

## VITRUVIUS HIBERNICUS

Liam Madden B. Arch. NUI, M.Appl.Envir. Sc., Cert.Arch.Prof., Dip. Micro-Proc. Tech.,  
CHARTERED MEMBER OF THE ROYAL INSTITUTE OF BRITISH ARCHITECTS 1978 - 2017  
REGISTERED ARCHITECT U.K. REG. NO. 0461701  
EU REGISTERED ARCHITECT NETHERLANDS REG. NO. 1.180615.001  
ENVIRONMENTAL SCIENTIST

An Bord Pleanála,  
64 Marlborough Street,  
DUBLIN 1.

P.A. ref : DC 19/2 Section 5 request  
Stonepark, Longford, Co. Longford

Dear Sir/Madam,

this is section 5 referral by Liam Madden, Convent Road, Longford.

Attached are :

- (i) An Bord's referral fee €220-00,
- (ii) the section 5 request itself,
- (iii) the P.A. declaration,

### BACKGROUND

The house and surrounds are occupied intermittently by my client W. McGinley and who regularly visits Germany.

The house owner is my client's sister, B.P. Nic Fhionnlaigh (McGinley).

There is a parcel of land c. 5.5 acres adjoining this house site Folio LD 13828F, the current registered owner of which is John Hignis. These lands have recently been purchased by Willie McGinley and his new house is currently under construction.

The lands, apart from the dwellinghouse are agricultural.

### DEVELOPMENT

It is acknowledged that the matter the subject of the request and now referral constitutes works (as defined) and development (as defined).

The question before An Bord is whether the development is or is not exempted development.

### DESCRIPTION

The development is a structure measuring 10.5m by 14.75m internally with an overall height of 6.90m on a site c. 34m by 18m. The structure sits on land walled off from the dwellinghouse plot but with gates in the separating wall. The plot adjoins agricultural land.

The structure has a tractor-trailer in it and there is a boiler in the building.

The boiler heats the dwellinghouse.

There is no other boilerhouse which heats the dwellinghouse. This point is important.

12 April 2019

AN BORD PLEANÁLA

LDG- 015200-19

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

16 APR 2019

Fec: € 220 Type: Charge

Time: \_\_\_\_\_ By: Post

## SECTION 5 REQUEST

The request posed three questions :

- (a) the use of land for the purposes of agriculture,
- (b) the provision of an agricultural shed,
- (c) the provision of a boilerhouse serving a dwellinghouse.

The P.A. declaration in all three was negative.

## SUPPORTING ARGUMENTS

The supporting arguments are those set out in the request to the P.A.

In relation to (a) I argue that I can rely absolutely on Section 4.-(1)(a) of the 2000 Act, as amended, which expressly provides that the use of ANY land for the purposes of agriculture is exempted development together with the use of any building thereon.

Therefore it follows that the use of the site edged in RED including the structure thereon may be used for the purposes of agriculture and is exempted development.

In relation to (b), I argue that the structure is a Class 9 Part 3 Schedule 2 exempted development (Rural) made under the Article 6 of the Regulations made under Section 4.(2) of the Act. The structure complies with all the Conditions and Limitations attaching to the Class. Moreover, it is not de-exempted by any of the provisions set out in Article 9 of the regulations.

Insofar as it may be even remotely relevant, I comment on the dicta obiter in the P.A. declaration, notwithstanding that the declaration has been annulled by the lodging of this Referral.

The P.A. declined to express any view on Section 4.(1)(a) of the Act which entitles a person to use ANY land for the purposes of agriculture.

The P.A. expressed the view that the structure is not linked to any agricultural activity and, therefore, it could not be considered to be within the scope of Class 9.

The shed houses a tractor-trailer WHICH may be used on the adjoining agricultural lands (or indeed on any agricultural lands).

Anyway the area edged in RED, including the structure may be used for the purposes of agriculture and there are no conditions or limitations governing or restricting its use for the that purpose.

