

## 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

15 May 2019

P.A. ref : DC 19/5 Tom Devine, Ballagh, Newtownforbes, Co. Longford.

Dear Sir/Madam,

this is a referral made under Section 5 of the Act, as amended.  
The referrer is Tom Devine, Ballagh, Newtownforbes, Co. Longford.

Attached are :

- (i) An Bord's fee €220-00
- (ii) The section 5 request made to Longford County Council
- (iii) Longford County Council's declaration dated 14<sup>th</sup> May 2019
- (iv) maps, drawings and photos which accompanied the request to the Council.

### HISTORY

Various questions had arisen in the past on this site. The questions were the subject of a previous section 5 request and referral no. DC 18/4 and Bord ref : 301518-18  
That procedure found in my client's favour in about half of the questions posed.

This request/referral is a re-submission of six questions, clarified in the meanwhile.  
The Council has found in my client's favour in two of the six questions posed i.e. the replica windows and replica roof sheeting.

This referral relates to the other four questions i.e. whether the

- (a) erecting a boilerhouse,
  - (b) erecting and extension c. 29 sq.m.
  - (c) the keeping or storing of a caravan or campervan within the curtilage of a house,
  - (d) re-plastering of existing masonry in lime mortar to match original.
- is/are exempted development.

**AN BORD PLEANÁLA**

LDG- 01623-19.

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

**21 MAY 2019**

Fee: € 220 Type: Check

Time: 9.40 By: Post

## SUPPORTING ARGUMENTS (a), (b) and (c).

The Council in this matter and An Bord in the previous referral 301518-18 attached some importance to whether the existing cottage was still in use as a dwelling. Of course, the cottage is NOT in use as a dwelling. However, this is wholly irrelevant.

I respectfully submit that An Bord in the previous referral 301518 went wildly astray in its Inspector's Assessment. It is totally irrelevant whether the cottage is or is not in current use. The relevant exemption Classes refer to exemptions referable to a "house".

"House" is defined in the Act as a building or part of a building which is being or has been occupied as a dwelling or was provided as a dwelling but has not been occupied .....

(~~Attached copy~~ definition extract from 2000 Act.)  
cf.

If the cottage is a "house", then the exemption Classes apply to the cottage.

Therefore, the erection of a boilerhouse is exempted under Class 2 of Schedule 2 Part 1  
Therefore, the erection of an extension c. 20 sq.m. is exempted, subject always to compliance with the attached limitations and conditions, of course.

But exempt nonetheless under Class 1 of Schedule 2 Part 1.

Therefore, the keeping or storing of a caravan or campervan within Class 8 Schedule 2 Part 1.

*(I comment that the Council's re-wording in its declaration a. was mischievous and ultra vires as there is a very real difference between a caravan/campervan and a mobile home and the latter was not the subject matter of any part of my S. 5 request.*

*Planning authorities and An Bord must stick to the parametres of their legal ambits)*

The underlying reason for re-submission of certain questions is to afford the Council in the first instance, and more particularly An Bord Pleanala an opportunity to correct its previous serious mistake.

The mistake made by An Bord is to invent a new legal definition for "house" by wrongfully inferring that the "house" has to be in use.

The Act already has a definition of "house".

There is only one definition of "house".

There are no conditions/limitations attaching to the definition.

An Bord has invented its own brand new definition.

The real question for An Bord is does the Planning and Development Act apply to An Bord's Inspectors .... or will it take a High Court Judicial Review with all the attendant costs and embarrassment to get An Bord to do its job.

The cottage is a "house".

**SUPPORTING ARGUMENT (d)**

I submit that re-plastering of the external walls is clearly exempted under Section 4.(1)(h).  
The Council in its declaration relies on the absence of evidence of the original finish.  
I say this is wrong : the submitted photos show the remaining areas of lime mortar plaster on the face of the external walls.

The Council's stated position is petty and an invented obstruction, conceived for the sole purpose of teaching my client a lesson.

(I comment that if the plaster was not decayed, there would be no need to re-plaster.  
It is only because of the decay that the need arises.)

My client looks forward to An Bord correct interpretation and application of the law.

Yours faithfully,



Liam Madden,  
Convent Road,  
LONGFORD  
N39 EE72

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14<sup>th</sup> May, 2019

Mr. Tom Devine,  
c/o Liam Madden,  
Convent Road,  
Longford.

**Subject: Register Reference DC19/5 – Tom Devine, c/o Liam Madden,  
Vitruvius Hibernicus, Convent Road, Longford,  
Development at Ballagh, Newtownforbes, Co. Longford.**

**Declaration and Referral on Development and Exempted Development  
under Section 5 of Planning and Development Act 2000 (as amended)**

Dear Sir,

The Planning Authority wishes to acknowledge receipt of your request for a declaration of works considered to be development or exempt development under Section 5 of the Planning and Development Act 2000 (as amended) on the 9<sup>th</sup> April, 2019.

The question to be determined is:

- a) Whether the following constitute development or exempted development:
- Erecting a boiler house;
  - Erecting an extension to the rear of the house c.29m<sup>2</sup>;
  - The keeping or storing of a caravan or campervan within the curtilage of a house;
  - The replacement of the decayed profiled metal roof on the house with profiled metal roofing;
  - The replacement of existing timber frame windows with replicated sash windows; and
  - The re-plastering of existing masonry in lime mortar to match original.

Following an assessment of the subject works, the Planning Authority has concluded that:

- the development consisting of the provision of a mobile home within the curtilage of the subject site comprises of a material change of use of the subject land and, therefore, comprise development under section 3(2) of the Planning and Development Act, 2000, as amended;
- the erection of a boiler house and an extension to the rear of the structure rely, for the purpose of the exempted development provisions, on the structure being construed as a 'house'.



However, there is no evidence of the residential use of the structure and the Planning Authority is satisfied, therefore, that the residential use has been abandoned. Therefore, these matters do not fall within the provisions of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;

- c. the proposed application of a lime mortar render to the exterior walls would, in the view of the Planning Authority and in the absence of any sufficient evidence to the contrary in relation to the original appearance of the structure, materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures and, therefore, not exempted development under section 4(1)(h) of the Planning and Development Act, 2000, as amended; and
- d. the proposed repair and replication of the existing roof of the previous cottage structure with a profiled metal sheeting in slate grey colour and the proposed replacement and replication of the timber windows within the previous cottage structure are not considered works which will materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures and, therefore, are considered exempted development under section 4(1)(h) of the Planning and Development Act, 2000, as amended.

Yours faithfully,

  
\_\_\_\_\_  
Administrative Officer

## VITRUVIUS HIBERNICUS

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ENVIRONMENTAL SCIENTIST

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

5 April 2019

My ref :        T 1879        Tom Devine, Ballagh, Newtownforbes, Co. Longford.

