

The Secretary,  
An Bord Pleanála  
64 Marlboro Street  
Dublin1  
D01 V902

**AN BORD PLEANÁLA**  
LDG- 069045-23  
ABP- \_\_\_\_\_  
20 DEC 2023  
Fee: € 70.00 Type: Cheque  
Time: \_\_\_\_\_ By: POST (REG)  
19<sup>th</sup> December 2023

A Chara,

In application for a referral under Section 5(3)(a) of Planning and Development Act 2000 (as amended by Clare County Council (ref R23-85) on 28<sup>th</sup> November 2023.

Please find enclosed the following :

1. Letter of referral
2. Correspondence and supporting documentation
3. Cheque in the sum of €220

If you have any queries please do not hesitate to contact me.

Le meas,

  
John Clancy

(

Lahinch Road,  
Ennistymon,  
Co. Clare

The Secretary,  
An Bord Pleanála  
64 Marlboro Street  
Dublin 1  
D01 V902

19<sup>th</sup> December 2023

**Referral under Section 5(3)(a) of Planning and Development Act 2000 (as amended)**

A Chara,

I wish to refer a declaration under Section 5(3)(a) of Planning and Development Act 2000 (as amended) for review. The declaration was issued by Clare County Council (ref R23-85) on 28<sup>th</sup> November 2023.

Please find the declaration enclosed together with a copy of the supporting documentation which was originally submitted. I request that An Bord Pleanála now consider this documentation as part of this review.

The question put to the Planning Authority and that is now before the Board is as follows :

“Is the construction of an agricultural shed to the rear of existing dwelling house development and if so is it exempted development?”

I submit that the agricultural shed is development and that it is exempt development. I wish to comment on the declaration of Clare Co. Co. as follows:

**Planning History**

Permission was granted to John Clancy by Clare County Council for a house and garage on site under ref P11/616

The house was built first. The garage was omitted.

A warning letter issued to John Clancy from Clare Co Council on 27<sup>th</sup> February 2023. Four issues were identified :

1. Unauthorised extension to North of dwelling house without the benefit of planning permission.
2. Unauthorised placing of two velux roof lights to front elevation without planning permission
3. Construction of structure to the rear of dwelling house without the benefit of planning permission
4. Siting of dwelling house does not match exactly with site layout as submitted under P11/616



In addressing this warning letter, I, John Clancy subsequently applied for retention planning permission on 14<sup>th</sup> June 2023 (Planning ref 23343) for the extension, two velux windows. There was an issue with the site boundaries of the property. The adjacent dwelling house (owned by my brother Mark Clancy) was also sited incorrectly. The boundaries and site maps of both properties were incorrect and had to be amended subsequently in the Land Registry. I also sought Planning Permission to alter the site boundaries to correlate with the now corrected Land Registry boundaries. In addressing the warning letter, I confirmed that the structure to the rear of the site was an agricultural building which is exempted development and therefore I did not seek retention planning permission for this development. Clare Co Co in a further information request dated 28<sup>th</sup> July 2023 stated that they would not consider the application for retention permission because the agricultural building cannot be considered exempted development as it is located within the curtilage of the dwelling.

I submitted a section 5 referral, together with supporting documentation to Clare County Council, who subsequently decided that the agricultural shed constituted development which is not exempted development on 28<sup>th</sup> November 2023. (Copy letter enclosed). In particular, they concluded that

“the structure the subject of this referral, is located within the curtilage of a dwelling house, and as such the exemptions for agricultural buildings as set out under Class 9 of Part 3, Schedule 2 of the Planning and Development regulations 2001, do not apply.

I wish to refer that decision on the following grounds :

I am not seeking to rely on the exemptions for development provided within the curtilage of a house under Sch 2 Part 1 Class 3 of the Planning and Development Regulations as amended. These do not apply in relation to this development. I submit that each class of exempted development provided for in the legislation operates on a standalone basis, unless specified otherwise in the legislation. Mr. G. Ruane of Clare Co. Co. in his report clearly states that “the regulations make a clear distinction between exempted developments permitted within the curtilage of a dwelling house...and exempted development for the purposes of agriculture” I agree with this statement. However Mr Ruane then erroneously goes on to state that the correct class to be applied is Class 3. He excludes Class 9 without further explanation. He offers no basis in law for this and he puts forward no precedent or case law to back up his decision. He doesn't offer an explanation for why he considers the shed to be within the curtilage of the dwelling house. The house and shed are not enclosed together. The shed is not enclosed at all. There is no functional connection between the agricultural shed and the enjoyment of the dwelling house. The shed does not service the house and it is not ancillary to it. It services the surrounding land. The shed is a structure in its own right. It simply shares a driveway with the house and it is located to the rear of the site behind the house, at the farthest back location on the land. The development which consists of a detached agricultural building is not within the curtilage of the dwellinghouse. The site boundary is not the curtilage.

It seems arbitrary that an agricultural shed would firstly be shoehorned by Clare County Council into the Class 3 exemption for development within the curtilage of a dwelling, when it clearly meets none of the requirements for that class of exemption. And as a consequence of this, it has been excluded it from consideration under from Class 9, Agricultural, when it meets ALL of the requirements for that Class.

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Just because a development meets one, or indeed several, of the requirements of a different Class of exemption, does not preclude that development being considered exempt under another Class, provided it meets all of the conditions / limitations as prescribed by law. I did not seek exemption under Class 3. I sought an exemption under Class 9.

The agricultural shed is exempted development in its own right, as an agricultural building. There are no exclusions in the legislation for agricultural structures which lie adjacent to the principal house, or within its curtilage in a rural area. Agricultural storage sheds are frequently found directly adjacent to dwelling houses in rural areas of Co. Clare. In this case, the location was chosen to minimise the visual impact (from the road and also from both dwelling houses) for reasons of convenience, safety, security and protection from the prevailing winds.

The legislation permits exempted agricultural structures within 100metres of neighbouring dwellings, with the written consent of the owner. This shed is within 100metres of two dwelling houses – one in my ownership and one not in my ownership. The neighbouring house is in my brothers ownership, but has the benefit of a letter of consent to such works. It follows, by the reasoning of Clare Co Co, that an agricultural building could be deemed exempt development if built 10m from a neighbouring dwelling house with a letter of consent, but must not be built 10m from the owners own house. Or indeed, if the dwelling house were to be registered in the name of the owners wife, she could provide a letter of consent regardless of the proximity to the agricultural shed. In this instance, Clare County Council have inferred from the Planning Legislation that agricultural structures cannot be exempt development if they are located “within the curtilage”. This conclusion has no basis in law and is unfounded. “The curtilage” is not defined on any map, and the boundaries of the curtilage cannot be drawn with any certainty.

The category of buildings which are exempted and the limitations are set out under Class 9 of Part 3 of the Second Schedule (Rural) of the 2001 Planning and Development regulations, as amended. The agricultural shed was designed and constructed to comply with all of the limitations / conditions therein. The exemption for agricultural developments exists in order to effectively regulate agricultural structures in rural areas. I have relied on and adhered to the specific requirements as set out in the legislation for exempted development of agricultural buildings and the building was constructed to be in accordance with those provisions in order to be considered exempt.

