



RL 6349 0414 8IE

COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Marina Levitina & Colm Hogan
Aka Counterpoint Films
Corracloon More,
Caher,
Flagmount,
Co. Clare
V94 603F**

19th May, 2021

Section 5 referral Reference R21-27 – Marina Levitina & Colm Hogan

Whether the upgrading the existing road and installing 2 compost toilets, within the property in Corracloon More, Caher, Flagmount, Co. Clare is considered development and if so, is it exempted development.

A Chara,

I refer to your application received on the 6th May 2021 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

Mise, le meas

**Josephine Connors
Staff Officer
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**



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

Reference No.: R21-27



**Comhairle Contae an Chláir
Clare County Council**

Section 5 referral Reference R21-27

Whether the upgrading the existing road and installing 2 compost toilets, within the property in Corracloon More, Caher, Flagmount, Co. Clare is considered development and if so, is it exempted development.

AND WHEREAS, Marina Levitina & Colm Hogan 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) Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (c) Article 9 of the Planning and Development Regulations 2001, as amended
- (d) The works as indicated in submitted documents from the referrer.

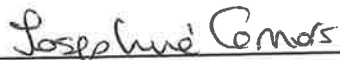
And whereas Clare County Council has concluded:

- (a) the proposed development consisting of the upgrading of the surface of existing roads and installation of compost toilets constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- (c) the said development consisting of the upgrading of the surface of existing access roads is considered to be exempted development having regard to Section 4 (1) (h) of the Planning & Development Act, 2000, as amended, and Class 13 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended .
- (d) There are no exemptions in the Planning Acts or Regulations for compost toilets therefore the installation of same is development and is not exempted 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:

- (i) The upgrading of the existing road at Cooracloon More, Caher, Flagmount Co. Clare V94 603F **constitutes development** and is **exempted development**.
- (ii) The installation of 2 compost toilets, at Cooracloon More, Caher, Flagmount Co. Clare V94 603F **constitutes development** and is **not exempted development**.

as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate

19th May, 2021

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:

77645

Reference Number:

R21-27

Date Referral Received:

6th May 2021

Name of Applicant:

Marina Levitina & Colm Hogan

Location of works in question:

Cooracloon More, Caher, Flagmount Co.
Clare V94 603F

Section 5 referral Reference R21-27 – Marina Levitina & Colm Hogan

Whether the upgrading the existing road and installing 2 compost toilets, within the property in Corracloon More, Caher, Flagmount, Co. Clare is considered 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) Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (c) Article 9 of the Planning and Development Regulations 2001, as amended
- (d) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) the proposed development consisting of the upgrading of the surface of existing roads and installation of compost toilets constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- (c) the said development consisting of the upgrading of the surface of existing access roads is considered to be exempted development having regard to Section 4 (1) (h) of the Planning & Development Act, 2000, as amended, and Class 13 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended .
- (d) There are no exemptions in the Planning Acts or Regulations for compost toilets therefore the installation of same is development and is not exempted development.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, 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 Garreth 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, Garreth Ruane, Senior Executive Planner, hereby declare that

- (i) The upgrading of the existing road constitutes development and is exempted development.
- (ii) The installation of 2 compost toilets, constitutes development and is not exempted development.

Signed:



GARRETH RUANE
SENIOR EXECUTIVE PLANNER

Date: 19th May 2021

CLARE COUNTY COUNCIL

SECTION 5 REFERRAL

Reference No:	R21-27
Applicant:	Marina Levitina & Colm Hogan
Location:	Corracloon More, Caher, Flagmount, Co. Clare
Proposal:	Whether the upgrading of the existing road and installation of 2 compost toilets, constitutes development and if so is it exempted development.
Due Date:	02/06/2021

Introduction

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) to determine the upgrading of the existing road and installation of 2 compost toilets, constitutes development and if so is it exempted development.

Site location

The site is located at a remote location at Corracloon Moor circa 1km to the east of Caher. From the local road an existing private lane leads downhill to the site, which sits adjacent to an agricultural farm building also within the same ownership.

