. The previous use of the structure is the established structure.
- The change of use and works render the appearance inconsistent with the character of the structure. While not a protected structure, the former public house is a period property and the home of the former Latteragh Post office, located on a prominent crossroads. The hipped roof building was a landmark attractive property. The local authority has inserted pvc windows and a most incongruous front door to the property. Inexplicably, rather than curtains, the local authority have placed back sheeting on the bay window which lights a tearoom for staff.

## 8.2 Potential exemptions under PRR2001

Article 80 of the PDR2001 prescribes "proposed development", for the purposes of section 179 of the Act where such development must utilise the Part 8 planning process. The relevant articles are assessed below in the order of relevance rather than sequential order.



### 8.2.1 Other works which exceed €126,000

Art 80(1)(k) provides any “development other than .....the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.”

#### Assessment

The exemption does not apply because:

1. As section 178(1) of PDA states “The council of a county shall not affect any development in its functional area which contravenes materially the development plan”, the exemption does not apply, because the development materially contravenes the policies of the plan as set out in table 1 and section 3 above in this report.
2. The project requires Appropriate Assessment contrary to section 4(4) of the PDA2000 and Art. 9 (1)(a)(viiB) PDR2001.
3. The works consist of the carrying out of development which would contravene a condition attached to a previous permission Ref. 5111652 where there are clear conditions regarding the boundary wall and the access to the site which are at significant variance to the recent works carried out and to the overall boundary and ditch treatments. This is contrary Art. 9 (1)(a)(i) PDR2001. See appendix 4.
4. The development includes the formation of a new access fronting the Local road L6154 and therefore is not exempted development contrary to Art 4(1)(a)(ii) PDR2001.

The planning report states that “Nenagh Municipal District have confirmed that a new entrance was not developed (existing entrance that previously served the pub was used and improved” ... In this regard, the wording of the restriction on exemption includes where it would “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. The carriageway exceeds 4 m. An access has been formed by railings, gates and a new lay-by. Previously the site was open and was not an access. The three elements of the wording are independent of each other so the forming and/or laying out of an access is not dependent on the widening of an access if there was one in the first place.

**Plate 6** Historical imagery from google earth of site



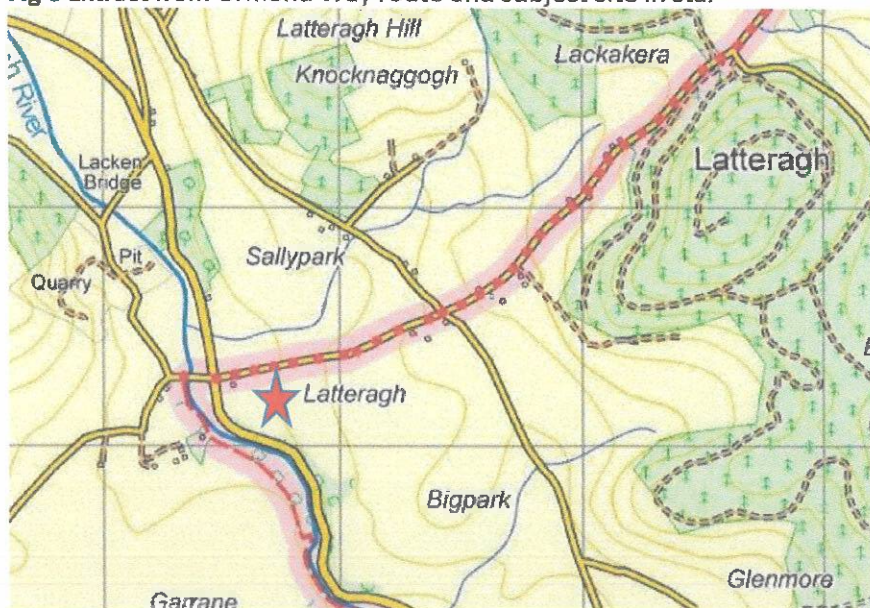


**Plate 7** Current access arrangement

5. The development is causing a traffic hazard and / or obstruction of road users and therefore is not exempted development contrary to Art 4(1)(a)(iii) PDR2001 .

This has not been addressed by the planning authority. The site creates a traffic hazard and obstruction of road users owing to the queuing of articulated and other vehicles on the regional and local road. Vehicles arrive when the site is not open and must park on the road or in the layby at the referrer's home. This obstructs road users. This is exacerbated by the location of a local school bus stop opposite the subject site where parents also park to collect children.

