

An Bord Pleanála.  
64 Marlborough Street,  
Dublin 1,  
D01 V902

Michael & Sharon Hanley  
Derrymore,  
Dunmore,  
Co. Galway.

**REF: Galway County Council reference: ED21/102**

Dear Sir/Madam,

In accordance with section 5 (3) (a) and/or section 5 (3) (b) of the Planning and development act (as amended) I wish to refer a declaration, as issued by Galway County Council under section 5 (2) (a) of the Planning and development act (as amended), for review by the Board.

**Proposed development:**

The repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling to ensure its effective reuse.

In support of this application for review please find attached the following:

1. A copy of the declaration and planners report as issued by Galway County Council on the 4<sup>th</sup> of February 2022.
2. A copy of the acknowledgement of the receipt of the application issued by Galway County Council.
3. A copy of the application form and all supporting documents lodged with Galway County Council in relation to the original section 5 (2) (a) of the Planning and development act (as amended) application. (Original application is with the local authority)
4. Letter outlining the grounds of referral and substantiated reasons, considerations and arguments on which they are based.
5. Appropriate fee.

AN BORD PLEANALA

18 FEB 2022

Fee: € 220 Type: PMO

Time: \_\_\_\_\_ By: Reg Post.

**Grounds for referral**

**1. Notice of decision -**

- a. The notification of the decision, as issued by the local authority, exceeded the statutory time limit as specified in section 5 (2) (a) of the planning and development Act 2000 (as amended).

It is unclear whether a declaration issued outside of this time limit is valid or whether the decision issued by the local authority should be considered null and void in favour of a referral as specified under section 5 (3) (b) of the planning and development Act 2000 (as amended).



- b. The notification of the decision, as issued by the local authority, is indecipherable - the contents of paragraph 2 is not logical and the first line of the paragraph 2 is repeated in paragraph 3.

The notification is confusing and is considered misleading. It is unclear as to what matters if any have been considered in the making of the decision and no reasons on which the decision has been based have been offered in the notice.

- c. The notice of decision is not logically set out, essentially is nonsensical and is not signed by the person who prepared it.

The planning authority has not exercised the powers conferred on it by section 5 of the 2000 planning act in accordance with section 5 of the act - as is stated on the notification of the decision issued.

## 2. Planners report –

- a. There is no evidence to suggest that the report titled ‘planners report’ has been reviewed by a planner of any level. The report would appear to have been drafted by a grade 2 technician – the most junior grade of technical staff available to the local authority much less a discernibly suitably qualified competent person authorised to determine the opinion of the local authority i.e., a planner – as would be the case in any other application made to the authority under the planning and development act. The report is neither signed by the writer, counter signed by a planner or decided by the relevant director. I am at a loss as to whether this report should be considered the opinion of the grade 2 technician let alone the opinion of the local authority to which the application was submitted.
- b. Relevant legislation – the ‘planners report’ includes a section on relevant legislation which appears to identify legislation considered by the writer. There is no reference to the following legislation as is relied upon/referenced in the exempted development design statement and outline specification submitted with the application –

Article 6 (4) (a) of the planning and development regulations – critical in determining the works as exempted development (referenced in the application report)

The relevant legislation referenced in the ‘planners report’ goes on to state –

*“Article 6 deems the development set out in schedule 2, part 1 to be exempted development. Column 1 describes the development which can be considered exempted development, while column 2 describes the conditions and limitations applicable to such exemption.”*

This appears to be a summary of Article 6 (1) of the planning and development regulations which is irrelevant to the application as the relevant legislation forming the basis of the application is Article 6 (4) of the planning and development regulations - to which there appears to have been no consideration given.



The relevant legislation outlined in the 'planners report' goes on to outline consideration given to Article 9 (1) (a). As stated previously and as stated in the exempted development design statement and outline specification submitted with the application, the basis of consideration of the application by the local planning authority should be Article 6 (4).

Article 6 (4) is not reliant and is not subject to Article 9 and as such Article 6 (4) should be applied in isolation. The planning authority's consideration on what is, or is not, exempted development, within the provisions of the Planning Act and Regulations should be focused on the relevant legislation.

- c. Planning history - The 'planners report' refers to the planning history. The planning history offered failed to identify pl. ref 972797 and critically fails to acknowledge that the dwelling, subject to the application, was constructed pre-1963. The pre 63 nature of the dwelling is essentially the basis of the application but it would appear this fact has either been overlooked as it certainly hasn't been acknowledged in the 'planners report'. The pre 63 nature is critical in relation to determining that the proposed works are exempted development, it is clearly stated in the exempted development design statement and outline specification submitted as part of the application that the dwelling is pre 63. (refer to the second to last paragraph of the exempted development design statement and outline specification). A selective review of the planning history is not considered appropriate in determining the question.
- d. Opinion – the 'planners report' outlines legislation considered in the making of an opinion offered as the opinion of the local planning authority, again no reference to indicate any consideration of Article 6 (4) of the planning and development regulations.

**i. The opinion states that-**

*"There is no provision for 'installation and maintenance of an appropriate domestic wastewater treatment system' in the Planning and development Regulations 2001 (as amended).*

The reference *'installation and maintenance of an appropriate domestic wastewater treatment system'* is taken out of context and is a misinterpretation of the exempted development design statement and outline specification lodged with the application. For clarity please see below the complete text from the relevant section of the exempted development design statement and outline specification where it clearly outlines how the proposed wastewater treatment system is required in order to satisfy building regulations demonstrating compliance with article 6 (4) (a) of the planning and development regulations.

*"within the curtilage of the existing dwelling the provision of a drainage system necessary for the hygienic and adequate disposal of foul water from the building – as is required to satisfy H 1 of the building regulations, will be provided. A suitable*



*qualified competent person will be engaged to; complete a site assessment, select a suitable system and oversee the installation and maintenance of an appropriate domestic wastewater treatment system. Any such system shall be designed installed and commissioned in accordance with the EPA's Code of practice for Domestic Waste Water Treatment Systems. The provision of this drainage system is necessary to secure compliance with H 1 of the building regulations and as such is in accordance with Article 6 (4) (a) of the planning and development regulations this development is exempted development.*

For clarity please see below Article 6 (4) of the planning and development regulations (as amended).

*(a) Subject to paragraph (b), the carrying out of such works as are necessary to secure compliance with the Building Regulations, 1997 (S.I. No. 497 of 1997) shall, in the case of development consisting of the construction of a dwelling or dwellings in respect of which permission under Part IV of the Act of 1963 was granted before 1 June 1992, be exempted development.*

*(b) Paragraph (a) shall not apply in the case of development consisting of the construction of a building designed for use as 2 or more separate dwellings.*

The dwelling being a pre-63 dwelling is exempted development. This exemption precedes the building regulations and the associated June 1<sup>st</sup> 1992 qualifying date as outlined in Article 4 (a). Please note that the building regulations 1997 (S.I. No. 497 of 1997) have been amended to include Part H as is relied upon in the exempted development design statement and outline specification submitted with the original application.

The 'planners report' opinion has not indicated any consideration for the above.

**ii. The opinion states that-**

*"secondly, works of the nature described, beside a National Road, would bring restrictions on exemption 9(1)(a)(iii) into effect."*

*"endanger public safety by reason of traffic hazard or obstruction of road users"*

The first paragraph of the full description/outline specification submitted clearly outline the works to be in accordance with Article 6 (4) (a) of the planning and development regulations (as amended) to which, and a previously stated here, is not reliant and is not subject to Article 9.