The use – or I should say – misuse of the word “*therefore*” in the P.A. declaration is utterly irrational and illogical and contrary to plain reason and common sense and indefensible for being in the teeth of plain reason and common sense.

Even if the building were not used – which is denied - that wouldn't render it out side of the scope of Class 9.

This was a simple question – either it may be used as a Class 9 shed or not.

In relation to (c), there is a boiler in the shed. The boiler heats the dwellinghouse and there is not other boiler heating the dwelling.

Attached are photos of :

- (i) the fuel tank to the side of the shed,
- (ii) the balanced flue from the boiler through the side wall of the shed,
- (iii) the boiler unit within the shed
- (iv) the house itself owned by B.P. Nic Fhionnlaigh,
- (v) the new Willie McGinley house currently under construction in the adjoining field with the shed and the Nic Fhionnlaigh house in the background.

This is a boilerhouse and it complies with the only condition or limitation to Class 2 of Schedule 2 Part 1 of the Regulations. It does not fall foul of any of the provisions of Article 9 which might otherwise de-exempt the development.

It may be an unusually big boilerhouse but a boilerhouse it is nonetheless.

This final comment is most important.

In its declaration, the P.A. said "*the use of the structure is not in any way linked to the heating requirements of the adjoining dwelling house*".

This was totally untrue and begs the question whether the planner even visited the site.

I expressly invited the P.A. to contact me by phone to arrange to carry out an inspection.

There was no contact and, I suggest, no inspection.

This structure must be unlocked and opened for An Bord's Inspector.

During the inspection, the boiler will be switched on and the dwelling made available for inspection to confirm that the boiler DOES as a matter of fact heat the dwelling and that there is no other boilerhouse.

Therefore I again repeat the invitation to phone me at 043-33-41151 in advance to arrange for detailed inspection.

The determination of this referral depends on this internal inspection.

Yours faithfully,



Liam Madden,  
Convent Road,  
LONGFORD.



**Please Note**  
 Your current balance is  
 €1.5

Show all downloads...

REFERRAL  
 SITE IN RED

STONEPARK

Royal Canal

Directions to ...pdf

---

Northgate St. | Athlone | Co. Westmeath

DX 12025 Athlone

Tel 090 6472862 | Fax 090 6476385 | [www.owencarty.ie](http://www.owencarty.ie) | Email [info@owencarty.ie](mailto:info@owencarty.ie)

**Our Ref: OMC/LD/Mc143**

**Your Ref:**

**Date: 6<sup>th</sup> January 2017**

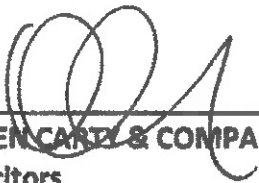
Planning Office,  
Longford County Council,  
Great Water St.,  
LONGFORD.

**Re: Planning ref No. PL 06/311**

Dear Sir/Madam,

We confirm that we act on behalf of Willie McGinley and that he is the owner of the lands comprised in Folio 13828F County Longford. His application for registration of that Folio is not completed as yet. We confirm he has given his consent to his son Christopher to the lodging of this planning application 06/311.

