



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Ruth O'Malley  
Hill House  
Sixmilebridge  
Co. Clare  
V95 WPX8**

**18th February 2025**

**Section 5 referral Reference R25-7 – Ruth O'Malley**

Is the change of use of an existing American style barn, used for housing horses to a dog kennelling facility development and if so, is it exempted development?

A Chara,

I refer to your application received on 23rd January 2025 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at [www.pleanala.ie](http://www.pleanala.ie).

Mise, le meas

**Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate**

**An Roinn Pleanála  
An Stúirthóireacht Forbairt Gheilleagrach**

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department  
Economic Development Directorate**

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



**CLARE COUNTY COUNCIL**

**SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED**

**DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT**

Chief Executive's Order No: 84957

Reference Number: R25-7

Date Referral Received: 23rd January 2025

Name of Applicant: Ruth O'Malley

Location of works in question: Cappagh South, Sixmilebridge, Co. Clare

**Section 5 referral Reference R25-7 – Ruth O'Malley**

Is the change of use of an existing American style barn, used for housing horses to a dog kennelling facility development and if so, is it exempted development?

**AND WHEREAS** Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Schedule 2, Part 1 'Exempted Development General and Schedule 2, Part 3 'Exempted Development – Rural', of the Planning and Development Regulations 2001 (as amended)
- (c) Article 10 'Change of use' of the Planning and Development Regulations 2001 (as amended)
- (d) The details and particulars as received by the Planning Authority with this referral on 23 January 2025.

**AND WHEREAS** Clare County Council has concluded:

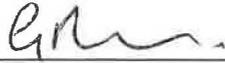
- (a) The proposed change of use constitutes both 'works and 'development' as set out in Sections 2 and 3 of the Planning & Development Act, 2000, as amended
- (b) The proposed change of use does not meet the fall within any Class of use as set out in Article 10, 'Change of use' and Part 4 'Exempted development- Classes of use' of Schedule 2 of the Planning and Development Regulations 2001 (as amended)
- (c) There were no other provisions under the Planning Acts or Regulations to render the subject structure as exempt development.

**ORDER:** Whereas by Chief Executive's Order No. HR 46 dated 1<sup>st</sup> January 2025, Carmel Kirby, Interim Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended)

and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the proposed change of use of an existing American Style Barn used for housing horses, to a dog kenneling facility at Cappagh South, Sixmilebridge, Co. Clare is considered development which is not exempted development.

Signed:



\_\_\_\_\_  
**GARETH RUANE**  
**SENIOR EXECUTIVE PLANNER**

Date:

**18th February 2025**

**DECLARATION ISSUED UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R25-7



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R25-7**

**Is the change of use of an existing American style barn, used for housing horses to a dog kennelling facility development and if so, is it exempted development?**

**AND WHEREAS, Ruth O'Malley** has requested a declaration from Clare County Council on the said question.

**AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –**

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Schedule 2, Part 1 'Exempted Development General and Schedule 2, Part 3 'Exempted Development – Rural', of the Planning and Development Regulations 2001 (as amended)
- (c) Article 10 'Change of use' of the Planning and Development Regulations 2001 (as amended)
- (d) The details and particulars as received by the Planning Authority with this referral on 23 January 2025.

**And whereas Clare County Council has concluded:**

- (a) The proposed change of use constitutes both 'works and 'development' as set out in Sections 2 and 3 of the Planning & Development Act, 2000, as amended
- (b) The proposed change of use does not meet the fall within any Class of use as set out in Article 10, 'Change of use' and Part 4 'Exempted development- Classes of use' of Schedule 2 of the Planning and Development Regulations 2001 (as amended)
- (c) There were no other provisions under the Planning Acts or Regulations to render the subject structure as exempt development.

**THEREFORE:** The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the proposed change of use of an existing American Style Barn used for housing horses, to a dog kennelling facility at Cappagh South, Sixmilebridge, Co. Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



**Anne O'Gorman**  
**Staff Officer**  
**Planning Department**  
**Economic Development Directorate**

**18th February 2025**

**CLARE COUNTY COUNCIL**

**SECTION 5 REFERRAL**

**Reference No:** R25-7  
**Applicant:** Ruth O'Malley  
**Location:** Cappagh South, Sixmilebridge County Clare.

**Referral Question:**

Is the change of use of an existing American Style Barn used for housing horses, to a dog kennelling facility development, and if so ,is this exempted development.