The work described in the exempted development design statement and outline specification submitted with the original application relate to the repair and renewal of the existing dwelling. The works are clearly outlined therein and it is clearly states that there no material widening of the existing access to the house, no new access point is proposed, and that no intensification in use will occur. No works are proposed to the road or the access to the road. The 'planners report' fails to identify any reason as to what element of the works "endanger public safety by reason of traffic hazard or obstruction of road users". Is it simply proposed to maintain the existing access





which predates the legislation relied on the 'planners report', predates the road being designated a national road and the planners report suggestion that Article 9 (1) (a) (iii) or any legislation applies retrospectively set a worrying precedent in relation to all/any dwelling or access route heretofore considered exempted development.

### 3. Summation –

I am concerned in relation to the planning authorities' willingness to exercise the powers conferred on it by section 5 of the 2000 planning act through the lowest grade of technical staff available to the authority without any evident oversight. I do not believe that same is an appropriate mechanism in relation to determining the local authorities' opinion and I do not believe that same would be tolerated/considered appropriate in relation to any other application to the authority. I do not believe/have confidence that the local authority has exercised its powers with due diligence nor has adequate consideration been given to the information/question submitted. This has resulted in;

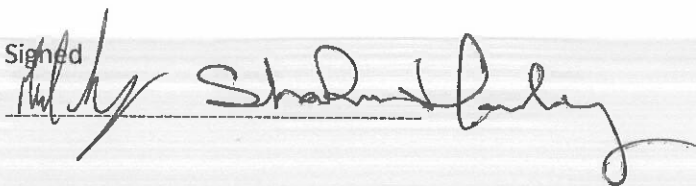
- the planning authority inappropriately issuing a declaration of "not exempted development" without due consideration for the question/information submitted.
- A delay in the commencement of the works
- A waste of my time and resources
- A waste of the time and resources of the Board

Following initial consideration by a planning authority, Galway County Council reference: ED21/102, I refer the application for declaration of exempted development under section 5 of the planning and development act (as amended) to the Board for formal adjudication. The assessment, opinion and the recommendation made by the planning authority together with original application is the subject of this request to the board for review.

Proposed development –

The repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling to ensure its effective reuse.

Signed



Date

16-02-2022



Planning Department,  
Galway County Council  
Áras an Chontae,  
Prospect Hill,  
Galway.

To whom it concerns,

Please see attached application for declaration of exempted development under section 5 of the Planning and Development Act 2000 including;

- Application form
- Exempted development design statement & outline specification
- Historic maps (reference only – Not to scale
- Site location map
- Site layout
- Existing floor plan & elev
- Proposed floor plan & elev
- Current condition images
- Previous images depicting habitable condition
- Application fee - €80.00

Should you require any further information or wish to discuss the application further please do not hesitate to contact me.

Kind regards

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hanleysharon@gmail.com



Iarratas ar dhearbhú maidir le forbairt dhíolmhaithe faoi Alt 5 den Acht um Pleanáil agus Forbairt 2000



Comhairle Chontae na Gaillimhe  
Galway County Council

Application for Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000

Tá an fhoirm seo le fáil i gcló mór chomh maith

This form is also available in large print

Tá míle fáilte an fhoirm seo a líonadh i nGaeilge

1. Mionsonraí faoin iarratasóir		1. Applicant details
Ainm	Name	Michael & Sharon Hanley
Seoladh	Address	Derrymore
		Dunmore
		Co Galway
Cód Poist	Postcode	H54 A443
Teileafón	Telephone	089 4506316
Ríomhphost	Email	hanleysharon@gmail.com

2. Mionsonraí faoin bhforbairt bheartaithe		2. Proposed development details
Tuairisc iomlán	Full description	The repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse - refer to accompanying documents for full description

Más méadú ar theach cónaithe atá i gceist, cuir isteach achair urláir		If an extension to a dwellinghouse, please include floor areas	
(i) méadú beartaithe	(i) Proposed extension	N/A	mcr/sqm
(ii) struchtúir reatha	(ii) Existing structure	N/A	mcr/sqm
(iii) spás oscailte príobháideach ar gcúl	(iii) Rear private open space	N/A	mcr/sqm

Más forbairt í a bhaineann le Garáiste/Bothán/Stóras etc a chur in airde, luaigh an méid seo a leanas, le do thoil:		If for the erection of Garage/Shed/Store etc., please include the following:	
(i) garáiste/bothán/stóras etc beartaithe	(i) Proposed garage/shed/store etc	N/A	mcr/sqm
(ii) struchtúir reatha	(ii) Existing structure	N/A	mcr/sqm
(iii) spás oscailte príobháideach ar gcúl	(iii) Rear private open space	N/A	mcr/sqm

I gcás aon foirgneamh /fhoirgnimh atá le coimeád ar an láithreán, nó i gcás athraithe ar úsáid na maoinne		For any building(s) to be retained on site, or for a change of use of the property
Léirigh an úsáid reatha	Please indicate the existing use	Existing dwelling (vacant)



Doiciméid atá le cur in éineacht leis an bhfoirm iarratais ☐ (cuir isteach tic (✓) le do thoil)	Documents to be included with this application form (please tick✓)	
Léarscáil de shuíomh an láithreáin Scála 1:1000 nó 1:2500	Site location map Scale 1:1000 or 1:2500	<input checked="" type="checkbox"/>
Léarscáil de leagan amach an láithreáin Scála 1:200 nó 1:500	Site layout map Scale 1:200 or 1:500	<input checked="" type="checkbox"/>
Pleananna urláir & ingearchlónna	Floor plans & elevations	<input checked="" type="checkbox"/>
Táille (€80)	Fee (€80)	<input checked="" type="checkbox"/>

Dearbhaím leis seo go bhfuil an fhaisnéis a thugtar ar an bhfoirm seo ceart		I hereby declare that the information given on this form is correct
Síniú (iarratasóir/gníomhaire)	Signature (applicant/agent)	
Dáta	Date	

Seol an fhoirm ar ais chuig: An tAonad Pleanála & Forbartha Inmharthana Comhairle Chontae na Gaillimhe Áras an Chontae Cnoc na Radharc Gaillimh.	Return to: Planning & Sustainable Development Unit Galway County Council Áras an Chontae Prospect Hill Galway	Tel. (091) 509308 Fax (091) 509199 <a href="mailto:planning@galwaycoco.ie">planning@galwaycoco.ie</a> <a href="http://www.gaillimh.ie">www.gaillimh.ie</a> <a href="http://www.galway.ie">www.galway.ie</a>
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## **Exempted development design statement & outline specification**

### **1. Brief Description**

The works will consist of the repair and renewal, of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse.

### **2. Location**

Derrymore,  
Dunmore,  
Co Galway.

### **3. Purpose of the works**

It is the applicant's intention to return the existing bungalow, which is currently in a state of disrepair back to its original use - a dwelling. It is intended that the dwelling will be used to satisfy the housing needs of the applicant's family. The applicants reside in the adjoining property and have raised their family there for over twenty years. As the family has recently extended, with the arrival of a grandson two years ago, there is an immediate family housing need that will be satisfied by the renewal of this existing dwelling.

### **4. Full description/outline specification**

The repair and renewal of the existing dwelling will consist of works which affect the interior of the structure and, only where necessary to demonstrate compliance with Part A of the building regulations, to the structure of the existing dwelling in accordance with Article 6 (4) (a) of the planning and development regulations, this development is exempted development.

No alteration is proposed in relation to the footprint of the dwelling. Where necessary works to the exterior will be by way of maintenance, repair, renewal/reinstatement to match existing and, only where deemed necessary by a suitably qualified engineer, replacement to match existing. Any works to the structure or external finishes will not materially affect the external appearance of the structure with the exception of the removal of 1 No. chimney as solid fuel heating will be made redundant due to the proposed provision of a new Part L compliant heating system. The heating system shall be designed in accordance with the conditions and limitations associated with class 2 exempted development.

No alterations are proposed in relation to the floor area save for where a reduced floor area is as a consequence of energy upgrading and Part L compliance works applied internally.

