

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1
D01 V902

19-04-23

A Chara,

AN BORD PLEANÁLA
LDG- 062532-23
ABP- _____
24 APR 2023
Fee: € 220 Type: CHQ
Time: _____ By: REG-POST

I refer to a decision on a declaration with respect to a development at Thomond Park Stadium Grounds, Old Cratloe Road, Limerick and seek a review by An Bord Pleanála under the provisions of section 5 (3) (a) of the Planning & Development Act 2000, as amended.

Details of the declaration and the grounds for review are set out below –

- An Bord Pleanála review fee in the amount of 220 euro
- Copy of application for declaration lodged with Limerick City & County Council – appendix 1
- Copy of declaration decision from the County Council – planning reference EC16/23 refers – appendix 2
- Copy of internal technical report on application for declaration – appendix 3

Background:

The area is adversely impacted by 3 tented structures (marquee like structures) erected inside and outside the grounds of Thomond Park for Heineken Cup matches.

These marquees cause a serious injury to property arising from noise/general disturbance and visual impact on the landscape and should be the subject of a standard planning application process.

Declaration:

I submitted a formal request under section 5 of the Planning & Development Act 2000, as amended, with respect to these structures.

I requested that the Council issue a declaration as to *'whether tented structures erected within Thomond Park Stadium grounds at Old Cratloe Road, Limerick for the sale of alcohol in association with match events is or is not development and is or is not exempted development'* – copy of application for declaration included in appendix 1, planning reference EC16/23 refers.

Limerick City & County Council issued a decision on the declaration by order signed 31/3/2023 - see copy enclosed in appendix 2.

The Council decided basically that two of the tented structures (at location 2 & 3) came within the provisions of class 37 of the Planning & Development Regulations 2001, as amended, and were 'exempted development', while one of the structures (the structure at location 1) did not come within the scope of exempt development as defined by Class 37 as the structure had been in place for a number of years.

The Council, in its technical report, stated it had already issued a declaration with respect to the third structure (at location 2) and found it came within class 37.

The Board should note that the Council made an **error** in relation to the tented structure located at 'location number 2'. It has mixed up this tented structure with a marquee structure close to Shannon RFC which was erected by the Club for fund raising events, discos etc and was the subject of declaration planning reference EC-017-22. **For the avoidance of doubt this previous declaration for Shannon RFC does not apply to the structure used for the sale of alcohol at location number 2 which is the subject of the current declaration request.**

Tented structure 1 is outside the main stadium close to the public road and adjacent to the 'Dug Out' bar. It is used for the sale of alcohol. The tented structure at location 2 is a larger structure decorated in Heineken colours and logos and erected by Shannon Rugby Club adjacent to their club house for sale of alcohol. The tented structure at location 3 is a large white structure directly facing my home and that of other Mayorstone residents and is erected by Thomond Park Stadium for sale of alcohol.

It is contended that Shannon RFC and Thomond Park are using these structures to provide/intensify floor space for the sale of alcohol in order to increase profits. It is contended that class 37 of the planning regulations was never intended to be used for this purpose and that Limerick City and County Council has erred in interpreting the regulations in this manner.

My request for a declaration for the three tented structures still stands therefore.

Issues for review:

a) Are the tented structures 'development'?

The first question I put in the request for a declaration was whether what was involved was 'development'. This was not addressed in the technical report on which the Limerick City and County Council's decision was based or in the body of the decision itself. No deliberation appears to have taken place as to whether the structures are in fact 'development'.

It is my understanding that 'development' includes the use of land for the '*placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of sale of goods*' - section 3 of Planning and Development act 2000, as amended, refers. The act states the use of land in such a case can be taken as having '*materially changed*'.

On this basis I understand that the tented structures are 'development' and while the Council did not deliberate on this issue it did appear to accept that what was involved is 'development'. I am not aware of any grant of planning permission for these structures. There is a lack of detail once again on this issue in the Council's internal report but it is assumed that the planning history was checked. Presumably this detail will be referred to the Board so that the full planning history/background can be assessed with respect to the review.

b) Are the structure exempted development?

