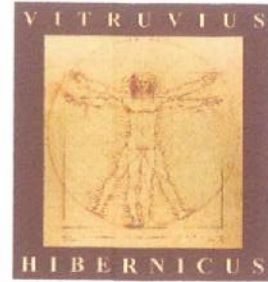


LIAM MADDEN
EU REGISTERED ARCHITECT NETHERLANDS REG. NO. 1.180615.001
UK REGISTERED ARCHITECT REG. NO. 0461701
ENVIRONMENTAL SCIENTIST PLANNING CONSULTANT
LEGAL ADVISOR S.I. 8/2017 SCH. 5



An Bord Pleanála,
64 Marlborough Street,
DUBLIN 1
D01 V902

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
24 NOV 2022	
Fee: €	220 Type: cheque
Time:	By: post

23 Nov. 2022

P.A. ref : S5. 20/22 Westmeath County Council.

Re : Section 5 Request by John Hayden, Castle View, Moydrum, Athlone, Co. Westmeath

Dear Sir/Madam,

this is a referral under Section 5 of the Planning and Development Act 2000, as amended.
The referrer is John Hayden, Castle View, Moydrum, Athlone, Co. Westmeath.

The circumstances are as follows.

A Section 5 Request was lodged with Westmeath County Council accompanied by my €80 cheque dated 26.09.22 No acknowledgement or receipt issued. The cheque was cashed. The Council told me by phone that the Request was received by them on 4th Oct. 22 There were no exceptional circumstances and no further information was sought. Based on the receipt of the request on 4th Oct.. 22, by my reckoning, a declaration ought to have been made not later than 31 Oct. 22

Following numerous phonecalls to the Planning Office and repeated assurances that the matter would be dealt with within the appropriate period, no declaration issued until a notice dated 22 Nov. 22, received by me today 23 Nov. 22.

I submit that no declaration issued within the appropriate period and that the declaration dated 22 Nov. 22 is late.

I take issue with the (late) declaration and the rationale/logic in its declaration.

Accordingly, I am now referring the attached questions posed in the request to An Bord Pleanála for review.

Attached are :

- (i) An Bord's Fee €220
- (ii) Section 5 Request to Westmeath County Council with drawings etc.

L. MADDEN B. ARCH. NUI, M. APPL. ENVIR. SC., CERT. ARCH. PROF., DIP. MICRO-PROC. TECH.
2 THE GATE LODGE, WINDSOR CLOSE, 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

It is accepted that the proposals constitute 'development' as defined.
Insofar as the rationale in the (late) declaration by the P.A. has any merit I make these arguments.

- (a) The P.A. refers only to Class 3 in its conclusion.
- (b) The proposed boilerhouse is Exempted under Class 2.
There is no restriction on area, height, aesthetics or location.
(The garage could have been part of the boilerhouse with an overall area of 65 sq.m.
An Bord has a planning precedent in ABP 304215-19 (attached) with a 154 sq.m.
boilerhouse declared exempted development.)
- (c) The proposed photovoltaic panels are Exempted under Class 2 and not Class 3.
The photovoltaic panels do not have a floor area : they are to be mounted on a pergola
which also does not have a floor area.

Only in relation to Class 3 is there a cumulative area restriction, 25 sq.m.
There is only one garage which is 25 sq.m.
There are no other previously constructed on the site.
All that's on the site is a large house and an independent studio-office.
While there is a terrace, it doesn't have a floor area.

It may be inferred from the P.A. assessment that as the garage, boilerhouse and pergola with photovoltaic panels atop are all one structure, that being a single structure somehow militates against a declaration of exemption.

This is nonsense, of course. Consider a Class 7 porch with a 2 sq.m. area. Invariably such a porch is connected to the front of the house and both become one structure.

WHEREAS A QUESTION HAS ARISEN as to whether the erection of :

- (i) 25 sq.m. garage,
- (ii) 40 sq.m. boilerhouse,
- (iii) 12 sq.m. photovoltaic panels,
- (iv) an open pergola

is/are development and is/are exempted development.

I say that the Council's declaration was late and the decision making was lazy and inaccurate.
I look forward to An Bord's favourable declaration.