Yours faithfully,

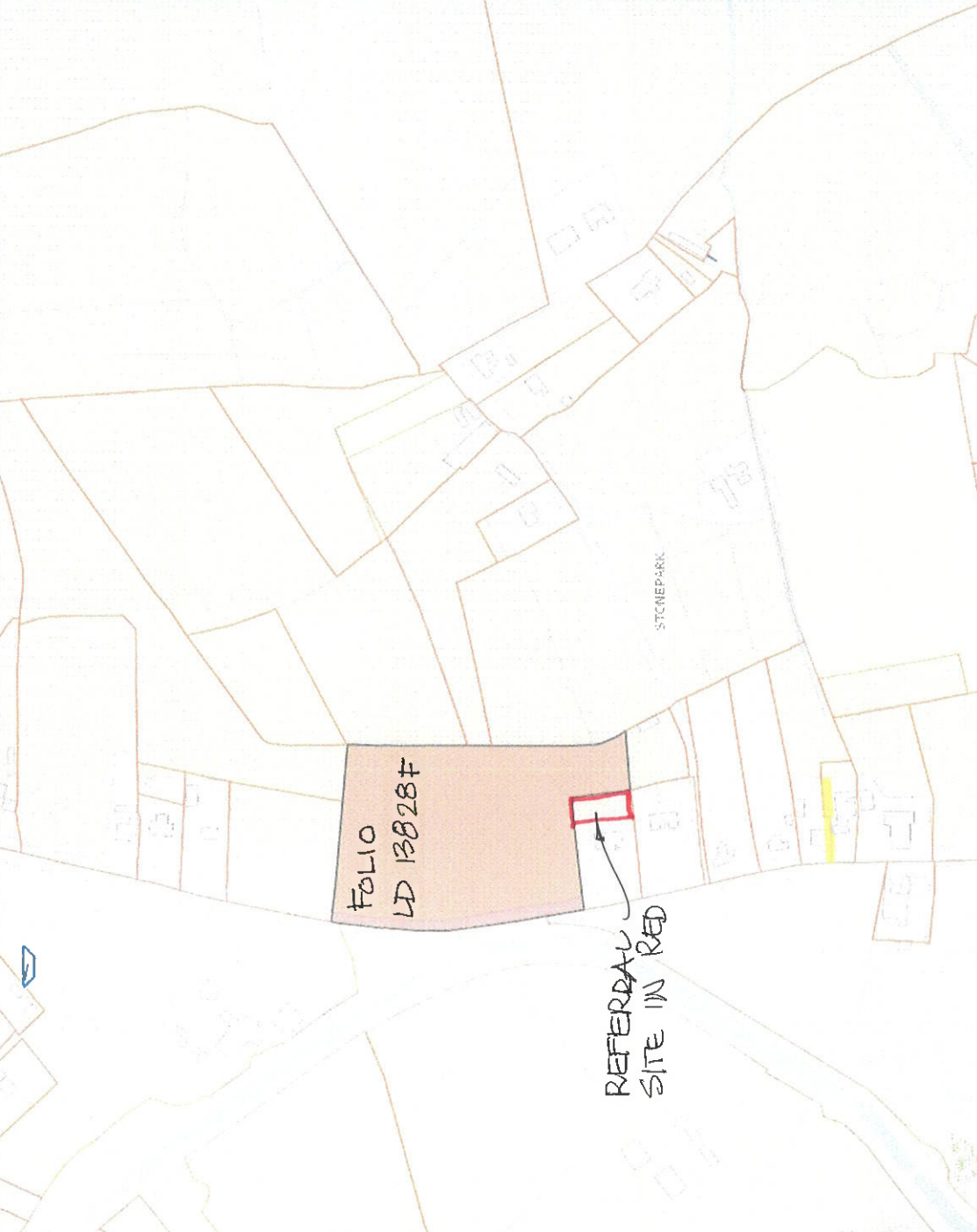


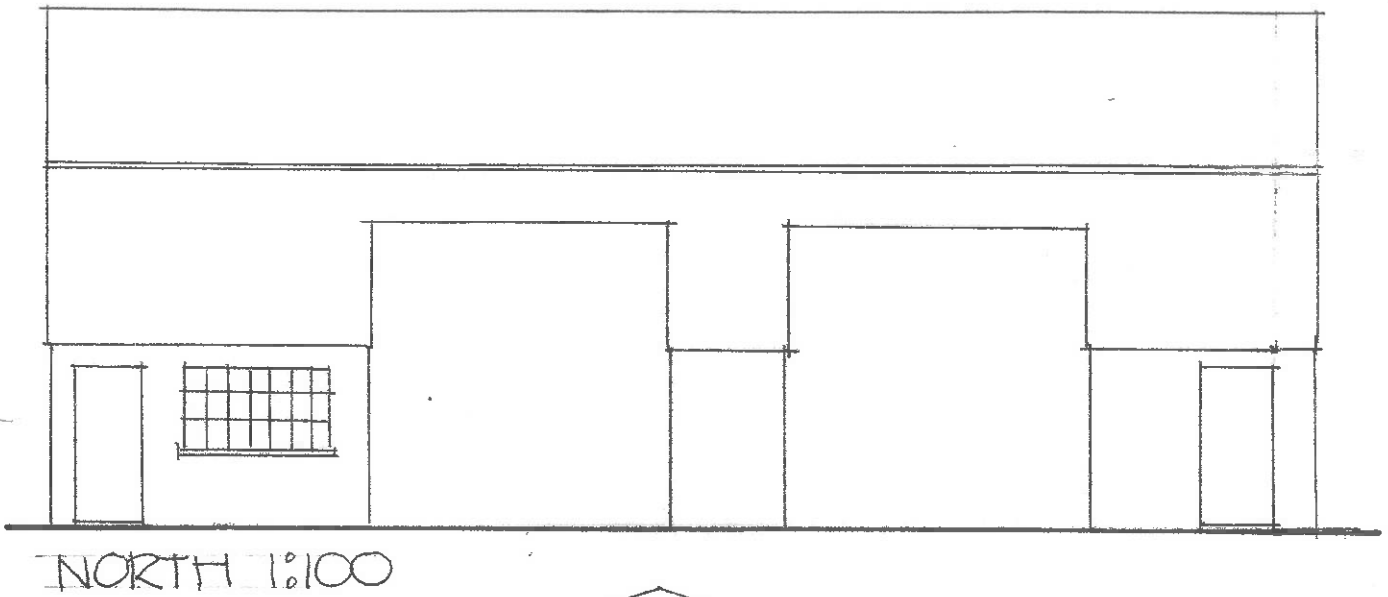