Please note this de-exemption applies to either/or traffic hazard or obstruction of road users.

**Fig 6** Extract from Ormond Way route and subject site in star



The subject site bounds the Ormond Way walking trail which has not been addressed by the Planning Authority. The parking that occurs in the layby of the referrer and while queuing obstructs road users including pedestrians.

6. The former FIA football ground was not enclosed and was open to the public habitually for over 10 years prior to being enclosed and is therefore not exempted development. This contrary to Art. 4(1)(a)(x) PDR2001.

This has not been addressed by the Planning Authority.

The historical imagery clearly shows that access to the football pitch was open via the car park to the rear of the public house. The parking area to the rear of the former public house provided access to the football field and was not enclosed as there was an open section in the low perimeter fence of the pitch which was open to the public for recreational use. No right of way is required for this de-exemption it apply.

7. The works and change of use are inconsistent with the approved Part 8 and were not included in that consent process contrary to section 179 of the PDA2000 and Art.80(1) of the PDR2001.
8. The cost of the development exceeds €126,000 contrary to Art.80(1)(k) PDR2001.

It may be noted the guide price for the site was €150,000 and a Council Freedom of Information (FOI) document Appendix 2 states the land purchase and stamp duty paid €147,934.66. The FOI document of costs provided a list of costs and a figure at the bottom of €104,429.66. A spread sheet highlighting the anomalies of the FOI is attached in Appendix 3.

The FOI does not include the high-level lighting as can be seen in the spreadsheet columns (note fencing is included). It may also be noted additional costs such as legal fees, and IT are not available on the spread sheet. The FOI does not include the new concrete footpath that has been constructed since the section 5 reference was made to the Planning Authority or the new planting that has been placed.

The maintenance fee is not designated as how often it is paid.

The Planning report states that *"Nenagh Municipal District have confirmed the expenditure on the works undertaken at the site to be €113,968.48"*. This figure is at variance with the FOI figure. The Planning Authority have omitted to reference the cost of the site as near €147,934.66.

The substantial works on the site in addition to the costs of the site considerably exceed €126,000. The site cost is integral to the development as the development could not take place if the Council had not bought the site. Several costs have been omitted.

### **8.2.2 Disposal of waste**

Art.80(1)(h) provides the use of land, for the disposal of waste, not being an activity in relation to which a waste licence is required or the provision of a bring facility which comprises not more than 5 receptables.

The position of the referrers is that waste material is stored on the site, that this should be subject to a licence.



*Assessment*

As section 178(1) of PDA states "The council of a county shall not affect any development in its functional area which contravenes materially the development plan", the exemption does not apply, because the development materially contravenes the policies of the plan as set out in table 1 and section 3 above in this report.

**Plate 8** Example of material stored openly on the subject site



The exemption under Article 80(1) (h) does not apply because the development is contrary to certain criteria in Article 9(1)(a) for reasons 1-5 set out as above in section 8.4. It is noted the Council dispute that waste is kept on the site. Please note the refers have observed piles of road sweepings on the site which is waste material. Piles of mixed material including soil, broken pipes, etc are also stored openly on site. It may be noted that storage of materials varies from day to day on the site.

### 8.3 Schedule 2 PDR2001

The Board may also wish to consider Article 6 Schedule 2 Part 1 of the PDR2001 for certain works that have taken place on the site. In the interest of providing all relevant information to assist the assessment by the Board, the following information is provided.

**Class 11** The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of a) any fence (not being a hoarding or sheet metal fence), or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

However, the restrictions provide that – 1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater and in any event, shall not exceed 2 metres and every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks



(other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.

Owing to the fact that this is no longer a dwelling, the height of the fencing and that no fence was present at the site on the local road, class 11 does not apply.

**Article 10(1)** of the PDR2001 states that development, which **consists of a change of use within one of the classes** of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act. Therefore, the change from one use to another within the same use class does not require planning permission. In terms of any potential change of use exemption, none apply to the instant case.

**Class 14 (b)** provides development consisting of a change of use from public house may not occur to any other use except a shop.

**Class 22** provides storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process.

This class does not apply for several reasons. The previously used public house now an office /staff building was not and is not an industrial building. Further, the restriction in column 2 applies as the raw materials, products, and waste stored are visible from the public road contiguous or adjacent to the curtilage of the non-industrial building.