Planning History

18/159 - Colm Hogan and Marina Levitina - PERMISSION *for* construction of a new detached 3 bedroom house with associated garage, office and studio, associated sewage treatment unit with percolation area and ancillary works, all off existing road access

18/1040 - PERMISSION *to*: Reposition on lands the development as previously granted under Planning Ref. No:P18-159, e.g. for construction of a new detached 3 bedroom house, with associated garage, office, and studio, associated sewage treatment unit with percolation area and ancillary works all off existing road access. The design of the development is to remain essentially as previously granted. If this application is successful, the existing grant reference P18-159 is to be extinguished

DESIGNATION/ZONING

Settled Landscape

The subject site is within a *Settled Landscape*. Therefore Development Plan Objective CDP 13.2 is applicable in this instance.

It is an objective of the Development Plan to permit development in areas designated as 'settled landscapes' that sustain and enhance quality of life and residential amenity and promote economic activity subject to

- (i) Conformity with all other relevant provisions of the Plan and the availability and protection of resources.
- (ii) Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design, are directed towards minimising visual impacts.
- (iii) Regard being given to avoiding intrusions on scenic routes and on ridges or shorelines.

Developments in these areas will be required to demonstrate that:

- sites have been selected to avoid visually prominent locations.
- site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies public amenities and roads.
- design for buildings and structures reduce visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.

CDP14.2 European Sites

It is an objective of the development plan:

- a) To afford the highest level of protection to all designated European sites in accordance with the relevant Directives and legislation on such matters;*
- b) To require all planning applications for development that may have (or cannot rule out) likely significant effects on European sites in view of the site's Conservation Objectives, either in isolation or in combination with other plans or projects, to submit a Natura Impact Statement in accordance with the requirements of the EU Habitats Directive and the Planning and Development Act, 2000 (as amended);*
- c) To recognise and afford appropriate protection to any new or modified SPAs or SACs that are identified during the lifetime of this plan, having regard to the fact that proposals for development outside of a European site may also have an indirect effect.*

Relevant Statutory Legislation

Planning and Development Act 2000, as amended

Section 2(1) interpretation of "works" and "structure".

Section 3(1) meaning of "development".

Section 2 of the Planning and Development 2000, as amended also defines the terms used within the Act and the following terms are relevant for the purposes of this referral.

Works - include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 (1) of the Act defines development except where the context otherwise requires the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.

road - has the same meaning as in the Roads Act, 1993

Section 4 sets out development which is deemed to be exempted development.

Section 4(1) states that the following shall be exempted development for the purposes of the Act :

- (a) Development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied, together with the land so used.
- (h) relates to development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structure

Planning and Development Regulations 2001, as amended

Article 6 Relates to Exempted Development.

Article 6 (3)

Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1

Article 9(1) Relates to restrictions on exemptions.

Article 9 (1) concerns development to which Article 6 relates and shall not be exempted development for the purposes of the Act.

(a) If the carrying out of such development would inter alia,
(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 meters in width.

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or AnBord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) Consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure

that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) Obstruct any public right of way,

Part 1, Schedule 2 relates to Exempted Development:

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.

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

Assessment

There are 2 aspects to this Section 5 declaration:

Upgrading of Access Road:

The upgrading of the access road is proposed via the use of tar and chip. It is not proposed to widen or extend the road which is less than 3m in width.

The works are considered to fall within the exemptions of Class 13 of Part 1, Schedule 2 of the Planning & Development Regulations and also Section 4 (1) (h) of the Act.

It is noted that the subject site falls within the existing Slieve Aughty SPA however given that the proposal is for works to an existing road it is not considered that the de-exemptions as per Article 9 (viiB) apply in this instance.

Installation of 2 no. compost toilets:

There are no exemptions in the Planning Acts or Regulations for compost toilets and therefore it is considered that the installation of same is not exempted development.

Appropriate Assessment

Having regard to the nature, size, scale and footprint of the proposed development, it is considered that the proposed works either alone or in-combination with other plans/or projects will not have significant effects on the European site in light of their conservation objectives.

Recommendation

The following question has been referred to the Planning Authority:

Whether the upgrading of the existing road and installation of 2 compost toilets, constitutes development and if so is it exempted development.

The 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) Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (c) Article 9 of the Planning and Development Regulations 2001, as amended
- (d) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) the proposed development consisting of the upgrading of the surface of existing roads and installation of compost toilets constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- (c) the said development consisting of the upgrading of the surface of existing access roads is considered to be exempted development having regard to Section 4 (1) (h) of the Planning & Development Act, 2000, as amended, and Class 13 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended .
- (d) There are no exemptions in the Planning Acts or Regulations for compost toilets therefore the installation of same is development and is not exempted development.