The internal assessment and ultimate decision by Limerick City and County Council is that what is involved is exempted development having regard to Class 37 of Schedule 2 Part 1 of the Planning and Development Regulations which I have set out below for ease of reference -

CLASS 37 Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.	<ol style="list-style-type: none">1. The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.2. On the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.
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I have looked at other references to the Board and refer in particular to inspector's report on file reference PL09F.RL.2684 which relates to a marquee in Ballinderry, Nenagh.

The inspector, Mr. John Desmond, states here (in summary) that -

- 1) Class 37 was not designed to facilitate commercial functions.
- 2) The erection of a marquee and the proposed change of use of land for social and recreational purposes is not provided for as exempt development under Section 4(1) of the Planning and Development Act 2000 as amended.
- 3) Class 37 relates to development for use for "*local events*". In relation to this he defined local according to the Oxford English Dictionary as an adjective '*relating to a particular area or to the area in which a person lives*'.

In this context he was of the opinion that local events " *excludes non local, regional or national events which limits the catchment and potential scale of such events*".

I am very concerned that Limerick City & County Council did not refer in any detail to the issues arising with respect to what it set out in the **text** of class 37. In particular –

- No reference is made as to how what is involved could be considered a '**local event**'.

It is clear to me that class 37 was designed to facilitate local events of a limited nature – community type events for people living in the area. It was not designed to facilitate a European match attended by 26, 000 people as is the case here.

- It is clear to me that such developments are not intended to be used mainly for profit or gain."

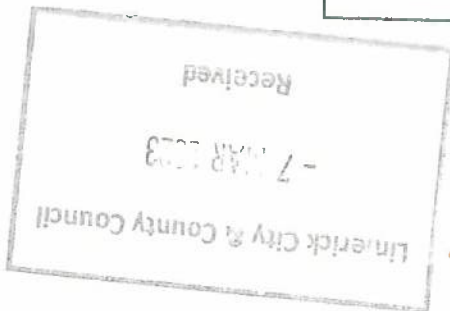
A handwritten signature in dark ink, appearing to be 'Pat Downes', written over a horizontal line.

Pat Downes

APPENDIX I

COPY OF APPLICATION FOR DECLARATION

F7



LIMERICK CITY & COUNTY COUNCIL

PLANNING AND ENVIRONMENTAL SERVICES

SECTION 5 APPLICATION

DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

PAT DOWNES

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

Age Group	Percentage
18-24	18%
25-34	22%
35-44	15%
45-54	12%
55-64	10%
65-74	8%
75-84	5%
85+	3%

1000

Age Group	Percentage
18-24	~12%
25-34	~32%
35-44	~28%
45-54	~25%
55-64	~22%
65-74	~18%
75-84	~15%
85+	~8%

Address for Correspondence:

AS ABOVE

bioRxiv preprint doi: <https://doi.org/10.1101/2020.05.14.242444>; this version posted May 14, 2020. The copyright holder for this preprint (which was not certified by peer review) is the author/funder, who has granted bioRxiv a license to display the preprint in perpetuity. It is made available under aCC-BY-NC-ND 4.0 International license.

Location of Proposed development:

THOMOND PARK STADIUM GROUNDS
OLD CRAZLOE ROAD, LIMERICK

Description of Proposed development: QUESTION FOR DELAYATION

WHETHER TENTED STRUCTURES ERECTED WITHIN
THOMOND PARK STADIUM GROUNDS AT OLD CRAZLOE RD.
LIMERICK FOR THE SALE OF ALCOHOL IN
ASSOCIATION WITH MATCH EVENTS IS OR IS NOT
DEVELOPMENT AND IS OR IS NOT EXEMPTED

Is this a Protected Structure or within the curtilage of a Protected Structure. DEVELOPMENT?
YES/NO

Applicant's interest in site: NO LEGAL INTEREST

List of plans, drawings, etc. submitted with this application:

/

Have any previous extensions/structures been erected at this location YES/NO NEW
STADIUM

If Yes please provide floor areas of all existing structures:

/

Signature of Applicant (or Agent)



NOTES: Application must be accompanied by:

- (a) Fee of €80
- (b) Site location map
- (c) Site layout plan
- (d) Dimensioned plans and elevations of the structure and any existing structures.
- (e) Where the declaration is in respect of a farm building, a layout identifying the use of each existing building together with floor area of each building.