A determination as to *"whether the storage of raw material, by-products and waste is or is not development or is or is not exempted development"* was determined by An Bord Pleanála Ref. PL.17.RL3084 as development and not exempted development.

#### 8.4 Temporary uses

The Board will be aware that pursuant to the decision of the High court last year in relation to local authority own development that in order consider a matter temporary, it must have a start date and an end date, Carvill and Ros -v- Dublin City Council [2021] IEHC 544.

The email correspondence to the referrer indicates a long-term permanent development.

## 9 Part 8

On 24<sup>th</sup> August 2017 Councillors adopted a Part 8 subject to conditions.

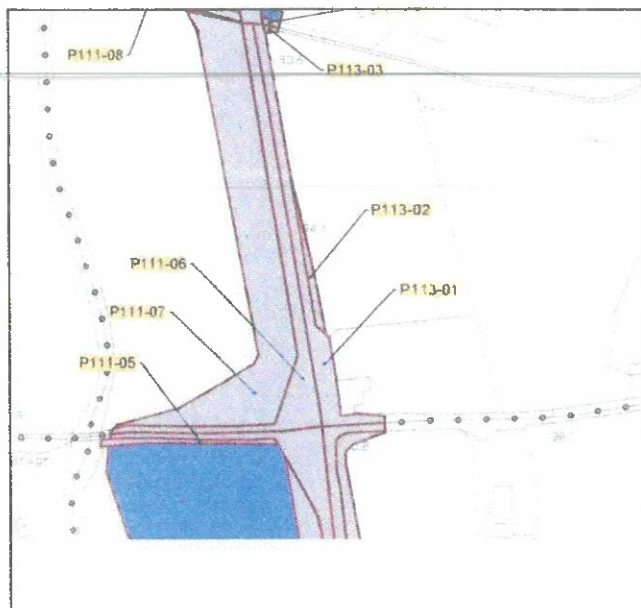
<https://www.tipperarycoco.ie/sites/default/files/Adopted%20Minutes%20of%20Special%20Meeting%2024.8.17.pdf>.

No documentation indicated a depot at the subject site. A proposed temporary site was proposed in the publicly advertised suite of documents on the west side of the regional road in Fig 3.4 of that documentation. Any development to that consent beyond the adopted part 8 requires an amendment to the part 8 process. There is no exemption to amend a Part 8 beyond de minimis works. There is no provision for a change of use of a building or a site within the adopted part 8.

In relation to the Compulsory purchase order (An Bord Pleanála ref. 307931-20), the submitted maps and details include temporary acquisition recommendations where temporary land takes are required to facilitate construction for the proposed realignment and will be returned to the landowner on completion of the scheme.



Fig. 4 Extract from CPO map dated and signed 19<sup>th</sup> July 2020



It can be seen from above, these areas do not coincide with the subject depot site. The subject site was not subject to either a temporary or permanent CPO. The Councillors did not address the potential of the site being used as a depot. This is a critical failure in the local authority adopted process. Please also note the contents of Appendix 1 which indicates that the Director of Roads intends the site to be used as a compound associated with the Part 8. Further as a temporary compound is approved in the vicinity of the subject site, the in combination and cumulative impacts of two compounds has not been assessed.

The development that took place on the subject site should have been subject to a Part X to the Board. It may be noted that the AA screening on the Road realignment in 2017 was prior to the suite of judicial reviews relating to mitigation measures in AA and the statement in the Part 8 AA screening as follows would not be appropriate at this time. *"During the construction phase, mitigation measures will be put in place to protect nearby surface water bodies and the underlying aquifer and to maintain, or improve, the water quality. This mitigation will be developed and reported in the Project Description and prescribed for implementation in the outline CEMP which will form part of the Contract Documents for the delivery of the proposal."* The conclusion would also not be suitable today. There is no criticism intended of the 2017 AA screening as it was carried out prior to the judicial reviews on this issue but it should be noted that best practice has developed significantly in this area.

## 10 Environmental Impact Assessment

The Board as the competent authority shall carry out Environmental Impact Assessment (EIA) screening for all plans and projects. If the proposed project is of a class set out in Schedule 5, Part 2 of the Planning and Development Regulations 2001 (PRD2001) but does not meet or exceed the relevant threshold, it is a 'sub-threshold development' and will be screened for EIA. This applies to all development including exempted development, part 8 development and Part X development.