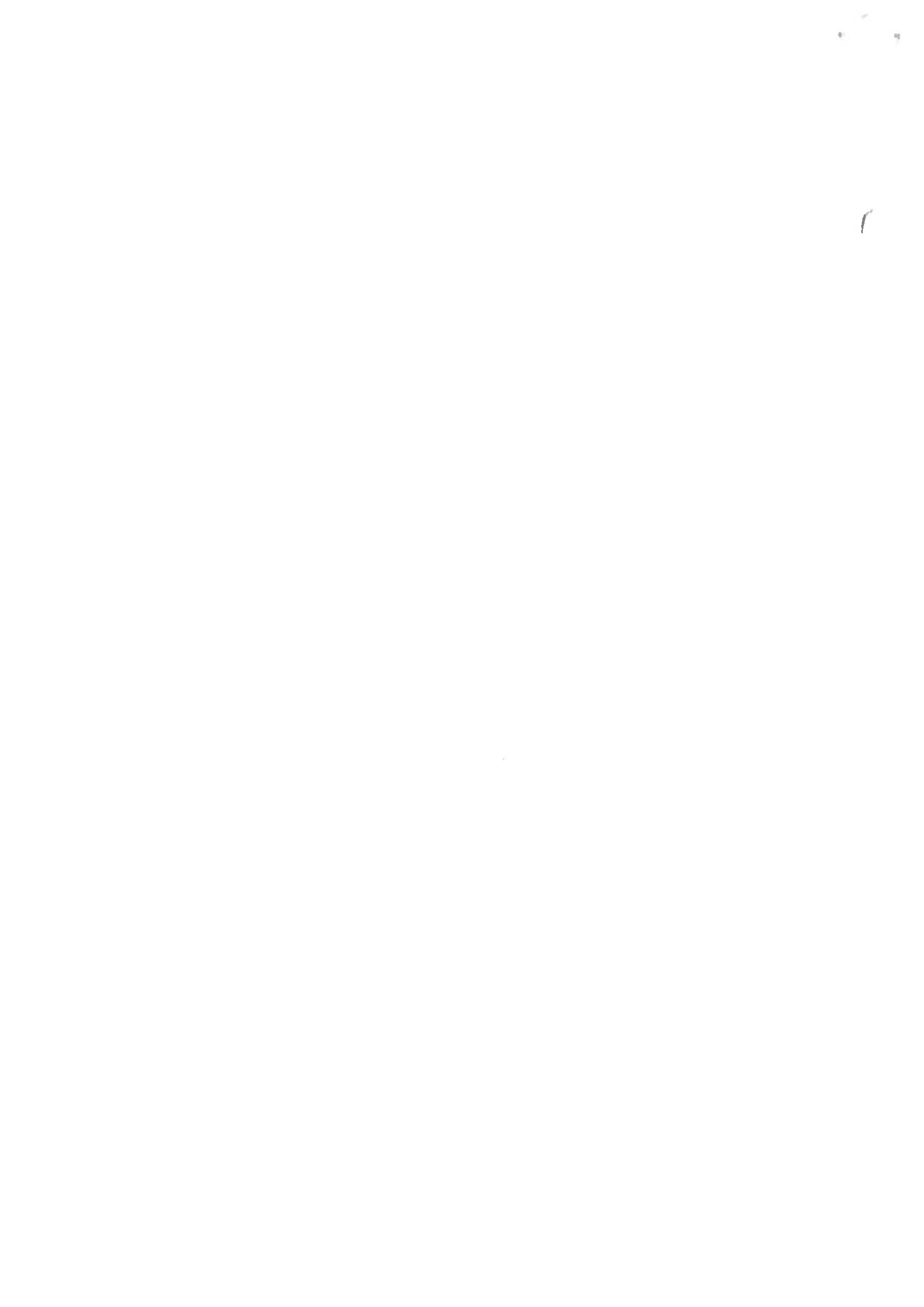
#### CLASS 9

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

The development of the store /shed falls squarely within conditions/limitations, including

No.1 –The shed will be used solely for agricultural purposes. It will not be used for the purpose of housing animals or storage of effluent

No.2 - gross floor space does not to exceed 300 sq.m within or close to a farmyard complex





No.3 The location is greater than 10m from public road

No.4 Height does not exceed 8m

No.5 requires a separation distance of 100m from the agriculture structure to a house (or other sensitive building) or alternatively written consent from the owner. The consent in writing of the owner of the house adjacent has been furnished to Clare Co. Co.

No.6 No unpainted metal sheeting.

The shed meets Conditions 1,2,3,4,5 and 6 of the conditions and limitations. Furthermore, it is submitted that it does not contravene any of the restrictions on exempted development.


The restrictions on exemptions under Article 9 of the Regulations. 10.6.2 Article 9(1)(a) of the Regulations were also considered when constructing the shed, which are relevant in this case. Article 9(1)(a)(iii) – Endanger public safety by reason of a traffic hazard or obstruction of road users – The shed did not itself involve creating any new road access onto the regional road. Although there are two agricultural gateways into the land, they do not meet the minimum requirements for sight lines and were excluded from consideration. The main entrance is used for access to the dwelling houses and also to the land. Utilising this entrance for shed access does not materially alter or intensify the use of the entrance onto the regional road. The provision of modest agricultural storage facilities for a small land-holding would not involve an intensification of road use, as everything would now be located on site. Indeed, it would lead to less trips for supplies. No negative impact on amenities, no health and safety implications, no pollution, no odours, no noise, no waste and no discharge.

The shed was constructed as close as possible to the high rear boundary wall, behind the existing building lines of the two houses to reduce visual impact. The shed design (fenestration, ridge height and plaster finish) was constructed to be in keeping with the two neighbouring dwelling houses due to the close proximity to same. The landscaping has yet to be completed on site and the shed will be screened from the dwelling house and the neighbouring dwelling house and the public road in due course.

I am the director and employee of an agricultural/horticulture company. The land is in my ownership in excess of 20 years. Clare County Council have granted Part 8 Planning Permission and have issued a Compulsory Purchase Order to demolish my property, including an existing horticultural storage shed in Ennistymon, Co. Clare. The lands at Toornahoun are used for agricultural purposes. There was already an agricultural yard and hayshed on the plot (see geo map attached). The old shed became unsafe and had to be removed. Replacing this shed in the same place would not have met the planning guidelines due to its proximity to the road / visual impact / unsafe access road.

I also wish to direct your attention to An Bord Pleanála case ref RL02.RL3472 which may be relevant to this matter. I submit for the reasons set out above that this development should be considered exempt development.

Le meas.

  
John Clancy



# GeoHive Map



11/2/2023, 4:59:19 PM

1:2,500  
0 0.02 0.04 0.07 0.08 mi  
0 0.03 0.07 0.13 km  
© Ordnance Survey Ireland



# Land Registry Compliant Map



**CENTRE COORDINATES:**  
ITM 510057.698902

**PUBLISHED:** 25/05/2023  
**ORDER NO.:** 50338801\_1

**MAP SERIES:**  
1:5,000 3851  
1:5,000 3908  
1:2,500 3908-A

**COMPILED AND PUBLISHED BY:**  
National Mapping Division of  
Tailte Éireann,  
Phoenix Park,  
Dublin 8,  
Ireland.  
D08 F6E4

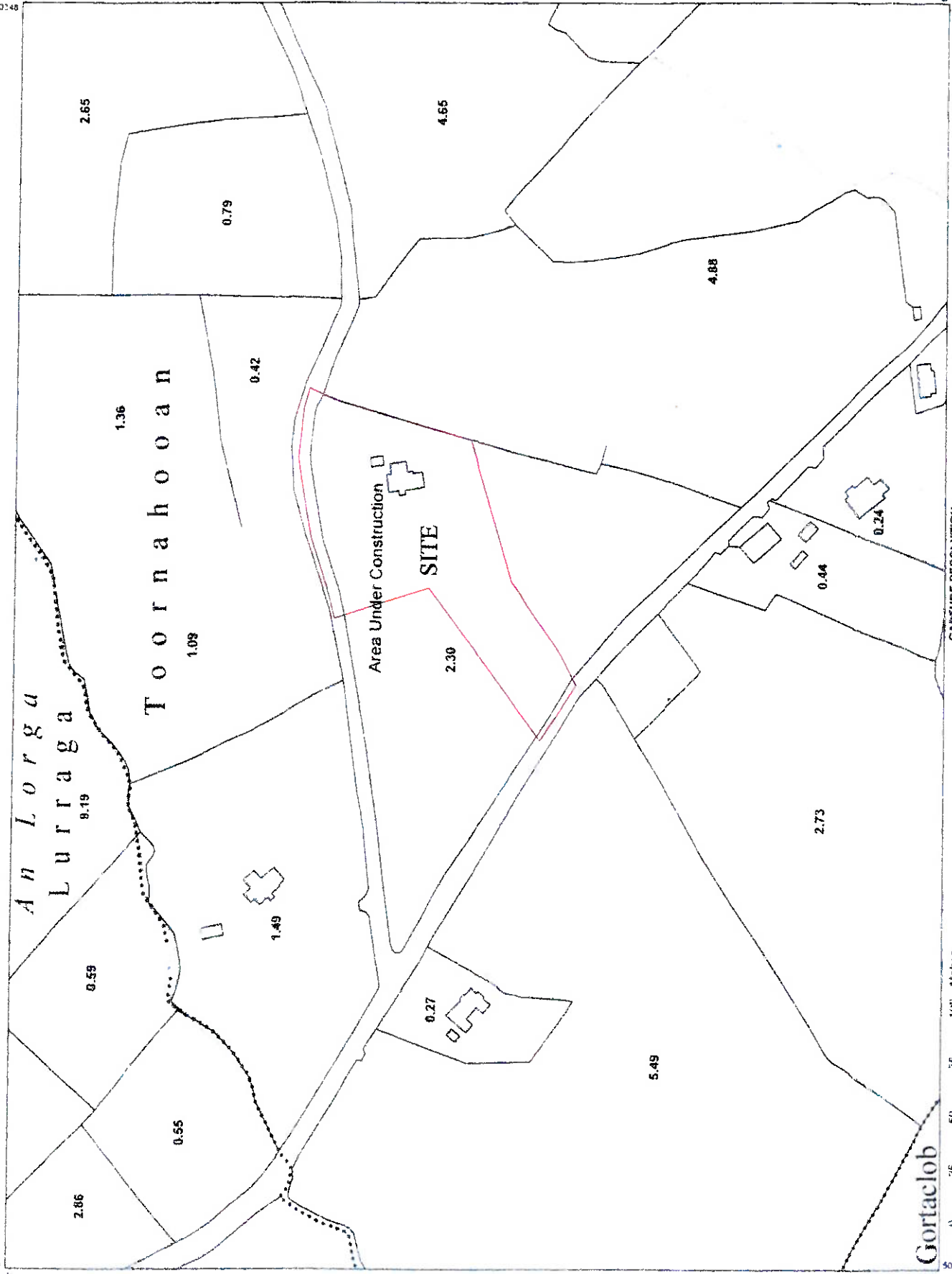
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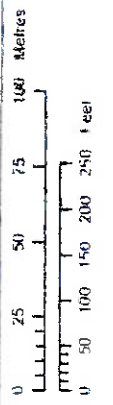
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**LEGEND:**  
To view the legend visit [www.os.ie](http://www.os.ie) and search for Large Scale Legend

