

Sharon Duke and James Joseph Kearney  
Upper Burncourt, Burncourt  
Cahir, Co. Tipperary  
E21A890  
Email: sharon\_kearney25@hotmail.com  
Mob: 086 3642028/087 9388492

28<sup>th</sup> September 2023

An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902

F.A.O. The Secretary,

<b>AN BORD PLEANÁLA</b>	
LDG-	066808-23
ABP-	
02 OCT 2023	
Fee: €	220 ... Cheque
Time:	By: Reg Post

Dear Sir/Madam,

**Re: Section 5 Exemption Ref: S5/23/90**  
**Upper Burncourt, Burncourt, Cahir, Co. Tipperary**

With reference to the above I wish to appeal the decision to grant the above exemption, this exemption was applied for on top of the existing exemption S5/23/16, the exemptions were granted by Tipperary County Council. Please find attached folder containing completed application form and supporting documentation.

The works on the section 5 gateway has not yet commenced, however the exempted new road development has started, the roadway has been excavated, but no further works have begun. We are concerned that should further works be undertaken, further damage will be inflicted to the trees located at the bounds of our property as the works is not compliant with BS5837:2012 and the RPA has obviously not been calculated. There is also Health and Safety issue with serious risk to life as a tree will require taking down on the location of the Section 5 gateway, the tree is dangerously close to ESB powerlines and works is not being completed by a qualified arborist.

As a matter of urgency we would ask if it was possible for the representatives of An Bord Pleanála, to ask the owner of the exempted roadway and Section 5 gateway to cease and desist any further works until a full and final decision of Appeal is made, as we are heading into the winter months and do not want any further unnecessary damage to our property or treeline, as we aware that a decision can take up to 18 weeks.

We look forward to hearing from you in the near future.

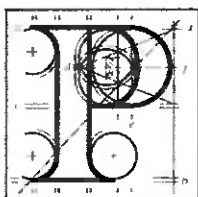
Kind Regards,

  
James Joseph Kearney and

  
Sharon Duke

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7. Site photographic evidence
8. Tree Damage
9. Documentation from planning complaint TUD-23-115



An  
Bord  
Pleanála

## Planning Appeal Form

### Your details

#### 1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Sharon Duke and James Joseph Kearney

(b) Address

Upper Burncourt, Burncourt, Cahir, Co. Tipperary  
E21 A890

### Agent's details

#### 2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

Click or tap here to enter text.

(b) Agent's address

Click or tap here to enter text.

## Postal address for letters

3. During the appeal we will post information and items to you **or** to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

**You (the appellant) at the address in Part 1**

☒

**The agent at the address in Part 2**

☐

## Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

**(a) Planning authority**

(for example: Ballytown City Council)

Tipperary County Council

**(b) Planning authority register reference number**

(for example: 18/0123)

S5/23/90 is the current Section 5 applied for on top of S5/23/16 as advised by Tipperary Council Enforcement Officer

**(c) Location of proposed development**

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Upper Burncourt, Burncourt, Cahir, Co. Tipperary Gateway and new roadway development are on Folio TY59356F owned by Mr P Cusack. We

own the house and farm on folios TY67200F and TY20504, that it will come out directly opposite

## Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments).  
You can type or write them in the space below or you can attach them separately.

Prior to our purchasing Upper Burncourt, the previous owner Mr Danny Fortune applied for a Section 5 gateway and roadway development for his neighbour Mr Cusack to come out onto the narrow roadway that leads to our property, this narrow laneway is charged to the council. The application was made falsely by Danny Fortunes engineer as it describes him as the owner of the lands that required the development, however this is not the case, it is owned by a Mr Cusack a neighbouring dairy farmer. The Section 5 (S5/23/16) was granted on 31<sup>st</sup> March 2023.

Once we moved into the property Mr Cusack began works on the roadway. He has started to excavate the road development, prior to installing the gateway, however there is a turn in the new roadway to come out onto the existing roadway and this is not in the correct location of the drawings submitted for the section 5 and is now closer to our property. The enforcement officer at our request came to site, he took drone footage of the property and declared it a mess and he went away to looked into it, he advised us that the current works are within the granted section 5. However he advised us to apply for a Section 5 (S5/23/90) on top of the existing Section 5 and to bring it to yourselves.

The reason we are bringing this to your attention is the following Health and Safety Issues:

- Our property is at the end of a narrow laneway, that is charged to the council.
- The laneway is very narrow and in poor condition with grass growing up through it (Refer to photo's provided). The road in its current condition could not sustain the additional heavy traffic of tractors, trailers and bailers etc from the neighbouring farm or contractors.

5. Please describe the grounds of your appeal (planning reasons and arguments).  
You can type or write them in the space below or you can attach them separately.

- There is a blind bend halfway down the narrow laneway and there is no where to pull over. Both sides of the laneway are banked as the fields on either side are higher than the laneway with one side having an original old stone wall in it. I enclose images of my husbands jeep and trailer on the laneway to confirm the width of the laneway and lack of space to pass.
- To allow vehicles to turn at the bottom of the laneway, the council have basically granted the use of our farm entrance as a turning circle and to facilitate the neighbour when pulling out of his property. Allowing him the ability to straighten up his vehicle across our property before exiting the laneway.
- If a jeep with a cattle trailer is coming down the lane and a tractor with a trailer is coming up the lane who reverses back. Because one way you are reversing back to our property and the other way you are reversing out on to the adjoining road which is equally as narrow. Either way the distance is long, sloped and dangerous.
- There are two other farmers that have bounds on this laneway and the council has now provided them with the opportunity to apply for a Section 5 on to the lane way.
- The location of the new gateway and new road development is directly opposite our main farm entrance. Our farm is a working farm. The new roadway will also run directly parallel with our house entrance and gateway and then runs around the back of our property, directly along the bounds of the two properties. We now have no privacy and the new development is affecting our own property value.
- Another concerning and dangerous issue is the power cables that run on the bounds between the two properties. At the last ESB pole closest to our house the cables go underground to our property. The new road

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You can type or write them in the space below or you can attach them separately.

development is going in extremely close vicinity to this, if not on top of the buried cables as we do not know where they are located. Where the proposed new Section 5 gateway will go is directly under the overhead power cables. The cables at this point are at their lowest with the risk of being struck while excavating the entrance or when bringing bail trailers and loaders out. Also not taking into account that the field is around a metre higher than the existing laneway, they are even lower on the field side. There are four cables running to the pole the bottom two are electricity and the top two are safety cables as further up the existing laneway going over the top of these cables and across our property into the Mr Cusack's property is a high voltage line, of which I had an ESB representative on site to confirm this.

Also with regards to the electricity there is a tree that will require cutting down prior to joining the new roadway development with the existing laneway. How can this be done safely, as there are only two ways, one is limb by limb which could result in the tree being hooked in the cables and endangering lives and pulling down the power lines or the other way is to fell the tree and this is only possible if you put the tree down across the existing laneway and on to my front lawn.

- Our property is close to the mountains and we are at the bottom of hill with the existing laneway charged to council running down the hill towards our property. Due to the amount of surface water there is, the property has an existing storm drain going across the laneway to stop the house from flooding. The new road development will come out directly on top of this and could damage the storm drain and stop it working effectively. Also because the neighbours field is higher than the laneway and our property,



5. Please describe the grounds of your appeal (planning reasons and arguments).  
You can type or write them in the space below or you can attach them separately.

the field. The storm drain is connected to a very old french drain system, while this system is working adequately at the moment protecting our home, if this development is allowed to proceed we believe that the old french drain system will not be able to handle the additional hydraulic flow and also with risk of additional mud, clay and silt washing into the old french drain system clogging it and in return flooding our property making the whole system protecting our home redundant.

- Where the new exempt roadway has been excavated, we are finding because the road way is higher than our property we are getting muddy wash out from the excavation running into our backyard and flooding the yard when it rains. Before this partial excavation commenced, our property never flooded in the back yard. Our property is now exposed to flooding at the front and the back, if this allowed to continue, we will be left with the financial burden of desilting drains and upgrading the existing system, due to the hydrology being altered directly adjacent to our property. With the natural fall of the neighbours field, the level of stone will act as a drain and its only outlet is directly into our property, both front and back.
- This existing laneway is the only entry point into our property, there is no other access route, Mr Cusack's lands are all joined together and his field is not a satellite farm, so the use of this gateway is not essential to his farming and will not affect his livelihood. The farmer has owned the folio TY59356F since 2016 and there has been no gateway or access on to this laneway since then.
- If the neighbouring farmers machinery or a contractor with there excessively large machinery breaks down in the existing laneway and we have an

5. Please describe the grounds of your appeal (planning reasons and arguments).  
You can type or write them in the space below or you can attach them separately.

emergency that requires a ambulance or fire engine how do they access our property, as we are at the end of a very narrow cul-de-sac.

- The new exempt roadway development is not compliant with BS5837:2012 and no RPA can have been calculated. Although works have been started, but not completed our property has suffered irrevocable damage, with specific reference to the Leylandii tree at the back of property, the works has not been carried out by qualified Arborists and the ESB have not been contacted as I have spoken with them directly on the 26/07/23.
- The new development of gate and roadway is leading to no where, so what is its use or hidden purpose. If this is allowed will there be additional development of sheds or residential in the coming years/months ahead.

I have referred all of my concerns to the Planning Office in the Council in numerous emails see attached and have referred to Planning Leaflet 9 Agricultural and Farm Development as this section 5 does not seem to be in compliance with this document. I can only assume that the Section 5 because the nature of which it was completed assumes there was only one individual involved in the application, which is untrue.

If this Section 5 remains approved, we will be in a position where our property is devalued and our home is at risk of flooding, who is responsible and will the council up grade the laneway, upgrade the drainage system or pay for flood damage to our property. This is an unnecessary development, we brought the property because of it being out of the way with both outstanding views of the mountains at both the front and back of the property, we are between the Galtee's and Knockmealdown mountain range, so went it rains it rains quite heavily. The flora and fauna is outstanding in this area we even have Hawkes nesting nearby.

5. Please describe the grounds of your appeal (planning reasons and arguments).  
You can type or write them in the space below or you can attach them separately.

The Department of Housing, Local Government and Heritage document  
Page 5 refers:

*"The exemptions do not apply if the development may interfere with sites, features etc. listed for preservation in the development plan or draft plan. In addition, as with all categories of exempted development, exempted status does not apply in the following situations: • where the development is contrary to a planning condition attached to a planning permission relating to the site; • where the development involves creating a new access or significantly widening an existing access onto a public road that is more than four metres wide **or where it would create a traffic hazard**; • where the development would interfere with the character of a landscape, view or prospect designated of special amenity value in the development plan;"*

I agree that this public road is less than 4 meters wide, however can one emphatically say the entrance won't create a traffic hazard. - of course not.

## Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

## Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

## Fee

8. You **must** make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

## Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the “yes, I wish to request an oral hearing” box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the “No, I do not wish to request an oral hearing” box.

**Yes, I wish to request an oral hearing**

☐

**No, I do not wish to request an oral hearing**

☒

NALA has awarded this document its Plain English Mark  
Last updated: April 2019.





Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary

E91 N512

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
An tAonach,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary

E45 A999

t 0818 06 5000  
e customerservice  
@tipperarycoco.ie  
[tipperarycoco.ie](http://tipperarycoco.ie)

Date: 20 September 2023

Our Ref: S5/23/90

Civic Offices, Nenagh

**Sharon Duke and JJ Kearney**  
**Upper Burncourt**  
**Burncourt**  
**Cahir**  
**Co. Tipperary**

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

Dear Sir/Madam,

I refer to your application for a Section 5 Declaration received on 25 August 2023, in relation to the following proposed works:

**Construction of an agricultural entrance onto the L-33115, the construction of a new field passage, the erection of fencing and the erection of a field gate at Upper Burncourt, Burncourt, Cahir, Co. Tipperary**

A question has arisen as to whether

- the construction of an agricultural entrance onto the L-33115
- the construction of a new field passage (same measured to be 3m in width),
- the erection of fencing
- and the erection of a field gate

at Upper Burncourt, Burncourt, Co. Tipperary is or is not exempted development.

Part 5 of the Planning and Development Act 2000 (as amended) requires a Planning Authority to make a declaration on any question that arises as to what is or is not development. In determining this query, the Planning Authority had regard to;

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),

- Articles 6 and 9 of the Planning and Development Regulations 2001, as amended and,
- Classes 9, 11 and 13 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- the nature and scale of the proposed use, as outlined in submissions on file by the owner/occupier.