The Planning Authority have made a determination that the project of Council depot including all the works and change of use described above is not a project under European Union



legislation. Using the OPR guidance, at preliminary examination, they have concluded the development is not a project subject to any screening or assessment of environmental impact.

The development may be considered under a number of sub threshold categories including 11 (b) of Schedule 5 Part 2. Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of Schedule 5 of the PDR2001. It is noted that the Council deny any waste stored on site but the referrers hold the position that road sweeping materials are stored on the site.

Despite the project not being screened by the Council in advance of the project the planning authority has screened the section 5 referral for EIA as is reported in the planning report.

It may be noted in the Part 8 carried out for the new road in the vicinity, the subject site was not included in the EIA or AA screenings.

## 11 Conclusion and recommendation

Having regard to the stated question that has arisen whether the same is or is not development or is or is not exempted development and having regard to the request for a review from the Board of the declaration of Tipperary County Council and particularly to –

- a) Sections 2, 3, 4, 5, 177U, 178 and 179 of the Planning and Development Act, 2000, as amended including Part XAB;
- b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended;
- c) Parts 1 and 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended;
- d) The European Communities (Water Policy) Regulations 2003 as amended;
- e) The provisions of the Tipperary County Development Plan 2010 as amended;
- f) The provisions of the Nenagh Local Area Plan 2013-2019 as varied;
- g) The hydrological pathway of the Nenagh River to a Special Area of Conservation;
- h) The permitted Part 8 development in the vicinity of the site;
- i) The quarry in the vicinity of the site;
- j) The Water Framework Directive and status assigned to adjacent rivers;
- k) The purchase of the site and the monies expended to date;
- l) The submissions below and the impact on neighbouring property;
- m) The nature of the uses and works previously and currently on site;
- n) The Planning history on the site;
- o) The location of the site and the pattern of development in the area; and
- p) The proper planning and sustainable development of the area.

It is respectfully requested that An Bord Pleanála concur with the position set out in this report and agree that the change of use and works that have taken place are development and are not exempted development.







---

# Appendix 1



## APPENDIX 1

### COPY OF RELEVANT EMAIL

---

From: **O'Connor, Marcus** <[marcus.oconnor@tipperarycoco.ie](mailto:marcus.oconnor@tipperarycoco.ie)>  
Date: Thu, 6 May 2021, 17:21  
Subject: SEANINS LATTERAGH  
To: Margaret Patricia Ryan <[mpryan@tcd.ie](mailto:mpryan@tcd.ie)>  
Cc: Jackie Cahill <[jackie.cahill@oireachtas.ie](mailto:jackie.cahill@oireachtas.ie)>, McGrath, Philip <[philip.mcgrath@tipperarycoco.ie](mailto:philip.mcgrath@tipperarycoco.ie)>, Joyce, Rosemary <[rosemary.joyce@tipperarycoco.ie](mailto:rosemary.joyce@tipperarycoco.ie)>, Murphy, Barry <[barry.murphy@tipperarycoco.ie](mailto:barry.murphy@tipperarycoco.ie)>

Hi Margaret,

Thank you for your Email. As you mentioned Deputy Cahill has raised this with me on a number of occasions. I would respond as follows :

1. The derelict pub and associated site at Seanins was purchased by Tipperary County having been derelict and on the market for some time. It was purchased so that it could be used as a compound for the contractor constructing the new section (4.3km) of the Nenagh – Thurles road at Latteragh and also in the longer term as a roads depot for Tipperary County Council.
2. As you are aware, An Bord Planala confirmed the road scheme and it is anticipated that we will have a contractor on site to work on this badly needed road improvement towards the middle of next year(2022). The works are anticipated to last for about 2.5 to 3 years and there is no doubt that the depot/compound will be busy during this period. We do not anticipate that there will be night works but the contractor is likely to work long hours during the construction period.
3. In the long term, Tipperary County Council will operate the building and compound as a roads depot. This would generally operate between the hours of 7.30am to around 6 pm Monday to Friday and possibly some Saturdays. We do not intend to use this as a salt depot although small quantities of salt could be stored there from time to time.
4. By its nature, a roads depot has to store chips , pipes , gullies and the like. There will be occasions when our crews will be called out to emergencies such as flooding, freeze ups, roads traffic accidents and the like and these can occur at weekends and at night. Hopefully , these will not be very common but you will appreciate



that we are not in a position to give written guarantees about hours of operation.