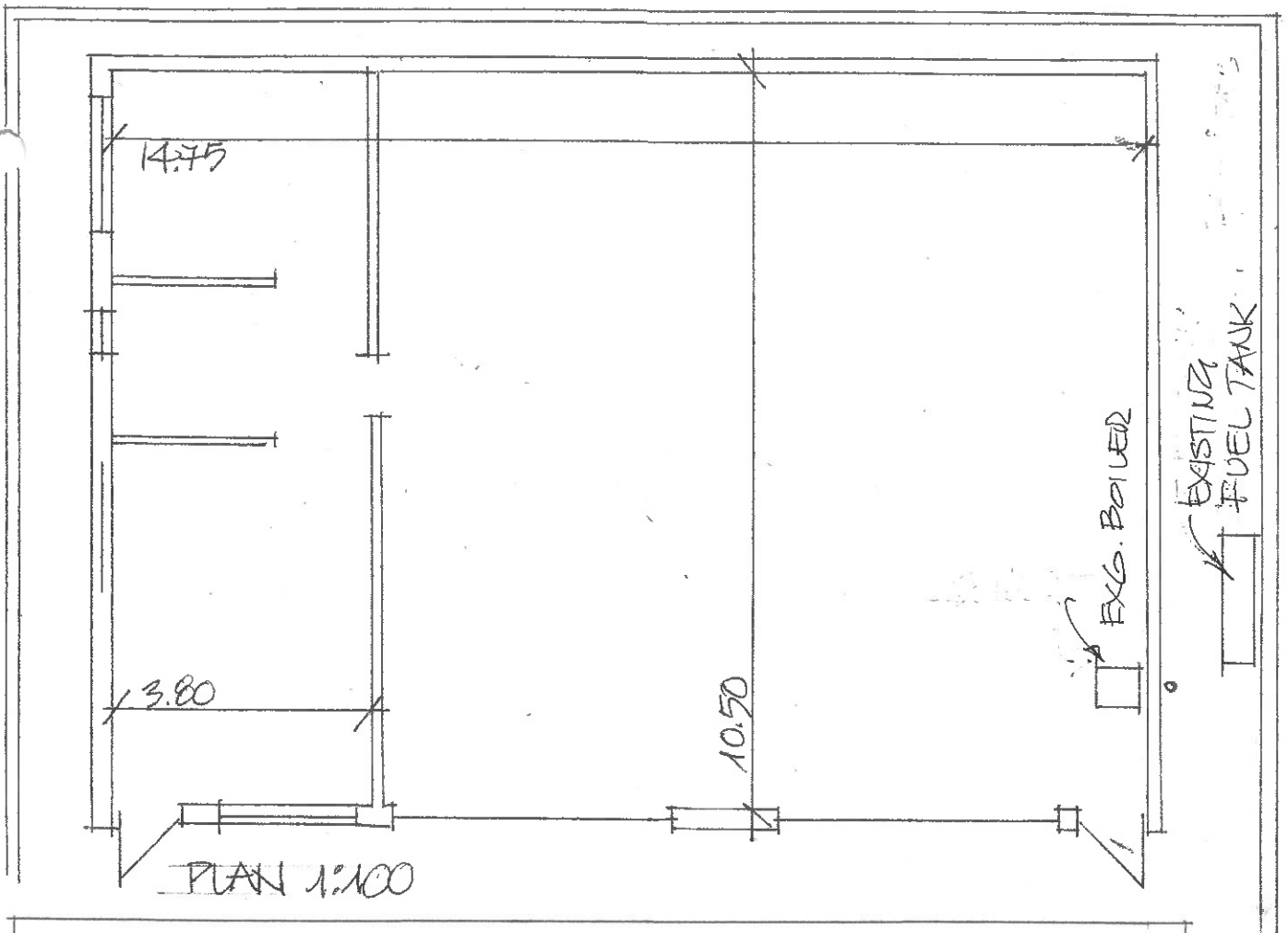
**OWENCARTY & COMPANY**  
Solicitors