Yours faithfully,

Liam Madden,
Convent Road,
LONGFORD.
N39 EE72



L. MADDEN B. ARCH. NUI, M. APPL. ENVIR. SC., CERT. ARCH. PROF., DIP. MICRO-PROC. TECH.
2 THE GATE LODGE, WINDSOR CLOSE, 81 LOWER WINDSOR AVENUE, BELFAST BT9 7DX
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John Hayden
C/O Liam Madden
Convent Road
Longford
N39 HY45

22nd November 2022

Our Ref: S5-20-22

Re: Whereas A Question Has Arisen As To Whether The Construction Of A 25sqm Garage, A 40sqm Boiler House, Photovoltaic Panels 12sqm And An Open Pergola To The Rear Dwelling House At Castle View Moydrum, Athlone, Co. Westmeath Is Or Is Not Exempted Development Under The Planning And Development Act 2000 (As Amended).

Dear Sir,

Westmeath County Council has reviewed your application for exempted development and in exercise of the powers conferred on it, by Section 5 of the Planning & Development Act 2000 as amended, and has decided that the subject of your application constitutes development and is not exempted development for the reasons set out in the attached Schedule.

A Declaration made by the Planning Authority may be appealed to An Bord Pleanála with the required fee within four weeks of the date of the issuing of the Declaration in accordance with Section 5(3) (a) of the Planning & Development Act 2000 as amended.

Yours sincerely,



Eamonn Brennan, AO.,
Planning Central,
Tel No: 044-9332165
E-Mail: ebrennan@westmeathcoco.ie
Enc.

Schedule

WESTMEATH COUNTY COUNCIL Planning and Development Act 2000 as amended

Section 5 Declaration Reference: S5-20-22

Section 5 Declaration

Whereas a question has arisen as to whether the construction of a 25sqm garage, a 40sqm boiler house, photovoltaic panels 12sqm and an open pergola to the rear dwelling house at Castle View Moydrum, Athlone, Co. Westmeath is or is not exempted development under the Planning and Development Act 2000 (as amended).

And whereas the said question is the subject of a request under Section 5 of the Planning & Development Act 2000, as amended.

And whereas Westmeath County Council, in considering this request had regard particularly to –

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- Article 5, 6 and Article 9 of the Planning and Development Regulations 2001 (as amended)
- Class 2 and Class 3 of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001, as amended.

And whereas Westmeath County Council in considering this request has concluded that as per design proposal submitted;

- The construction of the proposed garage, boiler house, photovoltaic panels and pergola contained as one structure to the rear of a dwelling involves the carrying out of works, as defined, and is therefore development,
- The development proposed does not come within the scope of Class 3 of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001 (as amended) as the proposed development of a garage, boiler house, photovoltaic panels and pergola structure, the total area of such structure constructed, erected or placed within the curtilage of the house, taken together with other such structures previously constructed, erected or placed within the said curtilage, exceeds 25 sqm in size.

Westmeath County Council, in exercise of the powers conferred on it, by Section 5 of the Planning & Development Act 2000 (as amended), hereby decides, that the proposed garage, boiler house, photovoltaic panels and pergola structure is development and **IS NOT** exempted development.

PLANNING DEPARTMENT
SECTION 5 APPLICATION

DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

1. Applicant's Name: JOHN HAYDEN
Applicants Address: CASTLEVIEW, MOYDRUM
ATHLONE, CO. WESTMEATH
N37 HY45

Tel. No. [REDACTED] Fax. No. [REDACTED] E-Mail [REDACTED]

2. Name of Agent (if any): LIAM MADDEN
Address: CONVENT ROAD, LONGFORD
N39 EE72

Tel. No. [REDACTED] Fax. No. [REDACTED] E-Mail [REDACTED]

3. Name and Address to which notifications should be sent:
LIAM MADDEN, CONVENT ROAD,
LONGFORD N39 EE72

4. Location of Proposed Development: CASTLEVIEW, MOYDRUM
ATHLONE, CO. WESTMEATH N37 HY45

5. Description of Proposed Development: SCHEDULE 2 PART 1 — GARAGE 25m² CLASS 1
SCHEDULE 2 PART 1 — BOILERHOUSE 8m x 5m CLASS 2
SCHEDULE 2 PART 1 — CLASS 2 (c) PHOTOVOLTAIC PANELS 12m²
SCHEDULE 2 PART 1 — CLASS 3 OPEN PERGOLA / SHADE NO FLOOR AREA

