

Comhairle Contae Chorcaí Cork County Council

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

Att: Dáire Littleton Caden/Stephen Sutton.

21st January 2025

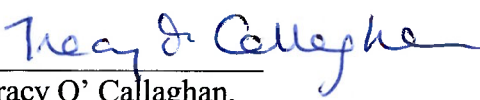
**RE: Referral to ABP under Section 5(4) of the Planning and Development Act 2000
(as amended), in respect to Burgess Service Station, Burgess Lower, Killeagh,
Co. Cork, P36 XP04.**

Dear Sirs,

The Planning Authority requests An Bord Pleanála to determine the question asked in the attached document.

I also enclose Paying Order No. 0000185453 in the sum of €110.00 for this.

Yours faithfully,


Tracy O' Callaghan,
Staff Officer.

Encl.

Pleanáil agus Forbairt,
Halla an Chontae,
Bóthar Charraig Ruacháin,
Corcaigh T12 R2NC.

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| AN BORD PLEANÁLA | |
| LDG- | <u>077513-25</u> |
| ABP- | |
| 22 JAN 2025 | |
| Fee: € | <u>110</u> Type: <u>Chg</u> |
| Time: <u>9.32</u> | By: <u>Reag Post</u> |

AN BORD PLEANALA
64 MARLBOROUGH STREET
DUBLIN 1

COMHAIRLE CONTAE CHORCAÍ
CORK COUNTY COUNCIL

Date: 20/01/2025
Account: 70000000

Schedule No: 780

| Our Reference | Type | Payment Details | Your Reference | Amount EURO € |
|------------------|------|-------------------------------------|-------------------|---------------|
| 0000941355 | INV | REFERRAL FEE-SECT.5 -AN BORD PLEAN/ | REFERRAL.FEE-A | 110.00 |



110.00

The Secretary

An Bord Pleanála

64 Marlborough Street

Dublin 1

D01 V902

21.01.2025

RE: Referral under Section 5(4) of the Planning and Development Act 2000 as amended, in respect to Burgess Service Station, Burgess Lower, Killeagh Co. Cork P36 XP04

1.0 INTRODUCTION

This referral is made by Cork County Council under Section 5(4) of the Planning and Development Act 2000 in respect to Burgess Service Station, Burgess Lower, Killeagh Co. Cork. We enclose a payment of €110 in respect to the statutory referral fee.

It should be noted that this referral is being made to An Bord Pleanála to expedite circumstances related to Enforcement file EF 20/153 which is due for hearing in Midleton District Court in May 2025, and to provide clarity on the status of this site. For the purposes of this referral the Council have appended the Public Planning Register to this referral.

2.0 DETAILS OF PERSON MAKING THIS REFERRAL

Thomas Watt | Senior Planner | Planning and Development
Cork County Council | County Hall | Cork | T12 R2NC | Ireland