**CAPTURE RESOLUTION:**  
The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Further information is available at [www.os.ie](http://www.os.ie) search Capture Resolution.

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



**Gortaclob**

510348

510348

509765

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Killeshinbegh  
Killeshinbegh  
Co. Clare

27<sup>th</sup> July 2023

Achara

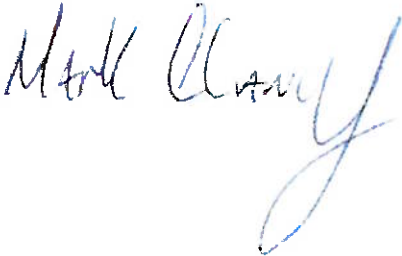
I am the registered owner of the dwelling house adjacent to John Clancy's dwelling at Toornahoun,  
Lisdoonvarna, Co. Clare

I have given my consent to the building of the horticultural shed to the rear of John Clancy's house.  
It was agreed to locate the shed to the rear of his house so that it would not impact upon the view  
from my dwelling.

It was also agreed that the roofing and exterior finish of the building would be constructed in  
keeping with the finish of both dwelling houses to mitigate and reduce the visual impact. (finished  
plaster, painted in the same colour as the house. No metal sheeting).

Please do not hesitate to contact me if you have any queries.

Le meas  
Mark Clancy







P07

CLARE COUNTY COUNCIL  
COMHAIRLE CONTAE AN CHLÁIR

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

Telephone No. (065) 6821616  
Fax No. (065) 689207  
Email: [planning@clarecoco.ie](mailto:planning@clarecoco.ie)  
Website: [www.clarecoco.ie](http://www.clarecoco.ie)

CLARE  
COUNTY COUNCIL

03 NOV 2023

Received  
Planning Section



Comhairle Contae an Chláir  
Clare County Council

R23-85

REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT  
(Section 5 of the Planning & Development Act 2000 (as amended))

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration	JOHN CLANCY TOORNAHOLIN LISDOONVARRA CO. CLARE.
(b) Telephone No.:	087/2820407
(c) Email Address:	
(d) Agent's Name and address:	AIDEN FITZGERALD B.ENG. MIEI AF ENGINEERING DOOLIN CO. CLARE

2. DETAILS REGARDING DECLARATION BEING SOUGHT

- (a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT  
*Note: only works listed and described under this section will be assessed.*

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

IS THE CONSTRUCTION OF AN AGRICULTURAL SITES TO THE REAR OF EXISTING DWELLING HOUSE DEVELOPMENT AND IF SO IS IT EXEMPTED DEVELOPMENT.

- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

THE AGRICULTURAL SITES REPLACED A PRE-EXISTING AGRICULTURAL SITES WITHIN THE LANDHOLDING AS DETAILED IN ATTACHED MAP - REF GEOHIVE 2001.

THE CURRENT AGRICULTURAL SITES WAS CONSTRUCTED TO ADHERE TO THE EXEMPTIONS AS PROVIDED FOR IN SCHEDULE 2, PART 3, CLASS 9 OF THE PLANNING & DEVELOPMENT REGULATIONS.

ATTACHED LETTER OF CONSENT FROM ADJOINING HOUSEHOLD WITHIN 100M OF THE SUBJECT SITES.

RETENTION PLANNING APPLICATION REF P23/343 IS CURRENTLY AT FURTHER INFORMATION (28/7/2023) WHERE THE P.A. INTIMATED THAT THE AGRICULTURAL SITES COULD NOT BE CONSIDERED EXEMPTED DEVELOPMENT AS IT IS LOCATED WITHIN THE CURTIAGE OF A DWELLING. - WE CANNOT FIND ANY REFERENCE TO THE EXEMPTION NOT APPLYING WITHIN THE CURTIAGE OF A DWELLING IN SCH 2, PART 3, CLASS 9 OF THE PLANNING & DEV. REGULATIONS.

- (c) List of plans, drawings etc. submitted with this request for a declaration:

*(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)*

SITE LAYOUT DRAWING - JC 010123.

OS1 SITE LOCATION MAP - GEOHIVE MAP 2001

LETTER FROM ADJOINING HOUSEHOLD WITHIN 100M OF SITES

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	TOORNAHOLAN LISDOONVARNA CO. CLARE
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWNER
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	N/A
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	WARNING LETTER REFERENCE UD 22/11
(g) Were there previous planning application/s on this site? If so please supply details:	P11/616 P23/343
(h) Date on which 'works' in question were completed/are likely to take place:	UNDER CONSTRUCTION

SIGNED:



DATE:

3/11/2023

**GUIDANCE NOTES**

*This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority*

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,  
Economic Development Directorate,  
Clare County Council  
Aras Contae an Chlair,  
New Road,  
Ennis,  
Co. Clare  
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

**FOR OFFICE USE ONLY**

Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:	.....		



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**John Clancy**  
C/o Aiden Fitzgerald, AF Engineering  
Doolin  
Co. Clare

03/11/2023

**Section 5 referral Reference R23-85 -- John Clancy**

Is the construction of an agricultural shed to the rear of existing dwelling house development and if so is it exempted development?

A Chara,

I refer to your application received on 3rd November 2023 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

**Brian Fahy**  
Planning Department  
Economic Development Directorate

An Roinn Pleanála  
An Stiúrthóireacht Forbairt Gheilleagrach  
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department  
Economic Development Directorate  
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2





P07

CLARE COUNTY COUNCIL  
COMHAIRLE CONTAE AN CHLÁIR

Planning Department,  
Economic Development Directorate,  
Clare County Council,  
New Road, Ennis,  
Co. Clare.  
E95DXP2

Telephone No. (065) 6821616  
Fax No. (065) 689207  
Email: [planoff@clarecoco.ie](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://www.clarecoco.ie)

CLARE  
COUNTY COUNCIL

03 NOV 2023

Received  
Planning Section



Comhairle Contae an Chláir  
Clare County Council

R23-85

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(b) Telephone No.:	.
(c) Email Address:	
(d) Agent's Name and address:	AIDEN FITZGERALD B.ENG. MIEI AF ENGINEERING DUBLIN CO. CLARE





2. DETAILS REGARDING DECLARATION BEING SOUGHT

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT

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IS THE CONSTRUCTION OF AN AGRICULTURAL SITED TO THE REAR OF EXISTING DWELLING HOUSE DEVELOPMENT AND IF SO IS IT EXEMPTED DEVELOPMENT.

(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

THE AGRICULTURAL SHED REPLACED A PRE-EXISTING AGRICULTURAL SITED WITHIN THE LANDHOLDING AS DETAILED IN ATTACHED MAP - REF GEONIVE 2001.

THE CURRENT AGRICULTURAL SITED WAS CONSTRUCTED TO ADHERE TO THE EXEMPTIONS AS PROVIDED FOR IN SCHEDULE 2, PART 3, CLASS 9 OF THE PLANNING & DEVELOPMENT REGULATIONS.