Application to be forwarded to:

Limerick City & County Council,
Planning and Environmental Services,
City & County Council Offices,
Dooradoyle Road,
Limerick.

OFFICE USE ONLY

Ref. No. _____ Date Received _____

Fee Received _____ Date Due _____

[REDACTED]
[REDACTED]
[REDACTED]

6/3/2023

Dear Sir/Madam,

I enclose a section 5 application in relation to tented structures that are erected within Thomond Park Stadium grounds in association with match events and wish to have the following addressed –

The question to the Planning Authority under section 5 is –

'Whether tented structures erected within Thomond Park Stadium grounds at Old Cratloe Road, Limerick for the sale of alcohol in association with match events, is or is not development or is or is not exempted development'

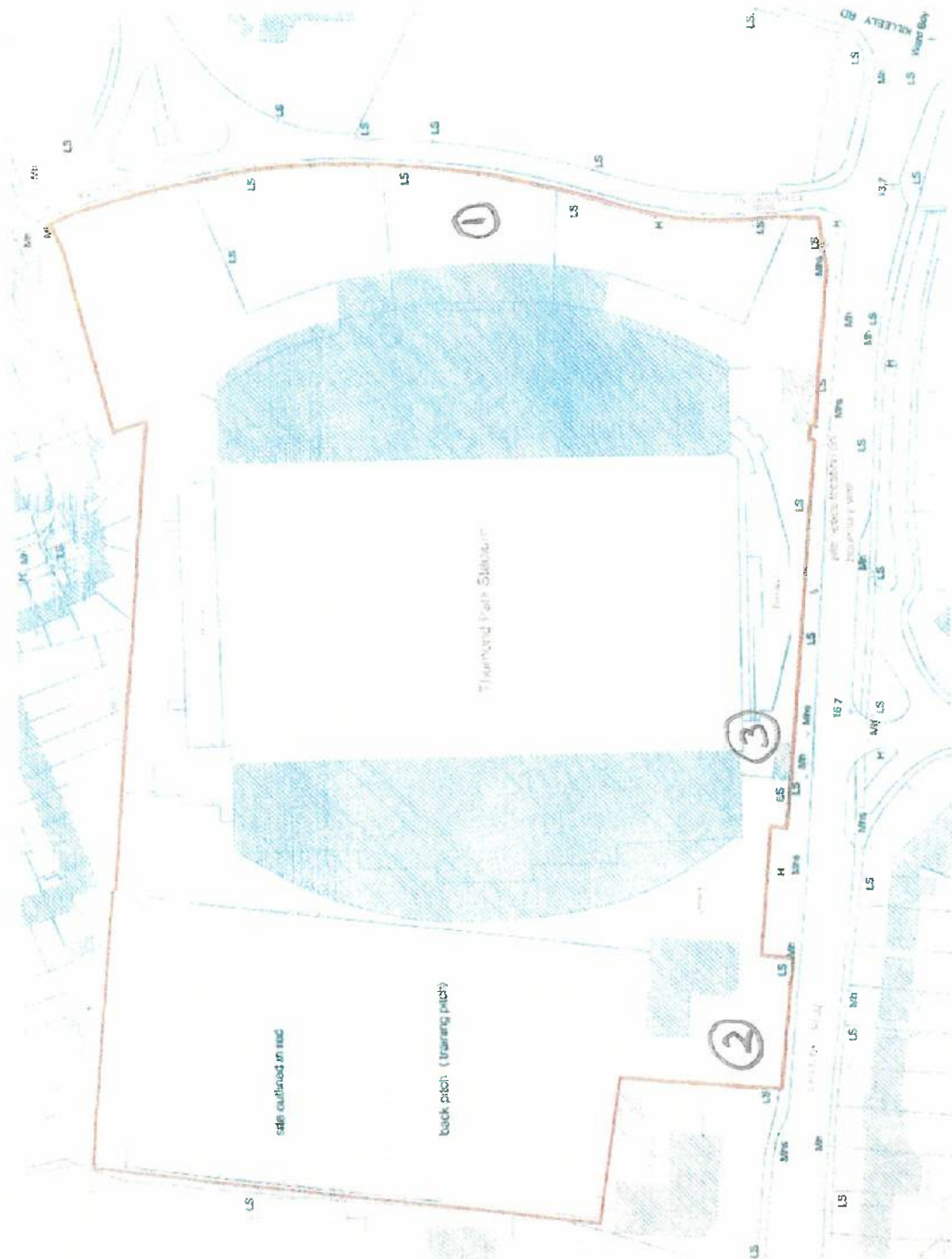
As the Council is aware there are a number of such structures erected for use for the sale of alcohol in association with match events - one behind the Dug Out bar at the eastern end of the stadium (no 1 on attached map), one generally adjacent to the Shannon RFC pavilion (no 2 on map) another at the southern end of the grounds (no 3 on map).