Dear Sir/Madam,

this is a Section 5 Request for a determination of questions which have arisen as to whether some matters are or are not exempted development.

The person making the request is Tom Devine, Ballagh, Newtownforbes.

Attached is the request fee €80-00

Attached are maps and sketches and photos supporting the arguments made.

### **DC 18/4 and REFERRAL 301518-18**

The request follows on the request DC 18/4 and Referral 301518-18 in which certain developments were deemed to be exempted based on arguments mounted on Tom Devine's behalf.

An Bord's exempted development declarations were a complete overturning of half of the declarations made earlier by Longford County Council.

The purpose of this Section 5 Request is to re-address certain matters in which An Bord declined to make Exempted Development declarations.

An Bord's Inspector's report cited uncertainty which could have given rise to a "potential" to render the proposals inconsistent with the existing and therefore "potentially" be a material alteration to the existing.

The Inspector's report relied on certain factual errors and, I argue, wrongly interpreted and mis-applied the definitions of "house" and "habitable house"

An Bord placed reliance of its conclusion that the site was derelict and/or abandoned.

This request will, it is anticipated, set aside any/all uncertainty and enable exemption declarations to issue, provided always that the definitions in the Act and Regulations are correctly used and applied.

Moreover, in precisely the same way as a refusal in a planning application can - and usually does -- lead to a repeat amended application and an approval, so too a repeat Section 5 Request/Referral should eliminate uncertainty and lead to a declaration of exemption.

2 THE GATE LODGE, WINDSOR CHASE, 81 LOWER WINDSOR AVENUE, BELFAST BT9 7DX  
POSTBUS 41882, 1009 DB AMSTERDAM, NEDERLAND  
RESIDENCE : VITRUVIUS HIBERNICUS, CONVENT ROAD, LONGFORD N39 EE72 Tel./Fax 043-33 41151

Also, a repeat Section 5 Request/Referral has the added benefit of vigorously contested matters being determined and settled in a civilised and affordable forum rather than in a High Court Judicial Review.

### MATTERS IN QUESTION

The matters for adjudication are :

- (A) boilerhouse
- (B) rear extension
- (C) caravan
- (D) replication of windows and roof covering
- (E) replacing external plaster

These matters are of the utmost importance to my client Tom Devine whose ancestral family homestead is, in effect, under attack and placed in jeopardy due to planning blunders, factual misrepresentation and injudicious misinterpretation.

### SUPPORTING ARGUMENTS for (A), (B) and (C)

Items A, B and C all rely on Section 4.-(2) of the Act.

4.-(2) provides for Exemption Classes under Article 6 of the 2001 Regulations, as amended.

The relevant Exemption Classes fall within :

#### **Schedule 2 Part 1**

#### ***Exempted Development - General***

#### ***Developments within the curtilage of a house.***

- (A) boilerhouse falls into Class 2
- (B) rear extension falls into Class 1
- (C) caravan falls into Class 8

“house” is not defined in the Regulations (save only to exclude multiple dwellings, flats and apartments in Article 5 Interpretation).

“house” is defined in the Section 2 of the Act :

*“house” means a building or part of a building which is being or has been used as a dwelling .....*

An Bord's Inspector in 301518 placed great reliance on the definition of “*habitable house*” in Section 2 of the Act.

The Inspector then wrongfully declined to declare the boilerhouse, extension and caravan/campervan exempted because they were not associated with a “*habitable house*”. This was wrong as Schedule 2 Part 1 deals with developments within the curtilage of a house. Schedule 2 Part 1 does NOT deal with developments within the curtilage of a habitable house.

The purpose of the proposed works is to render the existing house (as defined) habitable. For the avoidance of all doubt, my client is not for one moment suggesting that the house on the site is habitable. It is as clear as a pikestaff that the house is vacant, has been vacant for some time and, until the works declared by An Bord as exempt are completed, unfit for habitation.

For the avoidance of further doubt, my client is not suggesting that the structure to the rear of the site is a caravan. A caravan is a separate matter. In any case, a Class 8 exempted caravan may not be used for habitation.

I add that my client hasn't the remotest notion of ever bringing a caravan onto these lands. Nevertheless, my client is legally entitled to this declaration of exemption.

Moreover, there is no caravanning or camping use on the site.

While An Bord's Inspector expressed the view *dicta obiter* that Section 3(2)(b) of the Act which deals with vans (*plural*), tents (*plural*) or other objects (*plural*) implies a material change of use of the lands, the Inspector failed to consider Class 8 which confers total legality on the provision of a single caravan within the curtilage of an existing house.

There is and can be no change of use from a house to a house.

The house on the lands may not be a "habitable house".

However, the house on the lands is a "house".

The exemption classes refer to a house and NOT a habitable house.

I submit that my client is entitled to a declaration that a boilerhouse, an extension and caravan within the curtilage of a "house" (sic) are exempted developments.

Provided always that all three comply with the Conditions/Limitations attaching to Class 2, Class 1 and Class 8.

Provided also that all three are not de-exempted by falling foul of the provisions of Article 9 of the regulations which can de-exempt what otherwise or normally would be exempted.

#### **SUPPORTING ARGUMENTS for D and E.**

I rely on Section 4.-(1)(h) and the legal precedents in similar cases and in particular the definitions-interpretations in the Supreme Court case *Cronin v An Bord Pleanala 2017*.

In DC 18/4 and 301518-18, the P.A. and An Bord made errors in matters of fact.

The P.A. said the house was a cottage with a rusted metal roof and had boarded up window openings without window frames.

The P.A. relied on the definition of a "habitable house" and discounted the Exemption Classes on that basis.

The P.A.'s view is irrelevant as it was annulled by the Referral to An Bord which overturned half of the P.A.'s findings.



Nevertheless, it is of fundamental importance to correct errors in matters of fact.

- (i) First, the cottage dates from at least 1837 cf. Cassini Historical map.
- (ii) An Bord was correct in stating that traditional cottages such as this is, were commonly one room deep. This house is one room deep.
- (iii) The roof is not merely metal sheeting. The metal sheeting covers and protects the original thatched roof which is still in place beneath the protective metal sheeting.
- (iv) An Bord's Inspector was wrong when she said the proposed windows would involve enlarging the window openings and thereby interfere with the traditionally more modest opes thereby presenting a "potential" risk of affecting the character of the structure.

The factual corrections are best put in historical context.

The original thatched cottage may be placed at c. 1837 and one room deep.

The house has an entrance hall and a room to the left and right within.

There used to be a second room to the left.

The thatched roof over the leftmost room fell in in the 1970s.

The remainder of the thatched roof is still in place.

The window opes were not intended to be enlarged in a modern fashion as suggested.

In fact the question posed was for "replica" window replacements.