Within the curtilage of the existing dwelling the provision of a drainage system necessary for the hygienic and adequate disposal of foul wastewater from the building - as is required to satisfy H 1 of the building regulations, will be provided. A suitably qualified competent person will be engaged to; complete a site assessment, select a suitable system and oversee the installation and maintenance of an appropriate domestic wastewater treatment system. Any



such system shall be designed installed and commissioned in accordance with The EPA's, Code of Practice for Domestic Waste Water Treatment Systems. The provision of this drainage system is necessary to secure compliance with H 1 of the building regulations and as such is in accordance with Article 6 (4) (a) of the planning and development regulations this development is exempted development.

Please note that the works associated with this application demonstrate compliance with Article 6 of the planning and development regulations in accordance with Section 5 of the planning and development act and as such demonstrate what is exempted development. As there is no requirement to apply for planning permission there is no requirement, for example, to satisfy Article 22 (2) (c) as same is only required where a planning application is required/submitted.

Landscaping works, including the reinstatement of a front lawn, will be completed in accordance with the conditions and limitations associated with class 6 exempted development.

The original access to the dwelling is to be maintained in its original location. Access has always been maintained to the dwelling, even whilst the dwelling was vacant, and same is evident by the visibly used gated access on the boundary. No material widening of this existing access is proposed and in the interest of clarity it is important to acknowledge that any maintenance/repair associated with the existing access does not and will not constitute a material widening of an existing access route nor will it constitute the provision of a new access point. There will be no intensification in the use of this access as it will continue to serve a single dwelling only. Maintaining an existing entrance with no intensification in its use ensures that no additional traffic hazard, obstruction to road users or public safety issues will exist as a result of the repair and renewal of the existing dwelling.

Separate to this application and where there is an opportunity to improve road safety, the applicant, with the agreement of the local authority, is willing to provide a parking space immediately adjoining the road at a width equal/consistent (approximately 3 meters in width) with the neighbouring dwelling to the south. This space can be graded, levelled and surfaced to a suitable standard and the applicants, who also own the land immediately to the north, can undertake to maintain the hedge to a maximum height of 1.2 meters. Any replacement front boundary wall would not exceed 1.2 meters in height and would be finished in accordance with the conditions and limitations associated with class 5 exempted development.

For clarity the works outlined in the paragraph above do not form part of this application and whilst the applicant believes same would also be exempted development any regulatory compliances associated with same would be subject to a separate further application at a later date.

All works will be carried out under the supervision of a suitably qualified competent person. Any repair/renewal will be carried out in accordance with engineers' specification/instruction and certification of compliance with building regulations will be provided on completion. In addition, the opinion of a suitable qualified competent person shall be provided on



completion indicating compliance with planning and development regulations and any exemption certificate issued by the local authority.

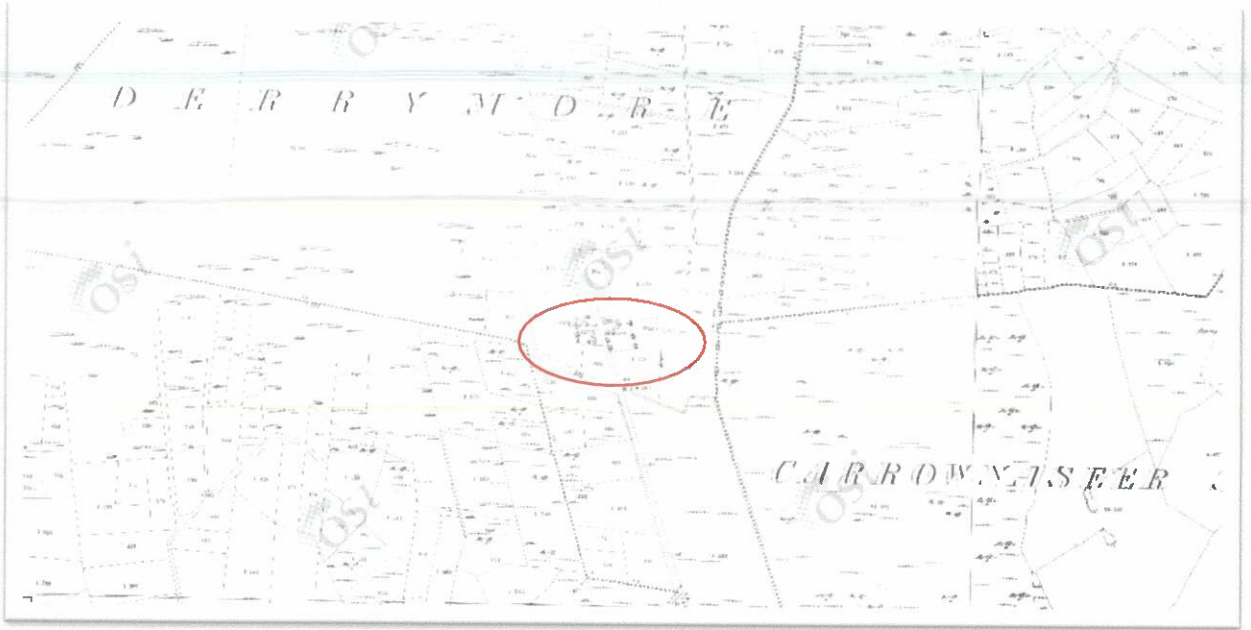
Whilst the exact date of construction for the dwelling is unknown is it understood to be pre-1963. Historically there has always been a dwelling/dwellings on this site as is evident on all OSI historic maps. The current house and all previous dwellings on the site, pre-exist the road designation as a national road under Statutory Instrument S.I. No. 164/1977. In short, the existing dwelling predates planning and the national road designation, to remove any pre-existing use and/or any pre-existing access would have no basis in relevant legislation.

The proposed repair and renewal of an existing vacant dwelling completed in accordance with the full description/outline specification above, the accompanying drawings and the application form submitted demonstrate compliance with part 2 of the Planning and Development regulations and as previously stated, the proposed works shall be completed in accordance with Article 6 of the planning and development regulations and it is on this basis that the applicants request Galway County Council to issue a declaration that where the works are completed in accordance with the information submitted as part of this application same shall be considered exempted development – in accordance with Section 5 of the Planning and Development Act.