5. Having said all that , we would like to think that we would be very good neighbours. If there are any matters that we could assist you with on the ground , please feel free to contact the district Engineer, Philip McGrath(087/625 8068) or the Overseer Sean Ryan

Regards

Marcus

Marcus O' Connor

Director of Roads, Transportation and Nenagh Municipal District

Tipperary County Council,

Civic Offices,

Limerick Road,

Nenagh,

Co. Tipperary

**From:** Margaret Patricia Ryan <[mpryan@tcd.ie](mailto:mpryan@tcd.ie)>

**Sent:** 27 April 2021 15:44

**To:** O'Connor, Marcus <[marcus.oconnor@tipperarycoco.ie](mailto:marcus.oconnor@tipperarycoco.ie)>

**Subject:** [External] Fwd: SEANINS LATTEAGH

----- Forwarded message -----

**From:** Margaret Patricia Ryan <[mpryan@tcd.ie](mailto:mpryan@tcd.ie)>

**Date:** Monday, 26 April 2021

**Subject:** SEANINS LATTEAGH

**To:** [marcus.oconnor@tippcoco.ie](mailto:marcus.oconnor@tippcoco.ie)

**Cc:** Michael Power <[michaelpower131@gmail.com](mailto:michaelpower131@gmail.com)>, [jackie.cahill@oir.ie](mailto:jackie.cahill@oir.ie)

Dear Marcus,

I am aware Jackie Cahill has liaised with you with regards to our concerns. Over the last couple of weeks there has been a significant increase in activity in seanins including out of hours work



~.g. work didn't not finish until after 10pm one of the nights last week (one of many examples... most of which I have noted). My young children (4 yr, 2 yr and 10 months) were awoken from their sleep with the level of noise.

---

Again, Sat April 24th there was work going on all day (which didn't finish until 9pm). This was lovely sunny day, a day we were trying to enjoy as a family in our garden.

We want written confirmation that seanins will not be used outside of normal working hours which I presume is Mon to Fri 8.30 until 5.30.

We are very disappointed with the lack of communication with regard to forewarning us of possible disturbances and excessive noise disruption.

I am available to discuss this further if required on 0860722984.

Many Thanks,

Mgt Power

**Comhairle Contae Thiobraid Árann**  
**Tipperary County Council**

[www.tipperarycoco.ie](http://www.tipperarycoco.ie)

[Tipperary County Council Disclaimer](#)