Tented structure no 1 has been there almost permanently for the last number of years, structures 2 and 3 go up when there are matches.

Yours sincerely,



Pat Downes

[illegible]

Tented Structure No. 1 – Google View



APPENDIX 2

COPY OF DECLARATION DECISION FROM COUNCIL



Comhairle Cathrach
& Contae **Luimnigh**

Limerick City
& County Council

Pleanáil, Comhshaol agus Cruthú Áite
Comhairle Cathrach agus Contae Luimnigh
Bothar Thuar an Daill
Tuar an Daill, Luimneach
V94 WV78

Planning, Environment and Place-Making
Limerick City and County Council
Dooradoyle Road
Dooradoyle, Limerick
V94 WV78

PLANNING & DEVELOPMENT ACTS 2000 (as amended)

PLANNING & DEVELOPMENT REGULATIONS, 2001 (as amended)

SECTION 5 – DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

DECLARATION NO.

EC16/23

Name and Address of Applicant:

Pat Downes, [REDACTED]
[REDACTED]

Agent:

N/a

Whether the erection of 3 tented structures shown on the attached map and marked location 1, 2 and 3 at Thomond Park, Old Cratloe Road, Limerick is or is not Development or is or is not Exempted Development. The works as described on the plans submitted with the application on the 07th March 2023.

NOW THEREFORE the Planning Authority in exercise of the powers conferred on it by Section 5(2) (a) of the Planning and Development Act 2000 (as amended) hereby decides that the erection of 1 tented structure shown on the attached map and marked **location 1** at Thomond Park, Old Cratloe Road, Limerick does **NOT** come within the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 01 as amended and is **Development and is NOT Exempt Development**.

AND WHEREAS the Planning Authority has concluded that the erection of 2 tented structures shown on the attached map and marked **location 2 and 3** at Thomond Park, Old Cratloe Road, Limerick comes within the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 01 as amended and is **Development and is Exempt Development**.

Signed on behalf of the said Council

Date: 31/3/23

NOTE: A Declaration on Development or Exemption issued by Limerick City & County Council may be referred to An Bord Pleanála on payment of €220 for review within 4 weeks after the issuing of the declaration.

APPENDIX 3

COPY OF TECHNICAL REPORT ON APPLICATION FOR DECLARATION



Comhairle Cathrach
& Contae **Luimnigh**

Limerick City
& County Council

Pleanáil, Comhshaol agus Cruthú Áite
Comhairle Cathrach agus Contae Luimnigh
Bothar Thuar an Daill
Tuar an Daill, Luimneach
V94 WV78

Planning, Environment and Place-Making
Limerick City and County Council
Dooradoyle Road
Dooradoyle, Limerick
V94 WV78

PLANNING, ENVIRONMENT & PLACE-MAKING

EC16/23/SMn/CL

23/Mar/2023

Donogh O' Donoghue
Senior Executive Planner

RE: Declaration under Section 5

Attached please find a report in connection with the above and I recommend that a Declaration be issued.

Signed:

Seán Moran
Development Inspector.