Having considered the information received, the Planning Authority has determined that the works, as detailed in Section 4.1.1 above, at Upper Burncourt, Burncourt Co. Tipperary, constitutes development and are **"exempted development"**.

**NOTE:** Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours sincerely

  
for **Director of Services**



Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann  
Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary  
E91 N512

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Co. Thiobraid Árann  
Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary  
E45 A099

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

Our Ref: S5/23/90

Date: 28<sup>th</sup> August 2023

Civic Offices, Clonmel

**Sharon Duke and JJ Kearney,  
Upper Burncourt,  
Burncourt,  
Cahir,  
Co. Tipperary.**

**Re: Application for a Section 5 Declaration – for the construction of  
a field access and associated roadway on to a cul-de-sac at Upper  
Burncourt, Burncourt, Co. Tipperary.**

Dear Sir/Madam

I acknowledge receipt of your application for a Section 5 Declaration received  
on 25<sup>th</sup> August 2023 in connection with the above.

I wish to advise that you will be notified of a decision on your application in  
due course.

Yours faithfully,

For A/Director of Services





**Comhairle Contae Thiobraid Árann**  
Tipperary County Council

**PLANNING & DEVELOPMENT ACT, 2000 (as amended)**

**Application for a Section 5 Declaration**  
**Development / Exempted Development**

**1. Applicant's address/contact details:**

Applicant	SHARON DUKE & JJ KEARNEY
Address	UPPER BURNCOURT BURNCOURT CAHIR, CO. TIPPERARY E21A890
Telephone No.	[REDACTED]
E-mail	[REDACTED]

**2. Agent's (if any) address:**

Agent	NONE
Address	
Telephone No.	
E-mail	
Please advise where all correspondence in relation to this application is to be sent;	
Applicant [ <input checked="" type="checkbox"/> ]      Agent [ <input type="checkbox"/> ]	

**3. Location of Proposed Development:**

Postal Address or Townland or Location (as may best identify the land or structure in question)	field next to Upper Burncourt, Burncourt, Co. Tipperary E21 A890
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4. **Development Details:**

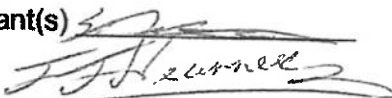
Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.

The construction of a field access and associated roadway on to a cul-de-sac	
Proposed floor area of proposed works/uses:          sqm	

5. **Legal Interest of Applicant in the Land or Structure:**

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Occupier
	C. Other <input checked="" type="checkbox"/>	
Where legal interest is 'Other', please expand further on your interest in the land or structure	Neighbour of proposed existing exemption	
If you are not the legal owner, please state the name and address of the owner	Name: Patrick Cusack Address: Burncourt Cahir, Co. Tipp	

Signature of Applicant(s) 

Date: 24/05/23

**Note:** If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.

## GUIDANCE NOTES

- (1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.
- (2) This application should be accompanied by **TWO COPIES** of the following documentation
  - OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
  - Floor Plans & Elevations at a scale of not less than 1:200
  - Site layout plan indicating position of proposed development relative to premises and adjoining properties
  - Other details e.g. brochures, photographs if appropriate.

(All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)
- (3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

**This application form and relevant fee should be submitted to:**

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

<b>FOR OFFICE USE ONLY</b>	
<b>Fee Recd. €</b> _____ <b>Receipt No</b> _____ <b>Date</b> _____ <b>Received by</b> _____	<b><u>DATE STAMP</u></b>

# **Drawing Notes and Specifications:**

1. Mr Cusack to carry out all works, including excavation, site works, erection of new fence, gate & passageway.
2. All materials, including passageway stone, fence, posts, gate etc to be supplied by Mr Fortune. Materials to be supplied from the following suppliers:  
a) Passageway stone - Gleasons Quarries, Lifford Bridge, Killesnoe, Co. Tipperary.  
b) Gate, hanging post & closing post - Dairygold, Carrigrohane, Co. Tipperary.  
c) Concrete fence posts & chain-link fence - Corbett Concrete, Cahill, Co. Tipperary.
3. New Roadway - Foundation Layer  
This foundation layer to be made up of granular fill material to a depth of 250mm (9-10 inches). The biggest stones should be no bigger than about one third of the thickness of this layer. 75 or 100 mm (3 or 4 inch) down material to be used.
4. On completion of all works, all fences, gates & roadway will be located within the property owned by Mr Cusack.

## **New Roadway - Surface**

The roadway to be completed with 40-60mm (1.5-2.5 inches) of a fine material. This surface layer or wearing course to be laid evenly and compacted. To be spread it out to the slope formed in the foundation layer. The surface material to be compacted & rolled when damp.

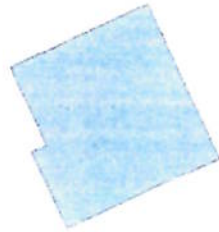
Proposed field gate - see T/I  
CC-SCD-0303 for details.  
Gate to be 12 foot steel gate with mesh.

Cult-to-sac

Proposed field gate - see  
CC-SCD - 0303.

Fence to be Concrete post and mesh  
fence to T/I - CC-SCD -00306.

Vehicle path.



Applicant's  
property.

## **PROJECT**

Upper Burncourt,  
Burncourt,  
Co. Tipperary,  
E21 A890.

## **CLIENT**

Danny Fortune

## **DESIGNER**

**RyCo**

**ENGINEERING & PLANNING**

51 Acres Terrace  
Ardaraun,  
Chenel,  
Co. Tipperary.

## **NOTES**

- Land Transfer
- Proposed Field Gate
- New Fence Line
- Existing Track

**PROJECT NUMBER**

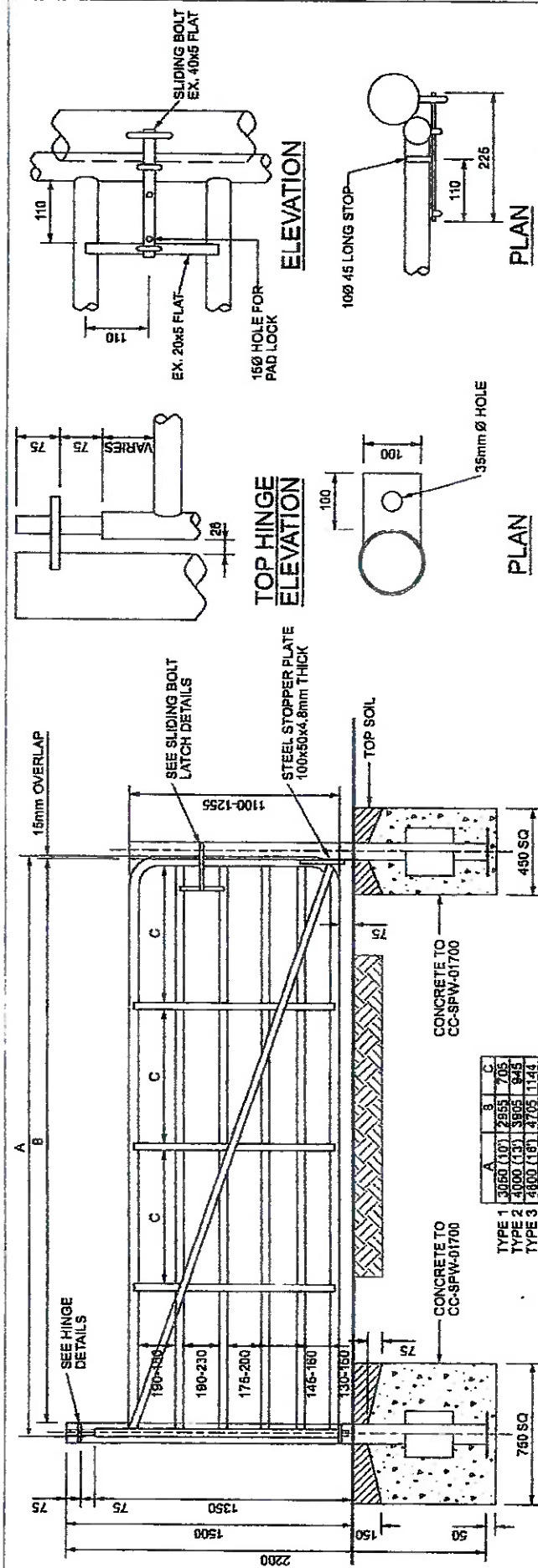
DF001

**DRAWING NUMBER**

0001

## **SITE LAYOUT PLAN**

Date: 30/12/2023 Dm: MC  
Scale: 1:500 (A3) Rev: 0

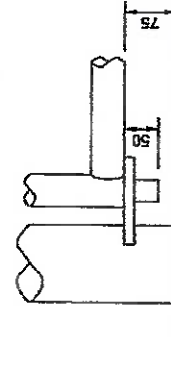


MATERIAL DESCRIPTION	SIZE	FIXINGS
HANGING POST (TUBULAR STEEL)	114.3mm EXT. DIA. 3.6mm THICK	CAP PLATES 4.8mm THICK. BASE PLATES 250x250x4.8mm THICK CAP & BASE PLATES TO BE CONTINUOUSLY FLUSH WELDED TO TUBE.
SHAPING POST (TUBULAR STEEL)	88.9mm EXT. DIA. 3.2mm THICK	WING PLATES 250x250x4.8mm THICK STITCH WELDED TO POST.
MAIN FRAME (TUBULAR STEEL)	48.9mm EXT. DIA. 2.8mm THICK	
INFILL HORIZONTAL RAILS (TUBULAR STEEL)	42.4mm EXT. DIA. 2.6mm THICK	
BRACES (FLAT STEEL) 3 VERTICAL, 2 DIAGONAL	38x4.8mm	FILLET WELDED TO EACH GATE MEMBER CROSSED BY BRACES.
MESH FABRIC (IF SPECIFIED)	61mm SQ.x4.1mm Ø STEEL SQUARE WELDED MESH FABRIC.	

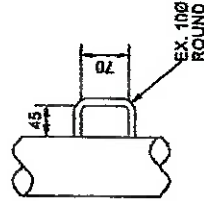
#### NOTES :-

1. ALL DIMENSIONS ARE IN MILLIMETRES.
2. GATES SHALL COMPLY WITH THE APPROPRIATE CLAUSES IN CC-RMP-00300 AND ANY FURTHER REQUIREMENTS IN APPENDIX 1/15 OR 3/1.
3. GATES SHALL OPEN INWARD FROM THE ADJACENT CARRIAGEWAY INTO THE OWNERS PROPERTY.
4. HINGES AND LATCH AS DETAILED.
5. THE CORNERS OF THE MAIN FRAME MAY BE ROUNDED OR MITRED.
6. GATES & FITTINGS SHALL BE GALVANISED TO COMPLY WITH IS EN 10240 UNLESS ALTERNATIVE PROTECTIVE TREATMENT DESCRIBED IN APPENDIX 1/15 OR 3/1.
7. GATE STOPS TO BE PROVIDED IN ACCORDANCE WITH CC-SCD-00314.