Now therefore Clare County Council (Planning Authority), hereby decides that:

- (i) The upgrading of the existing road constitutes development and is exempted development.
- (ii) The installation of 2 compost toilets, constitutes development and is not exempted development.



G Ruane

SEP

18/05/2021

Mark Kerin

From: Marina L. Levitina <>
Sent: Tuesday 18 May 2021 11:03
To: Mark Kerin
Subject: Re: Section 5 R21-27 for Marina Levitina & Colm Hogan

Hi Mark,

Thank you for your email. The access road will only be resurfaced (not widened), using tar and chip.

Many thanks,
Marina and Colm

On Tue, 18 May 2021 at 10:29, Mark Kerin <MKerin@clarecoco.ie> wrote:

Marina and Colm,

Just in relation to your Section 5 application that was submitted to the Planning Authority.

In relation to the access road could you please confirm the extent you are upgrading the access road, is it to be widened or resurfaced and what material will be used.

Thanking you

Mark Kerin

Mark Kerin
Clerical Officer
Planning Department
Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2
T: 065 6846409 | E: mkerin@clarecoco.ie | W: www.clarecoco.ie

Council of the Year 2020



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Marina Levitina & Colm Hogan
Aka Counterpoint Films
Corracloon More,
Caher,
Flagmount,
Co. Clare
V94 603F

6th May 2021

Section 5 referral Reference R21-27 – Marina Levitina & Colm Hogan

Whether the upgrading the existing road and installing 2 compost toilets, within the property in Corracloon More, Caher, Flagmount, Co. Clare is considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 6th May 2021 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

Mark Kerin
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



P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoft@clarecoco.ie
Website: www.clarecoco.ie



**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	<div style="border-bottom: 1px solid black; margin-bottom: 5px;">Marina Levitina and Colm Hogan</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">aka Counterpoint Films</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">Corracloon More, Caher</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">Flagmount, Co Clare</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">V94 603F</div>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"> </div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"> </div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"> </div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"> </div>

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Corracloon More Caher, Flagmount Co Clare V94 603F
(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):	owners. Counterpoint Films owns the land. We are directors of the company.
(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>	n/a
(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>	Yes, 2018
(h) Date on which 'works' in question were completed/are likely to take place:	July 2021

SIGNED: 
Marina Levitina

DATE: 5.5.2021

Lano registry compliant map



National Mapping Agency

CENTRE COORDINATES:
 ITM 557824.690990
ORDER NO.:
 58190219_1
MAP SERIES: 1:5,000
MAP SHEETS: 4636

COMPILED AND PUBLISHED BY:
 Ordnance Survey Ireland,
 Phoenix Park,
 Dublin 8,
 Ireland.

Unauthorized reproduction
 infringes Ordnance Survey Ireland
 and Government of Ireland
 copyright.

All rights reserved.
 No part of this publication may
 be copied, reproduced
 or transmitted in any form
 or by any means without the prior
 written permission of
 the copyright owners.