**Due Date:** 19/02/25

**Introduction and site location**

The subject site is located in a rural area to the south of Sixmilebridge and is accessed via a private access laneway off the local road – the L: 7112. There is an older and newly renovated house at this location ' Hill House' and a number of agricultural sheds and an equestrian arena. The building that us the subject of this Referral has been in long term use as a stables for horses.

**Referral question:**

The Referral Question is as follows;

Is the change of use of an existing American Style Barn used for housing horses, to a dog kennelling facility development, and if so ,is this exempted development.

The referrer provides the following information in relation to this referral:

- The subject building was originally used to house cows and sheep and subsequently horses ( since 1997)
- No external changes are proposed to the building,
- Internally, stables in the building will be converted into dog kennels.
- What is proposed is a change of use from horse livery to dog kenneling.
- It is intended that the proposed works would take place in April 2025.

The referrer has not submitted details as to the floor area of the subject shed and floor plans or elevation plans have not been submitted.

**Planning History at this site;**

None.

## Statutory Provisions.

### (1) Planning and Development Act 2000 ( as amended)

To assess this proposal, regard must be had to the following provisions of the Planning and Development Act 2000, as amended ( hereafter called The Planning and Development Act):

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

‘Works are defined in Section 2 of the Planning Act as follows:

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair, or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

‘Structure’ is defined at Section 2(1) of the Act as : *“any building, structure, excavation, or other thing constructed on or made on, in or under any land, or any part of a structure so defined, and:*

- *‘Alteration’ includes –*

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

*(b) The replacement of a door, window, or roof,*

*That materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neoghbouring structures.*

‘Use’ in relation to land does not include the use of the land by the carrying out of any works there on.

‘ Works’ includes any act or operation of construction, excavation, demolition, extension, alteration , repair, or renewal.

## **(2) Planning & Development Regulations, 2001, as amended**

The following provisions of the Planning and development Regulations 2001 ( as amended) have been considered).

Regard has been had to the provisions of Schedule 2, Part 1 , *Exempted Development General*’ and Schedule 2. Part 3’ *Exempted development- rural*’ of the above regulations.

As per the Planning and Development Regulations, 2001 (as amended) Part 2 Exempted Development Article 5 Interpretation for this part – a Business premises is defined as ;

*“business premises” means— (a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons”*

Consideration has also been given to Article 10 of the Planning and Development Regulations which addresses the matter of Changes of Use and which states that’

*“Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not*

*(a) involve the carrying out of any works other than works which are exempted development,  
(b) contravene a condition attached to a permission under the Act,  
(c) be inconsistent with any use specified or included in such a permission or Commented [i50]: Sub-article 9(3) is inserted by article 3 of S.I. No. 256/2008 Planning and Development (Amendment) Regulations 2008 44*

*(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned”*

I have referenced Part 4 ‘ Exempted development- Classes of use’ of Schedule 2 of the Planning and development Regulations 2001 ( as amended) .

### **Environmental Impact Assessment**

I do not consider that the proposed development falls within the mandatory requirements for an EIA as stated in EU Directive 85/337/EEC (as amended by Directive 97/11/EC, 2003/31/EC, and 2009/31/EC). The proposed development is also not considered to fall within the sub-threshold criteria having regard to the third schedule to the European Communities Environmental Impact Assessment (Amendment) Regulations 1999 and in Schedule 7 of the Planning and Development Regulations 2001, as amended.

## Appropriate Assessment

Having regard to the nature and scale of the proposed change of use, being the change of use of an existing stables building to use as a dog kennelling facility, the having regard to the absence of proximity or connectivity to a European Site, no Appropriate Assessment issues arise and it is not considered that the proposed change of use would be likely to have a significant effect individually or in combination with other plans or projects, on a European Site. AA is not required in this case.

## Assessment

The referrer in this case has specifically, as per the application form submitted, asked if the proposed development, being;

*“The change of use of an existing American Style Barn used for housing horses, to a dog kennelling facility development, and if so, is this exempted development”*

Is development and if so, is it exempted development.

The proposed development is for a change of use of an existing stable building to use as dog kennels and is not a new building.