Report on application under Section 5 of the Planning and Development Act 2000 (as amended)

Reference no. EC 016/23

Name and Address of Applicant: Pat Downes, [REDACTED]
[REDACTED]

Agent: N/A

Location: Thomond Park, Old Cratloe Road, Limerick

WHEREAS a question has arisen as to whether the erection of tented structures within Thomond Park Stadium Grounds at Old Cratloe Road, Limerick for the sale of alcohol in association with match events, is or is not development and is or is not exempted development.

Thomond Park is located on the North side of Limerick City and is used mostly to host rugby matches and on occasion music events. The capacity of stadium is approximately 26,000. The Stadium was redeveloped under Planning permission P06770279 granted on the 23/07/2007. *The development description was* Development at Thomond Park, Cratloe Road & Knockalisheen Road. Site area 4.887 Hectares. The development will consist of the demolition of the existing West Stand and West terrace, and dwellings No.1 to 28 Knockalisheen Road and associated out buildings. Construction of 2 No. stands, on the East and West side of the existing main pitch with a seating capacity of 7643 and 8013 respectively. Accommodation within the stands includes dressing rooms, bars, museum, retail areas, hospitality function room, corporate boxes, kitchen area, concourse areas, plant areas and ancillary facilities. Construction of new West terrace with a capacity of 2516, construction of infill terraces at the North West, North East, South West and South East corners with a capacity of 2575, modifications to the East and North terraces including the provision of a toilet block to the rear of the North terrace, relocation of the existing 4 No lighting masts and associated equipment.

The applicant has indicated tented structures at 3 locations within the grounds of Thomond Park.

Location no. 1 is located outside and to the east of the Stadium grounds; this tented structure has been in place a number of years, there is a current enforcement notice for this structure ref DC-457-22 with an enforcement notice served on the matter dated the 15th March 2023 to remove unauthorised structure with one month.

Location no. 2 is located inside the stadium wall near the Shannon RFC Club House there was previously an enforcement case on this marquee, which came to conclusion when the marquee was removed. The Authority issued a cert of exemption under ref: EC- 017-22 on the 1st July 2022 for this Marquee to be erected on certain dates for fund-raising discos and special match dates. The Authority was of the opinion it was exempt development under Class 37 of the Planning & Development Regs 2001. I am satisfied Shannon RFC have not breached the planning laws since issue of exemption cert on the 1st July 2022.

Location no.3: is located behind the South Terrace within the stadium grounds, on occasion I have seen this tented structure for match days approximately 5.0m x 5.0m = 25.0m² floor area with an approximate height of 5m. The roof on structure can be seen from the public road.

Class 37 of Schedule 2 Part 1 Exempted Development- General of the Planning & Development Regulations 2000 as amended: is as follows

CLASS 37

Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.

Subject to the following conditions

- 1. The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.***
- 2. On the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.***

The applicant as per of application has queried ^{is} the sale of alcohol for commercial purposes on match days from the temporary tented structures exempted development.

Firstly I am satisfied the tented structures are exempted development under Class 37 of Schedule 2 Part 1 Exempted Development- General of the Planning & Development Regulations 2001(as amended), as the tented structures are used in conjunction with a local event and of a social, recreational and sporting character .

There are 2no. conditions with the class 37 exemption as above, neither of which excludes the selling of alcohol or any goods for commercial purposes from temporary structures.

Class 37 also permitted the uses of land for a circus and funfairs, events like these are operated for profit also, so I am satisfied the organisations running the events at Thomond Park are not in breach of planning laws by selling of goods from tented structures.

I am satisfied the proposal with regard to tented structure at locations 2 & 3 to be exempted development under Class 37 of Schedule 2 Part 1 Exempted Development- General of the Planning & Development Regulations 2001.

However as the tented structure at location no. 1 to the east of stadium have been in place for more than 30 days in a year it cannot be deemed exempted development.

I have considered this question and I have had regard particularly to –

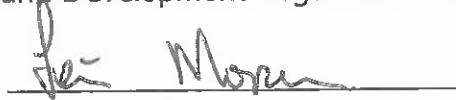
- (a) Section 2 and 3 of the Planning and Development Act 2001 (as amended)
- (b) Class 37 of Schedule 2 Part 1 Exempted Development- General of the Planning & Development Regulations 2000
- (c) Plans & particulars submitted with the application received on the 7th March 2023.