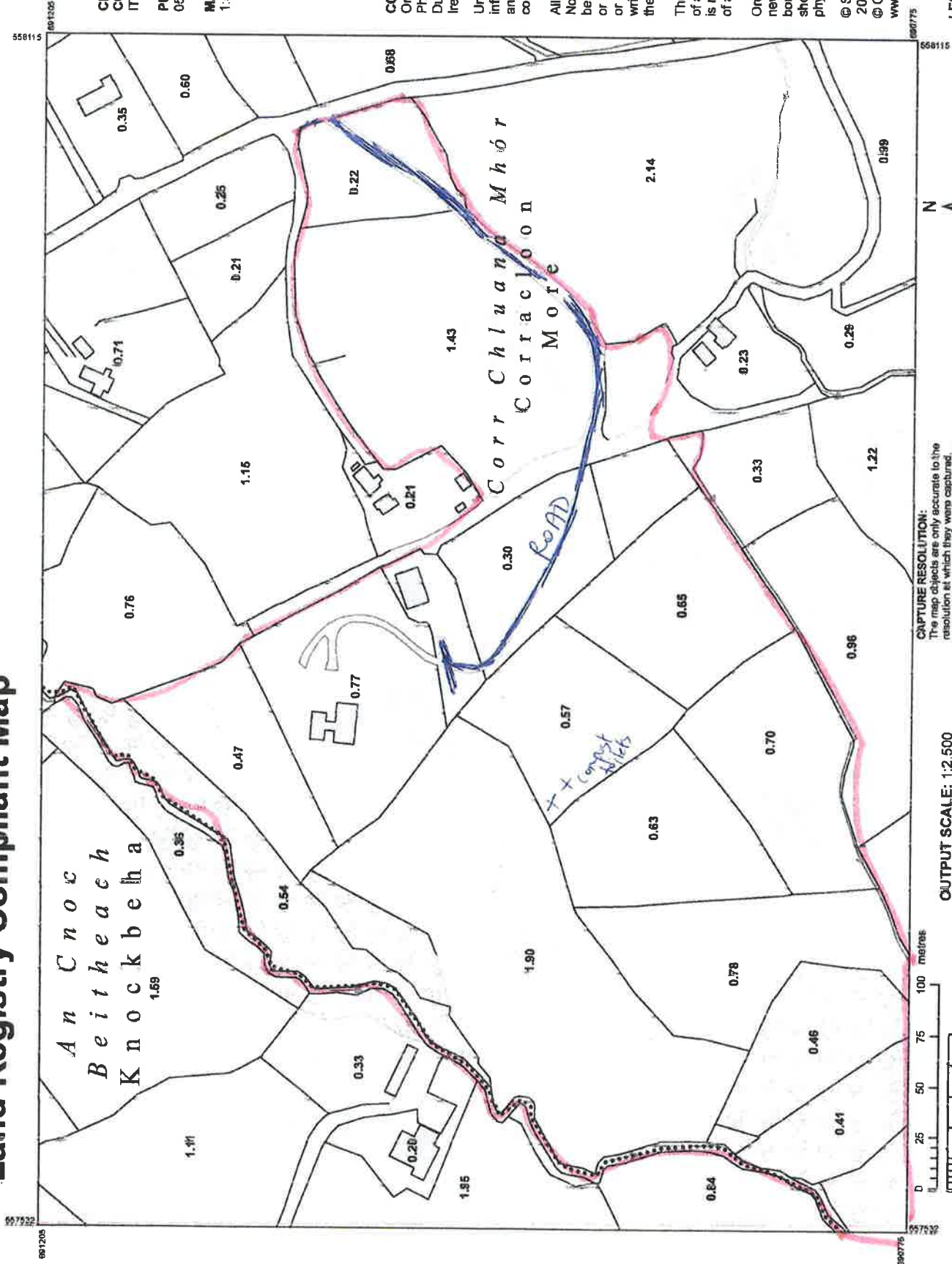
The representation on this map
 of a road, track or footpath
 is not evidence of the existence
 of a right of way.

Ordnance Survey maps
 never show legal property
 boundaries, nor do they
 show ownership of
 physical features.

© Suirbhéireacht Ordlánáis Éireann,
 2021
 © Ordnance Survey Ireland, 2021
 www.osi.ie/copyright

LEGEND:

<http://www.osi.ie>
 search 'Large Scale Legend'



CAPTURE RESOLUTION:
 The map objects are only accurate to the
 resolution at which they were captured.
 Output scale is not indicative of data capture scale.
 Further information is available at:
<http://www.osi.ie>, search 'Capture Resolution'

OUTPUT SCALE: 1:2,500



Folio

This map should be read in conjunction with the folio.

Registry maps are based on OSI topographic mapping. Where registry maps are printed at a scale that is larger than the OSI published scale, accuracy is limited to that of the original OSI map scale.

For details of the terms of use and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see www.prsa.ie.

This map incorporates Ordnance Survey Ireland (OSI) mapping data under a licence from OSI. Copyright © OSI and Government of Ireland.