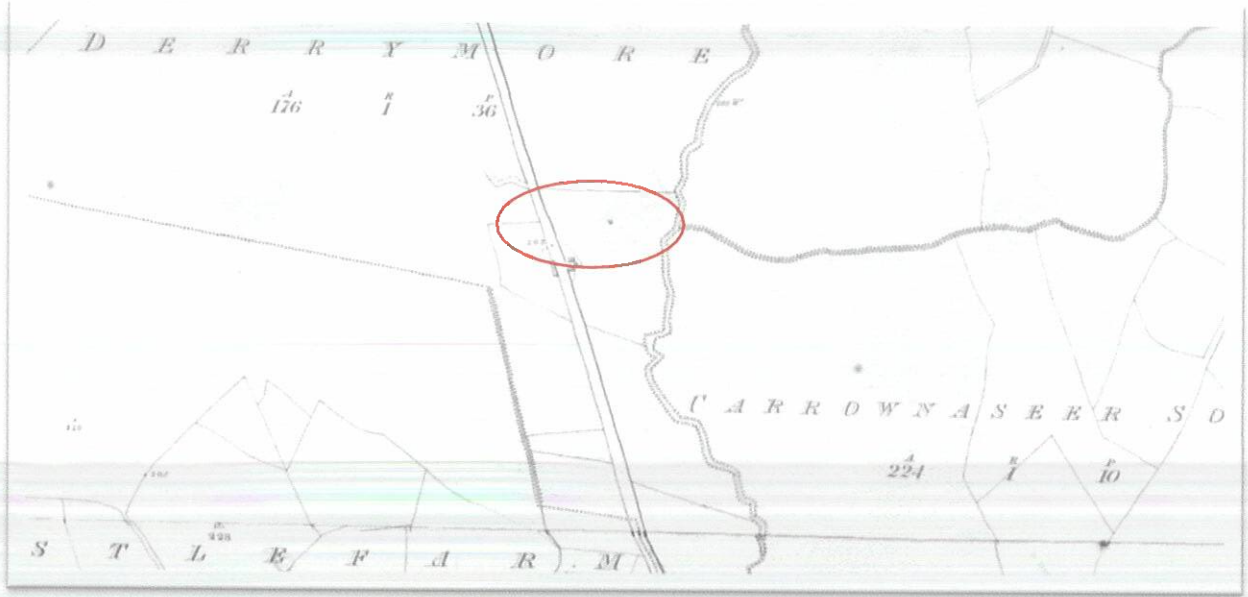
Signed \_\_\_\_\_

Date





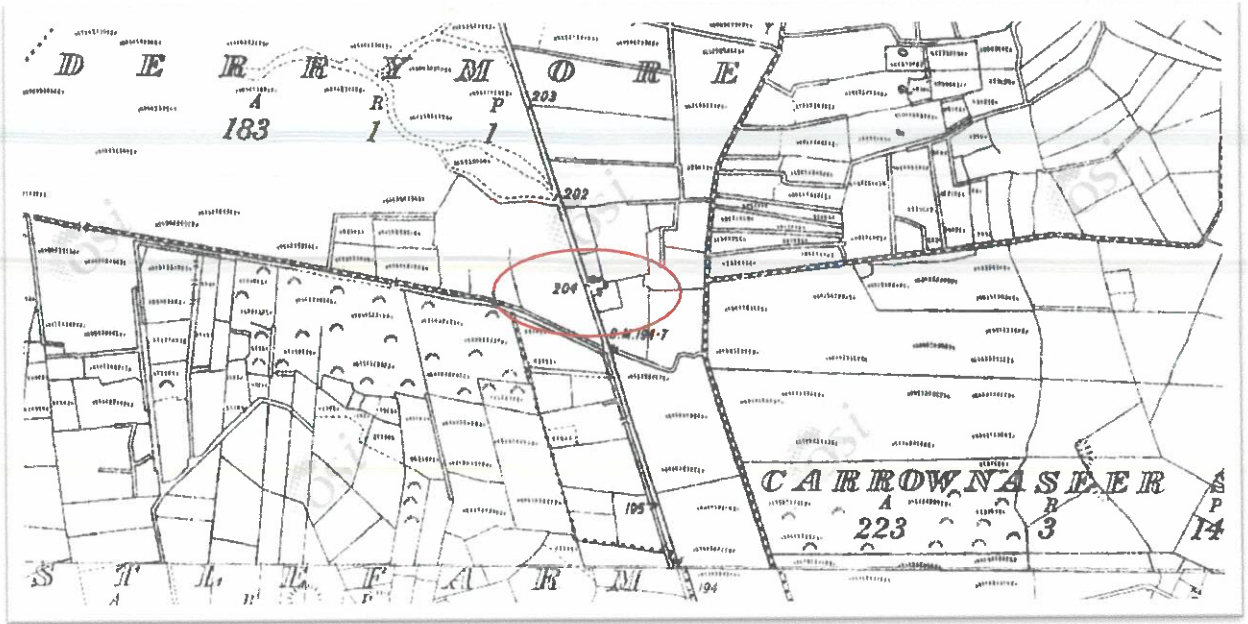
Historic 25 inch map



Historic 6 inch map – first edition



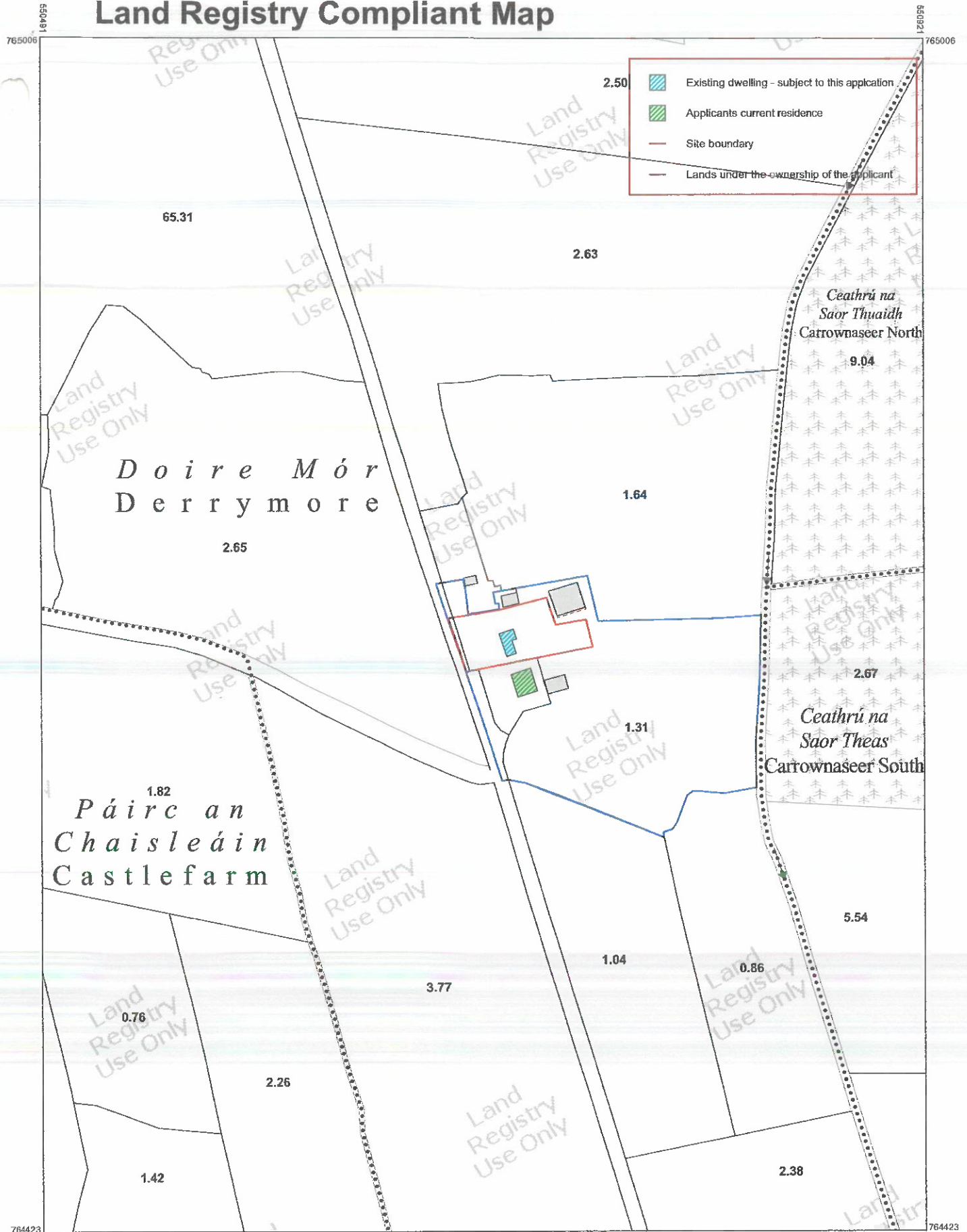




Historic 6 inch map – last edition

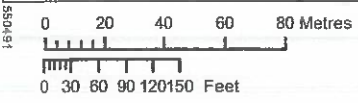


# Land Registry Compliant Map



**2.50**

- Existing dwelling - subject to this application
- Applicants current residence
- Site boundary
- Lands under the ownership of the applicant