6. Is location a Protected Structure or within the curtilage of a Protected Structure? ~~YES~~/NO (delete as appropriate)
7. If yes to 6 above, has a Declaration under Section 57 (works affecting the character of a Protected Structure(s) or Proposed Protected Structure(s)) of the Planning and Development Act 2000-2010 been requested or issued for the property by the Planning Authority? N/A
YES/NO (delete as appropriate)

8. Applicants Interest in site: OWNER
9. List of plans, drawings etc. submitted with this application: LAND REGISTRY MAP
PLAN, SECTION, ELEVATION + SITE LAYOUT
AERIAL PHOTOMETRIC VIEW
9. Signature of Applicant (or Agent) Liam Madden

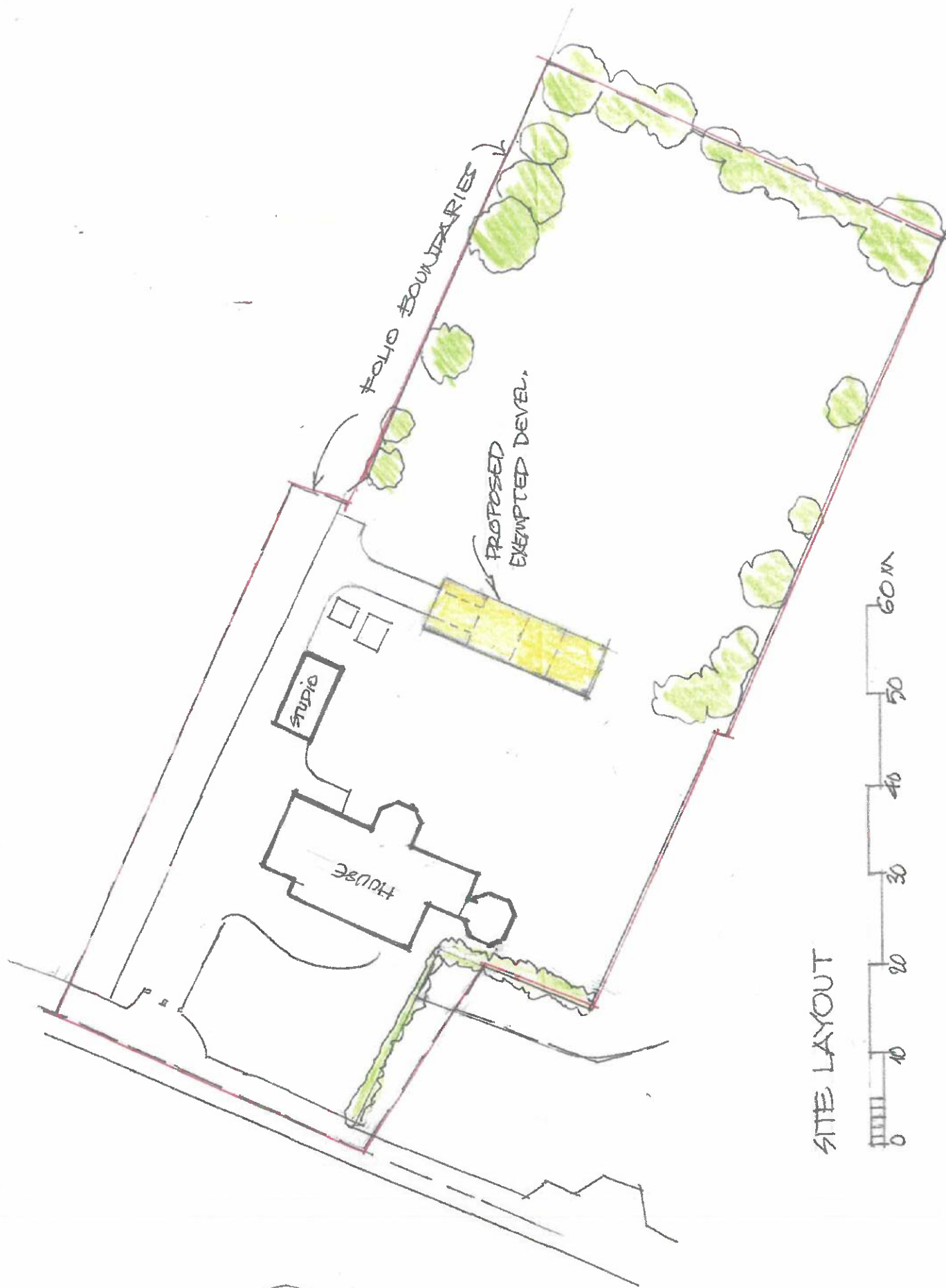
NOTES: (a) Application must be accompanied by fee of €80.00