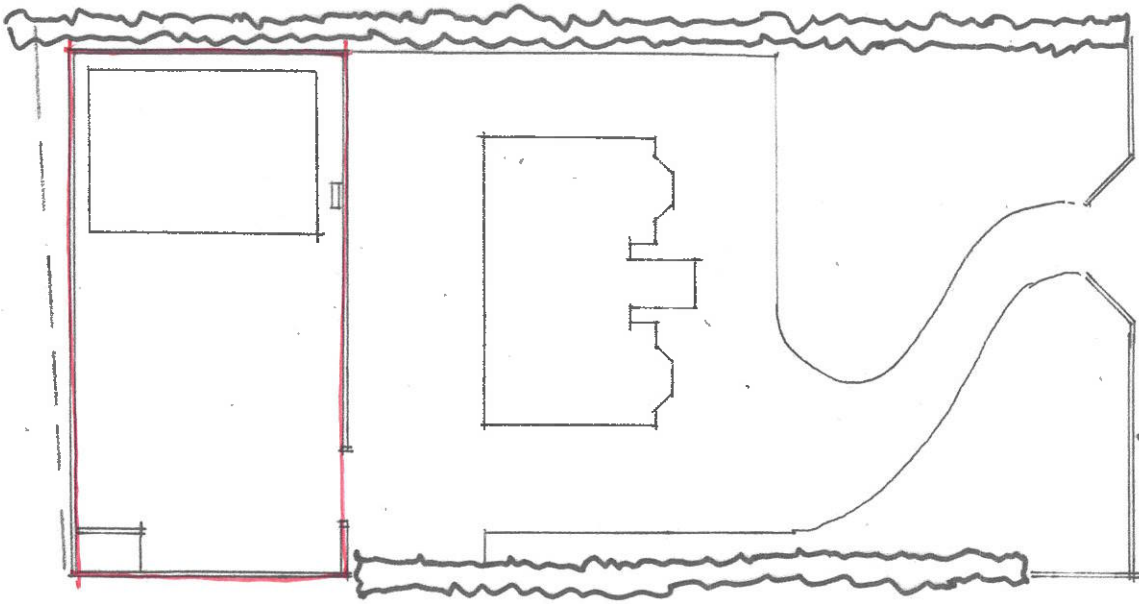
Owen Carty B.C.L. LL.M, Solicitor

Louise Dowd B.A. (Hons) Law, Legal Executive  