Three of the four original windows are still in place - see attached photos.

The fourth window is stored, albeit rotten.

The current proposal is to replicate the window frames and glaze them.

This is clearly shown on the attached drawings.

Also attached is a photo from the mid-1980s when the house was vacated.

Tom Devine (Junior) is shortly to commence the various works and improvements which

An Bord has deemed exempted and re-occupy the house his father Tom (Senior) and his father before him lived in. Tom Junior also intends to replicate the window frames which I confidently expect An Bord to declare exempt.

I refer to the photo of the rear of the cottage where it can be seen that some of the roof metal sheets are loosened and in need of replacement/refixing.

I submit in the strongest terms that repair/refixing/replacement, being replication of the existing roof metal, cannot materially affect the external appearance of the house so as to render the appearance inconsistent with the character of the structure or of neighbouring structure in the special circumstances that the only neighbouring structure on the site is my client's own shed with metal sheeted roof.

Note particularly that the Inspector's report carries no legal weight : it is merely advisory. It is deeply flawed and rambles into *ultra vires* territory.

The 301358 report displays a disturbing failure to grasp that An Bord's sole function is to decide the questions put before it.

Instead the report purports to determine questions NOT put to it by, for example, linking Exemption Classes with "habitable house". In this divergence, the report failed to come to terms with the actual legal wording of Schedule 2 Part 1 – exempted development within the curtilage of a house, as defined.

I have dealt with the replica windows above.

The matter of re-plastering is simple and of no material importance to my client.

(Although he is entitled to his declaration.)

The attached photo of the north gable shows that about half that gable is still plastered in lime-mortar plaster. Elsewhere, the plaster has loosened and fallen off.

The question posed is whether my client may re-plaster the external walls in lime-mortar being exempted under Section 4.(1)(h).

I submit that this proposal is a replication of the original lime-mortar and clearly falls within the definitions of repair/improvement/maintenance/alteration and the interpretations in the *Cronin – An Bord Pleanala* order.

If An Bord decides in my client's favour in this question, my client will advance the re-plastering. If An Bord decides against my client, he won't bother re-plastering and will leave the stonework exposed.

Similarly, the repair and/or replicating the existing metal roof sheeting is, I submit, clearly exempted under 4.(1)(h) as such does not materially – or even trivially – affect the external appearance.

It is a proposterous and absurd notion that a man would need permission to live in his ancestral family home because the site was in an unserviced zone. (The site has water, electricity and a septic tank.) The lack of knowledge and understanding of the most basic legal principles underpinning planning concepts and law is sadly wanting in the 301518 report.

Thankfully the report is a mere advisory commentary and therefore not amenable to review.

It is only An Bord's Order and Direction which may be Judicially Reviewed.

Anyway, this is not one of the questions posed before the P.A. and/or An Bord.

The arguments mounted in 301358 were solid, sufficiently solid to overturn the lazy, inept and inarticulate assessment by the P.A. The P.A. couldn't even get the right Planning Act.

The P.A. declared that the original window frames weren't there, something a blind man would have seen. It begs the question whether the P.A. officer even visited the site.

I also submit that An Bord behaved illegally in its reliance on the notions of dereliction and abandonment and the difference between "house" and "habitable house".

An Bord effectively invented a new law by re-writing Schedule 2 Part 1 : developments within the curtilage of a HABITABLE house.

This was illegal, ultra vires and beyond the remit of An Bord.

It doesn't matter whether the house is habitable or not. The law is the law is the law.

## **DRAWINGS – PHOTOS – MAPS**

Attached are :

- (a) 1837 Map and 1937 OS Map. These are self-explanatory.
- (b) photo of house front c. 1980s
- (c) 2019 photos of front rear and both gables.
- (d) measured elevations of existing
- (e) measured elevations of proposed, with and without re-plastering with replica windows.
- (f) sketch drawings of boilerhouse and extension. In this matter (f), it flows from the definition of "house" that these proposals are exempt.

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RESIDENCE : VITRUVIUS HIBERNICUS, CONVENT ROAD, LONGFORD N39 EE72 Tel./Fax 043-33 41151

**WHEREAS** questions have arisen as to whether the following developments within the curtilage of an existing house, as defined, are or are not exempted development :

- (i) the replacement of three existing windows with new timber window replicas in the existing unaltered window openings and one new timber window in an existing unaltered opening,
- (ii) the repair and/or replication of metal roof sheeting,
- (iii) the re-plastering of the external walls of a house in lime-mortar to match the original,
- (iv) the erection of a boilerhouse within the curtilage of an existing house, as defined,
- (v) the erection of an extension to the rear of an existing house,

Tom Devine seeks declarations that the above are exempted development.

I await hearing,

Yours,

Liam Madden,  
Convent Road,  
LONGFORD.  
N39 EE72



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- STREET 1946
- ORTHO 2005
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- HISTORIC 25\*

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Scale 1:2500  
XY 611590, 763881  
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> Back

Base Layer

- Osi Map
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Land Registry Overlays

- Burdens
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Your current balance is  
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XY: 611494, 782778  
 Scale: 1:1000  
 Townland: Ballyhugh (Aghmury)  
 Barony: Longford  
 County: Longford

PROFILED METAL  
SPRUETING SLATE ROOF

WALL FINISH TO MATCH  
EXA.

H/W WINDOW

H/W WINDOW  
STONE SILL

SOUTH • EAST 1:100

SOUTH • WEST 1:100

350

BEDROOM

350

4600

BOX ROOM

5800

SH.

W.M.B.

W.C.