**OUTPUT SCALE: 1:2,500**



**CENTRE COORDINATES:**  
ITM 550706,764715

**PUBLISHED:** 14/12/2021  
**MAP SERIES:** 1:2,500  
**ORDER NO.:** 50239541\_1  
**MAP SHEETS:** 2541-B

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

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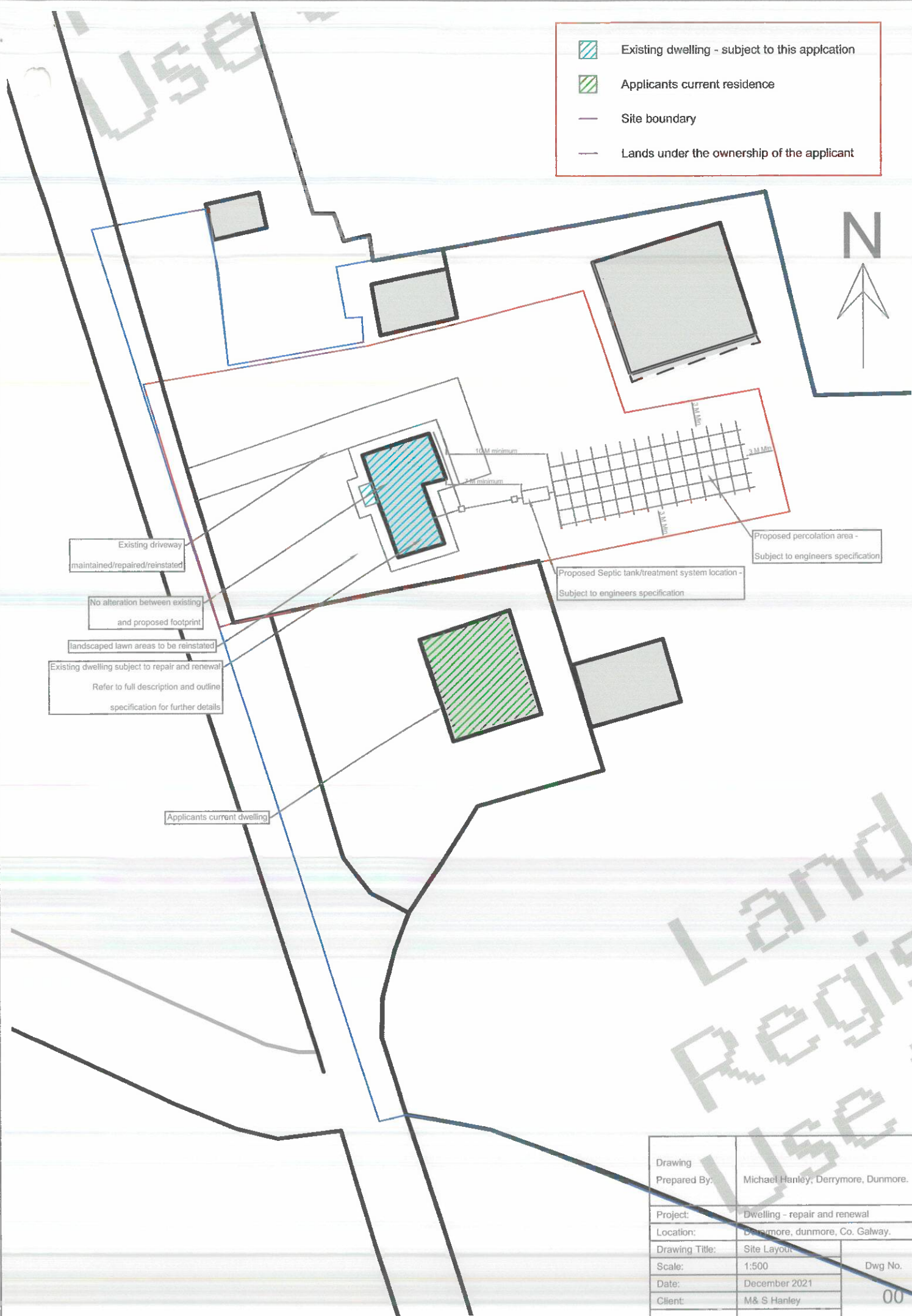
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	Existing dwelling - subject to this application
	Applicants current residence
	Site boundary
	Lands under the ownership of the applicant



Existing driveway  
maintained/repaired/reinstated

No alteration between existing  
and proposed footprint

landscaped lawn areas to be reinstated

Existing dwelling subject to repair and renewal  
Refer to full description and outline  
specification for further details

Applicants current dwelling

10M minimum

2M minimum

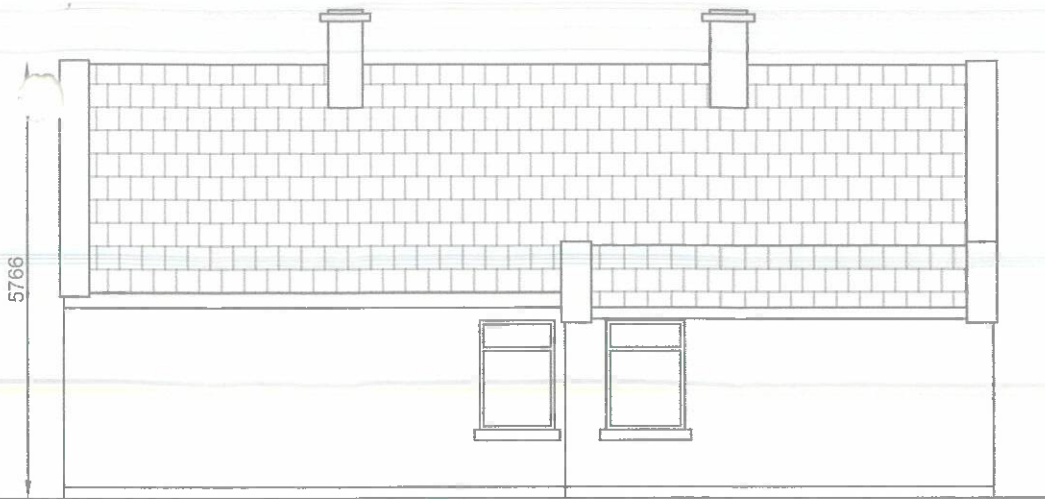
Proposed percolation area -  
Subject to engineers specification

Proposed Septic tank/treatment system location -  
Subject to engineers specification

Drawing Prepared By:	Michael Hanley, Derrymore, Dunmore.	
Project:	Dwelling - repair and renewal	
Location:	Derrymore, dunmore, Co. Galway.	
Drawing Title:	Site Layout	Dwg No.
Scale:	1:500	
Date:	December 2021	00
Client:	M & S Hanley	