- (b) Application must be accompanied by a copy of the following documentation:
- (i) site location map to scale 1:2500 clearly showing the site outlined in red and the extent of the site boundaries, the position of existing structures, etc., and the proposed work.
 - (ii) site layout plan to scale 1:500 of the proposed development. All drawings to differentiate between the original building, all extensions and proposed development. Please indicate position of proposed development relative to premises and adjoining properties.
 - (iii) Drawings, plans, photographs and other particulars necessary to identify and describe the matter to which the question relates
 - (iv) Any relevant planning history (including details of any previous requests for related Section 5 requests/declarations)

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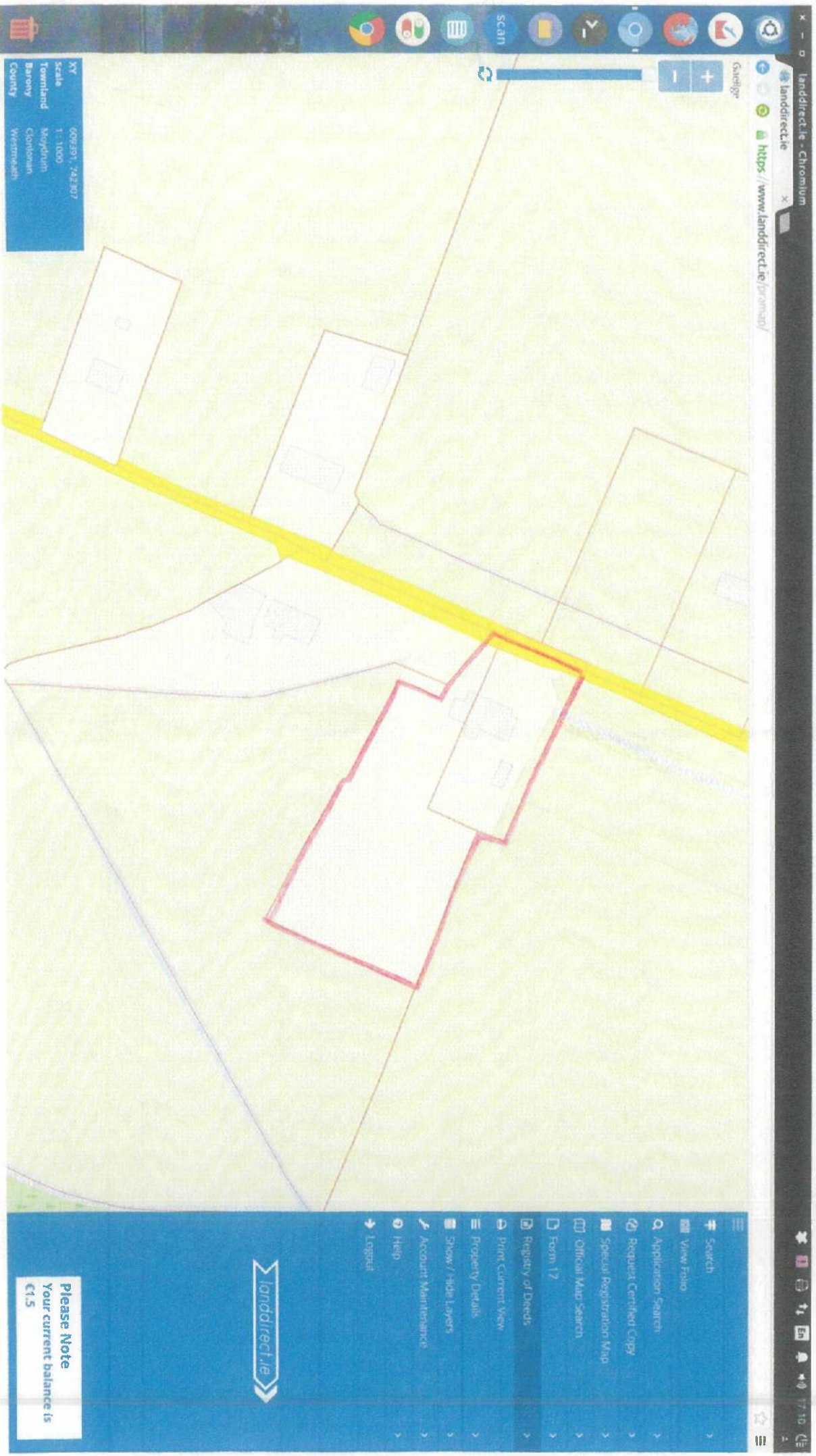
Ref. No. _____ Date Received: _____