### (i) Is or is not development;

As per Section 3(1) of the Planning and Development Act 2000( as amended) ‘ development’ is defined as follows;

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

‘Works are defined in Section 2 of the Planning Act as follows:

*“works” includes any act or operation of construction, excavation, demolition, extension, **alteration**, repair, or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

Having regard to the nature of developments as proposed and to the above definitions of ‘ Development’ and ‘ Works’ the stated development is considered to be both development and Works.

**(ii) Is or is not exempted development**

The second matter relates to whether the change of use as proposed is or is not exempt development.

Consideration has also been given to Article 10 of the Planning and development Regulations which addresses the matter of Changes of Use and which states that'

*"Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not*

*(a) involve the carrying out of any works other than works which are exempted development,*

*(b) contravene a condition attached to a permission under the Act,*

*(c) be inconsistent with any use specified or included in such a permission or Commented [i50]: Sub-article 9(3) is inserted by article 3 of S.I. No. 256/2008 Planning and Development (Amendment) Regulations 2008 44*

*(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned"*

I have referenced Part 4 ' Exempted development- Classes of use' of Schedule 2 of the Planning and Development Regulations 2001 ( as amended) and that there is no class of use that fits the description of the use as proposed in this case i.e. the use of an existing horse barn as a dog kenneling facility

I have also referenced all of the classes of exempted development as are set out in Schedule 2 of the Planning and Development Regulations 2001 ( as amended) and I have found that there is no Class of exempted development under which the stated development can be considered to be exempted development.

**Conclusion:**

Consideration has been given to the potential exempt development provisions as may apply to the proposed development.

Having regard to the details as submitted the structure as proposed is considered to be both 'Works' and ' Development' as set out in Sections 2 and 3 of the Planning and Development Act 2000 as amended.

In the referral question submitted, the referrer has specifically asked the question if the proposed development, being ;

Is the change of use of an existing American Style Barn used for housing horses, to a dog kenneling facility, development, and if so, Is this exempted development.

There is no form/ class of exempted development provisions as set out in Schedule 2, Part 1 Exempted development General or Schedule 2, Part 3 Exempted development – Rural - under which the proposed development could be considered to be exempted development.

Consideration has also been given to Article 10 of the Planning and development Regulations which addresses the matter of Changes of Use and which states that'

*"Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not*

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission or Commented [i50]: Sub-article 9(3) is inserted by article 3 of S.I. No. 256/2008 Planning and Development (Amendment) Regulations 2008 44*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned"*

I have referenced Part 4 ' Exempted development- Classes of use' of Schedule 2 of the Planning and Development Regulations 2001 ( as amended) and that there is no class of use that fits the description of the use as proposed is this case I.e. the use of an existing horse barn as a dog kenneling facility

#### **Recommendation:**

A question has arisen as to whether the change of use of an existing American Style Barn used for housing horses, to a dog kenneling facility is development, and if so ,is this exempted development.

**And Whereas** Clare County Council (Planning Authority) in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Schedule 2, Part 1 ' Exempted Development General and Schedule 2, Part 3 '*Exempted Development – Rural*' , of the Planning and Development Regulations 2001 (as amended)
- (c) Article 10 ' Change of use' of the Planning and Development Regulations 2001 (as amended)
- (d) The details and particulars as received by the Planning Authority with this referral on 23 January 2025.

Clare County Council has concluded that:

- (i) The proposed change of use constitutes both 'works' and 'development' as set out in Sections 2 and 3 of the Planning & Development Act, 2000, as amended
- (ii) The proposed change of use does not meet the fall within any Class of use as set out in Article 10, 'Change of use' and Part 4 'Exempted development- Classes of use' of Schedule 2 of the Planning and Development Regulations 2001 ( as amended)
- (iii) There were no other provisions under the Planning Acts or Regulations to render the subject structure as exempt development.

Clare County Council **has deemed that** the proposed **change of use** of an existing American Style Barn used for housing horses, to a dog kenneling facility is development and is not exempted development.

*Annemarie McCarthy*

Annemarie McCarthy  
Executive Planner  
18/02/25

*Noted. [Signature]  
18/02/25.*



**Figure 1 and 2 ; Subject structure.**



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

Ruth O'Malley  
Hill House  
Sixmilebridge  
Co. Clare  
V95 WPX8

27/01/2025

**Section 5 referral Reference R25-7 – Ruth O'Malley**

Is the change of use of an existing American style barn, used for housing horses to a dog kennelling facility development and if so, is it exempted development?