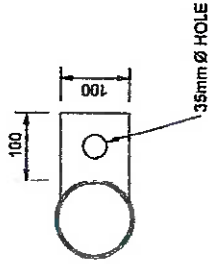
#### HINGE DETAILS



#### SLIDING BOLT LATCH DETAIL

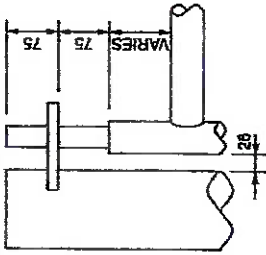


#### PLAN

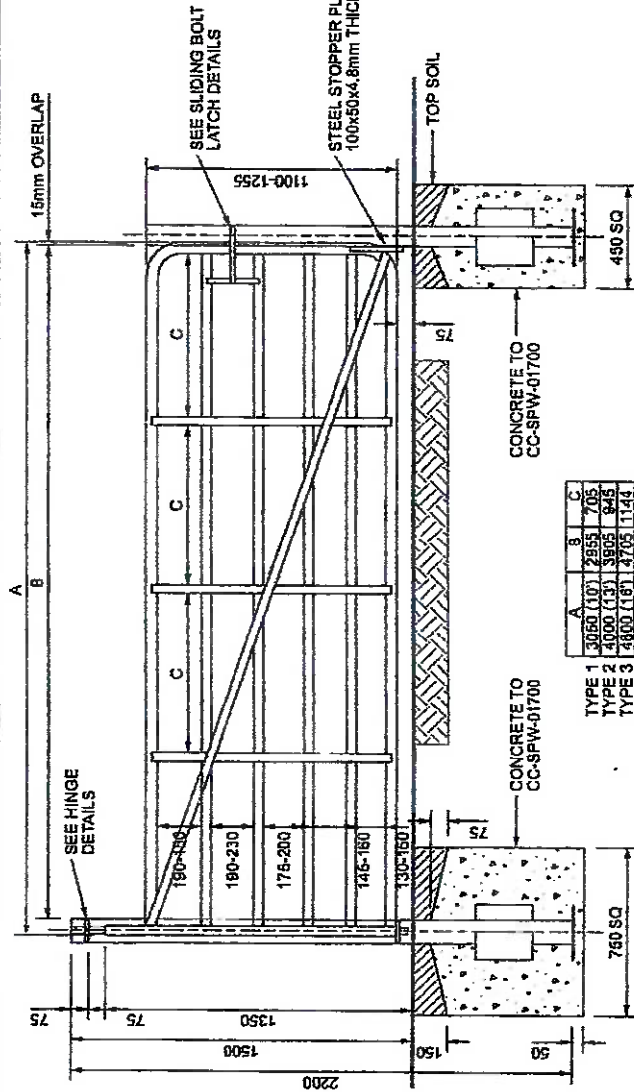


#### PLAN

#### ELEVATION



#### TOP HINGE ELEVATION



### GATES STEEL SINGLE FIELD GATE



#### STANDARD CONSTRUCTION DETAILS (SCD)

00309

SCD

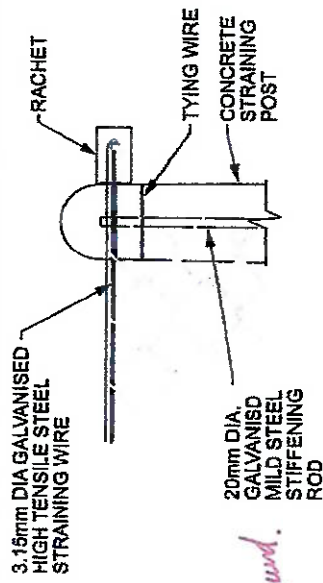
CC

JANUARY 2007

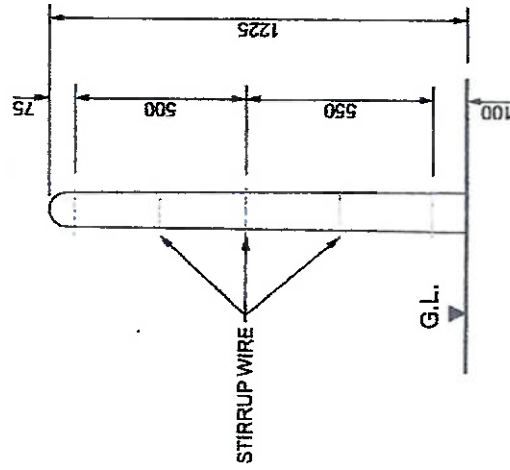
STANDARDS

RCD/300/9

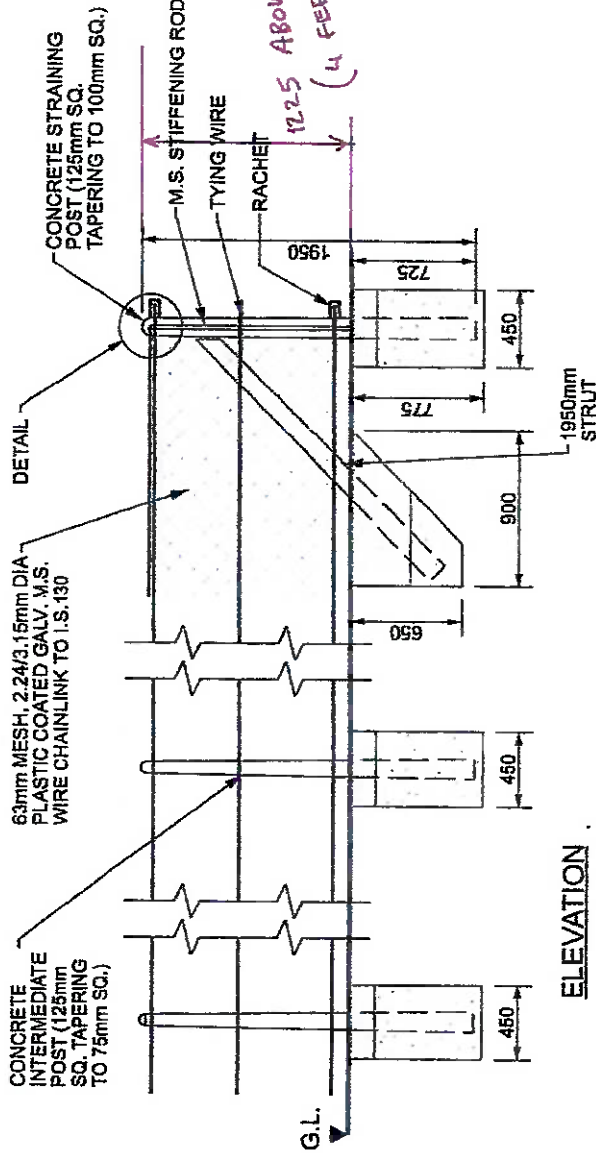
00309



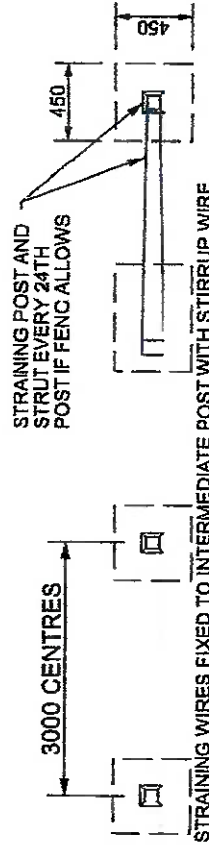
DETAIL SHOWING CHAINLINK STRAINING WIRE ETC.



SECTION INTERMEDIATE POST



ELEVATION



PLAN

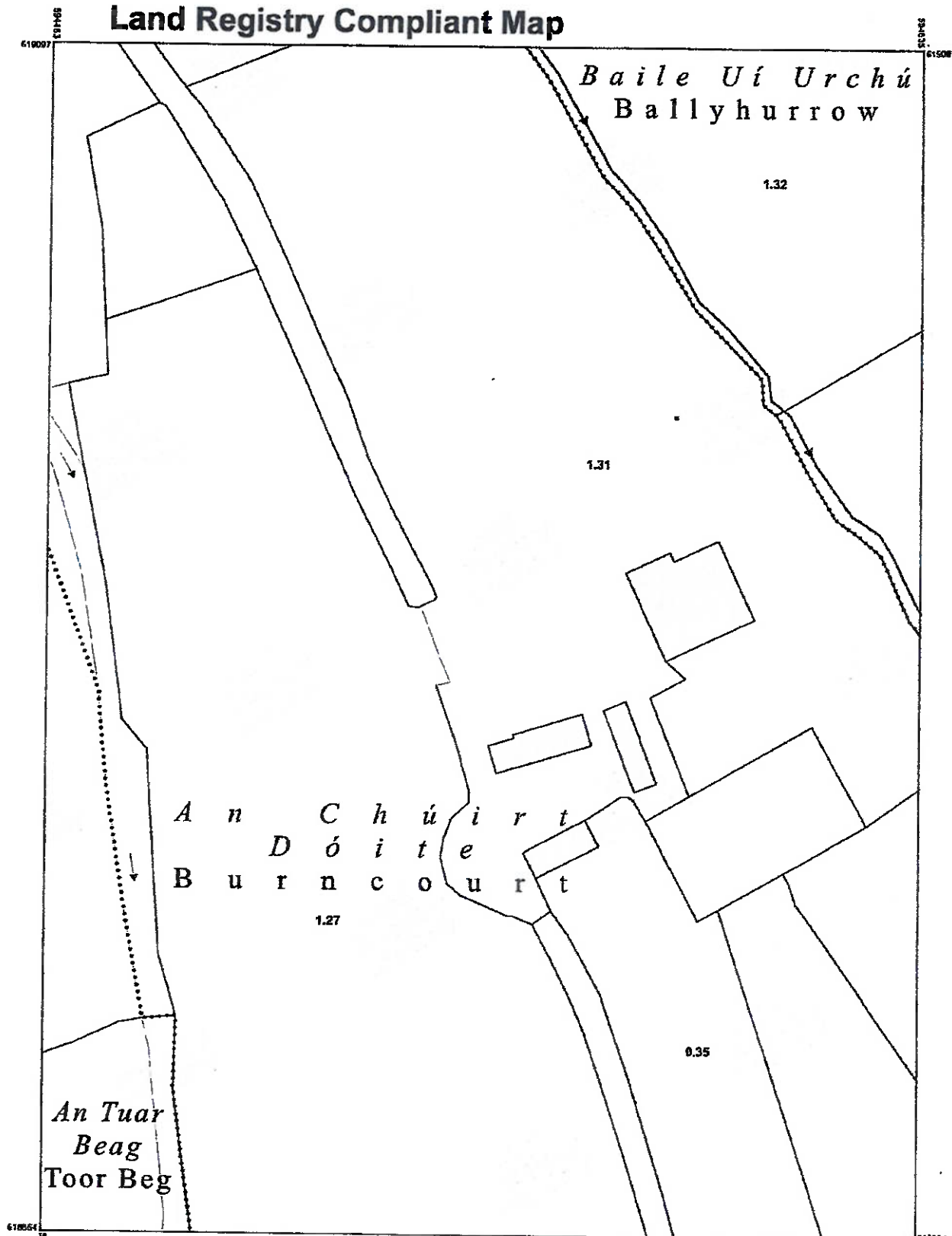
- NOTES:-
1. ALL DIMENSIONS ARE IN MILLIMETRES.
  2. FENCE SHALL COMPLY WITH I.S. 252.
  3. MESH TYPE OR BARBED WIRE WHERE REQUIRED SHALL BE SPECIFIED IN APPENDIX 3 / 1 TO SPECIFICATION.

<p>ACTIVITY</p> <p><b>TII</b></p> <p>Bombay Impulse Estate</p> <p>Construction of 4th &amp; 5th Floors</p>	<p>PUBLICATION TITLE</p> <p>FENCING</p> <p>CONCRETE POST AND MESH</p>
<p>STANDARD CONSTRUCTION DETAILS (SCD)</p>	<p>ACTIVITY</p> <p>CC</p> <p>SCD</p> <p>00306</p>
<p>DOCUMENTATION SET</p> <p>STANDARDS</p>	<p>PUBLICATION DATE</p> <p>JANUARY 2007</p>
<p>HISTORICAL REFERENCE</p> <p>RCD/300/6</p>	<p>PUBLICATION NUMBER</p> <p>31N/AM</p> <p>00306</p>





# Land Registry Compliant Map



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**CENTRE  
COORDINATES:**  
ITM 594549,618981

**PUBLISHED:**  
06/10/2022  
**MAP SERIES:**  
1:2,500

**ORDER NO.:**  
50295540\_1  
**MAP SHEETS:**  
5484-D

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Comhairle Contae Thiobraid Árann  
Tipperary County Council

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E91 N512

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Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary  
E45 A099

t 0818 06 5009  
e customerservice  
@tipperarycoco.ie  
tipperarycoco.ie

Date: 31<sup>st</sup> March, 2023

Our Ref: S5/23/16

Civic Offices, Nenagh

Danny Fortune,  
C/o John Ryan,  
2 Ascaill Breen,  
Dún Chormaic,  
Cashel, Co. Tipperary

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

Dear Mr. Fortune,

I refer to your application for a Section 5 Declaration received on 1<sup>st</sup> March, 2023, in relation to the following proposed works:

**Construction of field access on a cul-de-sac at Upper Burncourt,  
Burncourt, Co. Tipperary, E21 A890**

**WHEREAS** a question has arisen as to whether the proposed development is or is not exempted development:

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

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- Articles 6 and 9 of the Planning and Development Regulations 2001, as amended and,
- Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,

**AND WHEREAS** Tipperary County Council has concluded that the proposed development as presented on the drawings and details provided with the Declaration application constitutes "development" within the meaning of the Planning and Development Act 2000, and:

(2)

- i) The formation of an entrance onto the L-33115, the erection of a gate and fencing **is exempted development**.
- ii) The formation of a new passageway is **not exempted development** as it does not satisfy the requirements of Class 13, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended.