Fee Received: € _____ Receipt No. _____



SITE LAYOUT





Scale 1:1000
Townland Moydrum
Barony Clonsilla
County Westmeath

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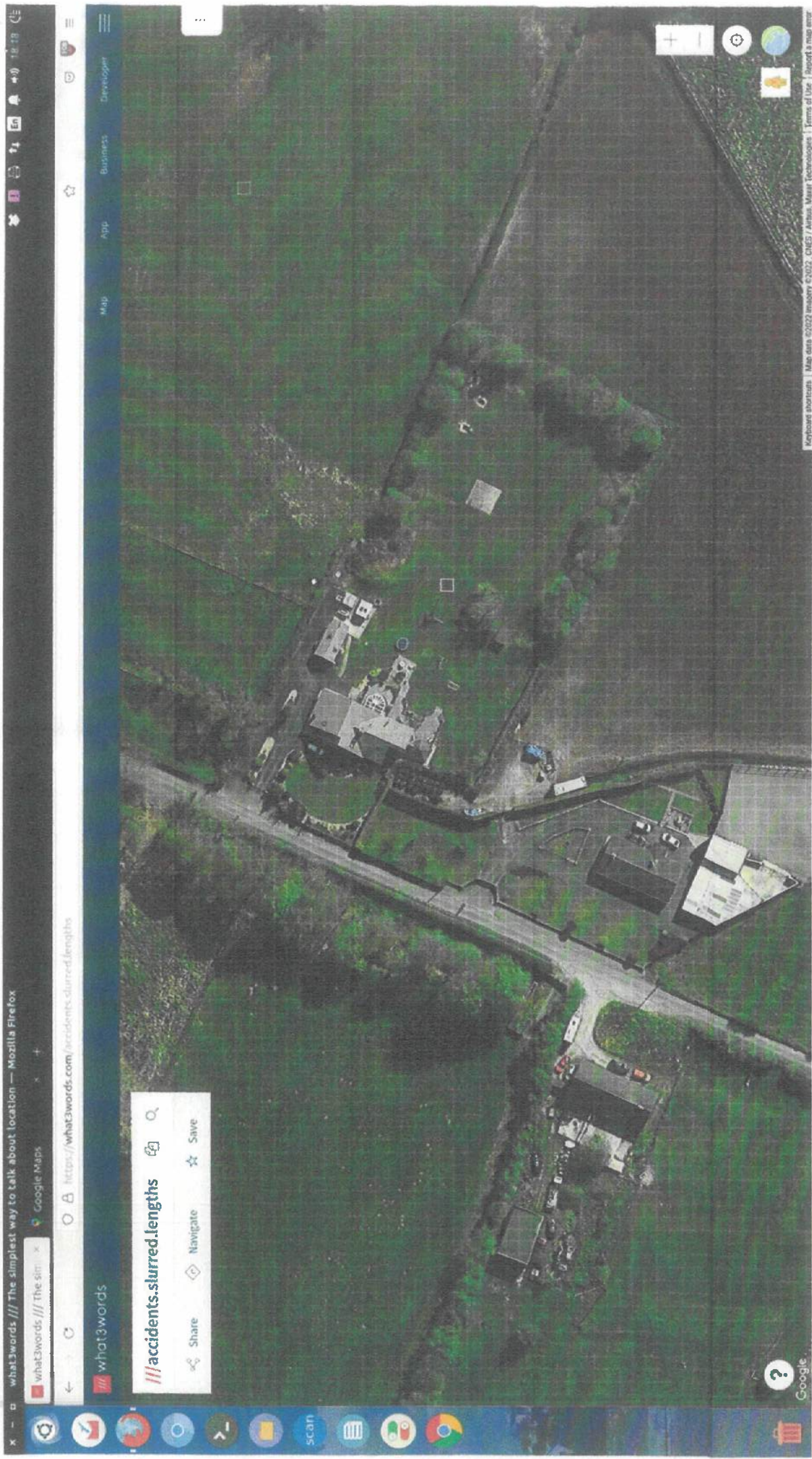
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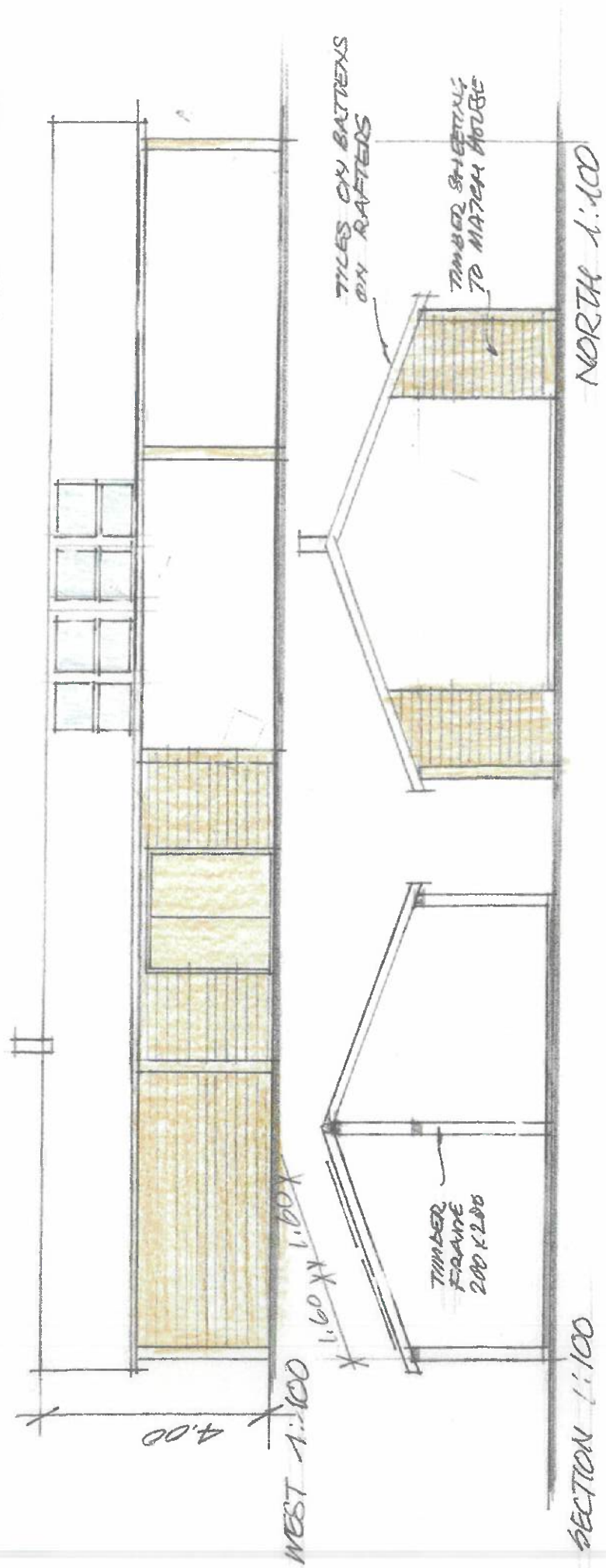