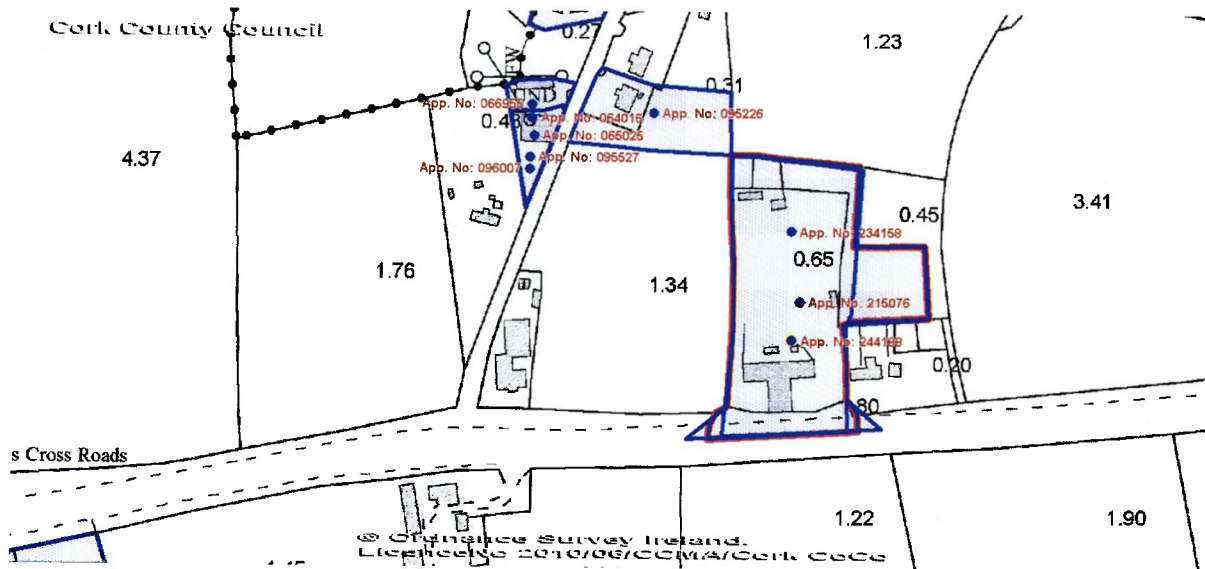
3.0 QUESTION REFERRED

The following question is presented to An Bord Pleanála:

1. Whether the operation of a service station shop at Burgess Service Station, Burgess Lower, Killeagh Co. Cork is or is not development, and is or is not exempted development.
 - (a) Whether or not the operation of a shop within a former restaurant at Burgess Service Station, Burgess Lower, Killeagh Co. Cork is or is not development, and is or is not exempted development.
 - (b) Whether or not the change of use of a former dwelling house and shop at Burgess Service Station, Burgess Lower, Killeagh Co. Cork to shop storage is or is not development, and is or is not exempted development.

4.0 THE REFERRAL SITE

The subject site is located within the townland of Burgess Lower, to the east of the town of Killeagh on the N25 national primary road. The Eircode for this premises is P36 XP04. A map of the Planning Register is included hereunder. A licenced map is included in Appendix 1 of this report.



The site comprises a petrol station including a large forecourt building. The rear of the site comprises a car parking area, as well as lorry/truck services. The site is bound to the east by a dwelling house and to the north and west by agricultural lands.

It should be noted that this site in the past comprised a permitted service station shop, a restaurant and a dwelling house.