RECOMMENDATIONS:

I therefore consider the **tented structure at location 1** said works to be development and **NOT** exempted development under Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001,(as amended) as it has been in the location for more than 30 days in the last year.

And I therefore consider the **tented structure at location 2 & 3** said works including for the sale of alcohol to be development and exempted development under Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001

Signed:



Seán Moran
Development Inspector.

23/03/23

PLANNING & DEVELOPMENT ACTS 2000 (as amended)

PLANNING & DEVELOPMENT REGULATIONS, 2001 (as amended)

SECTION 5 – DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

DECLARATION NO.

EC16/23

Name and Address of Applicant:

Pat Downes, [REDACTED]
[REDACTED]

Agent:

N/a

Whether the erection of 3 tented structures shown on the attached map and marked location 1, 2 and 3 at Thomond Park, Old Cratloe Road, Limerick is or is not Development or is or is not Exempted Development. The works as described on the plans submitted with the application on the 07th March 2023.

NOW THEREFORE the Planning Authority in exercise of the powers conferred on it by Section 5(2) (a) of the Planning and Development Act 2000 (as amended) hereby decides that the erection of 1 tented structure shown on the attached map and marked **location 1** at Thomond Park, Old Cratloe Road, Limerick does **NOT** come within the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 01 as amended and is **Development and is NOT Exempt Development.**

AND WHEREAS the Planning Authority has concluded that the erection of 2 tented structures shown on the attached map and marked **location 2 and 3** at Thomond Park, Old Cratloe Road, Limerick comes within the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 01 as amended and is **Development and is Exempt Development.**

Signed on behalf of the said Council



Date:

29/3/23

NOTE: A Declaration on Development or Exemption issued by Limerick City & County Council may be referred to An Bord Pleanála on payment of €220 for review within 4 weeks after the issuing of the declaration.

LIMERICK CITY & COUNTY COUNCIL

APPROVED OFFICER'S ORDER

SECTION 5 – DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

File Ref No. EC16/23

No. D.C. 201/23

SUBJECT:

Declaration under Section 5.

Planning and Development Act 2000 as amended

Planning and Development Regulations 2001 as amended

RE: The erection of 3 tented structures within Thomond Park Stadium Grounds, Old Cratloe Road, Limerick.

Location 1 East of stadium grounds.

Location 2 Near Shannon Rugby Club grounds.

Location 3 Behind South Terrace.

ORDER:

Whereas by Chief Executive's Order No. CE/2021/145 dated 07th September 2021, Dr. Pat Daly, Chief Executive, Limerick City & County Council did, pursuant to the powers conferred on him by Section 154 of the Local Government Act, 2001, delegate unto Donogh O' Donoghue, Senior Executive Planner the functions within the meaning of the Local Government Act, 2001 as set out therein.

Now therefore pursuant to the delegation of the functions aforesaid, I, Donogh O' Donoghue, Senior Executive Planner, having considered the report and recommendation of Mr. Seán Moran, Development Inspector dated 22/Mar/2023, hereby order that a Declaration under Section 5 of the Planning and Development Act 2000 as amended be issued to Pat Downes, 42 Mayorstone Park, Old Cratloe Road, Limerick to state that the tented structure at **location 1** as described above **is Development and is NOT Exempt Development.**

AND the tented structures at **location 2 and 3** as described above **is Development and is Exempt Development.**