**NOTE:** Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours sincerely



for **Director of Services**



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

***PLANNING & DEVELOPMENT ACT, 2000 (as amended)***

***Application for a Section 5 Declaration  
Development / Exempted Development***

**1. Applicant's address/contact details:**

<i>Applicant</i>	Danny Fortune
<i>Address</i>	Upper Burncourt, Burncourt, Co. Tipperary, E21 A890
<i>Telephone No.</i>	
<i>E-mail</i>	

**2. Agent's (if any) address:**

<i>Agent</i>	John Ryan
<i>Address</i>	2 Ascaill Breen, Dún Chormaic, Cashel, Co. Tipperary.
<i>Telephone No.</i>	087 906 4389
<i>E-mail</i>	john@rycoengineering.ie
<i>Please advise where all correspondence in relation to this application is to be sent;</i>	
Applicant [ <input type="checkbox"/> ]      Agent [ <input checked="" type="checkbox"/> ]	

**3. Location of Proposed Development:**

<i>Postal Address or Townland or Location (as may best identify the land or structure in question)</i>	Upper Burncourt, Burncourt, Co. Tipperary, E21 A890
--	---

**4. Development Details:**

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

The construction of a field access on a cul-de-sac.
Proposed floor area of proposed works/uses: NA sqm

**5. Legal Interest of Applicant in the Land or Structure:**

<i>Please tick appropriate box to show applicant's legal interest in the land or structure</i>	A. Owner <input checked="" type="checkbox"/>	B. Occupier
	C. Other	
<i>Where legal interest is 'Other', please expand further on your interest in the land or structure</i>		
<i>If you are not the legal owner, please state the name and address of the owner</i>	Name: Address:	

Signature of Applicant(s) \_\_\_\_\_

Date: 30/01/2023

**Note:** If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.

## GUIDANCE NOTES

- (1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently €80.00.
- (2) This application should be accompanied by **TWO COPIES** of the following documentation
  - OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
  - Floor Plans & Elevations at a scale of not less than 1:200
  - Site layout plan indicating position of proposed development relative to premises and adjoining properties
  - Other details e.g. brochures, photographs if appropriate.

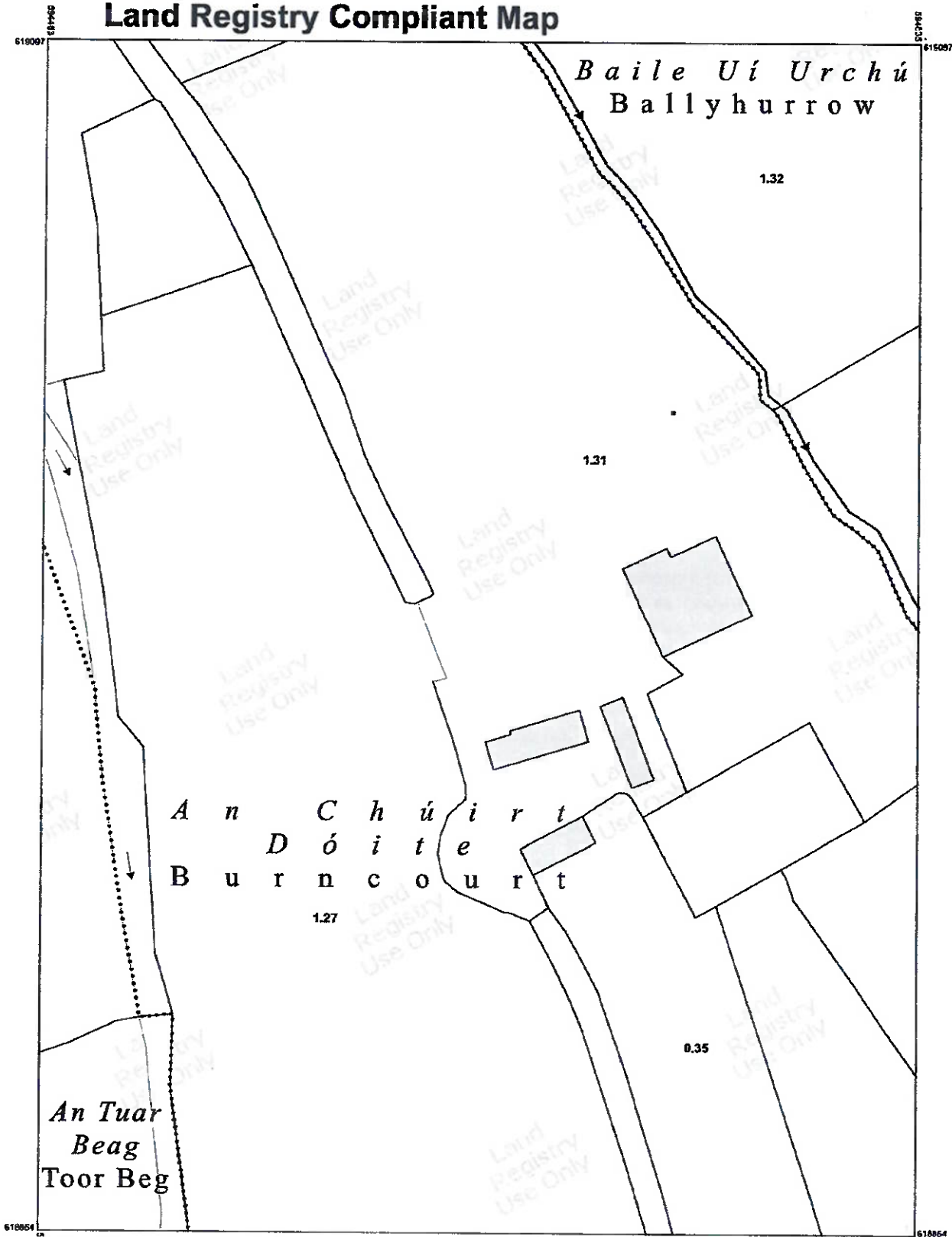
(All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)
- (3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

This application form and relevant fee should be submitted to:

<b>Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary</b>	<b><u>OR</u></b>	<b>Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary</b>
<b>Enquires:</b>  <b>Telephone 0761 06 5000</b>  <b>E-Mail <a href="mailto:planning@tipperarycoco.ie">planning@tipperarycoco.ie</a></b>		

<b>FOR OFFICE USE ONLY</b>	
<b><u>DATE STAMP</u></b>	
<b>Fee Recd. €</b> _____	
Receipt No _____	
Date _____	
Receipted by _____	

# Land Registry Compliant Map



*An Tuar  
Beag  
Toor Beg*

0 9.5 19 28.5 38 Metres  
0 10 20 30 40 50 Feet

OUTPUT SCALE: 1:1,000



CENTRE  
COORDINATES:  
ITM 594549.618981

PUBLISHED:  
06/10/2022  
MAP SERIES:  
1:2,500

ORDER NO.:  
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**LEGEND:**  
<http://www.osi.ie>; search 'Large Scale Legend'



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# **Drawing Notes and Specifications**

1. Mr. Cusack to carry out all works, including excavation, site works, erection of new fence, gate & passageway.
2. All materials, including passageway stone, fence, posts, gate etc to be supplied by Mr. Fortune. Materials to be supplied from the following suppliers:  
 a) Passageway stone – Gleasons Quarries, Laffins Bridge, Killeenale, Co. Tipperary.  
 b) Gate, hanging post & closing post – Dairygold, Cahir, Co. Tipperary.  
 c) Concrete fence posts & chain-link fence – Corbett Concrete, Cahir, Co. Tipperary.
3. New Roadway – Foundation Layer  
 This foundation layer is to be made up of granular M material to a depth of 250mm (8-10 inches). The biggest stones should be no bigger than about one third of the thickness of this layer. 75 or 100 mm (3 or 4 inch) down material to be used.
4. New Roadway – Surface  
 The roadway to be completed with 40-60mm (1.5-2.5 inches) of a fine material. This surface layer or wearing course to be laid evenly and compacted. To be spread it out to the shape formed in the foundation layer. The surface material to be compacted & rolled when damp.
5. On completion of all works, all fences, gate & roadway will be located within the property owned by Mr. Cusack.

Vehicle path.

Proposed field gate, see TH CC-SCD-00308 for details. Gate to be 12 foot steel gate with mesh.

Out-de-sac.

Proposed field gate, see TH CC-SCD-00308 for details. Gate to be 12 foot steel gate with mesh.

Proposed fence, see TH CC-SCD-00308 for details. Fence to be concrete post and mesh.

Applicant's property.

## **PROJECT**

Upper Burncourt  
Burncourt,  
Co. Tipperary,  
E21 A890.

## **CLIENT**

Danny Fortune

## **DESIGNER**

**RyCo**  
ENGINEERING & PLANNING

51 Aonora Terrace  
Ardaraun,  
Cherryhill,  
Co. Tipperary.

## **NOTES**

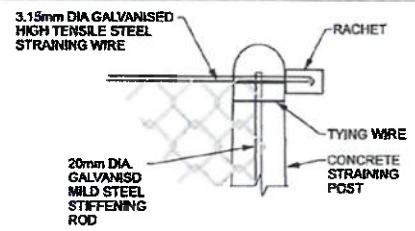
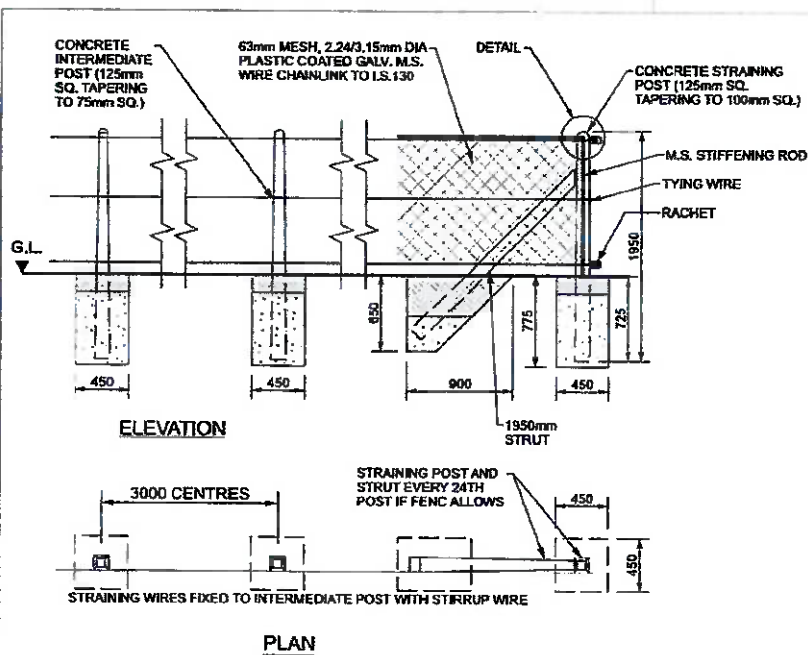
- Site Boundary
- Proposed Field Gate
- Proposed Fence
- Proposed Passageway
- Existing House Access

PROJECT NUMBER DFC01

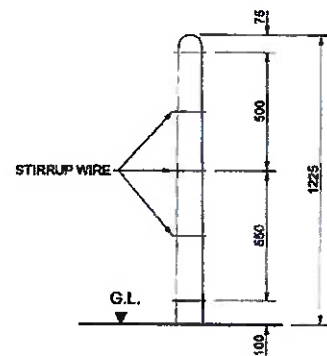
DRAWING NUMBER 0001

## **SITE LAYOUT PLAN**

Date: 10/01/2023 Drawn: MC  
Scale: 1:500 (A3) Rev: 0



**DETAIL SHOWING CHAINLINK STRAINING WIRE ETC.**



**SECTION INTERMEDIATE POST**

- NOTES:-**
1. ALL DIMENSIONS ARE IN MILLIMETRES.
  2. FENCE SHALL COMPLY WITH I.S. 252.
  3. MESH TYPE OR BARBED WIRE WHERE REQUIRED SHALL BE SPECIFIED IN APPENDIX 3 / 1 TO SPECIFICATION.