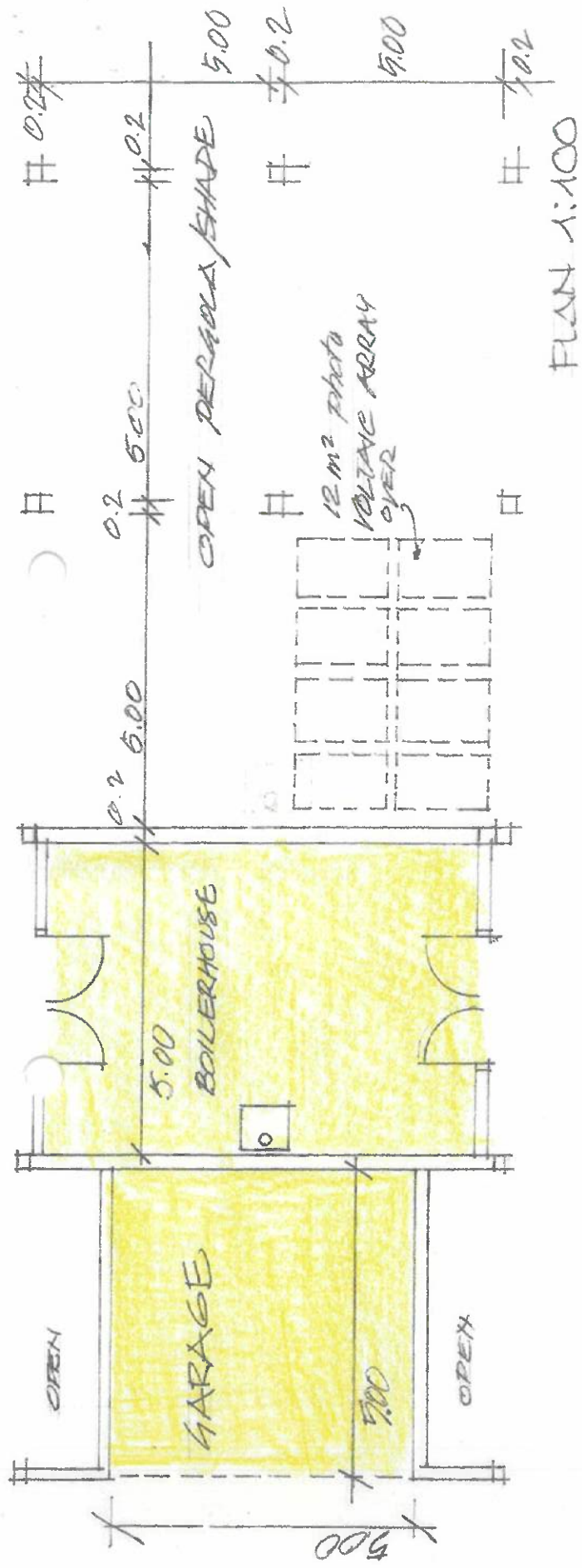
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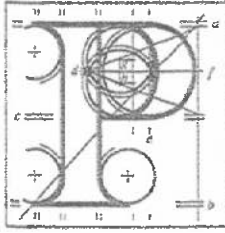
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Please Note
Your current balance is
€1.5