Marlene Cummins, Office Manager

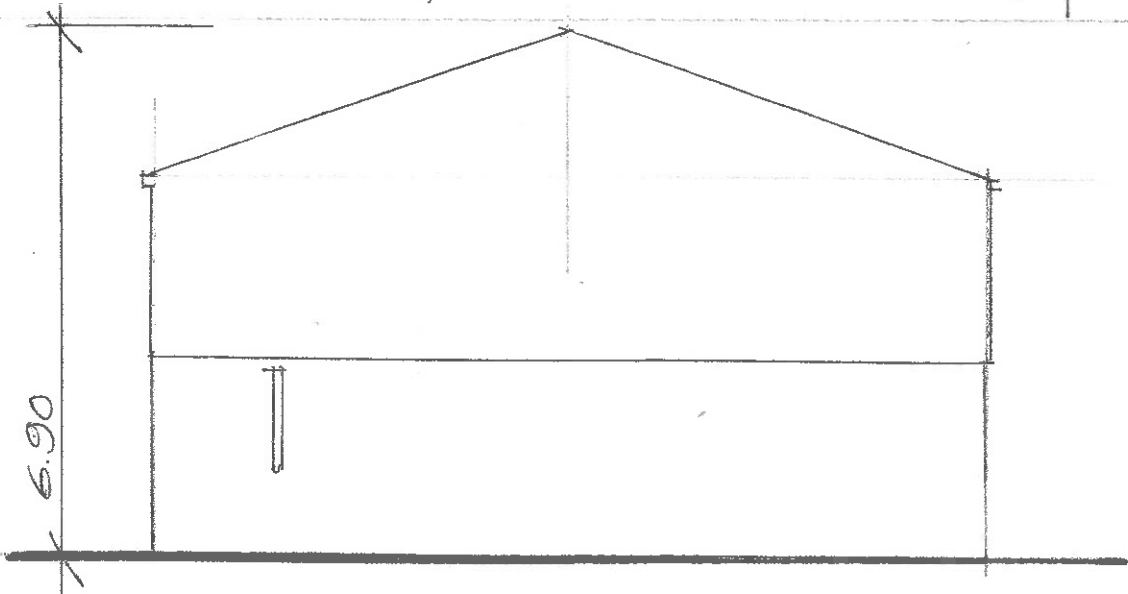
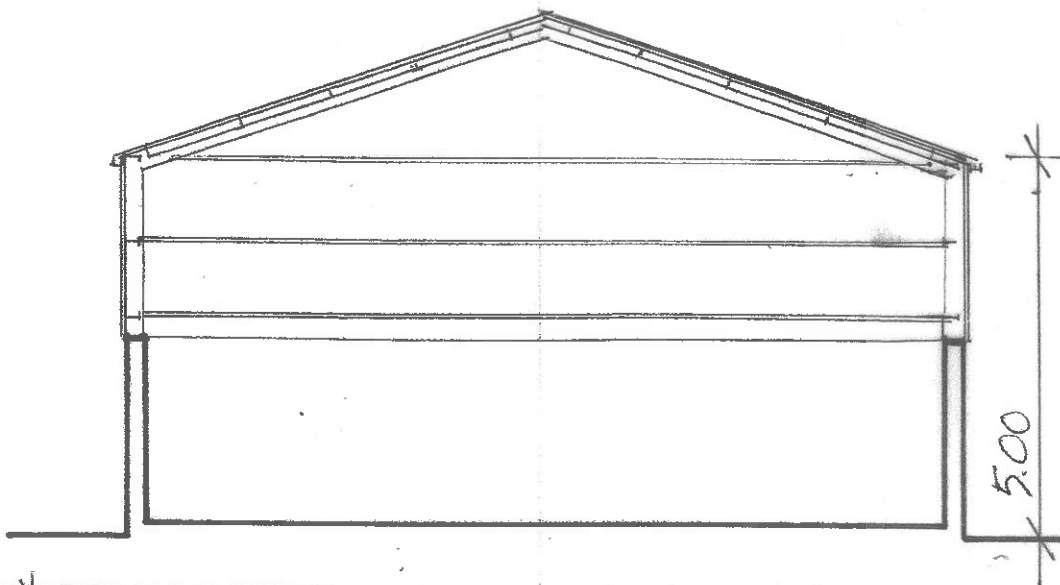
VAT No: 3511488K