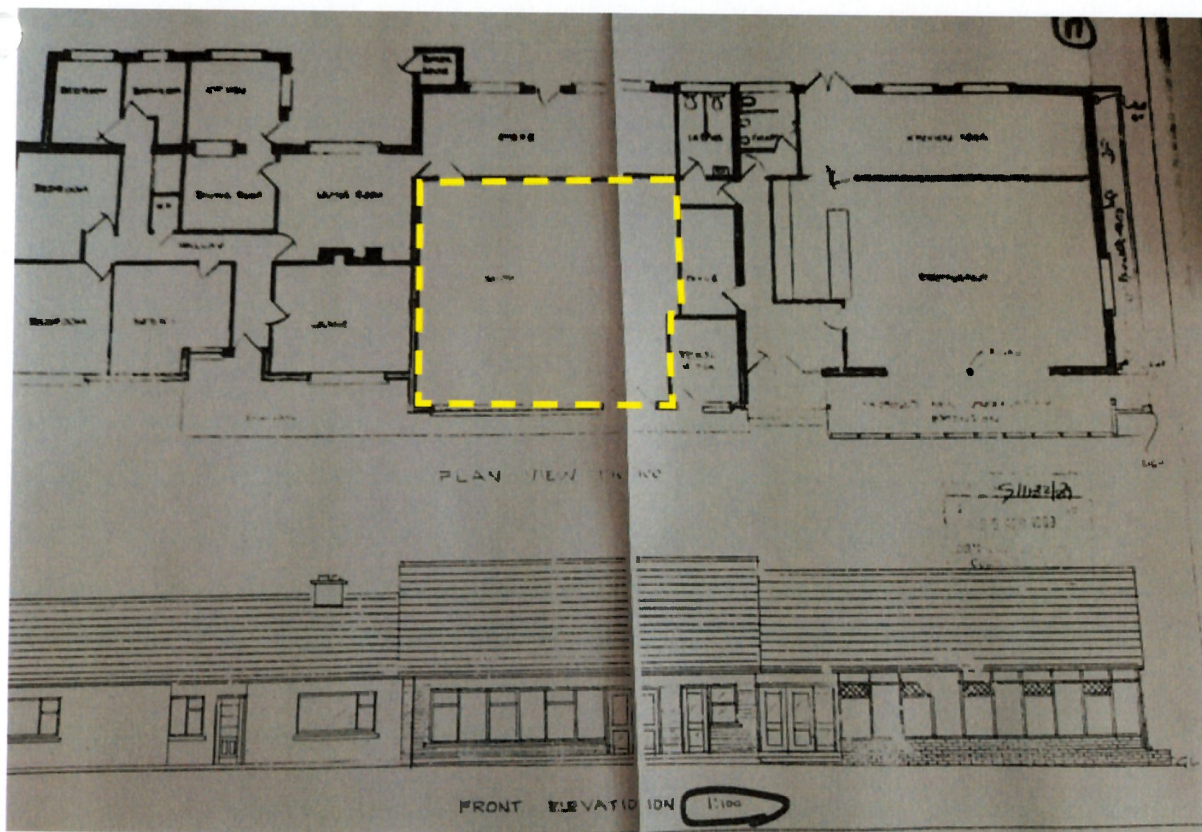
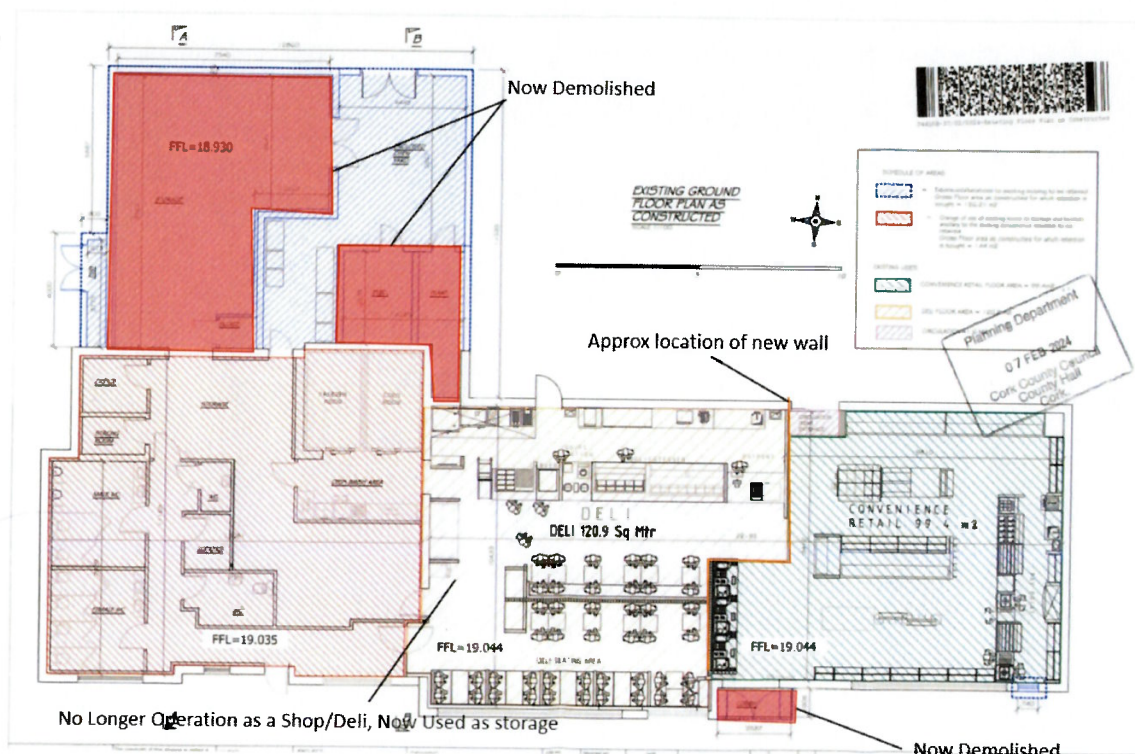


Image 1: Floor Plan Planning Reference 89/1182 (former shop area highlighted in yellow, the shop store is located to the north, the former dwelling is located to the west and the restaurant to the east.)

Since September 2020, there have been many and varying alterations to the internal layout of this service station. Extensions to the service station were also undertaken, which have since been demolished in accordance with a notice served. At its most intense there had been an uplift to c. 179sq.m of net retail floor space within the premises. The details of these iterations of development at the site are evidenced in the planning history as set out in Section 5.0 of this report.

Notwithstanding this history the Planning Authority makes this referral in respect to the present operation of a shop within a former restaurant and its associated ancillary storage areas at this site for which permission has not been granted. Additionally, the Planning Authority wishes to make it clear to the Board that the operation of a shop within the restaurant was not a 'remedy' specified under any enforcement notice associated with this site. As such this shop cannot be considered as works carried out in respect to a notice.