Construction & Commissioning

STANDARD CONSTRUCTION DETAILS (SCD)

FENCING  
CONCRETE POST AND MESH

HISTORICAL REFERENCE

RCD/300/6

CONSOLIDATION SET

STANDARDS

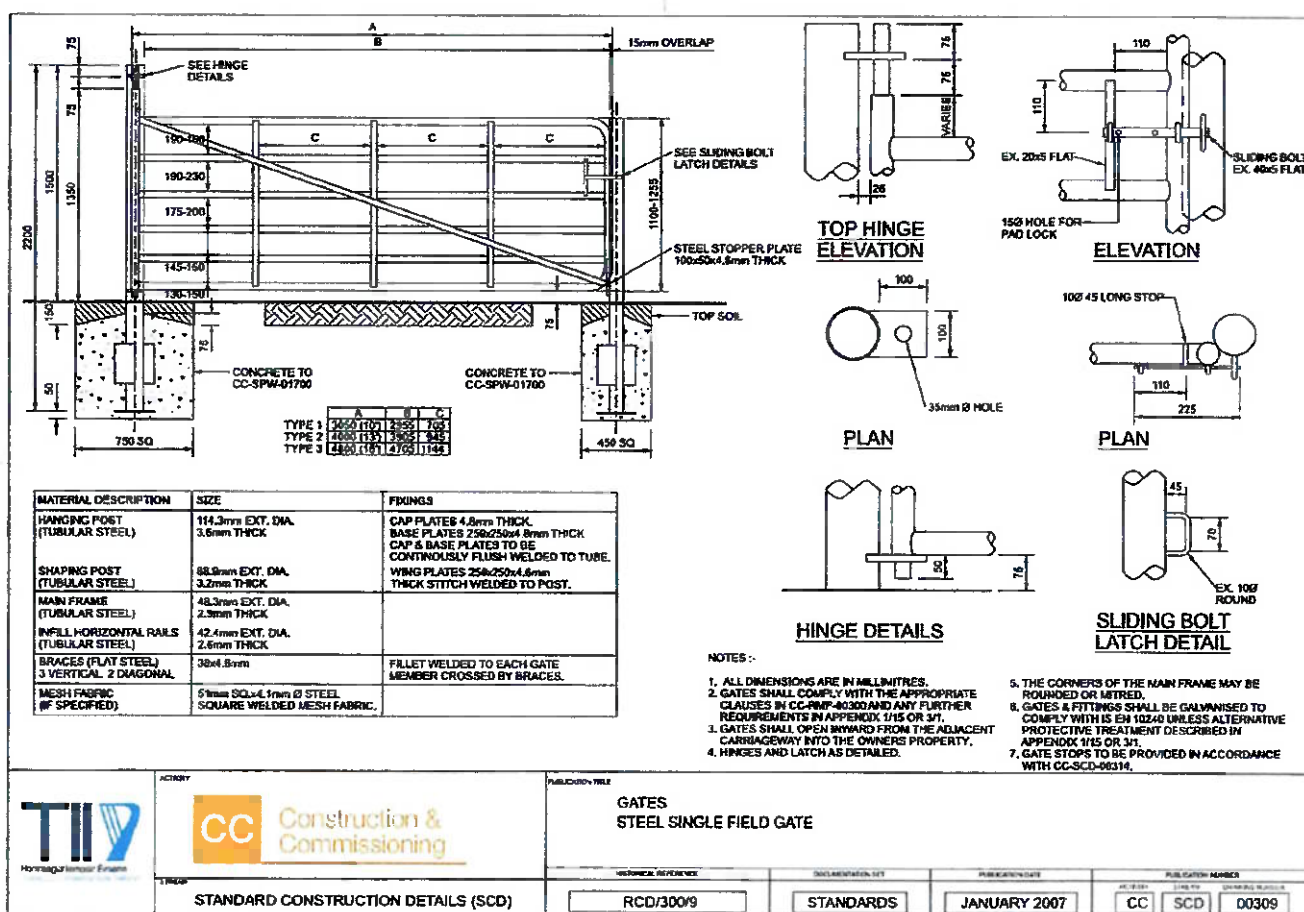
PUBLICATION DATE

JANUARY 2007

PUBLICATION NUMBER

CC SCD 00306





# GATES STEEL SINGLE FIELD GATE

STANDARD CONSTRUCTION DETAILS (SCD)

REVISIONS

RCD/300/9

STANDARDS

JANUARY 2007

CC SCD 00309



Comhairle Contae Thiobraid Árann  
Tipperary County Council

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Thiobraid Árann,  
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Tipperary County Council  
Civic Offices, Clonmel,  
Co. Tipperary

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An tAonach,  
Co. Thiobraid Árann  
Tipperary County Council  
Civic Offices, Nenagh,  
Co. Tipperary

E45 A099

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

**SENT BY EMAIL AND POST**

**Our Reference:**  
507/267-2022/346

**Your Ref:**  
NE/EW/FOR003/0002/253224

**Date:**  
3 June 2022

<b>Your Client:</b>	<b>Daniel Fortune</b>
<b>Property at:</b>	<b>Upper Burncourt, Cahir, Co. Tipperary</b>

Dear Sirs,

I refer to your request received on the above and I confirm the following:

- The road shown marked "X"- "Y" shaded Green on the attached map is the M8 Motorway.
- The road shown marked "A"- "C"- "D" shaded Yellow on the attached map **IS WITHIN THE CHARGE** of Tipperary County Council. L-33115-0 is the reference number on the official schedule.
- The Laneways shown marked "C"- "B" and "D"- "E" shaded Blue on the attached map **ARE NOT WITHIN THE CHARGE** of Tipperary County Council as Public Roads.
- The Services abutting query is being dealt with by The Water Services Section, Tipperary County Council, Civic Offices, Clonmel, Co. Tipperary, telephone 0818 06 5000.

This cert should be read in conjunction with the attached map.

Signed:

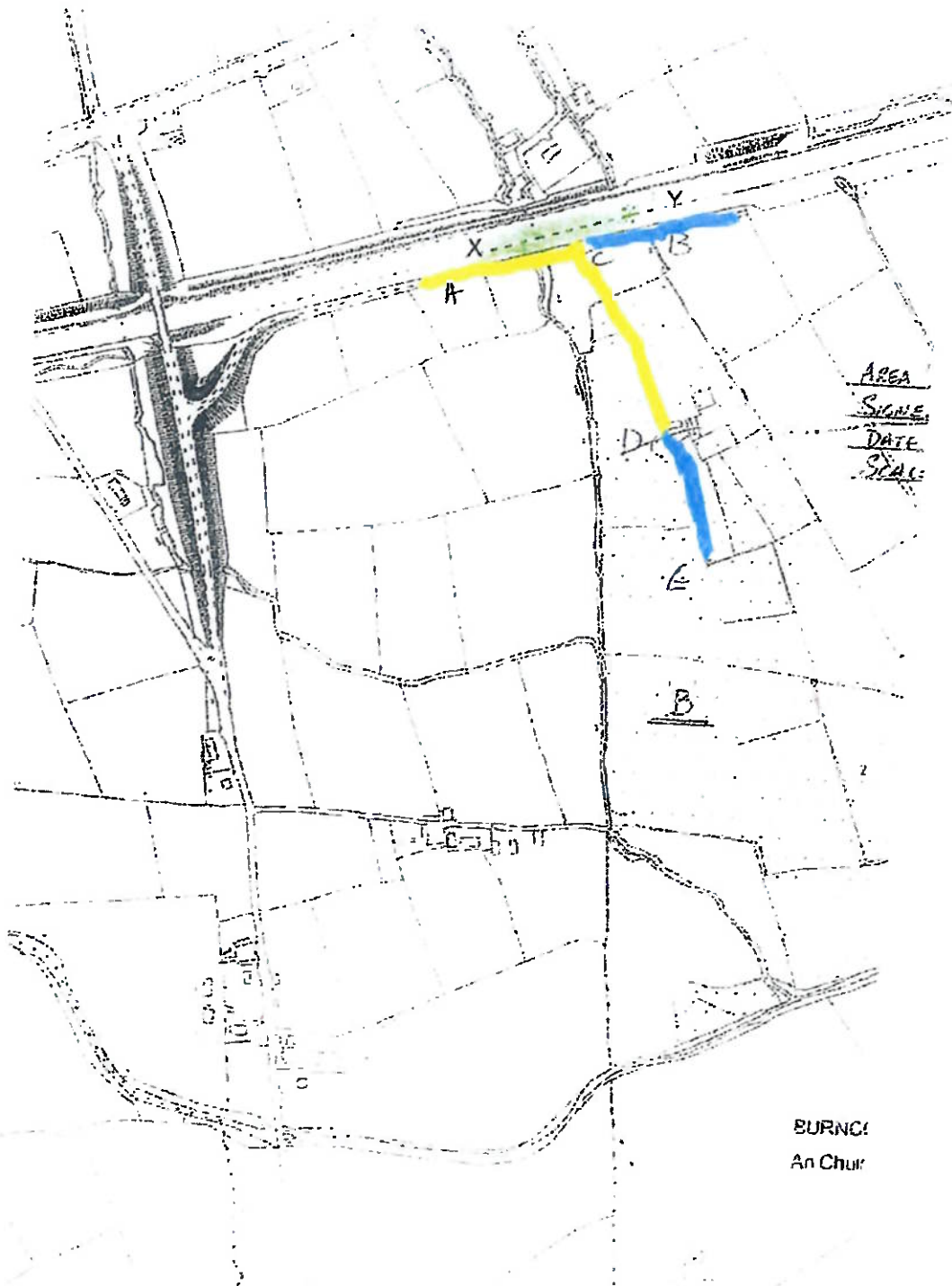
**James Hayes**  
**Senior Staff Officer**  
**Roads Department**

**Joseph Nolan & Co**  
**Solicitors**  
**28 Parnell Street**  
**Clonmel**  
**Co. Tipperary**  
**E91 P6Y0**

**Map.Encl.**

The road marked X to Y, shaded green, is the M8 Motorway.  
 The road marked A to C to D, shaded yellow, is the L-33115-0 and is in charge.  
 The Laneways marked C to B and D to E, shaded blue, are not in charge as Public Roads. 2022/346 *Simon Sheehan*

Folio number: TY20504



1 222 000 000 0 1000 1 km

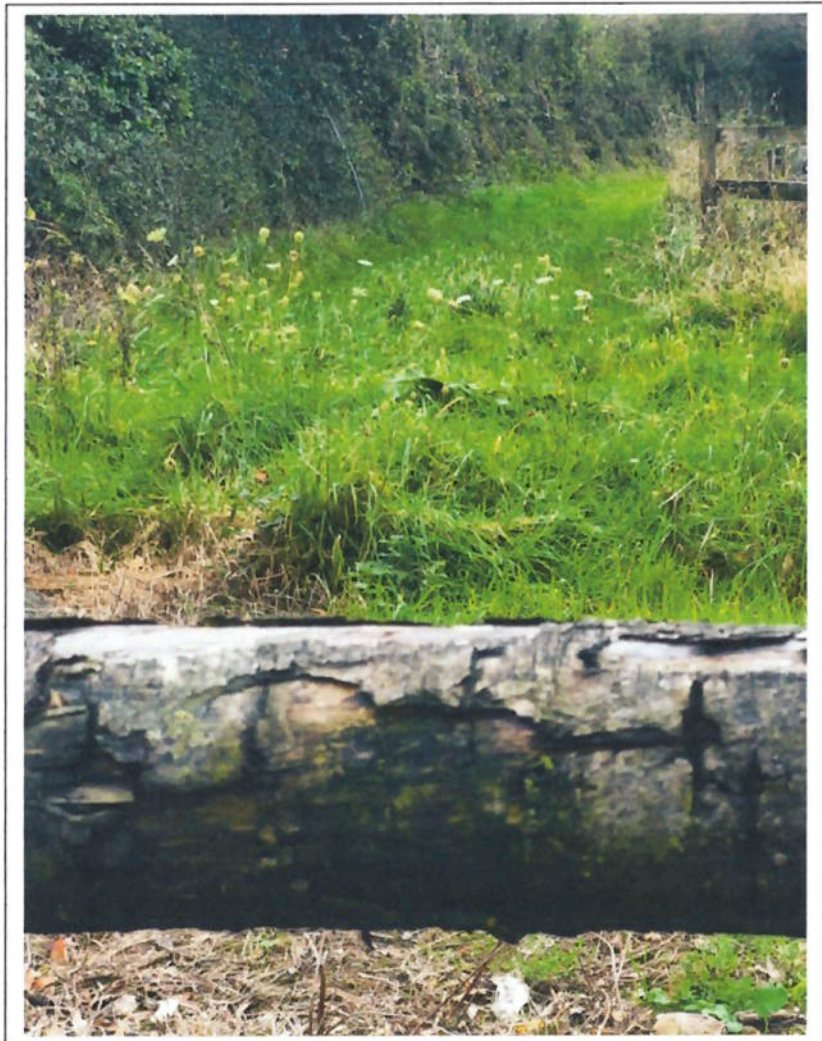
Signature Date: 06 February 2013 17:02:03

Are

Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16

## **Areas of laneway charged and not charged to the council**

I refer to the drawing provide by the roads department for Tipperary County Council. I would like to confirm that the laneway section marked D to E no longer exists in a road format. The first part is hard standing up to our boundary post and rail fence, beyond this point it has grassed over and the roadway itself no longer exists. Please refer to the photo below.





Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16

Gealge

+

-

TOUR EGG

BURNCOURT

XY 594791, 618905

Scale 1 : 2500

Townland Burncourt

Barony Iffa And Offa West

County Tipperary

Property Details

> Back

Folio Number TY67200F

Title Level Freehold

Plan Number D7M99

Property Number 1

Area of selected plans 1.65 hectares.

Number of Plans on this folio: 1

Address Upper Burncourt, Burncourt, Co. Tipperary, E21 4890

Add to Basket

Create Alert

The following Applications are Pending on this Folio

D2023LR084528E Mapping Query

YEMA Easements and Plan Area are not conclusive. See [Section 62\(1\) of Registration of Title Act 2006 and Rule 9\(1\) of the Land Registration Rules 2012](#)

View Basket

Print Current View

Folio TY67200F owned by Sharon Duke and James Joseph Kearney

Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16

Property Details

> Back

Folio Number  
TY20504

Title Level  
Freehold

Plan Number  
2

Property Number  
1

Area of selected plans  
4.57 hectares.

Number of Plans on  
this folio:  
1

Address  
Not Available

Add to Basket

Create Alert

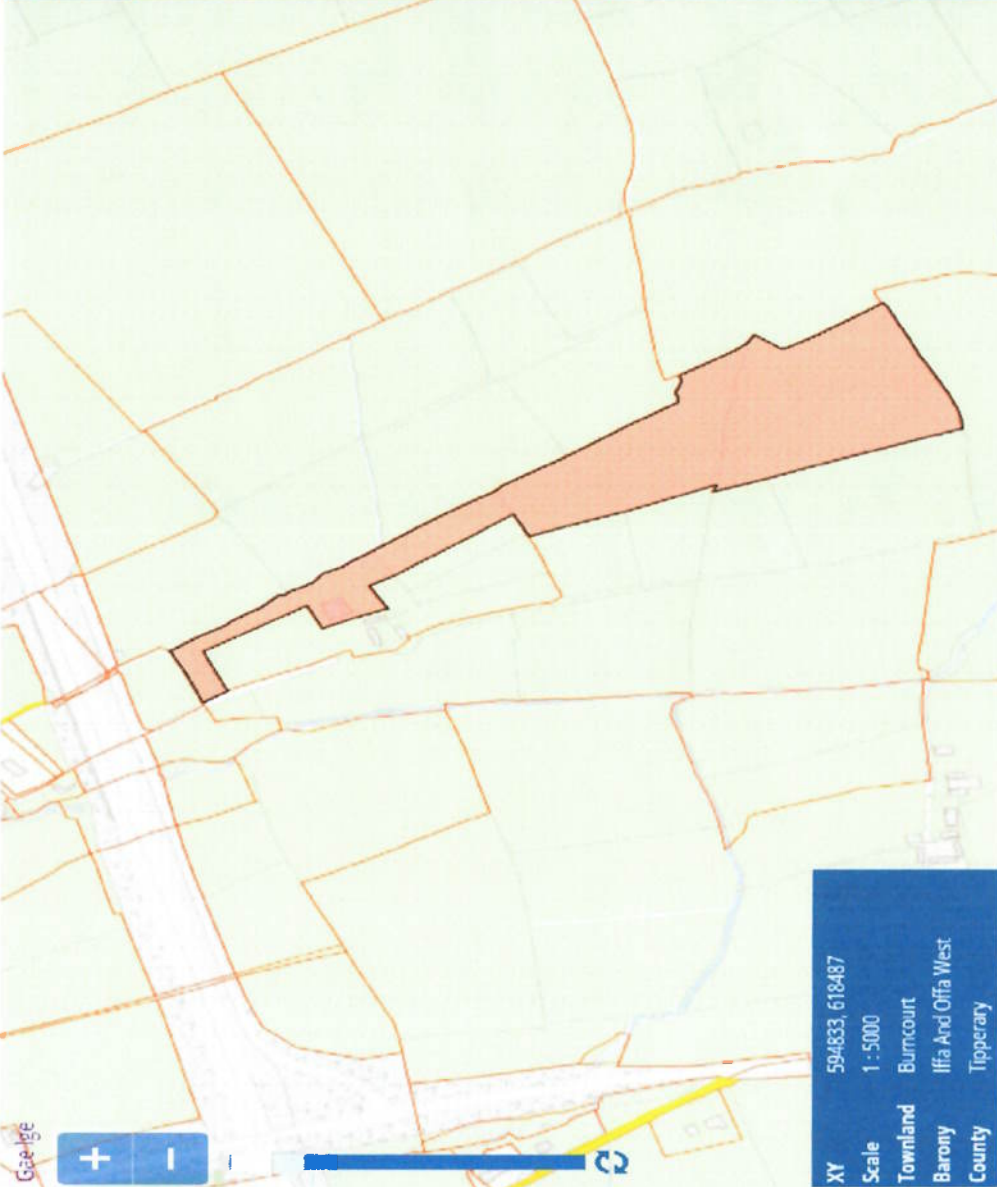
The following Applications are Pending on this Folio  
Folio  
D2023LR084528E  
Vacating Query

Land Enclosed by Flight Lines are not conclusive See Section 62(2) of Registration of Title Act 2006 and Rule 8(3) of the Land Registration Rules 2012

View Basket

Print Current View

Help



Geog

+

-

XY 594833, 618487  
Scale 1 : 5000  
Townland Burncourt  
Barony Iffa And Offa West  
County Tipperary

Folio TY20504 owned by Sharon Duke and James Joseph Kearney

Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16

Property Details

> Back

Folio Number

TY59356F

Title Level

Freehold

Plan Number

C700

Property Number

1

Area of selected plans

12.05 hectares

Number of Plans on this folio:

1

Address

140, Available

Add to Basket

Create Alert

Notes: 140, Available and 140, Available are not conclusive. See Section 62(2) of Registration of Title Act 2006 and Rule 23 of the Land Registration Rules 2012

View Basket

Print Current View

Help

Geog

+

-

TOUR EGG

BURN COURT

XY

594711, 618917

Scale

1:2500

Townland

Burncourt

Barony

Ilfa And Offla West

County

Tipperary

TY59356F Land Folio owned by Mr P Cusack



## Tree Damage

I understand that New Development of a new roadway was consider exempt under planning, but I do understand how this is possible when the roadway is not compliant with the standard BS5837:2012. The RPA was obviously not calculated on any of trees on this site.

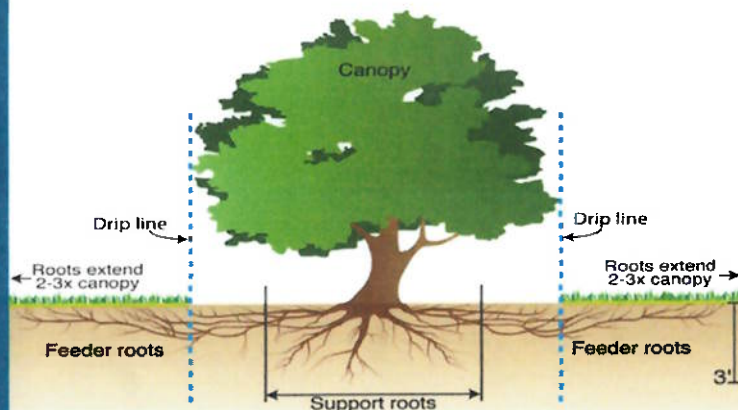
From the top of the neighbours boundary all the way down to the section 5 gateway and new development exempt roadway, it is a mature hedgerow. Once your reach the section 5 gateway the boundary is divided by trees. Obviously a professional arborist was not brought in to assess the trees or calculate the RPA.



### BS 5837: Trees in relation to construction

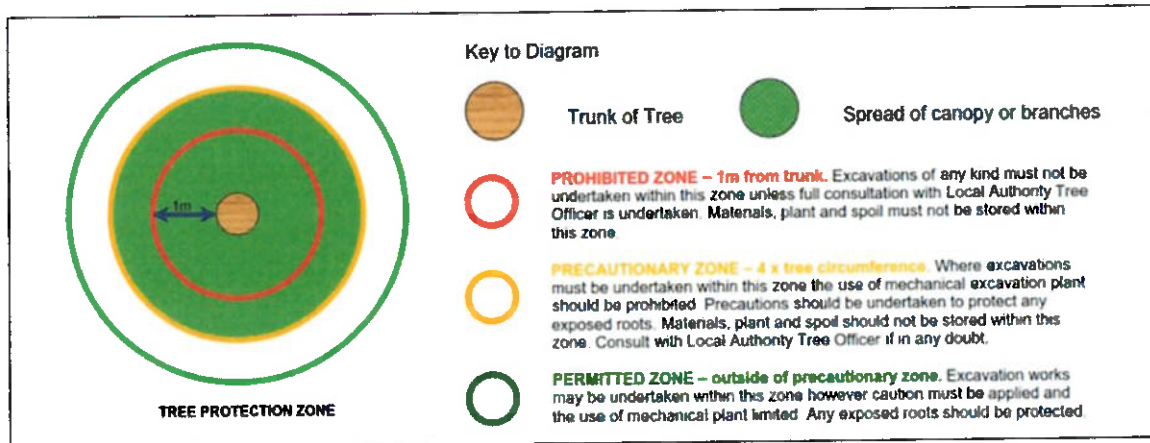
- Calculates Root Protection Areas (RPA) for individual trees
- Usually carried out by arboricultural consultant
- Takes into account the trees surroundings
- Calculation sheet on BMS

### Trees Root Systems





Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



In the process of this works our property has been irrevocably damage, the neighbour has entered our property, without permission and cut the limbs out the back of our healthy ash tree. Cutting too much and you'll risk nutritional deficiencies or branches that are too weak to tolerate the wind or fend off diseases or insect invasions.

Over pruning and topping can permanently disfigure your trees, or even kill them. I also understand that there is a **STATUTORY RESTRICTIONS ON VEGETATION CLEARANCE** during the period beginning on the 1st day of March and ending on the 31st day of August in any year and this was carried out in that time period and can be validated by the aerial drone footage taken by Tipperary County Councils enforcement officer on his visit.

**Damaged health Ash tree.**



**Disgarded limbs in the neighbours property also showing wire from electricity poll**



Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16

I am extremely concerned that all this works is happening on the bounds of my property and not being carried out by qualified individuals, it clearly states on the ESB website.

ESB NETWORKS How can we help you... [Contact Us](#) [Log In](#)

There are electricity lines presently running through trees on my property – is it ok for me to cut them?

**Under no circumstances should you attempt to cut them yourself.** You could come in contact with the live wires and might be electrocuted. Tree cutting contractors are specialists who are used to dealing with live wires when cutting trees.

The most dangerous of all is the damage that may have been cause to the roots of the large Leylandii tree in our backyard, as the main root spread can be up to 12 metres with the out roots spreading even further. The leylandii route system is relatively shallow in comparison to some other trees and damaging the roots could de-stabilise the tree and cause it to topple over, If damaged, the uptake of water and nutrients is restricted reducing growth. Root damage may take months or even years to progress and cause symptoms of decline or death depending on the situation and how much damage occurred. This tree is higher than our house and if it falls it would cause significant damage to our property.