BREAK DOWN OPEN  
THRU EXA. WINDOW

LIVING

KITCHEN

PANTRY

BOILERHOUSE

3700

350

350

4600

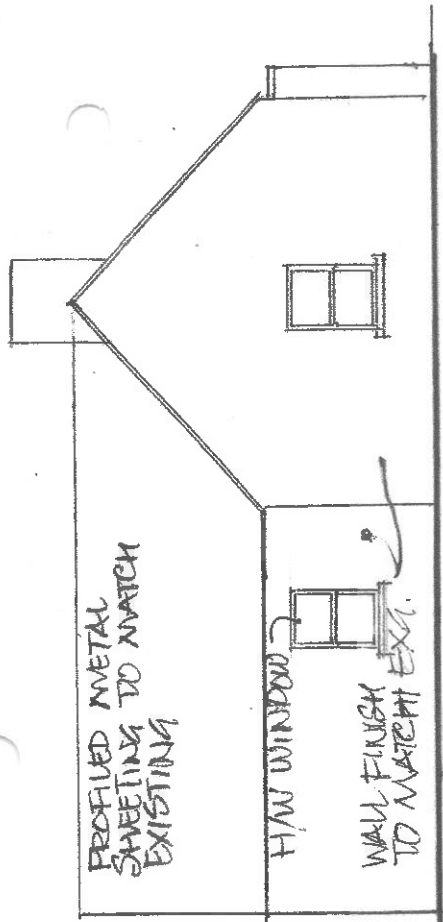
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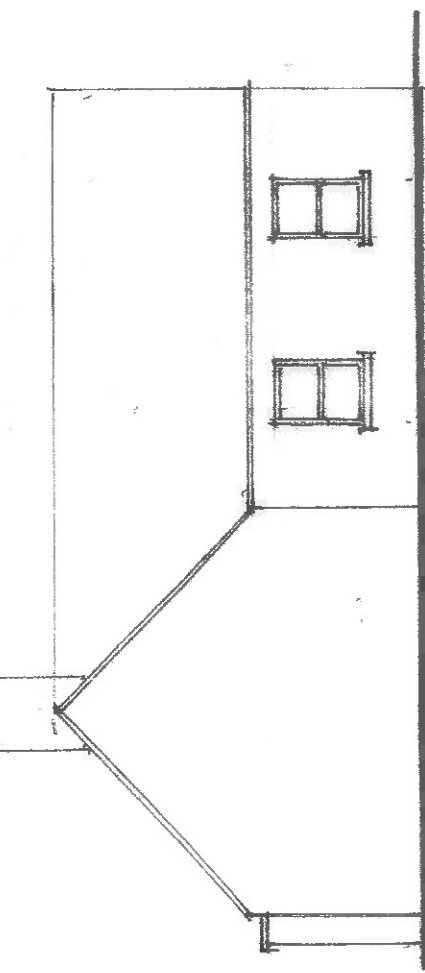
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PLAN  
1:100