A general layout of the property is included hereunder, which is reflective of development on site on 16.10.2024. The base drawing used is as per the layout sought for retention under ref 24/4188. Text tags have been added to the drawing to provide context to the use and extent of development at this site.



5.0 RECENT RELEVANT PLANNING HISTORY

EF/20153

An Enforcement Notice has been recorded on the public register as served in respect to this premises.

The Planning Authority has determined that the notice has not been complied with, and a court date has been set.

The planning register entry in respect to the notice served is appended to this Referral for An Bord Pleanála's records, please see Appendix 1.

24/4188

| | |
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| Date received | 07.02.2024 |
| Description of Development | Permission for retention of the following: 1) the change of use of a dwelling house to storage and facilities ancillary to the existing shop/deli, 2) internal modifications to shop/restaurant layout to include the provision of a deli counter and seating area, and revised convenience retail floorspace, 3) rear extension to allow for additional storage space and service area, 4) construction of a lobby to front elevation, 5) modifications to external elevations, 6) erection of 18 no. lamp posts serving the existing car/truck parking area, 7) upgrading of waste water treatment unit and 8) all associated site development works. and permission is also sought for modifications to the existing access/egress to allow for a left-in/left-out only traffic system to the service station and all associated site development works. |
| Decision | Refusal |
| Reasons for Refusal | 1. This proposed development is not in accordance with the DoECLG Spatial Planning and National Road Guidelines for Planning Authorities 2012. The proposal if permitted would |

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| | <p>create an adverse impact on the N25 National Road at a location where the maximum speed limit applies (100 kph) and would be at variance with policy in relation to control of frontage development on National Roads.</p> <p>2. The proposed development is located on an unimproved section of National Road where the maximum speed limit (100kph) applies. It would pose a traffic hazard and cause obstruction with impacts to the operation and safety of all road users due to the movements of the extra traffic generated by the intensification of use of the site as outlined the DOECLG's Spatial Planning and National Roads Guidelines for Planning Authorities.</p> <p>3. It is considered that the development for which retention is sought would facilitate the expansion of the shop unit associated with the filling station such that it would be significantly in excess of 100 square metres of net retail floor space. The scale of the resultant retail unit would exceed the maximum level of net retail floor space for retail forecourt development as set out in the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012.</p> |
| 23/4158 | |
| Date Received | 03.02.2023 |
| Description of Development | Permission sought for retention of the following: 1) the change of use of an existing house to storage and facilities ancillary to the existing shop/restaurant; 2) extension to former house to allow for extra storage space and service area; 3) construction of a lobby to front elevation; 4) modifications to external elevations; 5) erection of 18 no. lamp posts serving the existing car/truck parking area; 6) upgrading of waste water treatment unit; 7) all associated site development works. |
| Decision | Withdrawn |
| 21/5076 | |
| Date Received | 23.04.2021 |
| Description of Development | Permission for retention of the following: 1) the change of use of an existing house to storage and facilities ancillary to the existing shop/restaurant; 2) extension to former house to allow for extra storage space and service area; 3) construction of a lobby to front elevation; 4) modifications to external elevations; 5) erection of floodlights and bollards; and 6) all associated site development works. |
| Decision | Refusal |
| Reason for Refusal | <p>1. It is considered that the development for which retention is sought would facilitate the expansion of the shop unit associated with the filling station such that it would be significantly in excess of 100 square metres of net retail floor space. The scale of the resultant retail unit would exceed the maximum level of net retail floor space for retail forecourt development as set out in the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012.</p> <p>2. The development for which retention is sought does not accurately reflect the use of the property to which this application relates. Drawings submitted clearly identify that</p> |