---

## Appendix 2



PERIOD	ACC ELEMENT	JOB(T)	PRODUCT/EE	PRODUCT/EE(T)	SUBANALYSIS	TRANS DATE	EURO
<b>Purchase Cost</b>							
202007 LAND PURCHASE/COMPENSATION		LATTERAGH DEPOT	FIN47	STAMPDUTY PURCHASE INVESTMENT LAND	TAXSTAMP	07/07/2020	144,809.66
202009 LAND PURCHASE/COMPENSATION		LATTERAGH DEPOT				25/08/2020	3,125.00
							147,934.66
<b>Cost of refurbishment works</b>							
202103 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS		LATTERAGH DEPOT	FEN120	FENCING-SUPPLY & ERECT/REPAIR	FENCING	15/03/2021	23,440.02
202104 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS		LATTERAGH DEPOT	ENVSRT38	TRANSPORT & DISPOSAL RESIDUAL WASTE	WASTEDISPOSE	31/03/2021	352.08
202106 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS		LATTERAGH DEPOT	ENVSRT38	TRANSPORT & DISPOSAL RESIDUAL WASTE	WASTEDISPOSE	30/04/2021	558.08
202106 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS		LATTERAGH DEPOT	NRG13	ELECTRICITY- MINOR CONTRACT WORK	ELEC	17/06/2021	9,647.50
202107 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS		LATTERAGH DEPOT	WATSRB3	WATER SERVICES-MINOR CONTRACT WORKS	PLUMBER	28/06/2021	5,675.00
202109 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS		LATTERAGH DEPOT	ENVSRT38	TRANSPORT & DISPOSAL RESIDUAL WASTE	WASTEDISPOSE	31/07/2021	71.16
202109 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS		LATTERAGH DEPOT	NRG13	ELECTRICITY- MINOR CONTRACT WORK	ELEC	09/09/2021	136.20
202110 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS		LATTERAGH DEPOT	NRG13	ELECTRICITY- MINOR CONTRACT WORK	ELEC	07/10/2021	340.50
202201 NON-CAPITAL EQUIP PURCHASE - OFFICE EQUIP/FURN		LATTERAGH DEPOT	OFF05	OFFICE FURNITURE UNDER €5000 EA	FURN	31/12/2021	40,220.54
NON-CAPITAL EQUIP PURCHASE - OFFICE EQUIP/FURN		LATTERAGH DEPOT					720.63
202104 NON-CAPITAL EQUIP PURCHASE - OTHER		LATTERAGH DEPOT	EQP101	ROADS EQUIP PURC UNDER €5000 EACH	ROAD	12/04/2021	720.63
202104 NON-CAPITAL EQUIP PURCHASE - OTHER		LATTERAGH DEPOT	EQP101	ROADS EQUIP PURC UNDER €5000 EACH	ROAD	23/04/2021	8,093.40
202109 NON-CAPITAL EQUIP PURCHASE - OTHER		LATTERAGH DEPOT	EQP101	ROADS EQUIP PURC UNDER €5000 EACH	ROAD	27/08/2021	4,182.00
NON-CAPITAL EQUIP PURCHASE - OTHER		LATTERAGH DEPOT					2,803.69
202012 REPAIRS & MAINT - BUILDINGS (EXCL. LA HOUSING)		LATTERAGH DEPOT	SERV24	BUILDINGS MAINT CONTRACT- NON LA HSE		17/12/2020	15,078.09
REPAIRS & MAINT - BUILDINGS (EXCL. LA HOUSING)		LATTERAGH DEPOT					7,888.25
202104 CAPITAL CONTRACTS EXPENDITURE		LATTERAGH DEPOT	CAP01	CONTRACT PAYMENTS	LABMAT	27/04/2021	7,888.25
202110 CAPITAL CONTRACTS EXPENDITURE		LATTERAGH DEPOT	CAP01	CONTRACT PAYMENTS	LABMAT	27/09/2021	30,478.16
CAPITAL CONTRACTS EXPENDITURE		LATTERAGH DEPOT					2,133.80
202109 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	GENERAL	09/08/2021	32,811.98
202109 MATERIALS		LATTERAGH DEPOT	RDMA26	ROAD MAINTENANCE MATERIALS-SMALL ITEMS	GENERAL	06/09/2021	104.96
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	HSEKITCHEN	08/09/2021	2,633.20
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	HSEKITCHEN	08/09/2021	118.19
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	HSEKITCHEN	08/09/2021	217.32
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	HSEKITCHEN	08/09/2021	185.99
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	HSEKITCHEN	08/09/2021	366.81
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	HSEKITCHEN	08/09/2021	1,547.62
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	HSEKITCHEN	08/09/2021	697.82
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	HSEKITCHEN	08/09/2021	449.54
202111 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	GENERAL	14/10/2021	176.44
202112 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	GENERAL	14/10/2021	264.00
202112 MATERIALS		LATTERAGH DEPOT	HSMAT42	HOUSE MAINTENANCE MATERIALS	GENERAL	22/12/2021	118.80
202101 CONSULTANCY/PROFESSIONAL FEES AND EXPENSES		LATTERAGH DEPOT	FEEO2	CONSULTANTS PROF FEES & EXPENSES		07/01/2021	6,880.88
CONSULTANCY/PROFESSIONAL FEES AND EXPENSES							1,028.50
							104,423.68