An
Bord
Pleanála

Board Order
ABP-304215-19

Planning and Development Acts 2000 to 2019

Planning Authority: Longford County Council

Planning Register Reference Number: DC 19/2

WHEREAS a question has arisen as to whether

- (1) the use of land, being the site edged in red on the map submitted with the request, consisting of the use for any of the purposes of agriculture and consisting of the use for that purpose of any building occupied with and so used is or is not development and is or is not exempted development,
- (2) the provision of a building measuring 154.87 square metres internally as a Class 9 agricultural shed is or is not development or is or is not exempted development, and
- (3) the provision of a boiler house as part of a central heating system for the adjoining house is or is not exempted development,

at Stonepark, Longford, County Longford:

4

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the lands in question, being the site edged in red on the map submitted with the request, are located within the curtilage of the existing dwellinghouse, and do not form part of an agricultural holding,
- (b) the use of these lands for agricultural purposes would involve a change of use from residential to agricultural, and such change of use would be material, having regard to the pattern of development in the vicinity and the likely impacts on the residential amenities of adjoining properties, and would, therefore, be development,
- (c) the material change of use in this case would not, having regard to the location of the lands in question within the curtilage of a dwelling, come within the scope of the exemption afforded under Section 4(1)(a) of the Planning and Development Act, and would, therefore, not be exempted development,
- (d) the erection of the building that is the subject matter of this referral involved the carrying out of works and is, therefore, development,
- (e) the building in question is not linked to any agricultural activity on the lands in question, and, therefore, does not come within the scope of Class 9 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, or of any other Class in this Part, and is, therefore, not exempted development, and

- (f) the building in question, having regard to its location within the curtilage of the adjoining dwelling, would, if provided solely as part of the central heating system of the existing house within the same curtilage, constitute a boiler house within the scope of Class 2 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and would, if used solely for this purpose as a boiler house, be exempted development.