(centre-line of parcel(s) edged)

Freehold

Leasehold

Subleasehold

Burdens (may not all be represented on map)

Right of Way / Wayleave

Turbary

Pipeline

Well

Pump

Septic Tank

Soak Pit

A full list of burdens and their symbology can be found at:

www.prsa.ie

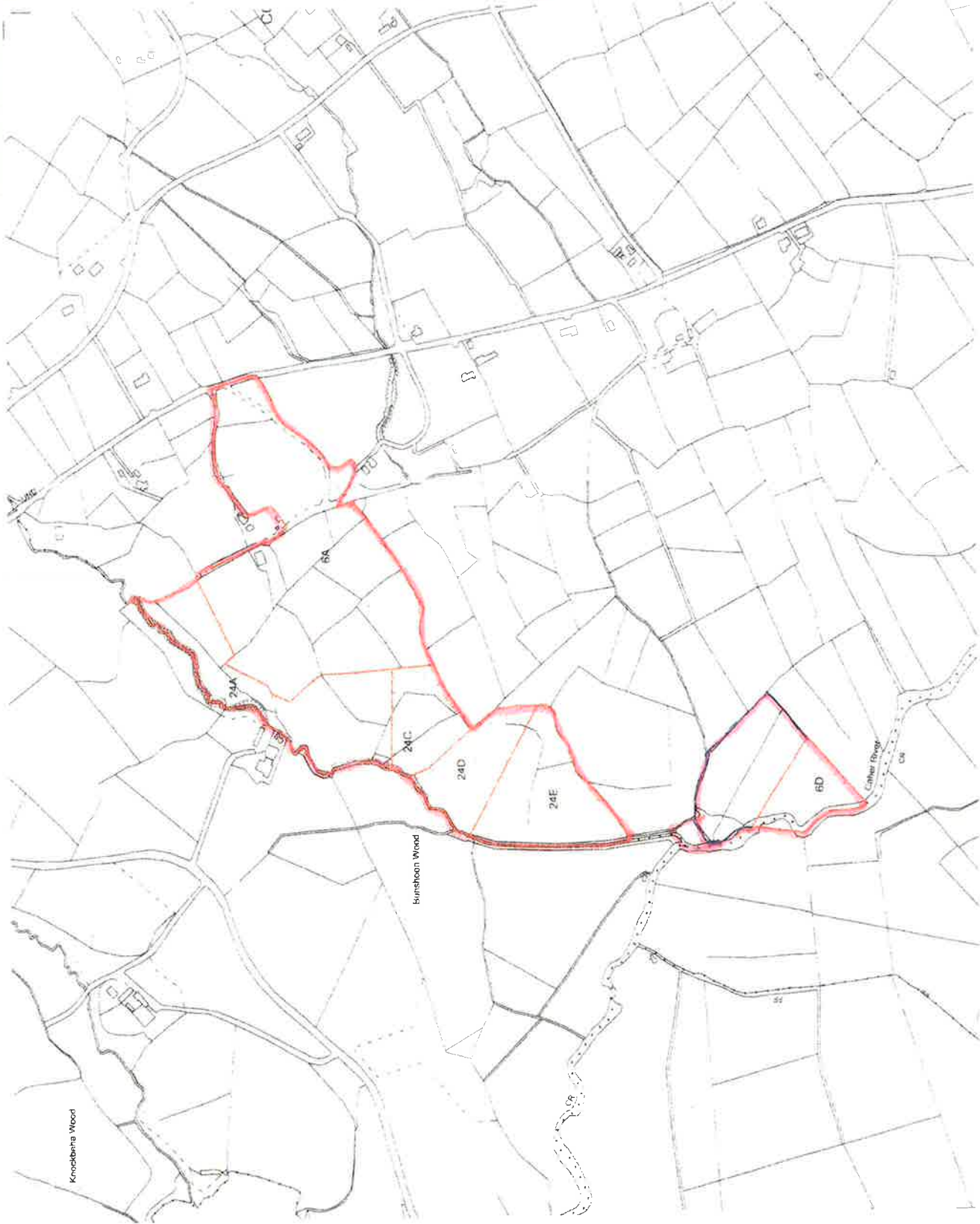
The registry operates a non-conclusive boundary system. The Registry Map identifies properties and boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent (see Section 85 of the Registration of Title Act, 1964). As inserted by Section 52 of the Registration of Deed and Title Act 2006.



1:5000 Scale

Page 6 of 7

558570 mU, 691360 mN



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



06/05/2021 15:45:36

Receipt No. LICASH/0/316117

REPRINTS

MARINA LEVITINA & COLM HOGAN
AKA COUNTERPOINT FILMS
CORRACLOON MORE
CAHER
FLAGMOUNT
CO CLARE V94 603F
REF: R21-27

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

Total : 80.00 EUR

Tendered :
CREDIT CARDS 80.00

Change :



Issued By : LICASH - Ann Carey