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| | <p>there is in excess of 100 square meters of net retail floor space which has been formed through the change of use of a former restaurant to a shop. Permission has not been sought for this change of use and the planning authority is therefore precluded from further considering this application. To do so would result in the consideration of a development which facilitates an unauthorised use.</p> <p>3. This proposed development is not in accordance with the DoECLG Spatial Planning and National Road Guidelines for Planning Authorities 2012. The proposal if permitted would create an adverse impact on the N25 National Road at a location where the maximum speed limit applies (100 kph) and would be at variance with policy in relation to control of frontage development on National Roads.</p> <p>4. The proposed development is located on an unimproved section of National Road where the maximum speed limit (100kph) applies. It would pose a traffic hazard and cause obstruction with impacts to the operation and safety of all road users due to the movements of the extra traffic generated by the intensification of use of the site as outlined the DOECLG's Spatial Planning and National Roads Guidelines for Planning Authorities.</p> |
| D/211/17 | |
| Decision | A declaration was sought in 2017 regarding whether or not the proposed resumption of a disused service station is or is not exempted development. It was declared that the resumption would not constitute 'development'. |
| 86/1362 | |
| Decision | Planning permission granted for a petrol service station including a forecourt, canopy, signage, shop and restaurant. |
| 87/820 | |
| Decision | Planning permission granted to extend truck parking area and relocate diesel pumps. |
| 89/1182 | |
| Decision | Permission granted for an extension to the restaurant |
| 91/2333 | |
| Decision | Permission granted for the erection of 2no. advertising signs. |

6.0 BASIS OF THIS REFERRAL

6.1 Background

A section 5 was made to Cork County Council pursuant to planning reference D/211/17 as to whether or not the proposed resumption of a disused service station is or is not exempted development. It was declared that the resumption would not constitute 'development'.

The reality of the development which was undertaken from 2020 onwards on site far exceeded what had been considered within the scope of the Section 5. Retention application 24/4188 had a statutory description of development as follows:

Permission for retention of the following: 1) the change of use of a dwelling house to storage and facilities ancillary to the existing shop/deli, 2) internal modifications to shop/restaurant layout to include the provision of a deli counter and seating area, and revised convenience retail floorspace, 3) rear extension to allow for additional storage space and service area, 4) construction of a lobby to

front elevation, 5) modifications to external elevations, 6) erection of 18 no. lamp posts serving the existing car/truck parking area, 7) upgrading of waste water treatment unit and 8) all associated site development works. and permission is also sought for modifications to the existing access/egress to allow for a left-in/left-out only traffic system to the service station and all associated site development works.

As noted in Section 5.0 above retention was refused. Since this refusal some works have been carried out in compliance with an Enforcement Notice served in respect to this site. However not all works have been carried out in compliance with the notice served.

For reference, the Council wish to make the Board aware that extension works were undertaken at this site coupled with internal material changes of use since 2020.

At the time of the most recent inspection at this site 16.10.2024 a shop remains operational within the forecourt building, albeit reduced in scale since the making of application 24/4188.

It is on the basis of the current petrol station operation that this referral is made.

6.2 Relevant Case Law - Molloy & Others – v – The Minister for Justice, 2004

The Council would wish to bring to the attention of the Board **Molloy & Others – v – The Minister for Justice, 2004**, whereby it was found that that in circumstances where a planning permission is capable of being implemented, a valid planning permission cannot be lost or abandoned:

"Where there was an existing valid planning permission for a specific use of property and no subsequent planning permission had been granted for the use of the property concerned and where a material unauthorised change of use had occurred, notwithstanding that that intervening use was incapable of being prevented, and where the original permission was capable of being implemented (in the sense that there had been no material structural alteration of the property which would render the original permission for use incapable of being implemented), the original planning permission could not be abandoned or extinguished."

The degree to which a permission may be retained is solely by the following:

"no material structural alteration to the property concerned, and remained extant until altered by a subsequent valid planning permission."

By contrast, within the site the historic units, a dwelling, a shop and a restaurant have experienced structural alteration since 2020 including the provision of extensions and the amalgamation of units.

Today just one of the former units; the historically permitted restaurant now functions as a shop. A small extension remains to the rear and the site is serviced by an unauthorised/unpermitted wastewater treatment system.

Additionally Cork County Council wishes to bring to the attention of the Board Article 9(1)(a)(viii)

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—

(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.

7.0 CONCLUSION

The question raised within this referral is whether or not the operation of a service station shop at Burgess Service Station, Burgess Lower, Killeagh Co. Cork is or is not development, and is or is not exempted development.

We would like to thank the Board for their time in making a recommendation on this referral. Should you have any queries in relation to this referral please do not hesitate to contact Cork County Council's Planning Department.



Siún McCarthy
Executive Planner
16.10.2024

Appendix 1 – Public Planning Register

CORK COUNTY COUNCIL
PLANNING AND DEVELOPMENT ACT, 2000
ENFORCEMENT NOTICE REGISTER SHEET

Enforcement Notice Reg. No. E / 23 / 13

SECTION 154 OF THE PLANNING AND DEVELOPMENT ACT, 2000.