SITE LAYOUT 1:500





25<sup>th</sup> March, 2019

**Registered Post**

Mr. Liam Madden,  
Vitruvius Hibernicus,  
Convent Road,  
Longford N39 EE72.

**Re: Section 5 Declaration – DC19/2,  
Development at Stonepark, Longford.**

Dear Sir,

The planning authority wishes to acknowledge receipt of your request for a declaration of works considered to be development or exempted development under Section 5 of the Planning and Development Act 2000 (as amended) on the 25<sup>th</sup> February, 2019.

It is the opinion of the Planning Authority that the existing structure is development, the development is not linked to any agricultural activity and therefore could not be considered within the scope of Class 9, Parts 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended or Section 4 (1) (a) of the Planning and Development Act 2000, as amended.

Nor is the use of the structure linked in any way to the heating requirements of the adjoining dwelling houses, and therefore does not fall within the scope of Class 2 (a) of Schedule 2, Part 1 of the Regulations and is therefore not exempted development.

Therefore, it is the opinion of the Planning Authority that the proposed structure, as defined, is considered to be development as defined in the Planning and Development Act and is development that is **not exempted development**.

Yours faithfully,

  
A/Administrative Officer.

27<sup>th</sup> February 2019

Mr. Liam Madden  
Convent Road  
Longford

**Acknowledgement of application for a Section 5 Declaration.**

Planning Reference No: DC19/2      Date Received: 25/2/2019

**Nature of Development:**      Development at Stonepark, Longford,  
Co Longford

Dear Sir

I hereby acknowledge receipt of your application on the date stated above and wish to inform you that it is under consideration at present.

A decision will be issued to you by Registered Post in due course.

Should we require any further particulars or information in relation to the application, we will be in contact with you further.

Yours faithfully

*Planning Department*

## VITRUVIUS HIBERNICUS

Liam Madden B. Arch. NUI, M.Appl.Envir. Sc., Cert.Arch.Prof., Dip. Micro-Proc. Tech.,  
CHARTERED MEMBER OF THE ROYAL INSTITUTE OF BRITISH ARCHITECTS 1978 - 2017  
REGISTERED ARCHITECT U.K. REG. NO. 0461701  
EU REGISTERED ARCHITECT NETHERLANDS REG. NO. 1.180615.001  
ENVIRONMENTAL SCIENTIST

Longford County Council,  
Planning Dept.,  
Great Water Street,  
LONGFORD.

22 Feb, 2019

### Section 5 Request

Dear Sir/Madam,

this is Section 5 Request relating to a structure at Stonepark, Longford.

Liam Madden, Convent Road, Longford is the person making the request.  
The owner of the land and the adjoining house is An tUasal B.P. Nic Fhionnlaigh.  
The house is occupied by the owner's brother, William.

It is only recently that the owner has returned from abroad and that I have been able to take full instructions and conduct a full internal and external survey. My instructions are a little different from those previously relayed to me by the owner's brother but nothing hinges on these differences.

Attached are :

- (i) request fee €80,
- (ii) Land Registry printout map showing request site edged in RED
- (iii) dimensioned drawings.

You will first notice that the site edged in RED contains a second (small) shed.  
This shed is a domestic shed and is incomplete. This is not the subject matter of this request.