Signed



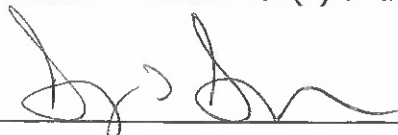
SENIOR EXECUTIVE PLANNER, PLANNING, ENVIRONMENT & PLACE-MAKING

Date

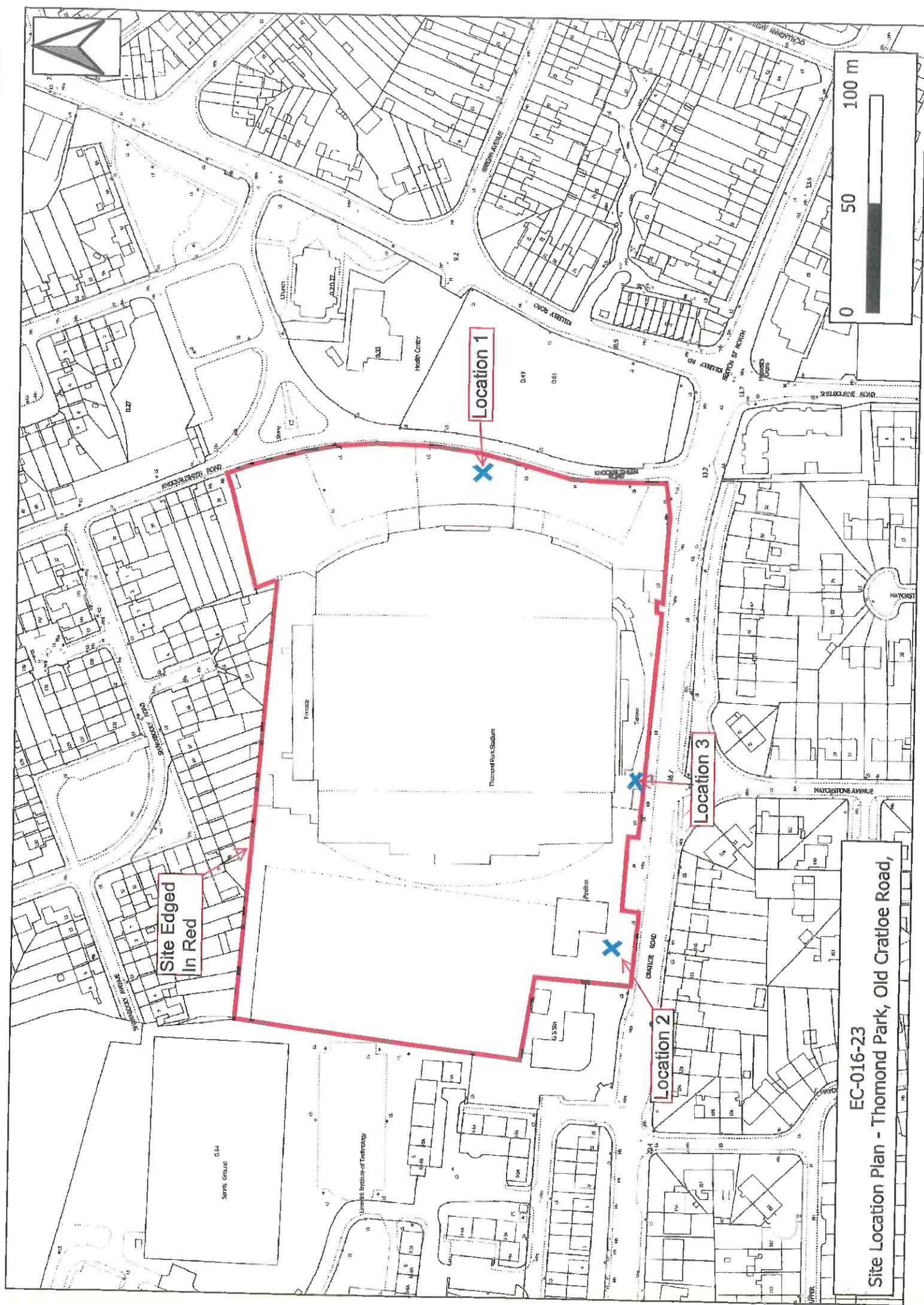
29/3/23

Certified to be a true copy of Approved Officer's Order, Planning & Development Order No. D.C. 201/23
dated 29/3/23, pursuant to Section 151(7) of the Local Government Act 2001

Signed:



SENIOR EXECUTIVE PLANNER, PLANNING, ENVIRONMENT & PLACE-MAKING



EC-016-23

Site Location Plan - Thomond Park, Old Cratloe Road,