### Leylandii Tree

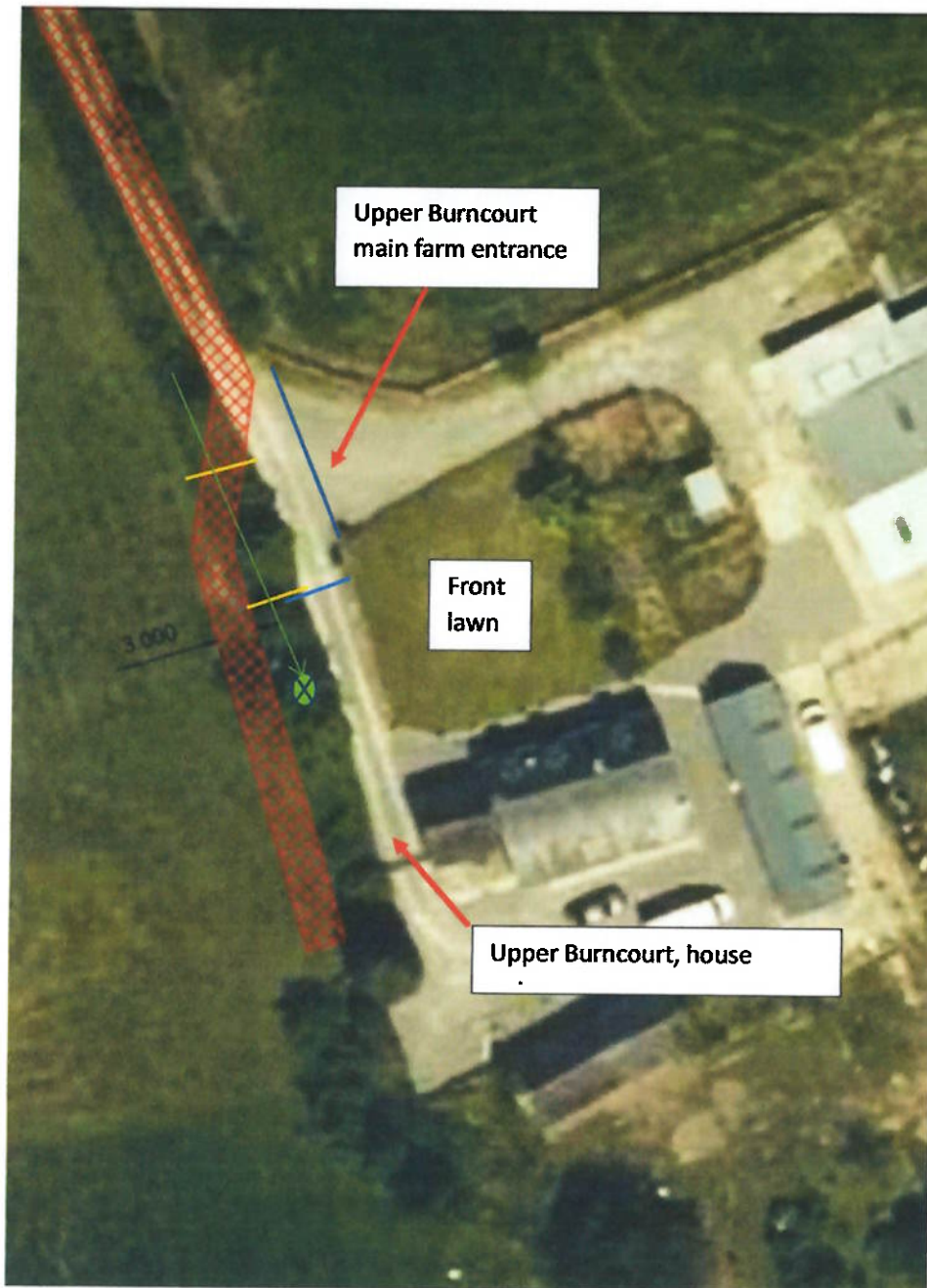


Location of neighbours digger parked on new excavated road development in close proximity to tree base. Not compliant with the BS 5837 and the RPA





Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



Not to Scale

Markings are for demonstration purposes only

— Upper Burncourt Boundary lines as per deeds

— Starting point and end point where new exempt road is proposed to now exit. The yellow line furthest from the house has a tree located at this point, the only way this can be felled is to put it down across my garden, as you cannot fell it the other way because of the electricity cables

⊗ Location of electricity pole after this point cables are buried to our house

→ Direction of electricity cables

The cross hatched red lines are the section 5 exemption and exempt roadway and how it should lead out on to the lane way and how it was applied for, but the council informed us that a section 5 once granted can be put anywhere and neighbour wishes to move it to location of yellow lines.

Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16

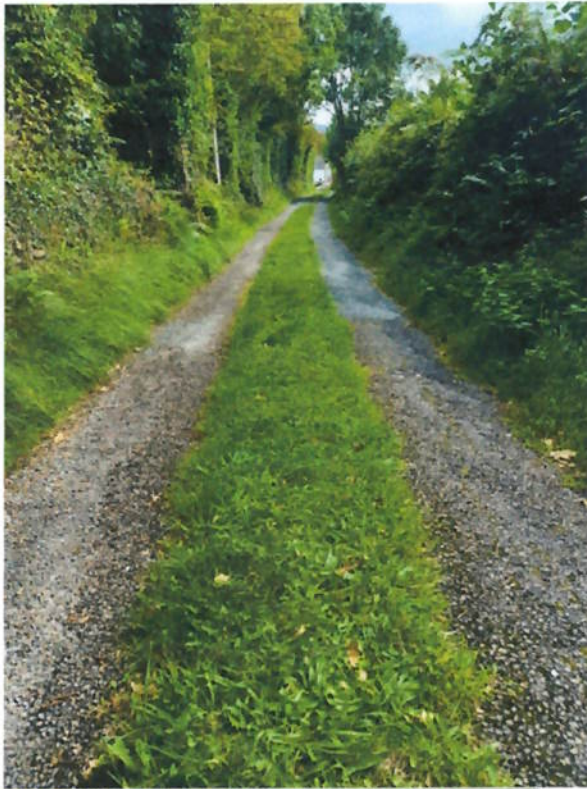


Photo of Lane (charged to the Council) leading down to Upper Burncourt. Which section 5 exemption applied on. As you can see both sides of the lane way are banked and there is no pull in point. In the hedge row is a traditional old stone wall.

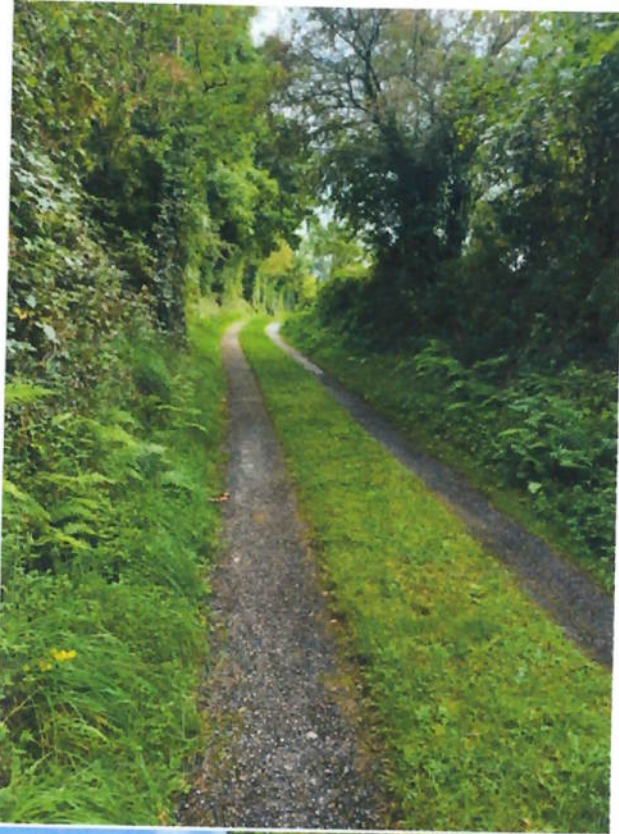
As road is in charge of the council will council commit in writing to upgrading the existing road to cope with additional traffic and heavy goods.



View from top of the lane way showing there is a bend in the laneway.

If you are proceeding down the lane you cannot see if anything is coming towards you and there are no points to pull in, to allow another vehicle past which on a health and safety grounds is dangerous and creates a traffic hazard.





Another photo showing the blind bend in the lane way and confirming that at no point down the lane is there room to pull over. This is due to banked sides and both fields on either sides being higher than the lane itself.



Photo showing that lane way is only just wide enough to accommodate the width of a cattle trailer and jeep and could not facilitate, the likes of large tractors with bail trailers and loaders. This photo also highlights the lack of room to pull over if you are met with oncoming traffic. Thus creating a traffic hazard.

Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



If you had to reverse back up the lane way leading to Upper Burncourt this is a photo of the adjoining road you would be backing out on to, which is as narrow



Point of which new roadway on exemption has been dug to. In line with tree shown on next page



Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



Tree in line with end of new road excavation and adjacent to our front lawn and main farm entrance, farm is a working farm with herd and flock numbers see photo below at different angle.



Height of field at Section 5 proposed opening



Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



Image of where current roadway  
is dug to and current proposed  
exit point



View directly across  
from end of new  
excavated roadway  
on exemption. Exit  
point will be  
directly opposite  
our front lawn and  
main farm  
entrance.



Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



Photo shows temporary fencing taken to current exit point and not taken up to original proposed section 5 as per drawings



Image of new exempt roadway, you can see from the photos how close it is to our property. As image shows Upper Burncourt the other side of the hedge line.

Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



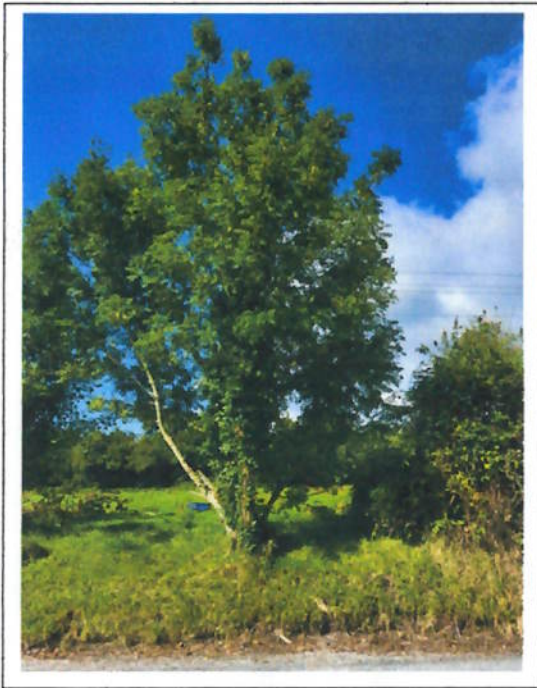
View from back of new exempt roadway running along boundary with Upper Burncourt. This new exempt road development wraps around the side of our property and effects our privacy.

Where the new exempt roadway has been excavated, we are finding because the road way is higher than our property we are getting muddy wash out from the excavation running into our backyard and flooding the yard when it rains. Before this partial excavation commenced, our property never flooded in the back yard.



Front view of Upper Burncourt Section 5 exemption to come out directly under power cables that feed Upper Burncourt directly from bank opposite main farm entrance and also in close proximity to house entrance as seen with red gate.





This is the exit point for the new proposed development on to the existing lane way. The tree in the photo will have to be removed, it is extremely close to low electricity cables, so will have to be taken down limb by limb or felled across the existing lane way charged to the council and put down across my front lawn. The top two cables are safety cables the bottom two are live. These cables are a lot less than 6 metres from the propose development



Image taken from inside our field showing our post and rail entrance, the edge of our front lawn is show in the bottom corner on the left. The roadway between the post and rail and our front lawn is our main farm entrance. The roadway that runs from left to right of the picture is the existing laneway. The tree in the middle of the photo is the tree that will need to be removed to allow for the proposed exit point. This picture highlights how low the electricity cables are and shows the proximity to the trees.

Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



These are the high voltage cables that run across my property and on to the neighbours, these are reason why the other cables are so low as they pass under this high voltage line



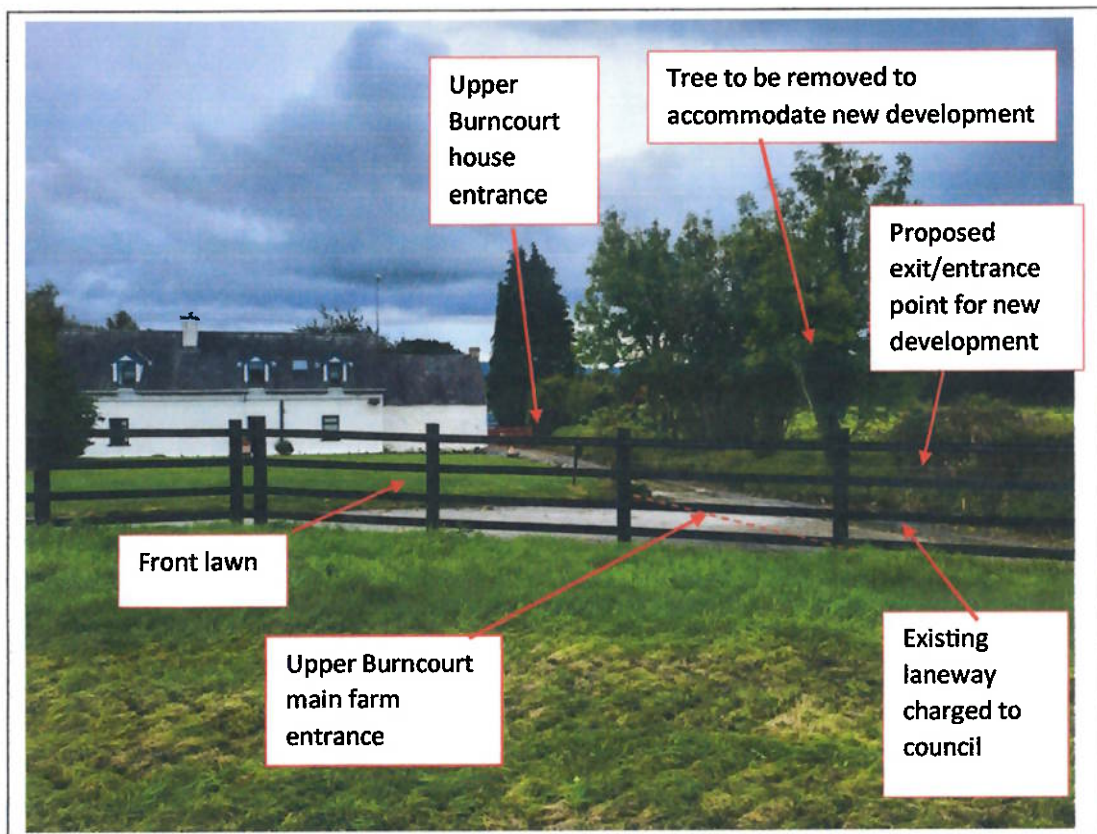
This photo shows the high voltage power line, with the lower power cables passing underneath.



Sharon Duke and JJ Kearney  
Upper Burncourt, Burncourt, Cahir, Co Tipperary  
Section 5 Appeal S5/23/90 on existing section 5 S5/23/16



This image shows the property from our front field and highlights the mountains and beautiful location of our old cottage





Our property is over 100 years old and made of stone construction, behind and to the side of the house are old stone stables of approximately the same age if not even older. These beautiful but fragile builds could not sustain the flooding that maybe a newer build could.

As already mentioned in the Appeals form, our property is close to the mountains and we are at the bottom of hill with the existing laneway charged to council running down the hill towards our property. Due to the amount of surface water there is, the property has an existing storm drain going across the laneway to stop the house from flooding. The new road development will come out directly on top of this and could damage the storm drain and stop it working effectively.

Also because the neighbours field is higher than the laneway and our property, the storm drain could be subjected to additional flow from the run off, from the field. The storm drain is connected to a very old french drain system, while this system is working adequately at the moment protecting our home, if this development is allowed to proceed we believe that the old french drain system will not be able to handle the additional hydraulic flow and also with risk of additional mud, clay and silt washing into the old french drain system clogging it and in return flooding our property making the whole system protecting our home redundant.



**From:** Sharon Kearney <[sharon\\_kearney25@hotmail.com](mailto:sharon_kearney25@hotmail.com)>  
**Sent:** Friday, August 18, 2023 2:55:17 PM  
**To:** [customerservice@tipperarycoco.ie](mailto:customerservice@tipperarycoco.ie) <[customerservice@tipperarycoco.ie](mailto:customerservice@tipperarycoco.ie)>  
**Subject:** Ref: TUD-23-115 Development at Upper Burncourt, Cahir, Co. Tipperary " "

## Planning Enforcement

Dear Jack,

Apologies for contacting you again, I know my husband spoke with you the other day. Its just when your too scared to leave the house unoccupied encase you come back to find Mr Cuisack has broken through to the laneway Its very stressful.

I would like to firstly state we have no problem with Mr Cuisack coming out on the laneway, but the grounds of health and safety feel it would be more advantageous, to move his new gateway up the laneway rather than directly across from our own main entrance. Our property like his is a working farm and we can provide our herd number to validate.. I would also like to state that this laneway is the only access we have to our property, whereas my understanding is all Mr Cuisacks land is adjoined through his main farm and can also be accessed by another laneway.

As like you stated on your site visit, its a mess and it doesn't' look like he is going to break through as per the drawings submitted for the section 5. If he does as he wants then I will have a tree felled across my property, as he can't be put down the other way because of the electric cables. Once he does this the situation will become extremely volatile and confrontational.

I just really want to ask some questions and get some clarity please. I can only assume the section 5 and the roadway were granted because the previous owner of our property Danny Fortune made the application, so it didn't look like more than one party was involved.

My questions are as follows, if you refer to Planning Leaflet 9 Agricultural and Farm Development.

1) it states two months notice must be given to the ESB of any construction works within six metres of a cable . Mr Cuisack has excavated and is planning to come out directly under low power cables, including the removal trees. On the bank between the two properties is an electricity pole and from that point it is buried, how is this being allowed?

2) in this Leaflet it also states with most developments that the farmer should be 100m distance from neighbouring property, I understand that 100m would be somewhat excessive in distance from our property, but how has it been allowed to be put so close?

3) the lane way is a long narrow road to our property it is the only access we have to our farm and our house. There is no location along the lane where you can get over to allow a car to pass, let alone agricultural machinery. So if we are coming back from the mart with a cattle truck and Mr Cuisack is coming out of the lane with a tractor and trailer, who goes where? Because one would be reversing back down the lane which would be difficult to see as the lane is so narrow and banked at either side, the other would be reversing out onto another lane which is equally as narrow. Also in the case of an accident or emergency, what about fire trucks and ambulances in this scenario?

4) I can't understand why a gateway has been granted under section 5 to come out on top of two existing entrances, one of which is a main farm entrance. Based on its location Planning has granted Mr Cuisack permission to swing out across our main entrance and property to access his new gateway and roadway. Mr Cuisack has already told us we have to leave him a turning circle, so he obviously has every intention of using our property for his own purposes. How is this acceptable?

5) Can you also please explain how the stone for the new roadway is to be delivered, because unless the lorry driver reverses the entire laneway, the only other option is to drive down the laneway, drive up onto my main farm entrance and reverse back into Mr Cuisacks entrance.

6) At the top of laneway there are two other landowners, as a precedence has now been set for Mr Cuisack, could they not also look for section 5's on to the laneway.

I look forward to hearing from you.

Kind Regards,

Sharon Kearney

Sent from [Outlook for Android](#)



**From:** Planning Group <[planning@tipperarycoco.ie](mailto:planning@tipperarycoco.ie)>  
**Sent:** Thursday, August 24, 2023 12:25:28 PM  
**To:** Sharon Kearney <[sharon\\_kearney25@hotmail.com](mailto:sharon_kearney25@hotmail.com)>  
**Subject:** RE: [External] Fwd: Ref: TUD-23-115 Development at Upper Burncourt, Cahir, Co. Tipperary  
" "

Hi Sharon,

I wish to acknowledge receipt of your email and advise that I have forwarded same to the relevant section.

Kind Regards,  
Emma

**Emma Williams,**  
**A/Assistant Staff Officer, Planning**  
Civic Offices, Limerick Road, Nenagh, Co. Tipperary.  
**Telephone: 0818 06 5000**  
**E-mail: [planning@tipperarycoco.ie](mailto:planning@tipperarycoco.ie)**  
**Website: [www.tipperarycoco.ie](http://www.tipperarycoco.ie)**



**From:** Sharon Kearney <[sharon\\_kearney25@hotmail.com](mailto:sharon_kearney25@hotmail.com)>  
**Sent:** 24 August 2023 11:49  
**To:** Planning Group <[planning@tipperarycoco.ie](mailto:planning@tipperarycoco.ie)>  
**Subject:** Re: [External] Fwd: Ref: TUD-23-115 Development at Upper Burncourt, Cahir, Co. Tipperary  
" "

**CAUTION FROM TIPPERARY COUNTY COUNCIL IT SECTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Sir/Madam,

Jack Doolan from enforcement contacted us yesterday regarding the above, notifying us that the neighbour was compliant with their section 5, so there was nothing that could be done to assist us, could I kindly ask that the council response regarding the section five be put in writing.

Kind regards,

Sharon Duke

Sent from [Outlook for Android](#)

**From:** Morgan, William <[william.morgan@tipperarycoco.ie](mailto:william.morgan@tipperarycoco.ie)> on behalf of Planning Group  
<[planning@tipperarycoco.ie](mailto:planning@tipperarycoco.ie)>  
**Sent:** Monday, August 21, 2023 8:38:17 AM  
**To:** Sharon Kearney <[sharon\\_kearney25@hotmail.com](mailto:sharon_kearney25@hotmail.com)>  
**Subject:** RE: [External] Fwd: Ref: TUD-23-115 Development at Upper Burncourt, Cahir, Co. Tipperary  
" "

Dear Sharon

I wish to acknowledge receipt of your email. The same has been forwarded to the Enforcement Section

Kind Regards

Willie Morgan  
Assistant Staff Officer, Planning  
Tipperary County Council, Civic Offices, Clonmel, Co. Tipperary

T: 0818 06 5000  
E: [planning@tipperarycoco.ie](mailto:planning@tipperarycoco.ie)  
W: [www.tipperarycoco.ie](http://www.tipperarycoco.ie)

**From:** Sharon Kearney <[sharon\\_kearney25@hotmail.com](mailto:sharon_kearney25@hotmail.com)>  
**Sent:** 20 August 2023 12:27  
**To:** Planning Group <[planning@tipperarycoco.ie](mailto:planning@tipperarycoco.ie)>  
**Subject:** [External] Fwd: Ref: TUD-23-115 Development at Upper Burncourt, Cahir, Co. Tipperary " "

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F.A.O. Head of Planning

Dear Sir/Madam,

Please refer to our email below to Jack Doolan in Enforcement, can you please kindly look into this as a matter of urgency and revert accordingly.

Kind Regards,

Sharon Kearney  
086 3642028  
JJ Kearney  
087 9388492  
Sent from [Outlook for Android](#)



Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann  
Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary  
E91 N512

Comhairle Contae  
Thiobraid Árann,  
Oifigi Cathartha,  
An tAonach,  
Co. Thiobraid Árann  
Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary  
E45 A099

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

Sharon Kearney

sharon\_kearney25@hotmail.com

Our Ref:  
**TUD-23-115**

Your Ref:

Date  
**25<sup>th</sup> August 2023**

**Re: Development at Upper Burncourt, Cahir, Co. Tipperary.**

Dear Madam

The Planning Authority acknowledges your correspondence received on the 24<sup>th</sup> August 2023 in relation to the above.

Please be advised that same has been referred to our Enforcement Officer for attention.

Should you have any queries in relation to this matter, please contact the Planning Enforcement Section on 0818 06 5000.

Yours faithfully

**for Acting Director of Services**



Comhairle Contae Thibraid Árann  
Tipperary County Council

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Thibraid Árann,  
Oifigi Cathartha,  
Cluain Meala,  
Co. Thibraid Árann

Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary

E91 N512

Comhairle Contae  
Thibraid Árann,  
Oifigi Cathartha,  
An tAonach,  
Co. Thibraid Árann

Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary

E45 A089

t 0818 06 5000  
e customerservice  
@tipperarycoco.ie  
[tipperarycoco.ie](http://tipperarycoco.ie)

Our Ref  
**TUD-23-115**

Your Ref

Date  
**19<sup>th</sup> September 2023**

**Re: Development at Upper Burncourt, Cahir, Co. Tipperary.**

Dear Sir/Madam

I refer to previous correspondence regarding the above development. The Planning Authority has investigated this matter and wish to advise the following:

- **Entrance is considered to be exempt development.**
- **The laneway falls under exemption Class 13, Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended**

***Class 13***

*The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way and the construction of any private footpath or paving.*

***Conditions & limitations***

*The width of any such private footpath or paving shall not exceed 3 metres.*

Therefore, we are now closing our file on this matter.

Yours faithfully

**For Acting Director of Services**

**Sharon Kearney**  
**Upper Burncourt**  
**Burncourt**  
**Cahir, Co. Tipperary E21 A890**

[sharon\\_kearney25@hotmail.com](mailto:sharon_kearney25@hotmail.com)