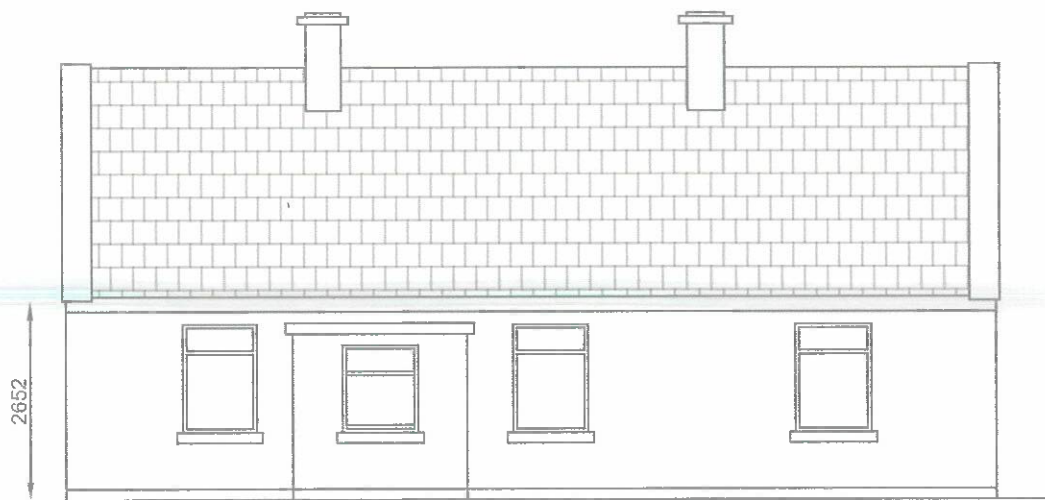


Existing Rear Elevation - 1:100



Existing side Elevation  
- 1:200

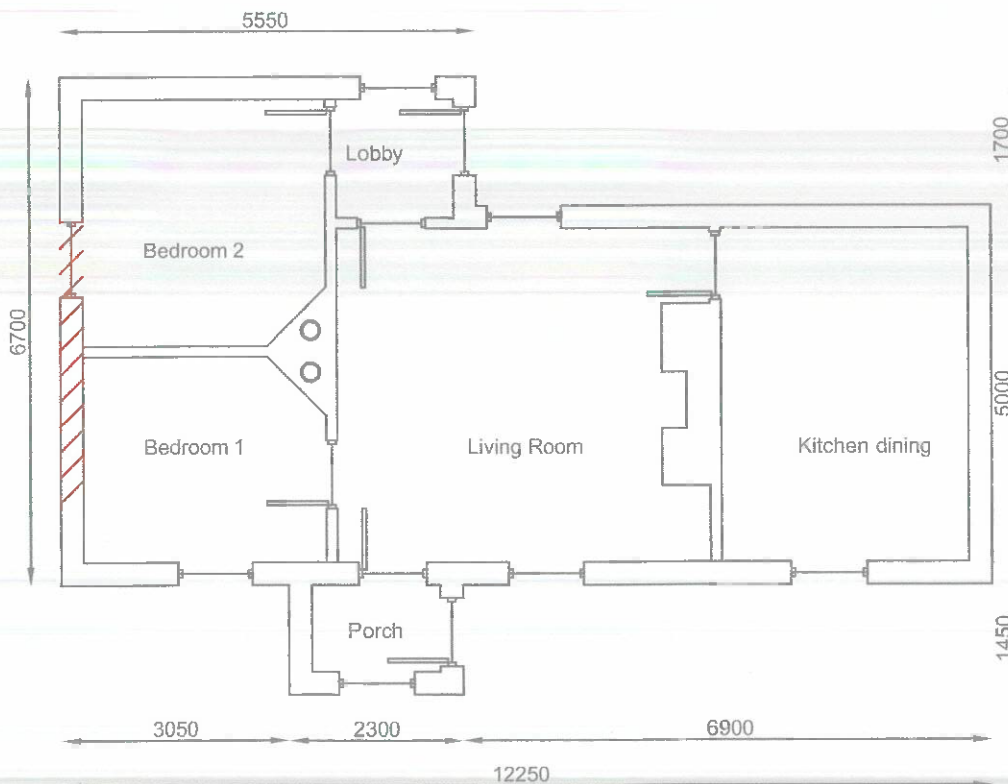
 Area subject to partial collapse



Existing Front Elevation - 1:100



Existing side Elevation  
- 1:200

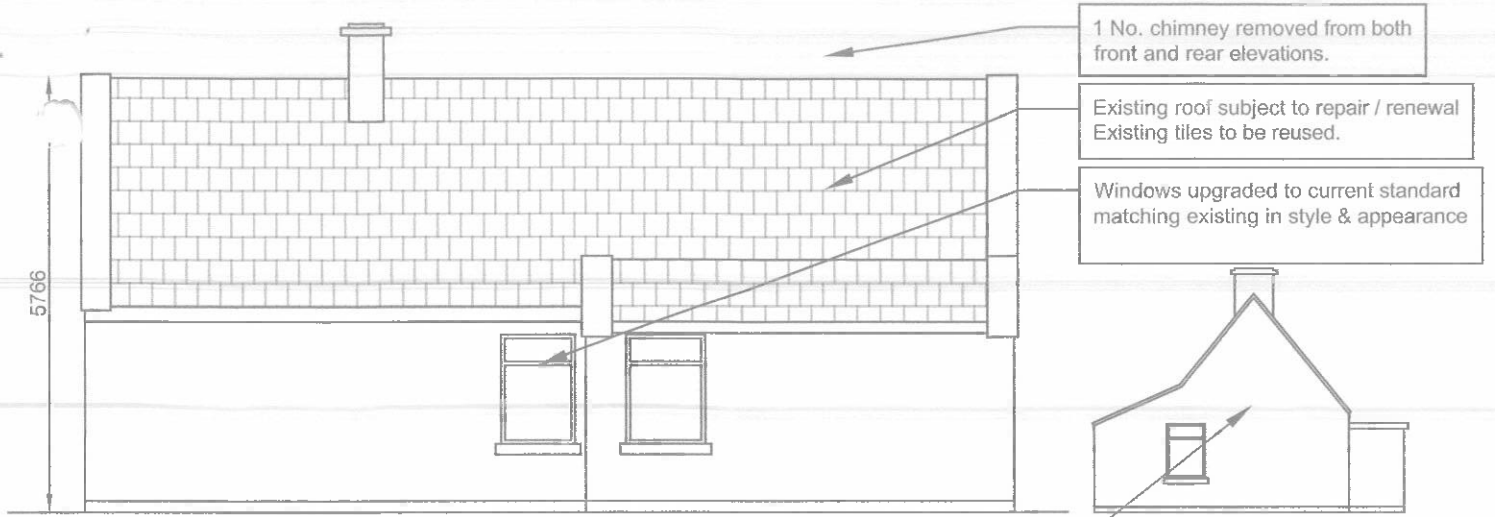


Existing Floor Plan - 1:100

Drawing Prepared By:	Michael Hanley, Derrymore, Dunmore.	
Project:	Dwelling - repair and renewal	
Location:	Derrymore, dunmore, Co. Galway.	
Drawing Title:	Existing plan & elev	
Scale:	1:100	Dwg No.
Date:	December 2021	01
Client:	M& S Hanley	

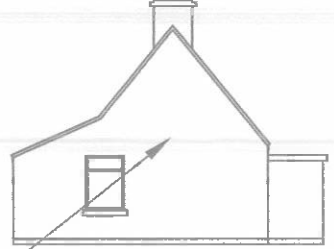






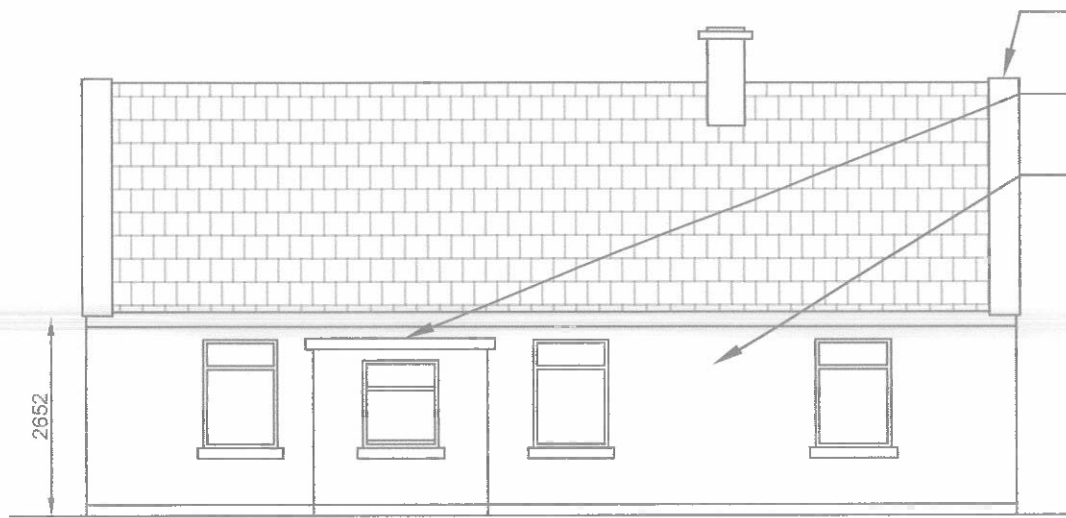
Proposed Rear Elevation - 1:100

- 1 No. chimney removed from both front and rear elevations.
- Existing roof subject to repair / renewal  
Existing tiles to be reused.
- Windows upgraded to current standard  
matching existing in style & appearance



Proposed side Elevation - 1:200

Repair to structure in accordance with engineers specification.