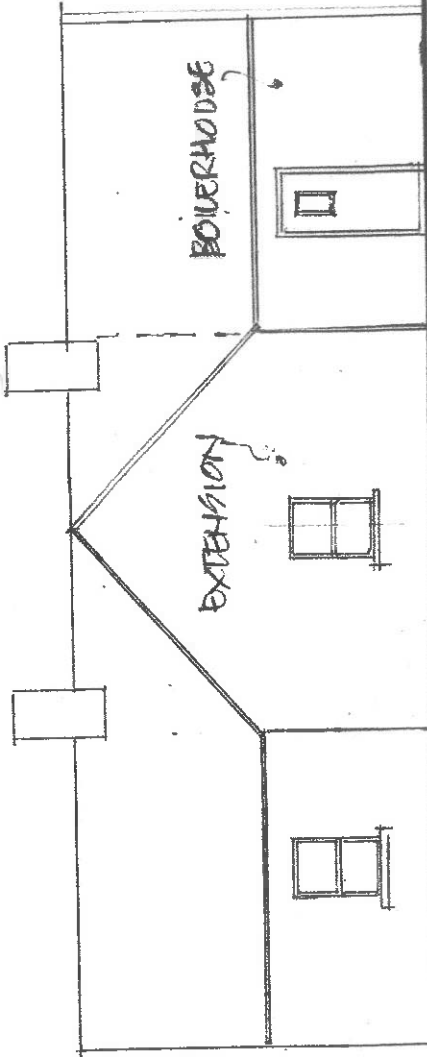




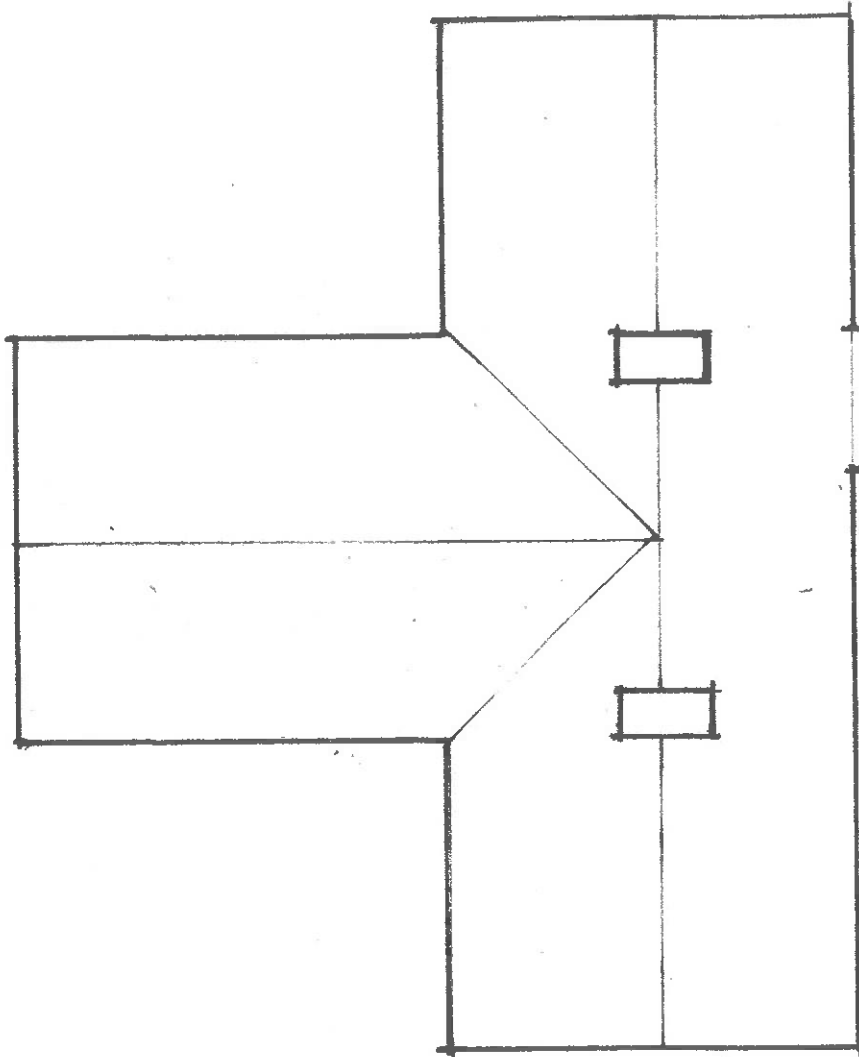
SOUTH-WEST



NORTH-EAST

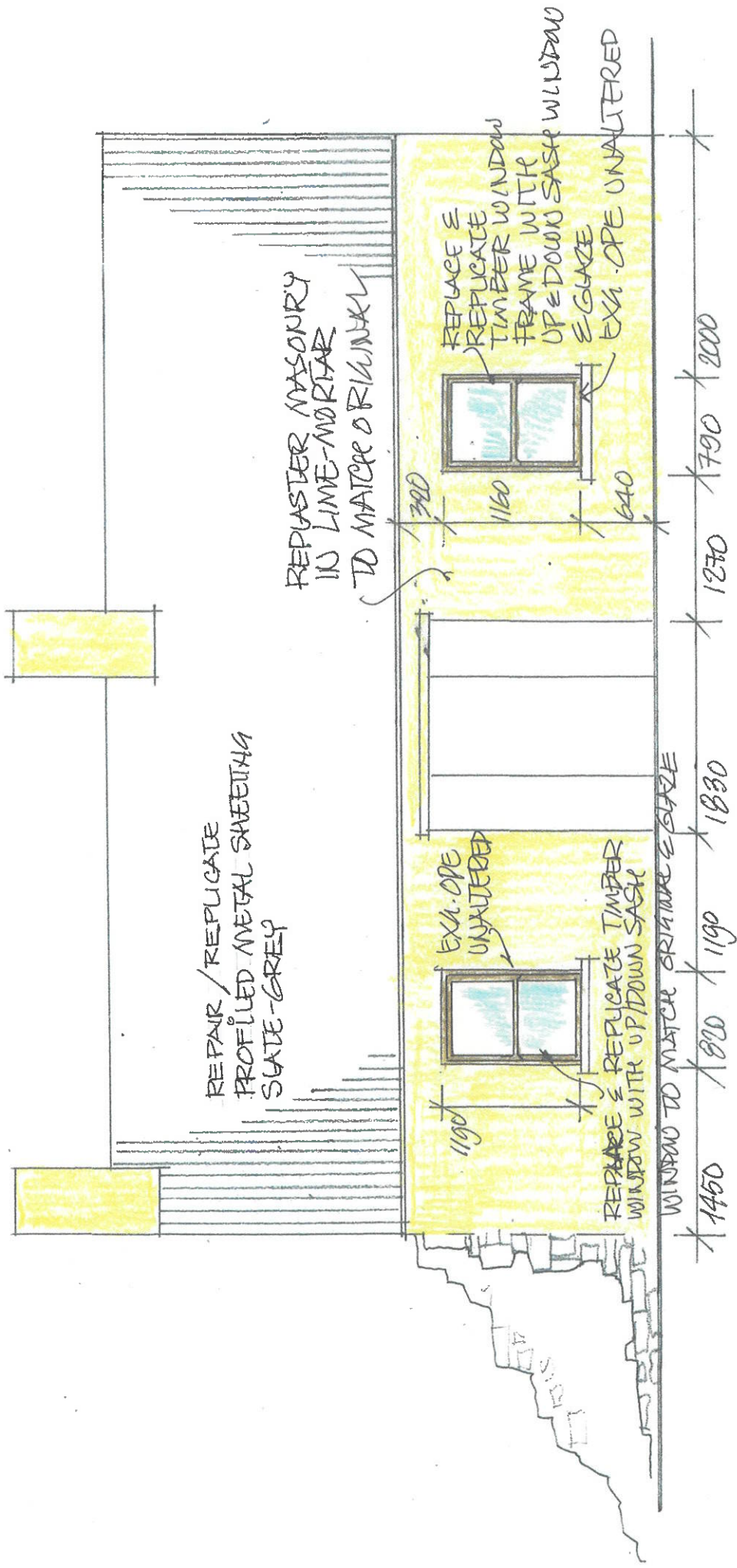


NORTH-WEST

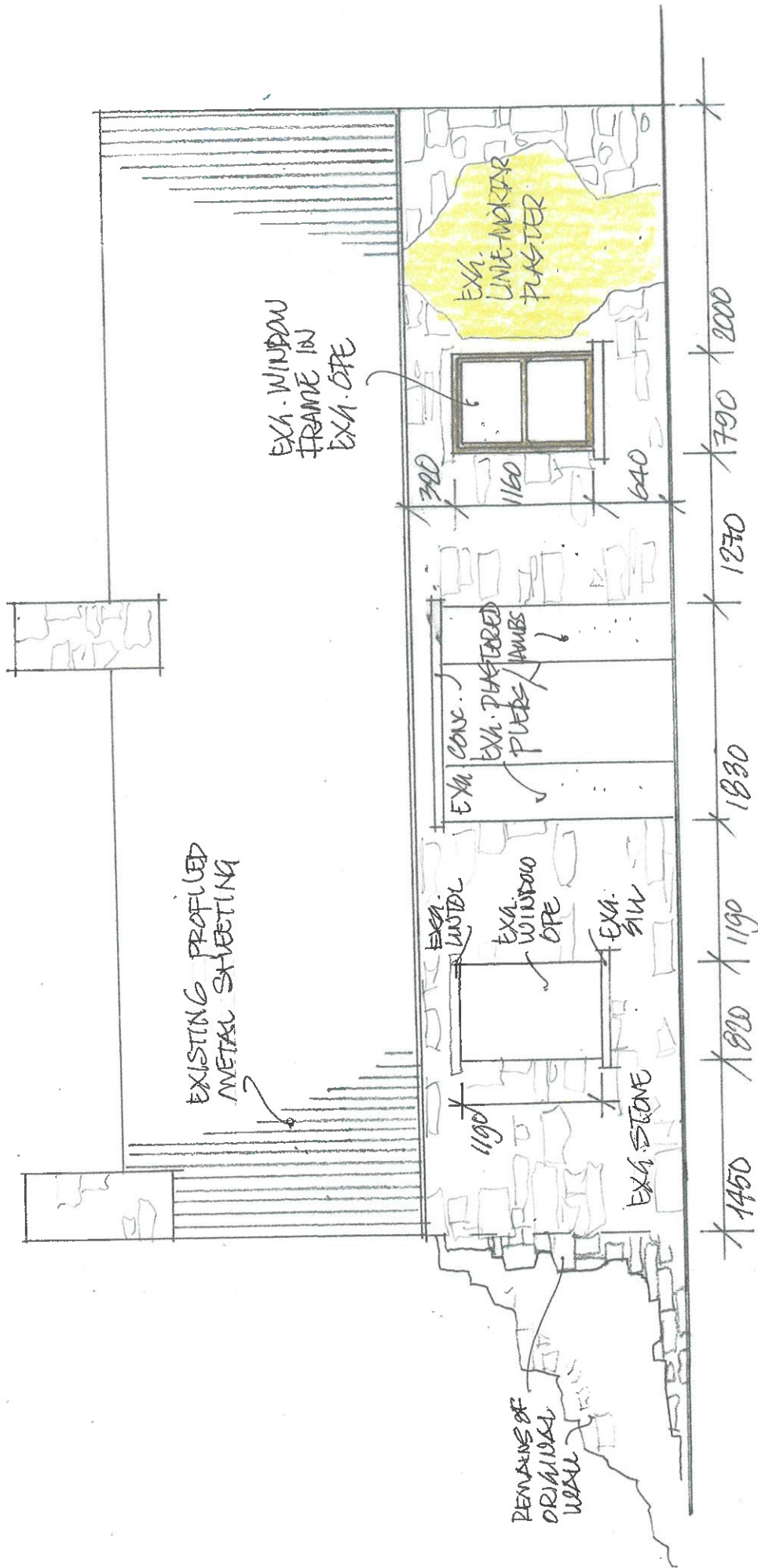


ROOF PLAN 1:100





EAST 1:50 PROPOSED



EXISTING PROFILED METAL SHEETING

EXISTING WINDOW FRAME IN EXISTING OPENING

EXISTING UNDECORATED PLASTER

EXISTING CONCRETE PLASTER JAMBES

EXISTING WINDOW

EXISTING WINDOW OPENING

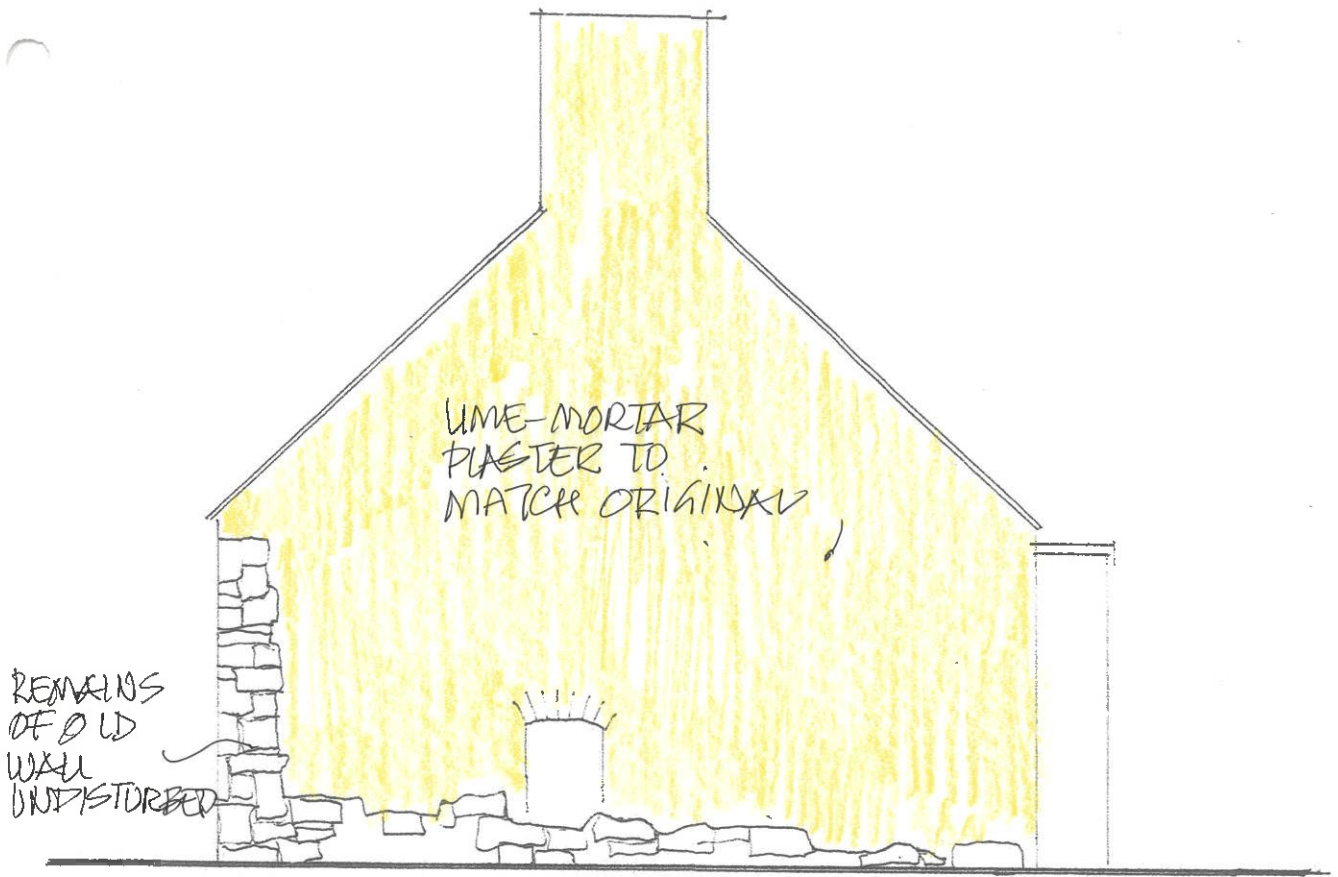