---

## Appendix 3



## Appendix 3 - Spreadsheet

	Fig. in FOI	Query ?	07/07/2020	25/08/2020
202007 LAND PURCHASE/COMPENSATION			144809.66	3125
202007 LAND PURCHASE/COMPENSATION				147934.66
202104 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS	352.08			
202106 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS	558.08			
202106 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS	9647.50			
202107 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS	5675.00			
202109 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS	71.16			
202109 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS	136.20			
202110 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS	340.50			
202110 MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS	40220.54	query does not sum above		
MINOR CONTRACTS- TRADE SERVICES & OTHER WORKS				
202201 NON-CAPITAL EQUIP PURCHASE - OFFICE EQUIP/FURN	720.63			
NON-CAPITAL EQUIP PURCHASE - OFFICE EQUIP/FURN	720.63			
202104 NON-CAPITAL EQUIP PURCHASE - OTHER	8093.40			
202104 NON-CAPITAL EQUIP PURCHASE - OTHER	4182.00			
202109 NON-CAPITAL EQUIP PURCHASE - OTHER	2803.69			
NON-CAPITAL EQUIP PURCHASE - OTHER	15079.09	query does not sum above		
202012 REPAIRS & MAINT - BUILDINGS (EXCL. LA HOUSING)	7888.25			
REPAIRS & MAINT - BUILDINGS (EXCL. LA HOUSING)	7888.25			
202104 CAPITAL CONTRACTS EXPENDITURE	30478.16			
202110 CAPITAL CONTRACTS EXPENDITURE	2133.80			
CAPITAL CONTRACTS EXPENDITURE	32611.96	is the sum of above rounded		
202109 MATERIALS	104.96			
202109 MATERIALS	2633.20			
202111 MATERIALS	118.19			
202111 MATERIALS	217.32			
202111 MATERIALS	185.99			
202111 MATERIALS	366.81			
202111 MATERIALS	1547.62			
202111 MATERIALS	697.82			
202111 MATERIALS	449.54			
202111 MATERIALS	176.44			
202111 MATERIALS	264.00			
202112 MATERIALS	118.80			
MATERIALS	6880.69	is sum of above		
202101 CONSULTANCY/PROFESSIONAL FEES AND EXPENSES	1 028.50			
CONSULTANCY/PROFESSIONAL FEES AND EXPENSES	1028.50			



---

## Appendix 4



TIDEBURY (NORTH RIDING) DISTRICT COUNCIL  
LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1982  
 ~~~~~

REF: PLC/11,625

APPLICANT: Mrs. Kathleen Dunlea, Ballinacloough, Nenagh.

FOR: Reconstruction & extension to Licensed Premises by way of internal alterations and additional floor area for public use

AT: Sallypark (Latteragh Cross), Nenagh.

Having considered the above application and supporting documents, I hereby recommend that **PERMISSION** be GRANTED/REFUSED to the applicant, subject to the following conditions and/or for the following reasons:-

| CONDITIONS                                                                                                                                                                                                                   | REASONS                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| (1) A 1.0 m. high post and chain fence to be provided along the line A - B as shown on the attached 1:2500 map.                                                                                                              | (1) In the interest of traffic safety. |
| (2) The existing high ditch shown B - C on the attached 1:2500 map to be cut and maintained to a maximum height of 1.0 m.                                                                                                    | (2) In the interest of traffic safety. |
| (3) The existing boundary wall abutting the minor road, as shown X - Y on the attached 1:2500 map, shall be removed. A new wall maximum height 1.0 m. shall be erected and recessed 3 m. from the line of the existing wall. | (3) In the interest of traffic safety. |
| (4) The entrance to the car park to be recessed 5 m. with wing walls splayed at 45 degrees. The maximum height of said walls to be 1.0 m.                                                                                    | (4) In the interest of traffic safety. |
| =====                                                                                                                                                                                                                        | =====                                  |

Over/....



| CONDITIONS | REASONS |
|------------|---------|
|            |         |

SIGNED: R. J. [Signature]  
SENIOR EXECUTIVE ENGINEER,  
(Planning Section)

DATE: 10/12/85.

SIGNED: *[Signature]*  
COUNTY ENGINEER

DATE: 10/15/85.

SIGNED:                       
COUNTY MANAGER

DATE: 14/10/85



TIPPERARY (NINTH RIDING) COUNTY COUNCIL.

Planning Section,  
Courthouse,  
Nenagh.

19th November 1985

Local Government (Planning and Development) Acts, 1963 to 1983.

NOTIFICATION OF GRANT OF A PERMISSION

AN OUTLINE PERMISSION

TO/

Mrs. Kathleen Dunlop,

Ballinaclogh,

Nenagh.

REFERENCE NO. in  
Planning Register: PLG/11.625

Application  
received on: 22nd August 1985

Development: Reconstruction and extension to licensed premises  
by way of internal alterations and additional floor  
area for public use

At:

Sallypark (Lateragh Cross) Nenagh.

A permission/~~an outline permission~~ was granted on 18th November 1985  
for the development described above subject to the conditions set out in  
notification of decision to grant a permission dated 14th October 1985

The applicant is advised that unless the development described above is  
carried out within five (5) years from the date of grant of permission,  
planning permission may cease to have effect at the expiration of said  
5 years. See Sections 2, 3 and 4 of the Local Government (Planning and  
Development) Act, 1982.

Copy/ Area Engineer, Roscrea.

SIGNED:

*P. Heffernan*

For COUNTY SECRETARY.