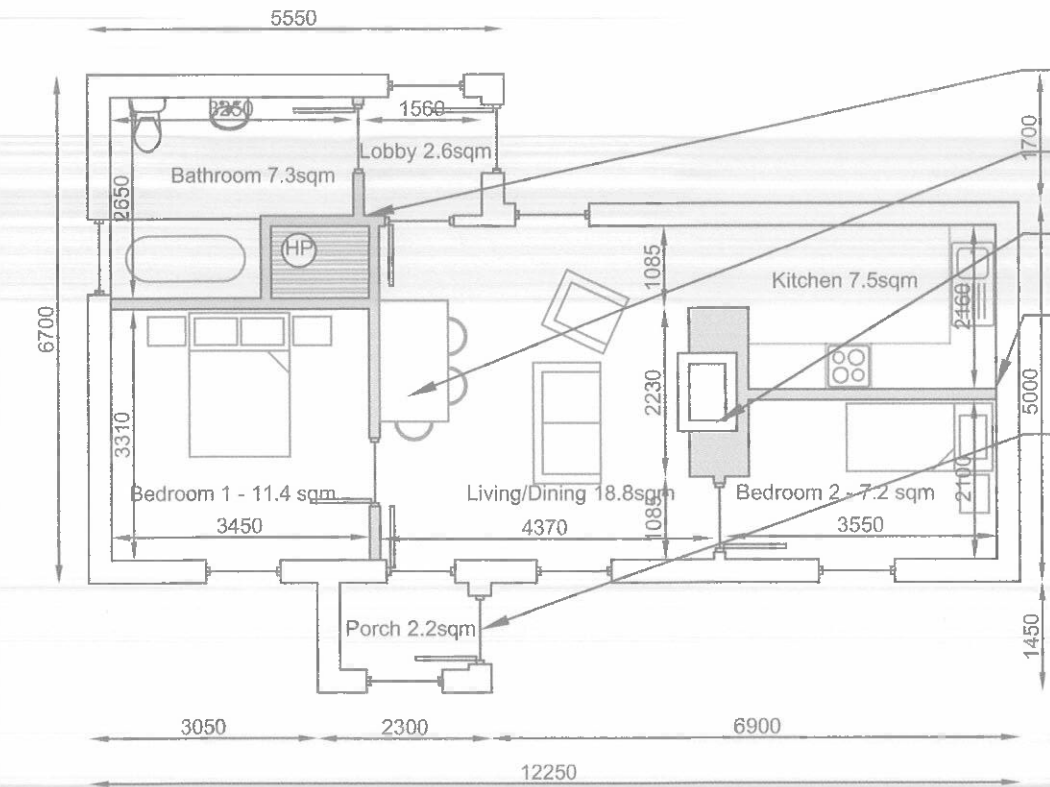


Proposed Front Elevation - 1:100

- Concrete barge replacement matching existing to accommodate re-leading.
- Repair to existing flat roof as required - in accordance with engineers spec.
- Maintenance/repair/replacement render in accordance with engineers spec.



Proposed side Elevation - 1:200



Proposed Floor Plan - 1:100

- Alterations to internal layout in accordance with engineers specification
- remove 1 No. chimney / fireplaces in relation to heating system upgrade.
- Rebuild existing chimney to accommodate a stove as secondary heating only.
- No change to the external footprint. Necessary insulation upgrade works to be applied internally.
- New external doors to be similar in style to existing.

Drawing Prepared By:	Michael Hanley, Derrymore, Dunmore.	Dwg No.  <b>02</b>
Project:	Dwelling - repair and renewal	
Location:	Derrymore, dunmore, Co. Galway.	
Drawing Title:	Proposed plan & Elev	
Scale:	1:100	
Date:	December 2021	
Client:	M & S Hanley	





Recent condition image (2021) of front elevation from existing entrance.



Recent condition image (2021) of rear elevation.







Image of existing dwelling on approach from Dunmore - approx date photo was taken 1996



Image of existing dwelling entrance and window detail- approx date photo was taken 1996







Comhairle Chontae na Gaillimhe  
Galway County Council

Michael and Sharon Hanley,  
Derrymore,  
Dunmore,  
Co. Galway  
H54 A443

5<sup>th</sup> January, 2022

**RE: Declaration of Exempted Development under section 5 of the Planning & Development Act 2000 - ED21/102**

**Description** - The repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure it's effective reuse - Derrymore, Dunmore

A Chara,

I refer to the above application which was received by this office on the 23<sup>rd</sup> December, 2021.

The reference for this application is **ED21/102** and you will be notified of the decision in writing in due course.

Mise le meas

**Martina Rogers**  
Planning & Sustainable Development Unit

Áras an Chontae  
Glasnevin, Dublin 9  
01-454 4000  
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Our Ref: ED 21/102

Comhairle Chontae na Gaillimhe  
Galway County Council

Michael and Sharon Hanley,  
Derrymore,  
Dunmore,  
Co. Galway,  
H54 A443

4<sup>th</sup> February, 2022

**RE: Declaration of Exempted Development under section 5 of the Planning & Development Act 2000**

*ED21/102 - The repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse - Derrymore, Dunmore*

**DECISION - NOT EXEMPTED DEVELOPMENT**

A Chara,

I refer to the above application which was received by this office on the 23<sup>rd</sup> December, 2021

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

- The definition of "works" set out in Section 2 of the Planning and Development Act 2000 (as amended).
- The definition of "development" set out in Section 3 of said Planning and Development Act.
- Section (3) of said Planning and Development Act.
- Section 4 (1) (h) & (4) of said Planning and Development Acts.
- Article 6(1) of said Planning and Development Regulations.
- Article 9(1)(a) subsections (i), (ii), (vi), (vi), (viiB) & (viiC) of said Planning and Development Regulations.
- Documents submitted from the referrer in this Section 5 application.

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

The 'the repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse' at Derrymore, Dunmore, Co. Galway is development and is **not exempted development** under the 2001 Planning and Development Regulations. Report attached.

Please note that you may appeal this decision to An Bord Pleanála within four weeks of the issue of this declaration on payment of the prescribed fee.

Mise le meas

  
**Robert Lydon**  
Planning & Sustainable Development Unit

Encl.



## PLANNER'S REPORT

**File Ref:** ED 21/102

**Applicant:** Michael and Sharon Hanely.

**Location:** Derrymore, Dunmore, Co. Galway

### Section 5 of the Planning and Development Act 2000 (as amended)

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

### Proposed – Application

Whether 'the repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse' at Derrymore, Dunmore, Co. Galway is or is not development or, is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (S.I. No. 600 of 2001) (as amended).

### Site Location

The site is in the townland of Derrymore, off the national road the N-83-132, approx. 1.0km north of Dunmore town.