EXISTING WINDOW

EXISTING STONE

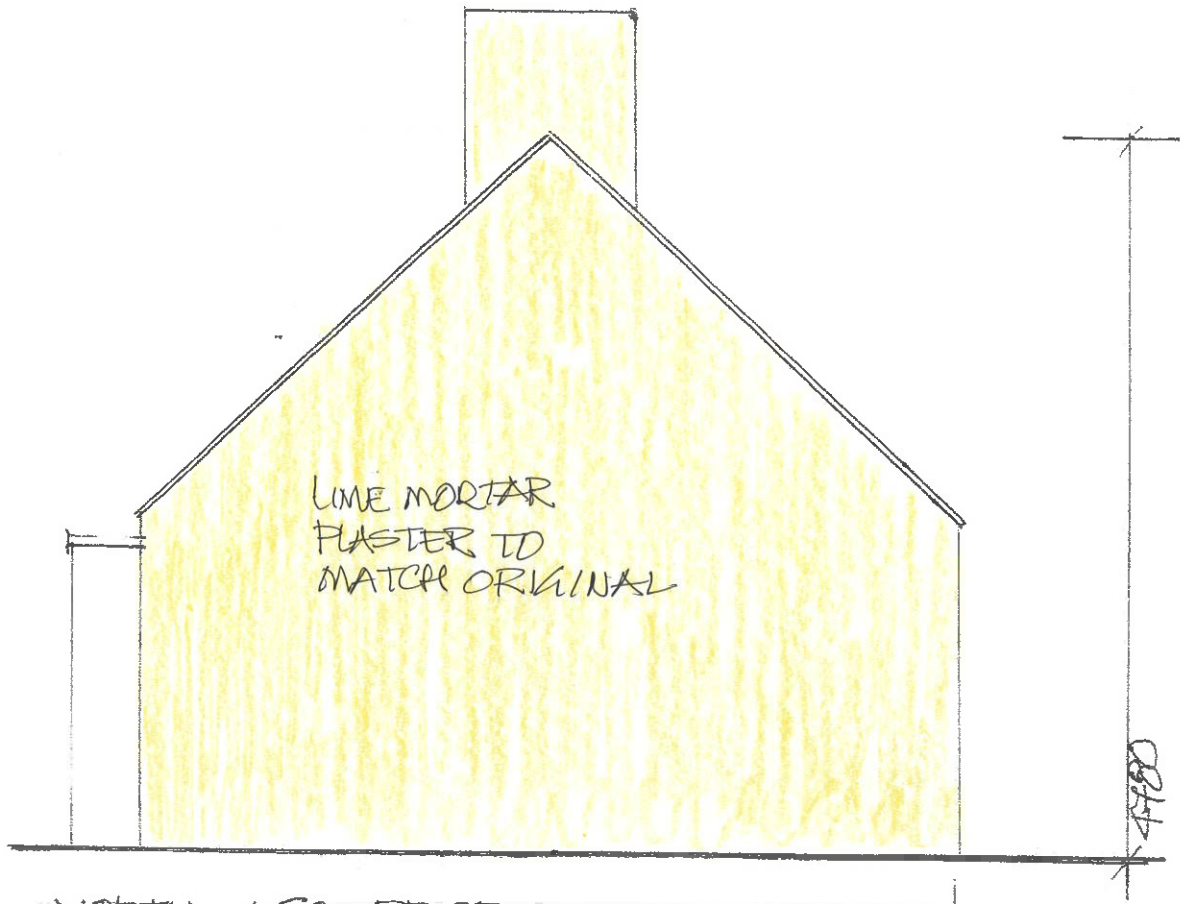
REMNANTS OF ORIGINAL WALL

1450 1800 1190 1830 1270 1790 2000

EAST 1650 EXISTING

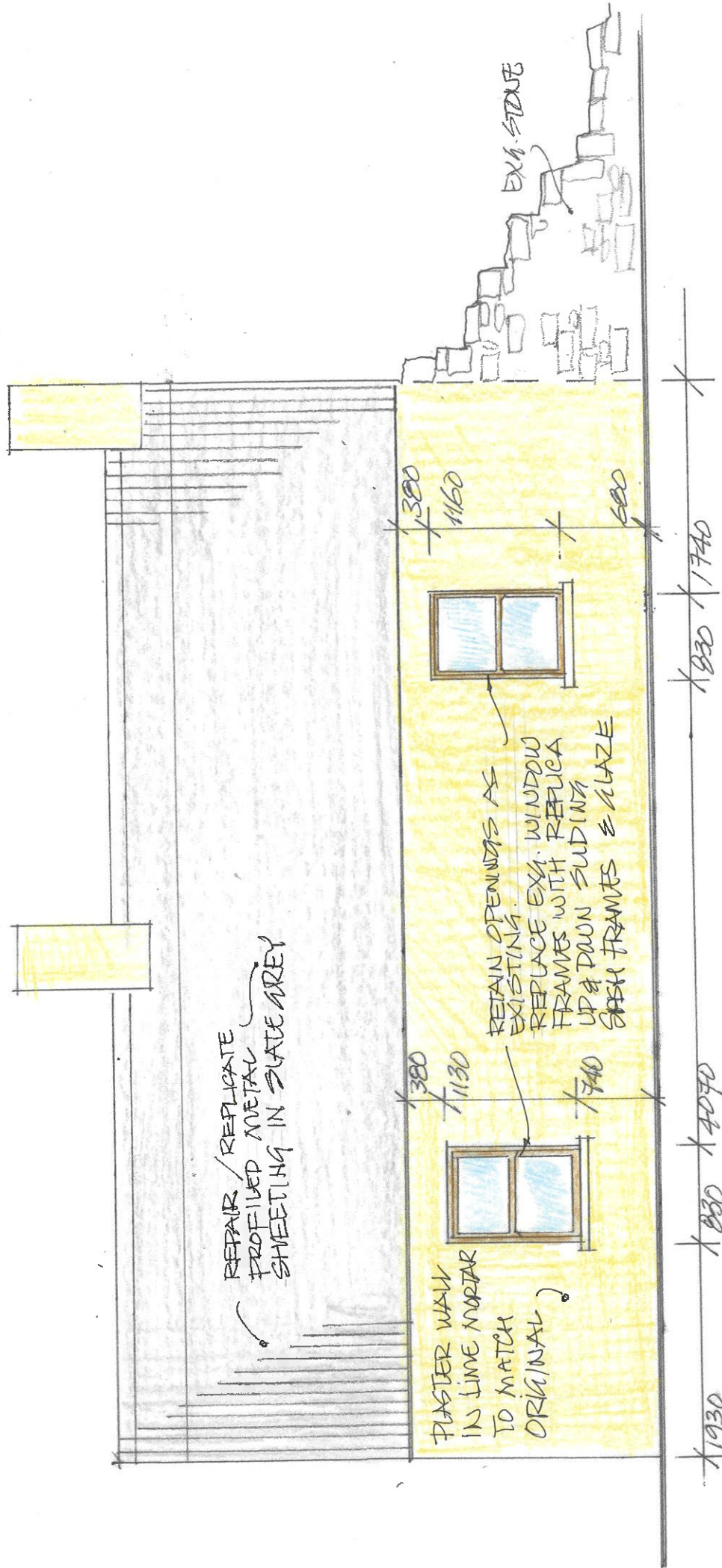


SOUTH 1:50 PROPOSED

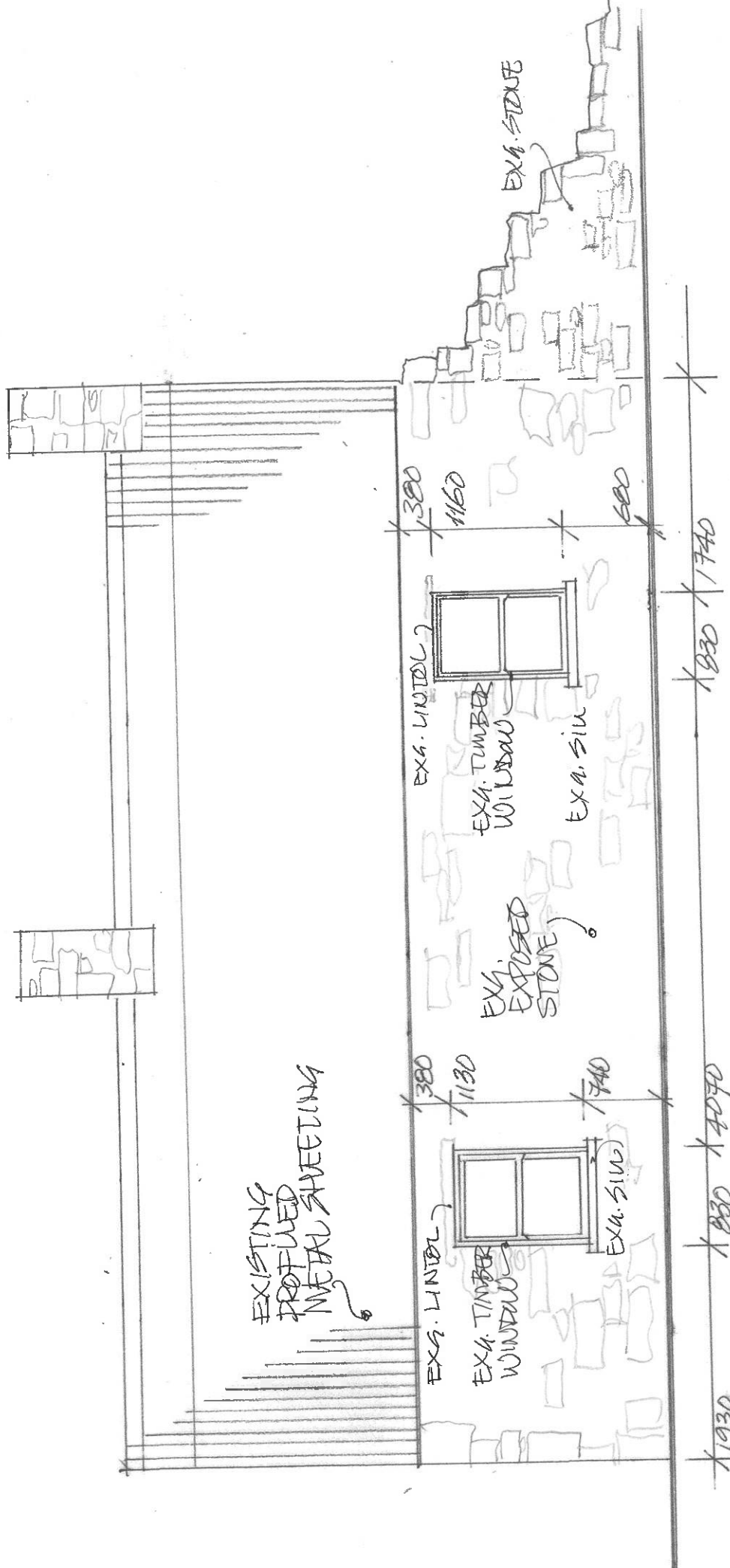


NORTH 1:50 PROPOSED

15350



WEST 1850 PROPOSED



EXISTING  
PROFULVED  
METAL SHEETING

EXG. LINTEL

EXG. TIMBER  
WINDOW

EXG. SILL

1380

1130

1740

1380

1160

600