A Chara,

I refer to your application received on 23rd January 2025 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

**Brian Fahy**  
Planning Department  
Economic Development Directorate

**An Roinn Pleanála**  
**An Stiúirthóireacht Forbairt Gheilleagrach**  
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department**  
**Economic Development Directorate**  
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



COMHAIRLE

Clare County Council  
Aras Contae an Chláir  
New Road  
Ennis  
Co Clare

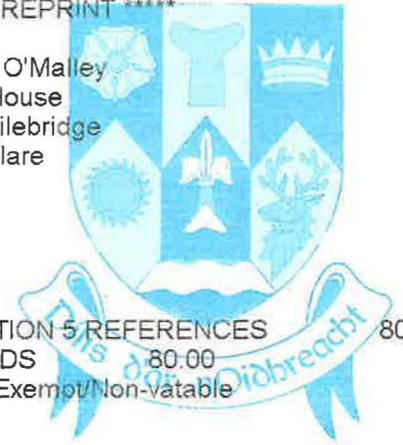
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AN CHLÁIR

23/01/2025 14:15:42

Receipt No. : L1CASH/0/374420  
\*\*\*\*\* REPRINT \*\*\*\*\*

Ruth O'Malley  
Hill House  
Sixmilebridge  
Co Clare



SECTION 5 REFERENCES	80.00	80.00
GOODS	80.00	
VAT Exempt/Non-vatable		

Total : 80.00 EUR

Tendered :  
CREDIT CARDS 80.00

Change : 0.00

Issued By : L1CASH - Rachael Barrett  
From : MAIN CASH OFFICE LODGEMENT AF  
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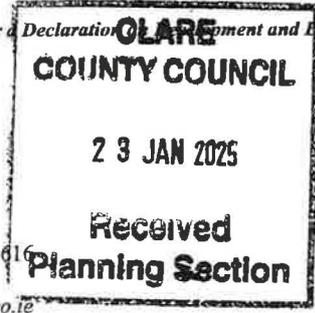
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CLARE COUNTY COUNCIL  
COMHAIRLE CONTAE AN CHLÁIR



Comhairle Contae an Chláir  
Clare County Council

Planning Department,  
Economic Development Directorate,  
Clare County Council,  
New Road, Ennis,  
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Website: [www.clarecoco.ie](http://www.clarecoco.ie)

R25-7

**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT  
(Section 5 of the Planning & Development Act 2000 (as amended))**

**FEE: €80**

*This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority*

**1. CORRESPONDENCE DETAILS.**

(a) Name and Address of person seeking the declaration	RUTH O'MALLEY HILL HOUSE SIXMILEBRIDGE CO. CLARE V95WPK8
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	

**2. DETAILS REGARDING DECLARATION BEING SOUGHT**

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT  
*Note: only works listed and described under this section will be assessed.*

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

*Could you please advise if changing the use of an existing American-style barn, used for housing horses, to a dog kennelling facility would be considered exempted development under Clause CC regulation*

(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

*The building in question was originally used to house cows and sheep (for 40+ years) and subsequently horses (since 1997). No external change, such as extensions, are proposed. Internally, stables will be converted into dog kennels. This is a change in use from horse livery to dog kennelling.*

(c) List of plans, drawings etc. submitted with this request for a declaration:

*(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)*

*Two site location maps to a scale of 1:2500 identifying the property are provided.*

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Hill House CAPPAGH SOUTH SIXMILEBRIDGE CO. CLARE V95 WPK8
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No.
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Parents to daughter transfer will come into force subject to declaration being granted. Domestic residence address is already in issue of application at this time.
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	Michael and Aine O'Malley Hill House, SIXMILEBRIDGE, CO. CLARE, V95 WPK8
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes.
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No.
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	No.
(h) Date on which 'works' in question were completed/are likely to take place:	APRIL 2025

SIGNED: Rach O'Malley

DATE: 19-1-25

**GUIDANCE NOTES**

*This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority*

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,  
Economic Development Directorate,  
Clare County Council  
Aras Contae an Chlair,  
New Road,  
Ennis,  
Co. Clare  
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

**FOR OFFICE USE ONLY**

Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:	.....		