1. Name and Address of Person against whom an Enforcement Notice issued:-

East Cork Oil Company Unlimited

2. Nature of Unauthorised Development:- Unauthorised

1. Change of use of former restaurant and kitchen to net retail floor space;
2. Change of use of former shop storage area to net retail floor space;
3. Change of use of dwelling house to gross retail floor space associated with the service station shop. This includes toilets, storage areas, office and circulation space;
4. Extension to the rear of the former dwelling comprising storage areas, plant and electric rooms and an enclosed open yard;
5. Extension to the front of the forecourt building comprising a lobby;
6. Erection of bollard bases/stumps to the front of the southern boundary wall of the service station adjacent to the national route;
7. Erection of 18no. lamp posts within the site

3. Location of Unauthorised Development:- Burgess, Killeagh, Co. Cork.

4. Date of Notice: 28.3.2023 Divisional Manager's Order Date of Order:
No: D.M.O./ 08/2023 28.03.2023

5. Registered Post No.: RL 5592 7274 012

6. Details of Withdrawal of Notice (if applicable):-

Date of Withdrawal:-

7. Specify whether Notice complied with: Yes/ No: NO. - as per report of
A.P. 10.3.2023

8. Enforcement File Register No. EF20153

Public Planning Register Map

Appendix 2

Image 1: Extension to rear of the premises.



Image 2: Rear of Premises



Image 3: Front of Premises

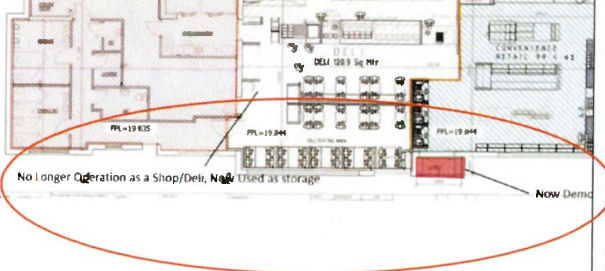


Image 4: Shop and new internal wall

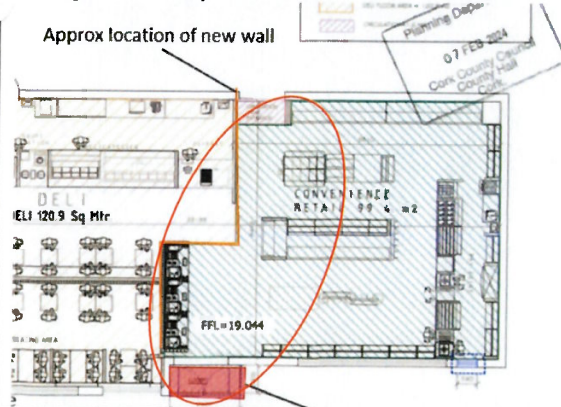


Image 5: New Shop Area

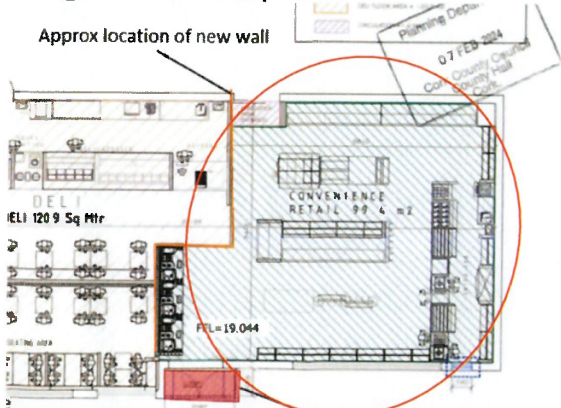
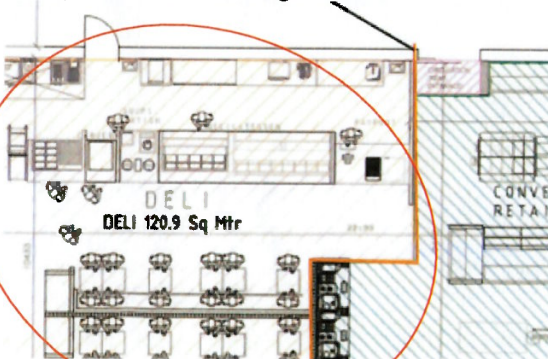


Image 6: New Storage Room



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