EXG. LINTEL

EXG. TIMBER  
WINDOW

EXG. SILL

EXG.  
EXPOSED  
STONE

1830

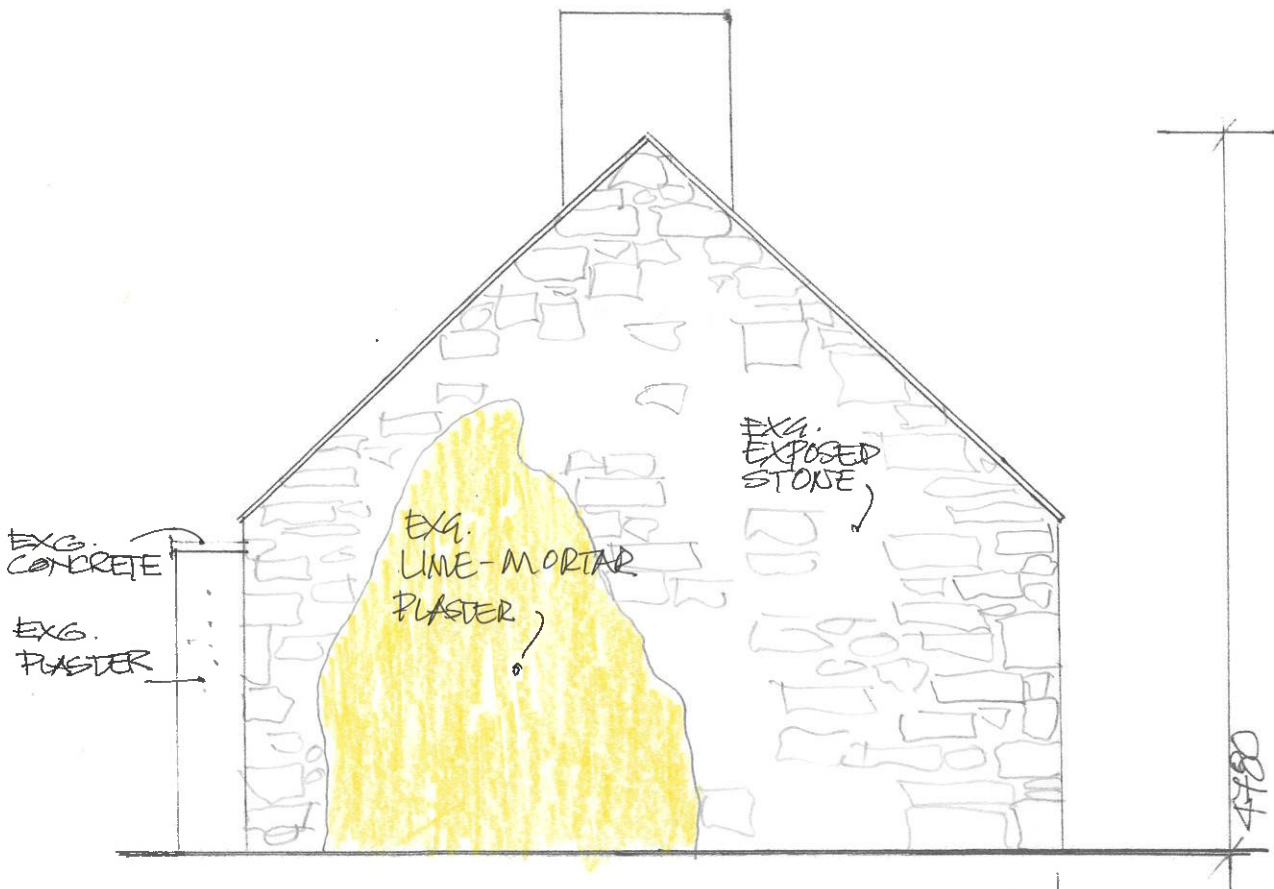
1830

14070

WEST 1830 EXISTING



SOUTH 1:50 EXISTING



NORTH 1:50 EXISTING

5350



**AN BORD PLEANÁLA**

**04 JUN 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

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



**AN BORD PLEANÁLA**

**04 JUN 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

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





**AN BORD PLEANÁLA**

**04 JUN 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

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



**AN BORD FLEANÁLA**

**04 JUN 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

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



**AN BORD PLEANÁLA**

**04 JUN 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

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