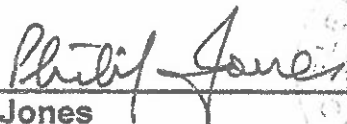
NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that


- (1) the use of land, being the site edged in red on the map submitted with the request, consisting of the use for any of the purposes of agriculture and consisting of the use for that purpose of any building occupied with and so used is development and is not exempted development,
- (2) the provision of a building measuring 154.87 square metres internally is development and is not exempted development under Class 9 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, and
- (3) the building in question would, if provided and used solely as part of the central heating system of the existing house within the same curtilage, constitute a boiler house, and would in such circumstances be development and be exempted development,

all at Stonepark, Longford, County Longford.

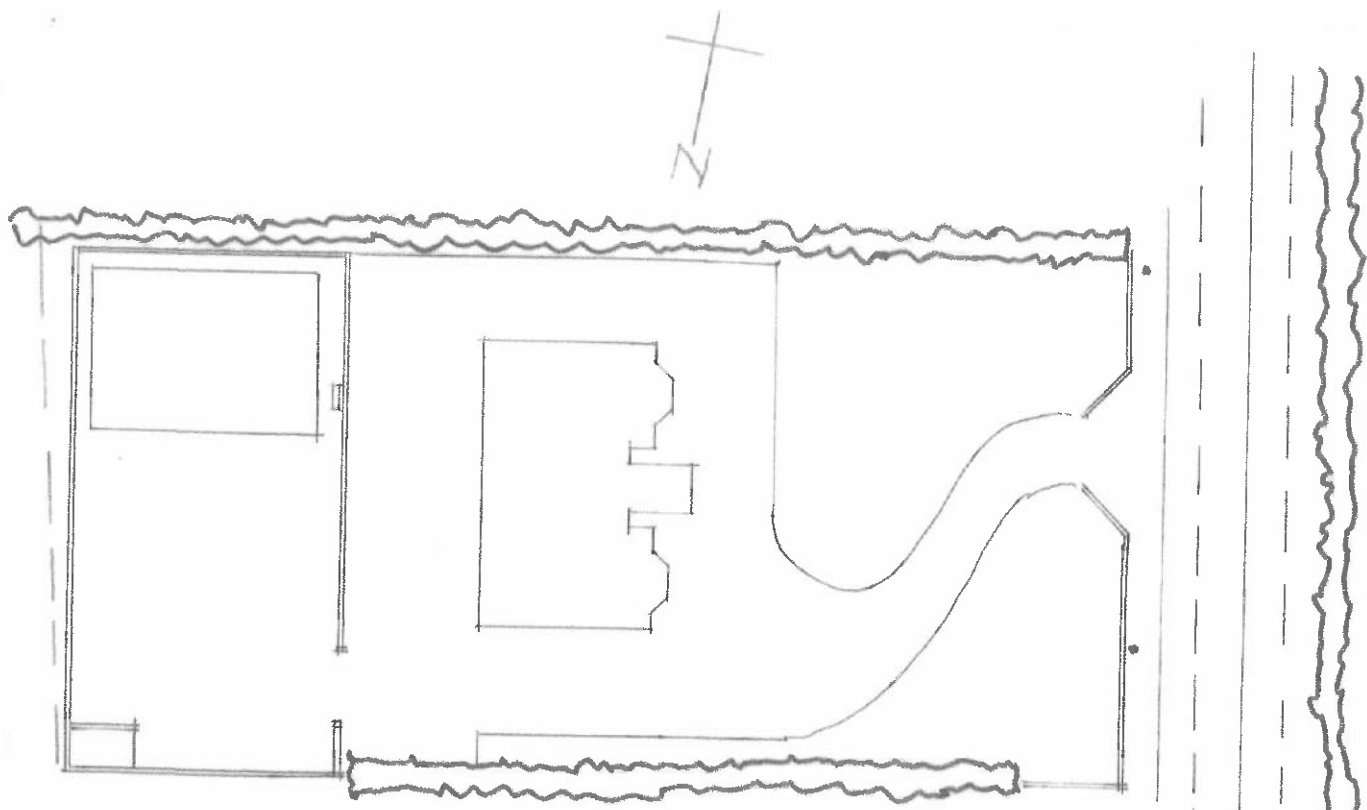
Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.


Philip Jones
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.



Dated this 30th day of July 2019.



SITE LAYOUT 1:500