ATTACHED LETTER OF CONSENT FROM ONLY HOUSEHOLD WITHIN 100M OF THE SUBJECT SITED.

RETENTION PLANNING APPLICATION REF P23/343 IS CURRENTLY AT FURTHER INFORMATION (28/7/2023) WHERE THE P.A. INTIMATED THAT THE AGRICULTURAL SITED COULD NOT BE CONSIDERED EXEMPTED DEVELOPMENT AS IT IS LOCATED WITHIN THE CURTIAGE OF A DWELLING. - WE CANNOT FIND ANY REFERENCE TO THE EXEMPTION NOT APPLYING WITHIN THE CURTIAGE OF A DWELLING IN SCH 2, PART 3, CLASS 9 OF THE PLANNING & DEV. REGULATIONS

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SITE LAYOUT DRAWING - JC 010123.

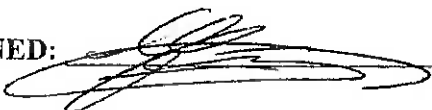
OS1 SITE LOCATION MAP - GEONIVE MAP 2001

LETTER FROM ADJOINING HOUSEHOLD WITHIN 100M OF SITED



<b>3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT</b>	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	TOORNAHOUN LISDOONVARNA CO. CLARE
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO
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(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	N/A
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	WARNING LETTER REFERENCE UD 22/11
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	P11/616 P23/343
(h) Date on which 'works' in question were completed/are likely to take place:	UNDER CONSTRUCTION

SIGNED:



DATE: 3/11/2023



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V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
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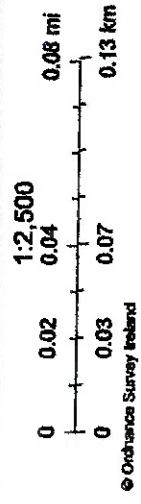
**FOR OFFICE USE ONLY**

Date Received: .....	Fee Paid: .....
Date Acknowledged: .....	Reference No.: .....
Date Declaration made: .....	CEO No.: .....
Decision: .....	





11/2/2023, 4:59:19 PM

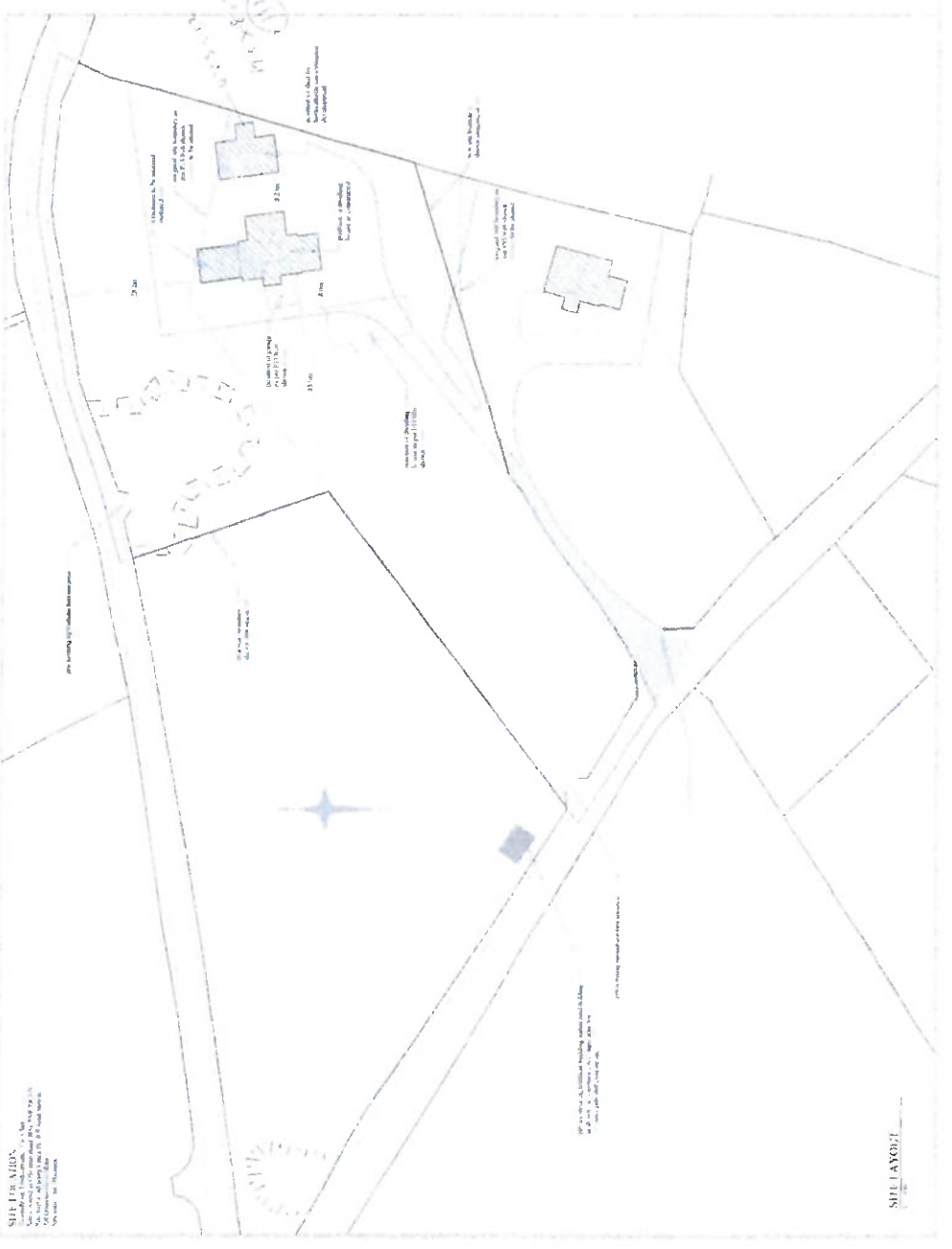
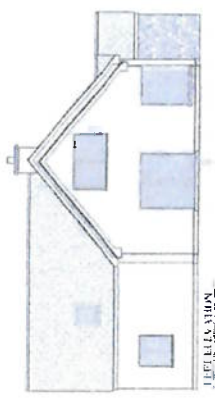
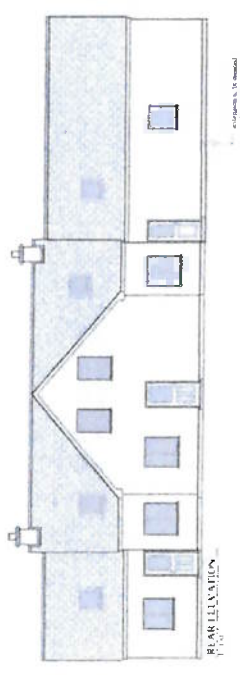
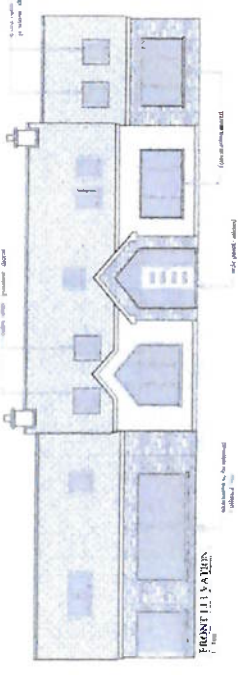
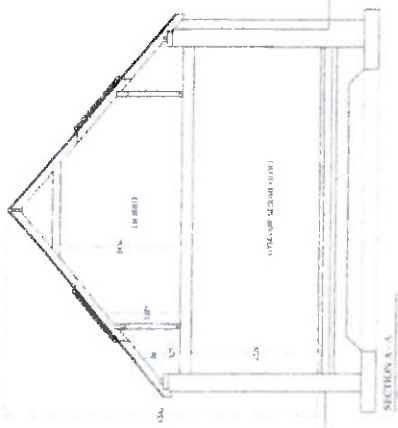












**AIDEN FITZGERALD ARCHITECTS**  
 ARCHITECTS  
 1000 W. 10th St. Suite 100  
 Anchorage, AK 99501  
 Phone: (907) 562-1234  
 Fax: (907) 562-1235  
 Email: info@aidenfitzgerald.com

PROJECT: 1000 W. 10th St. Suite 100  
 DATE: 10/20/2023  
 SCALE: 1/8" = 1'-0"  
 DRAWING NO.: 1000 W. 10th St. Suite 100 - 1000 W. 10th St. Suite 100 - 1000 W. 10th St. Suite 100  
 DRAWING BY: A. FITZGERALD

APPLY SETBACKS PER ZONING ORDINANCE  
 SETBACKS: 25' SIDE, 35' FRONT, 10' REAR  
 ZONING: R-10  
 TOTAL AREA: 10,000 SQ. FT.  
 TOTAL FLOOR AREA: 10,000 SQ. FT.