### Relevant Legislation

The following excerpts from current planning legislation are relevant to the assessment of this referral.

#### 2000 Planning and Development Act

Section 2 of the Planning and Development Act, 2000 defines the terms used within the act and states that

*"Works" includes any act or operation of construction, excavation, demolition, extension or alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes...*

and

*"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined,*



Section 3(1) states:

*"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."*

Section 4 sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act. (The 2001 Planning Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the act)

2001 Planning and Development Regulations (as amended)

Article 6 deems the development set out in Schedule 2, Part 1 to be exempted development. Column 1 describes the development which can be considered exempted development, while Column 2 describes the conditions and limitations applicable to such exemption.

Article 9 (1) (a) sets out general restrictions on exemption, stating that "Development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would..." before going on to list a number of applicable circumstances.

#### Planning Assessment:

The applicant is seeking written opinion from the Planning Authority under Section 5 of the Planning and Development Act, 2000 (as amended), as to whether 'the repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse' at Derrymore, Dunmore, Co. Galway is or is not development or, is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (S.I. No. 600 of 2001) (as amended).

#### Planning History:

**074278-** to demolish an existing house and construct a new serviced dwelling house and domestic garage (Gross floor area 357 sqm) **Refused.**

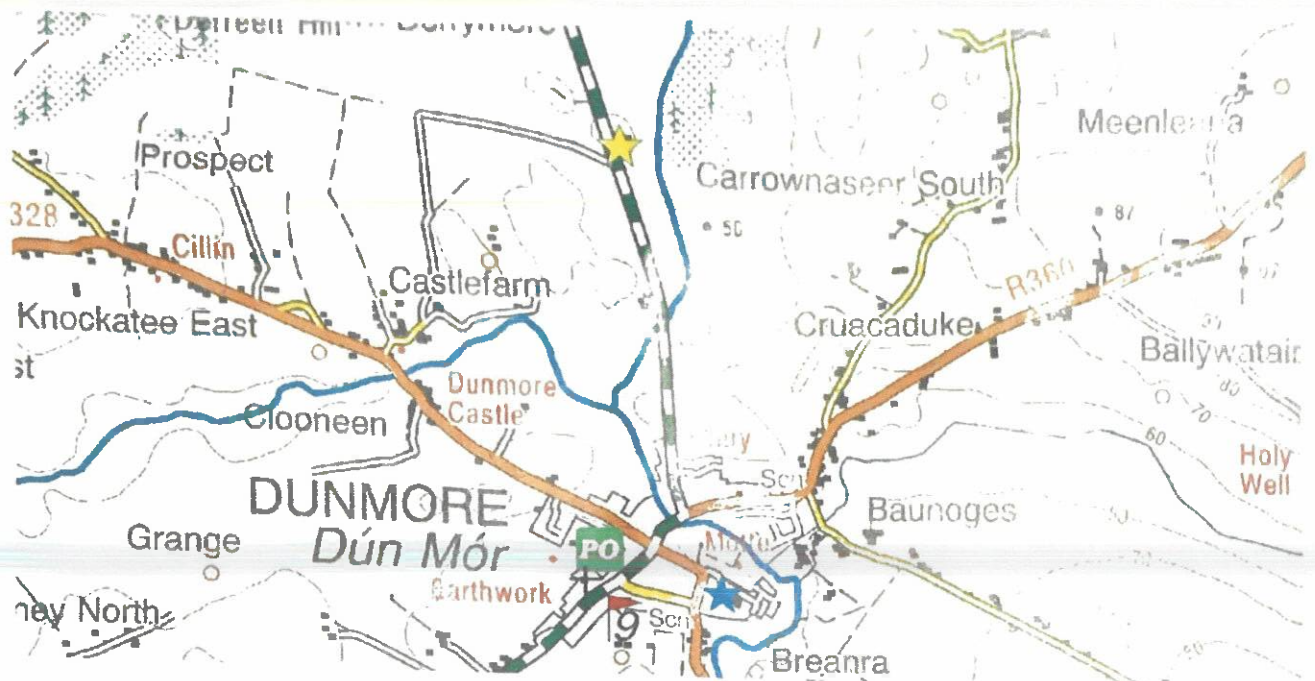
**073745-** to demolish an existing house and construct a new serviced dwelling house and domestic garage. (Gross floor area 357sqm) **Withdrawn.**



## Galway County Development Plan, 2015-2021:

### Landscape:

The site is located within a Class 1 designated rural landscape, which has a landscape sensitivity rating of 'Low'.



### Appropriate Assessment:

The application site is located on a site outside any Natura 2000 site; however, it is situated within 15km of the following Natura 2000 sites (8):

- SAC:Coolcam Turlough SAC
- SAC:Lough Lurgeen Bog/Glenamaddy Turlough SAC
- SAC:Croaghill Turlough SAC
- SAC:Lisnageeragh Bog and Ballinastack Turlough SAC
- SAC:Derrinlough (Cloonkeenleananode) Bog SAC
- SAC:Williamstown Turloughs SAC
- SAC:Lough Corrib SAC
- SAC:Levally Lough SAC
- No SPAs within 15km

The site is approximately 600m north of the Lough Corrib SAC (site code: 000297) which is a designated European site for rare and threatened flora and fauna (i.e. Natura 2000 network) protected under the EU Habitats Directive (92/43/EEC) & EU Birds Directive (79/409/EEC, as amended by Directive 2009/147/EC) and the European Communities (Natural Habitats) Regulations 1997, as amended by the European Communities (Birds and Natural Habitats) Regulations 2011 and part XAB of the Planning and Development, 2000 as amended.





### Proposed Works:

The proposed works include the 'the repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse'.

### Nature of the Development.

'The repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse' is within the scope of 'works' as defined by the 2000 Act. As such, 'the repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse' is 'development' for the purposes of the legislation.

### Opinion:

Having regard to the above, in conjunction with the Sections 2, 3, 4(1)(h) & 4(4) of the Planning and Development Act 2000 (as amended) and Articles 9(1) (a) (ii), (iii), (vi), (viiB) & (viiC) of the Planning and Development Regulations 2001 (as amended), it is considered that the development would constitute development under Section 3 of the Planning and Development Act 2000 (as amended).

There is no provision for 'installation and maintenance of an appropriate domestic wastewater treatment system' in the Planning and Development Regulations 2001 (as amended).

Secondly, works of the nature described, beside a National Road, would bring 'Restrictions on exemption 9(1)(a)(iii) into effect.

*'(iii) endanger public safety by reason of traffic hazard or obstruction of road users,'*

The proposed works are therefore not exempt development under the 2001 Planning and Development Regulations.



**Recommendation:**

The Planning Authority, in considering this Section 5 application, had regard particularly to

- (a) The definition of "works" set out in Section 2 of the Planning and Development Act 2000 (as amended).
- (b) The definition of "development" set out in Section 3 of said Planning and Development Act.
- (c) Section (3) of said Planning and Development Act.
- (d) Section 4 (1) (h) & (4) of said Planning and Development Acts.
- (e) Article 6(1) of said Planning and Development Regulations.
- (f) Article 9(1)(a) subsections (i), (ii), (vi), (vi), (viiB) & (viiC) of said Planning and Development Regulations.
- (g) Documents submitted from the referrer in this Section 5 application.

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

The 'the repair and renewal of an existing vacant dwelling and all associated works within the curtilage of the dwelling necessary to ensure its effective reuse' at Derrymore, Dunmore, Co. Galway is development and is **not exempted development** under the 2001 Planning and Development Regulations.

Prepared By: Robert Lydon, Technician Gr 2, Planning

Counter-signed By: Alan O'Connell, Senior Executive Planner

**Director's/Manager's Recommendation**

Decided By: Michael Owens, Director of Services