The structure the subject of this request is the larger shed measuring 10.5m by 14.75m internally with an overall height of 6.90m  
There are two houses located within 100m of the structure and their written consent of both owners/occupiers is attached.  
The structure also houses a boiler which heats the dwellinghouse.

WHEREAS A QUESTION HAS ARISEN as to whether :

- (a) the use of land being the site edged in RED on the attached map being development consisting of the use of any for the purposes of agriculture and development consisting of the use for that purpose of the use of any building occupied together with and so used is or is not exempted development,
- (b) whether the provision of a building measuring 154.875 sq.m. internally as a Class 9 agricultural shed is or is not exempted development,

and/or in the alternative to (b) above,

- (c) whether the provision of a boilerhouse as part of a central heating system for the adjoining house is or is not exempted development.

SUPPORTING ARGUMENTS.

- (a) Use of land and building.

Section 4 of the 2000 Act, as amended, lists definitions of exempted development.

Section 4.-(1)(a) to (i) incl. lists exemptions which are absolute without condition or limitation

Section 4.-(2) empowers the Minister to make Classes of Exemption.

Section 4.-(3) defines Exempted Development as exemptions under S.-(1) and/or S.-(2)

Section 4.-(4) de-exempts certain S. 4.-(1)(a) exemptions if/where an EIS or AA is required.

Section 5.-(5) requires the Minister/others to consult before the making of regulations.

Section 4.-(1)(a) of the 2000 Act, as amended, states :

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

- (a) development consisting of the use of any for the purposes of agriculture and development consisting of the use for that purpose of the use of any building occupied together with and so used.*

Unlike Class of Exemption made under Section 4.-(2) which have Conditions and Limitations affecting them, Section 4.-(1)(a) is absolute and free from such impediments.

Notwithstanding that, exemptions under Section 4.-(1)(a) theoretically could be de-exempted by Section 4.-(4) should such development involve an EIS or AA.

This development does not require an EIS or AA.

Therefore I submit that use of the land and the use of the the building occupied and so used is exempted development.

- (b) Class 9 agriculutral shed

I submit that the structure erected on the land is development,as defined.

I also submit that the shed complies with the 6 no. conditions and limiations attaching to a Class 9 agricultural shed.

I further submit that exemption under Class 9 is not de-exempted by the restrictions imposed by Article 9 (i) to (xii) inclusive and in particular (vii) and (viiA) to (viiC).

I submit that the written consent of the only two neighbouring owners/occupiers within 100m is attached per Condition/limitation (5).

Therefore I say that the shed constitutes a Class 9 exempted development.

(c) Boilerhouse

I submit, in the alternative to (b) above, that the shed complies fully with the provisions of Section 4.-(2) and Exemption Class 2 of Schedule 2 Part 1 of the 2001 Planning and Development Regulations made thereunder and in particular Article 6 of the 2001 Regs., as amended.

I also submit that the capacity of the adjoining oil storage tank does not exceed 3500 litres. I say that there is no condition and/or limitations which restricts area and/or height of a boilerhouse.

I further submit that the shed, as a boilerhouse, does not fall foul of any of the provisions of Article 9 (i) to (xii) inclusive.

I say, therefore, that the provision of a boilerhouse as part of a central heating system for the adjoining house is exempted development.

Nota Bene.

Please contact me by phone 043-33 41151 to arrange inspection of the development as the occupiers are frequently out of the country.

I await your declaration.

Yours faithfully,

Liam Madden,  
Convent Road,  
LONGFORD.



**TO WHOM IT MAY CONCERN**

I/we give consent to the provision of a Class 9 agricultural shed at Stonepark, Longford within 100 metres of our house.

SIGNED:

  
Cdm Dolan

Dated:

2-2-19

**TO WHOM IT MAY CONCERN**

I/we give consent to the provision of a Class 9 agricultural shed at Stonepark, Longford within 100 metres of our house.

SIGNED :



Padraig Farrell

Dated : 2/2/19