Kilcarraig  
Killeshilla  
Co. Clre

8<sup>th</sup> July 2023

A chara,

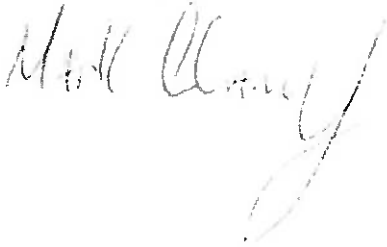
I am the registered owner of the dwelling house adjacent to John Clancy's dwelling at Toornahoun,  
Lisdoonahilly, Co. Clre

I have given my consent to the building of the horticultural shed to the rear of John Clancy's house.  
It was agreed to locate the shed to the rear of his house so that it would not impact upon the view  
from my dwelling.

It was also agreed that the roofing and exterior finish of the building would be constructed in  
keeping with the finish of both dwelling houses to mitigate and reduce the visual impact. (finished  
plaster, painted in the same colour as the house. No metal sheeting).

Please do not hesitate to contact me if you have any queries.

I.e. meas  
Mark Clancy





# CONTAE

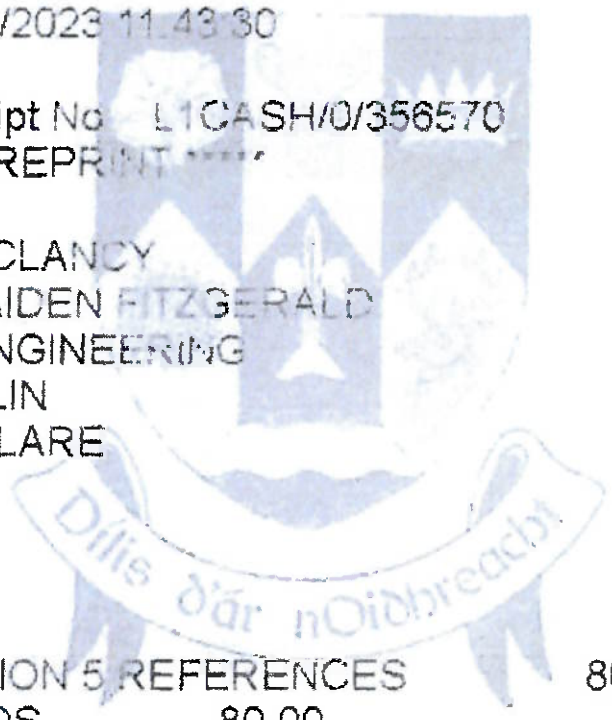
Clare County Council  
Aras Contae an Chláir  
New Road  
Ennis  
Co Clare

# AN CHLÁIR

03/11/2023 11:43:30

Receipt No: L1CASH/0/356570  
\*\*\*\*\* REPRINT \*\*\*\*\*

JHN CLANCY  
C/O AIDEN FITZGERALD  
AF ENGINEERING  
DOOLIN  
CO CLARE



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

Total : 80.00 EUR

# COMHAIRLE

Tendered :  
CREDIT CARDS 80.00

# CONTAE

Change : 0.00

# AN CHLÁIR

Issued By : L1CASH- Noilin Hayes  
From : MAIN CASH OFFICE LODGEMENT AF  
Vat reg No.0033043E

1





COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**John Clancy  
C/o Aiden Fitzgerald, AF Engineering  
Doolin  
Co. Clare**

**28th November 2023**

**Section 5 referral Reference R23-85 – John Clancy**

Is the construction of an agricultural shed to the rear of existing dwelling house development and if so is it exempted development?

A Chara,

I refer to your application received on 3rd November 2023 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at [www.pleanala.ie](http://www.pleanala.ie)

Mise, le meas

**Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate**



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

**Reference No.: R23-85**



**Comhairle Contae an Chláir  
Clare County Council**

**Section 5 referral Reference R23-85**

**Is the construction of an agricultural shed to the rear of existing dwelling house development and if so is it exempted development?**

**AND WHEREAS, John Clancy** has requested a declaration from Clare County Council on the said question.

**AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –**

- (a) Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) Schedule 2, Part 1, Class 3 of the Planning and Development Regulations 2001 (as amended)
- (c) Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended)
- (d) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- (e) The details and drawing as indicated in submitted documents from the referrer.

**And whereas Clare County Council has concluded:**

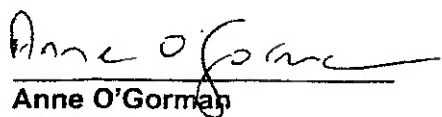
- (a) The development consisting of the construction of an agricultural shed to the rear of an existing dwelling house constitutes "works" and "development" which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- (b) The structure, the subject of this referral, is located within the curtilage of a dwelling house, and as such the exemptions for agricultural buildings as set out under Class 9 of Part 3, Schedule 2 of the Planning & Development Regulations 2001, as amended, do not apply.
- (c) The structure would not meet the exempted development requirements of Class 3 of Part 1, Schedule 2 of the Planning & Development Regulations 2001, as amended (i.e. development within the curtilage of a house), including the conditions and limitations therein.
- (d) There are no other provisions under the Planning Acts or Regulations to render the subject structure as exempted development.

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

The proposed development consisting of the construction of an agricultural shed to the rear of an existing dwelling at Tournahoan, Lisdoonvarna, Co. Clare **constitutes development** which



is not exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



**Anne O'Gorman**  
**Staff Officer**  
**Planning Department**  
**Economic Development Directorate**

**28th November 2023**



**CLARE COUNTY COUNCIL**

**SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED**

**DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT**

Chief Executive's Order No:

82776

Reference Number:

R23-85

Date Referral Received:

3rd November 2023

Name of Applicant:

John Clancy

Location of works in question:

Tournahoan, Lisdoonvarna, Co. Clare

**Section 5 referral Reference R23-85 – John Clancy**

Is the construction of an agricultural shed to the rear of existing dwelling house development and if so is it exempted development?

**AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –**

- (a) Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) Schedule 2, Part 1, Class 3 of the Planning and Development Regulations 2001 (as amended)
- (c) Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended)
- (d) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- (e) The details and drawing as indicated in submitted documents from the referrer.

**AND WHEREAS Clare County Council has concluded:**

- (a) The development consisting of the construction of an agricultural shed to the rear of an existing dwelling house constitutes "works" and "development" which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- (b) The structure, the subject of this referral, is located within the curtilage of a dwelling house, and as such the exemptions for agricultural buildings as set out under Class 9 of Part 3, Schedule 2 of the Planning & Development Regulations 2001, as amended, do not apply.
- (c) The structure would not meet the exempted development requirements of Class 3 of Part 1, Schedule 2 of the Planning & Development Regulations 2001, as amended (i.e. development within the curtilage of a house), including the conditions and limitations therein.
- (d) There are no other provisions under the Planning Acts or Regulations to render the subject structure as exempted development.

**ORDER:**

Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate





to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the construction of an agricultural shed to the rear of an existing dwelling house at Tournahoan, Lisdoonvarna, Co. Clare is **considered development** which is **not exempted development**.

Signed:

  
\_\_\_\_\_  
GARETH RUANE  
SENIOR EXECUTIVE PLANNER *AR*

Date: 28th November 2023

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CLARE COUNTY COUNCIL  
SECTION 5 DECLARATION OF EXEMPTION APPLICATION  
PLANNERS REPORT

**FILE REF:** R23/ 85 John Clancy  
**APPLICANT(S):**

**REFERENCE:** Whether the construction of agricultural shed to the rear of an existing dwelling house is or is not development and is or is not exempted development.

**LOCATION:** Tournahoan, Lisdoonvarna, Co. Clare

**DUE DATE:** 29<sup>th</sup> Nov 23

**Site Description.**

The site is located in Tournahoan. The site is occupied by a dwelling and the building which is the subject of this application .

**Planning History on site**

23/ 343 Application for PERMISSION the development will consist of a) RETENTION of extension and minor alterations to the fenestration and position of the existing dwelling house and b) PERMISSION to alter site boundaries as permitted under planning reference P11/616 together with ancillary site works. Further information requested 28/ 07/ 23 was as follows:

- 1. The Planning Authority notes that the proposed development includes for permission to alter the site boundaries as permitted under pl 11/ 616, and that works have been carried out within the curtilage of the site which do not appear to have the benefit of planning permission, namely the construction of an additional building to the rear of the dwelling. It is considered that proposed development cannot be considered to be exempted development for the purposes of agriculture given that it is located within the curtilage of a dwelling, the site boundaries of which are proposed to be altered. It is considered that proposed development and proposed retention on this site without the concurrent or prior regularisation of the works which have already been undertaken would compound unauthorised development of the site and would be contrary to the proper planning and development of the area. You are requested to outline how it is intended to regularise the above.*

11/ 616 John Clancy. Permission granted for development which will consist of a dwelling house, garage with septic tank and percolation area together with ancillary site works at Toornahoan Lisdoonvarna. It is noted that the garage permitted under this application was



located to the north of the dwelling and comprised 77 sq.m. of floor area ( ground floor garage 454 sq.m. and storage at loft left 32.3sq.m.). This garage was not constructed on site.

UD 22/ 111 – warning letter was served 27<sup>th</sup> Feb 23 for the following :

1. Unauthorised extension to north of dwelling house without the benefit of planning permission.
2. Unauthorised placing of 2 Velux roof lights to front elevation without the benefit of planning permission.
3. Construction of structure to rear of dwelling house without the benefit of planning permission.
4. Siting of dwelling house does not match with the site layout plan as submitted under planning reference P11/616

The agent advised on this file 14<sup>th</sup> Jul that the structure to the rear of the dwelling house is to be used for agriculture and falls under exempted development regulations as defined in the planning and development regulation schedule 2 part 3 class 9.

#### **Details submitted with the application**

- Site location map scale 1:500 showing the site outlined in red.
- Site layout map scale 1: 500 with the site outlined in red.
- Letter from Mark Clancy adjoining land owner giving his consent to the building of a horticultural shed at the rear of John Clancys house. Letter refers to external finishes matching those of the dwelling.
- Site layout plan scale 1 : 500 showing the position of the building on site, relative to the dwelling.
- Completed application form which state in summary the shed replaced a pre existing shed.
- The shed was constructed in accordance with Schedule 2 , part 3 class 9 of the Regulations and includes letter of consent from Mark Clancy , owner of adjoining residence.
- Retention application 23/ 343 is currently on f.i. where PA stated that the shed could not be considered exempted development as it is located within the curtilage of a dwelling . The applicant cannot find any reference to the exemption not applying to within the curtilage of a dwelling in schedule 2, part 3, Class 9 of the Regulations.

No drawings of the shed have been submitted.

No photographs ( internal or external ) have been submitted.



## **Background to Referral**

### **Statutory Provisions**

#### **Planning and Development Act, 2000 (as amended)**

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

'Works' are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

*"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

'Development' are defined in Section 3 of the *Planning and Development Act 2000, as amended* as follows:

*S.3.(1) 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.*

#### **Planning & Development Regulations, 2001, as amended**

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

#### **Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3,**





*Part 3 Exempted Development Rural- Article 6*

**Class 9**

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 9

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

**Conditions and Limitations**

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

*Schedule 2, Article 6, Part 1 – Exempted Development General.*

**CLASS 3** The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.
3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.
4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.
5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.



Under Article 9 (1) of the same Regulations, development to which Article 6 relates shall not be exempted development for the purposes of the Act:

(a) if the carrying out of such development would –

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
- (ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
- (iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*
- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*
- (vii) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would*



*require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

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

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

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

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

*(xi) obstruct any public right of way,*

*(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.*

## Assessment

### Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the construction of the construction of agricultural shed to the rear of an existing dwelling house unit is development and is or is not exempted development.

- No drawings of the shed have been submitted.
- No photographs ( internal or external ) have been submitted.
- No details have been submitted to demonstrate that the structure is being used for agricultural purposes.
- It was noted on inspection for 23/ 343 that the building has been finished to match the dwelling on site, it has a first floor area, roof light and windows of a domestic appearance with an opening which appeared to be of dimensions sufficient to form a garage door.
- The Regulations make a clear distinction between exempted developments permitted within the curtilage of a dwelling house (Class 3 Schedule 2, Article 6 , Part



1 Exempted Development – General) and exempted development for the purposes of agriculture - Part 3, Article 6, Exempted Development Rural. ( Agricultural structures class 6 to class 10 inclusive).

- The subject development is located within the curtilage of a dwelling and as such regulations Class 3 ( Schedule 2, Article 6 , part 1 Exempted Development – General apply. It is considered that the structure falls outside the scope of Class 9

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3.

**CLASS 3** The construction, erection or placing **within the curtilage of a house** of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

1.No such structure shall be constructed, erected or placed forward of the front wall of a house.

**The structure is not forward of the building line. It is located to the rear of the building line .**

2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

**No detailed drawings of the structure have been received. However from inspection it would appear that the development has a floor area which exceeds 25 sq.m. The site layout plan shows a footprint of approximately 112 sq.m.**

3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.

**The structure does not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.**

4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.

**The external finishes match those of the dwelling on site.**

5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.

**The height of the building exceeds the height restriction of 4m ( pitched roof)**

6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.





**The applicant advises the structure is to be used for horticultural purposes ( but is not a green house)**

Article 9 of the Planning and Development Regulations 2001, as amended

Article 9 of the Planning and Development Regulations 2001, as amended outlines restrictions on exempted development, and these are assessed below:

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*

**Condition 13 of 11/ 616 states 'The proposed garage shall not be used for human habitation, or any commercial activity or for any other purpose than a purpose incidental to the enjoyment of the dwelling'.**

**Reason:** In the interest of residential amenity and the orderly development of the area.

- (ii) *consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

**No alterations to the existing access point are proposed.**

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

**N/A.**

*(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*

**N/A.**

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

**N/A**

- (v) *consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main*



*or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

**N/A This is not applicable in this instance.**

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

**N/A This is not applicable in this instance.**

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

**N/A This is not applicable in this instance .**

- b. *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

**N/A**

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

**This is not applicable in this instance as the subject site is not located in a NHA or p NHA.**

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

**This is not applicable in this instance.**



- (ix) *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

**This is not applicable in this instance.**

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

**This is not applicable in this instance.**

- (xi) *obstruct any public right of way,*

**This is not applicable in this instance.**

- (xii) *further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.*

**This is not applicable in this instance.**

## **Conclusion**

The structure is erected within the curtilage of a dwelling and therefore exemptions under classes of development for agricultural purposes does not apply to a residential setting.

Having regard to the above it is considered that the proposed development constitutes both 'works' and 'development'. Notwithstanding the applicant assertion that the structure is for agricultural use there is no class of exemption which permits agricultural buildings within the curtilage of a dwelling. Regard has been had to Class 3, of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended and Article 9 as amended of the same Regulations .



## Recommendation

The following questions have been referred to the Planning Authority:

Whether the construction of agricultural shed to the rear of an existing dwelling house at Tournahoan, Lisdoonvarna, Co. Clare is or is not development and is or is not exempted development.

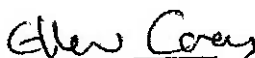
The Planning Authority in considering this referral had regard to:


- (a) Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) Schedule 2, Part 1, Class 3 of the Planning and Development Regulations 2001 (as amended)
- (c) Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended)
- (d) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- (e) The details and drawing as indicated in submitted documents from the referrer.

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

- a) the development consisting of the construction of agricultural shed to the rear of an existing dwelling house constitutes "works" and "development" which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- b) The structure, the subject of this referral, is located within the curtilage of a dwelling house, and as such the exemptions for agricultural buildings as set out under Class 9 of Part 3, Schedule 2 of the Planning & Development Regulations 2001, as amended, do not apply.
- c) The structure would not meet the exempted development requirements of Class 3 of Part 1, Schedule 2 of the Planning & Development Regulations 2001, as amended (i.e. development within the curtilage of a house), including the conditions and limitations therein.
- d) There are no other provisions under the Planning Acts or Regulations to render the subject structure as exempted development.

Now therefore Clare County Council (Planning Authority), hereby decides that construction of agricultural shed to the rear of an existing dwelling house at Tournahoan, Lisdoonvarna, Co. Clare is development and is not exempted development.

  
Ellen Carey  
Executive Planner  
Date: 28/11/23.

  
Gareth Ruane  
Senior Executive Planner  
Date: 28/11/23.





### Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	Section 5 R23/ 85
(b) Brief description of the project or plan:	Agricultural shed
(c) Brief description of site characteristics:	Curtilage of existing dwelling
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None



(e) Response to consultation:

None

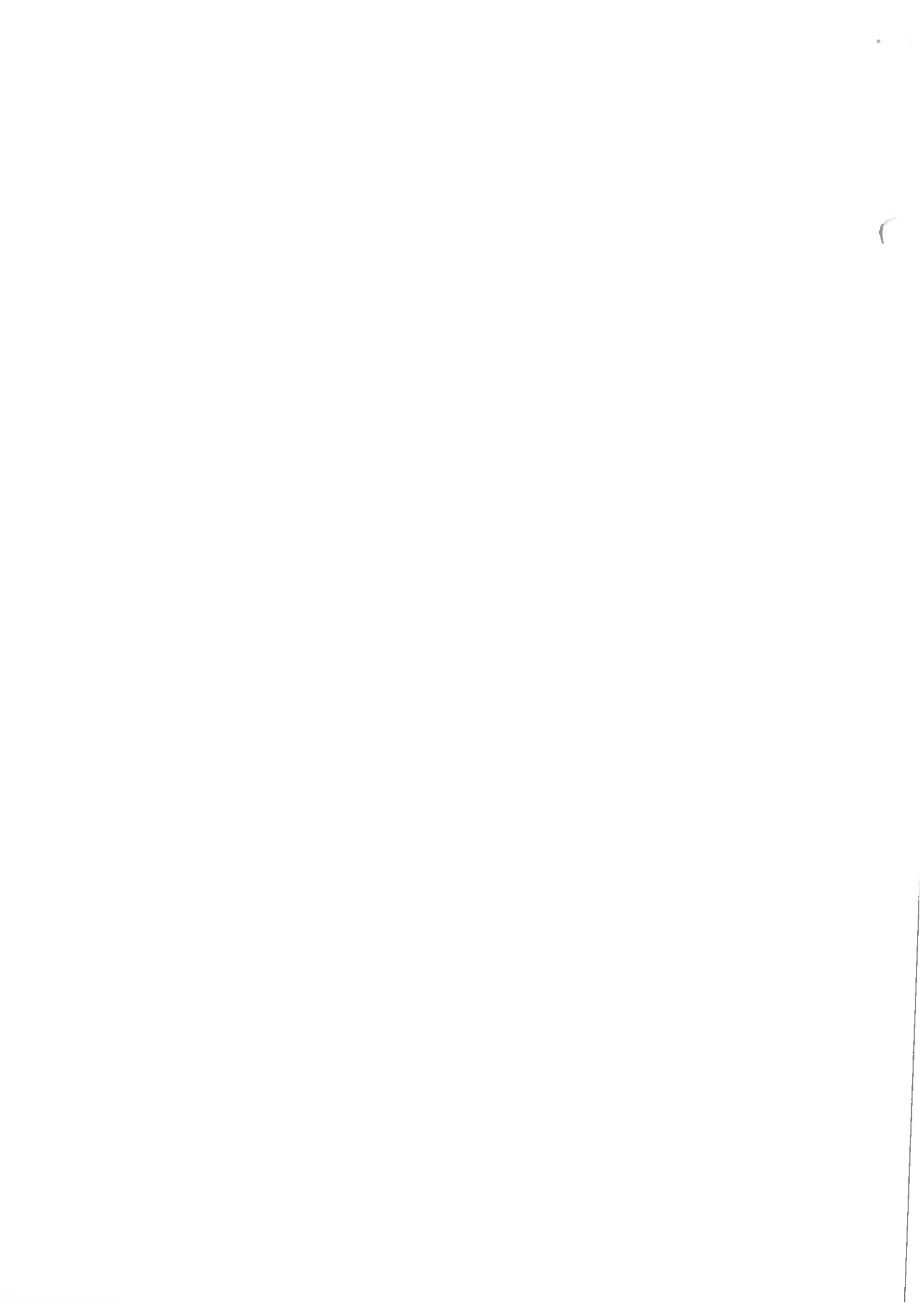
STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.

European Site (code)	List of Qualifying Interest/Special Conservation Interest <sup>1</sup>	Distance from proposed development <sup>2</sup> (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
Blackhead to Poulsallagh Complex SAC	Annex I habitats: • Reefs [1170] • Perennial vegetation of stony banks [1220] • Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche=Batrachion</i> vegetation [3260] • Alpine and boreal heaths [4060] • <i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130] • Semi-natural dry grasslands and scrubland facies on calcareous grasslands [6210] • Lowland hay meadows ( <i>Alopecurus pratensis</i> , <i>Sanguisorba officinalis</i> ) [6510] • Petrifying springs with tufa formation (Cratoneurion) [7220] • *Limestone pavements [8240] • Submerged or partially submerged sea caves [8330] Annex II Species • Petalwort <i>Petaphyllum ralfsii</i>	2km	none	no



- <sup>1</sup> Short paraphrasing and/or cross reference to NPWS is acceptable – it is not necessary to reproduce the full text on the QI/SCI.
- <sup>2</sup> If the site or part thereof is within the European site or adjacent to the European site, state here.

STEP 3. Assessment of Likely Significant Effects	
(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:	
Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
Construction phase e.g. <ul style="list-style-type: none"> <li>• Vegetation clearance</li> <li>• Demolition</li> <li>• Surface water runoff from soil excavation/infill/landscaping (including borrow pits)</li> <li>• Dust, noise, vibration</li> <li>• Lighting disturbance</li> <li>• Impact on groundwater/dewatering</li> <li>• Storage of excavated/construction materials</li> <li>• Access to site</li> <li>• Pests</li> </ul>	none
Operational phase e.g. <ul style="list-style-type: none"> <li>• Direct emission to air and water</li> <li>• Surface water runoff containing contaminant or sediment</li> <li>• Lighting disturbance</li> <li>• Noise/vibration</li> <li>• Changes to water/groundwater due to</li> </ul>	none



drainage or abstraction

- Presence of people, vehicles and activities
- Physical presence of structures (e.g. collision risks)
- Potential for accidents or incidents

In-combination/Other

none

**(b) Describe any likely changes to the European site:**

Examples of the type of changes to give consideration to include:

none

- Reduction or fragmentation of habitat area
- Disturbance to QI species
- Habitat or species fragmentation
- Reduction or fragmentation in species density
- Changes in key indicators of conservation status value (water or air quality etc.)
- Changes to areas of sensitivity or threats to QI
- Interference with the key relationships that define the structure or ecological function of the site

**(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?**

Yes  No

Step 4. Screening Determination Statement

The assessment of significance of effects:






Describe how the proposed development (alone or in-combination) is/is not likely to have significant effects on European site(s) in view of its conservation objectives.

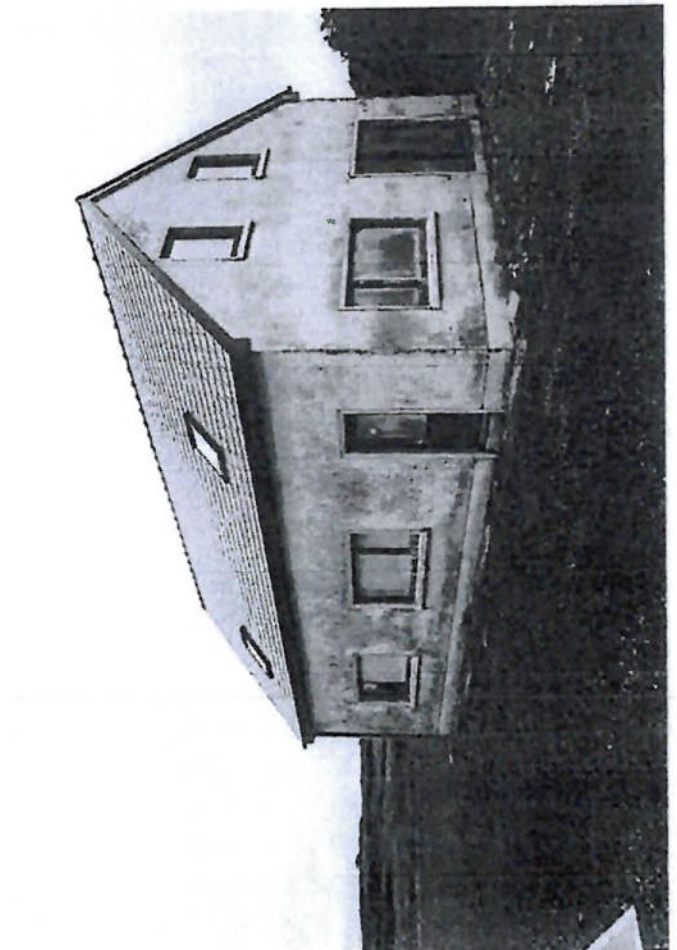
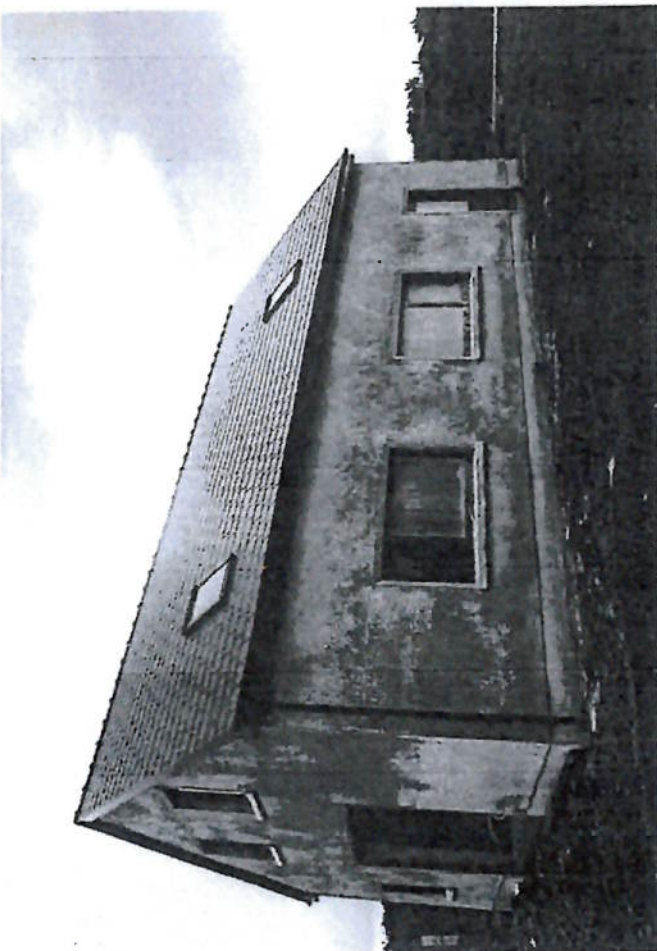
Having regard to the separation distance between the subject site and the SAC, and the lack of hydrological connection the proposed development is not likely to have significant effects on European site(s) in view of its conservation objectives

Conclusion: Having regard to the separation distance between the subject site and the SAC, and the lack of hydrological connection the proposed development is not likely to have significant effects on European site(s) in view of its conservation objectives.

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
(iii) Significant effects are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
Signature and Date of Recommending Officer:	28/11/23	 Name: Ellen Carey E.P.
Signature and Date of the Decision Maker:		

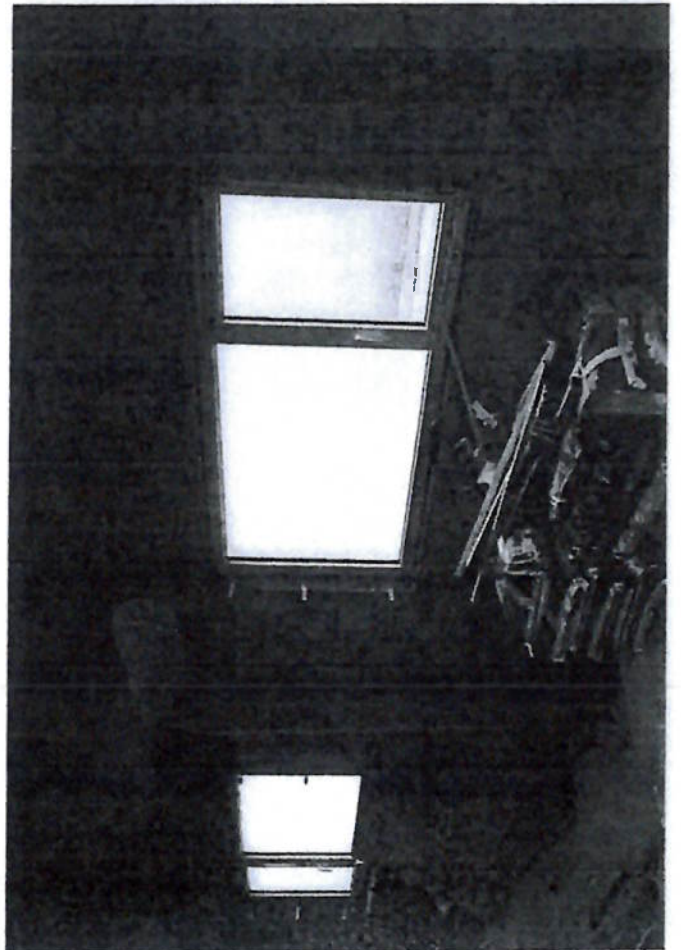
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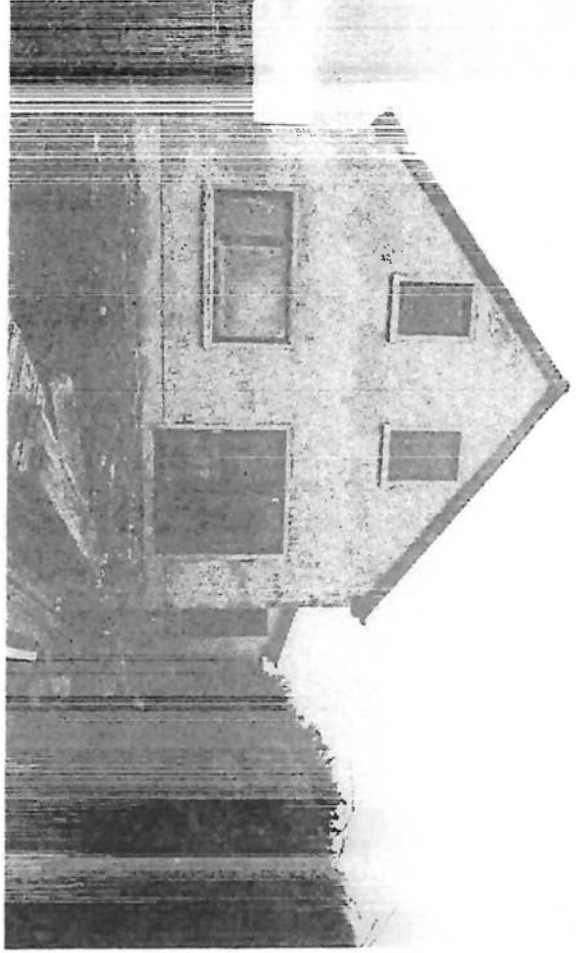
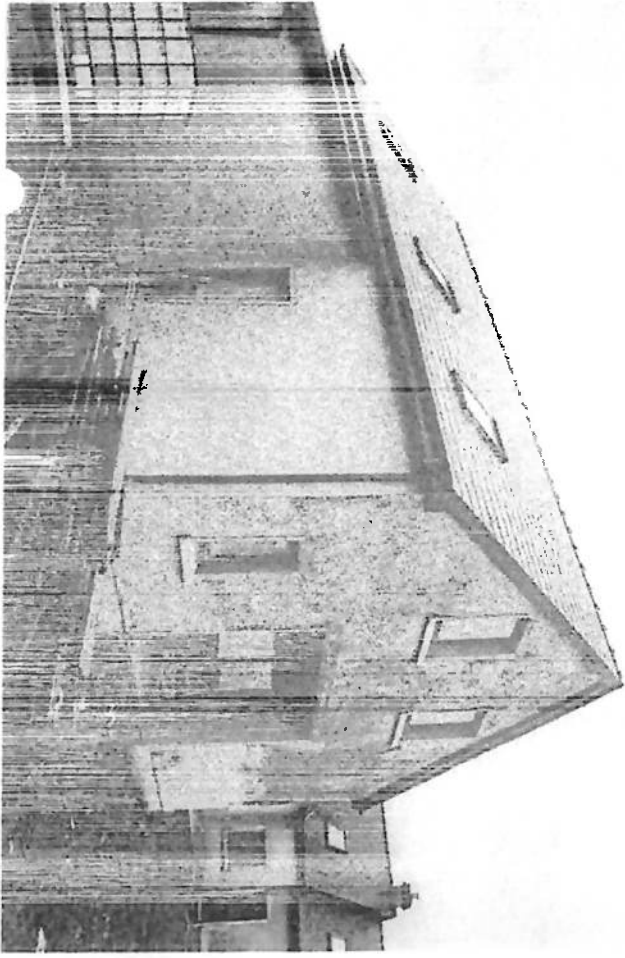




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