



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Ayo Conneely
Ballysheen More,
Sixmilebridge,
Co. Clare**

18th February 2021

Section 5 referral Reference R21-1 – Ayo Conneely

Whether the change of use from commercial to residential of vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is development and if so is it exempted development.

A Chara,

I refer to the recent declaration issued to you in relation to the above Section 5 application.

While this declaration considers the change of use outlined in the application form to be exempted development, it does not give permission to proceed with these works. In order to progress this, you are also requested to complete the enclosed Notification of change of use from Commercial to Residential under Article 10(6) if you are proposing to proceed with this change of use.

Mise, le meas

**Josephine Connors
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúirtheoireacht 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**





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**Ayo Conneely
Ballysheen More,
Sixmilebridge,
Co. Clare**

8th February, 2021

Section 5 referral Reference R21-1 – Ayo Conneely

Whether the change of use from commercial to residential of vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is development and if so is it exempted development.

A Chara,

I refer to your application received on 13th January, 2021 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

Mise, le meas

**Josephine Connors
Staff Officer
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



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

Reference No.: R21-1



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R21-1

Whether the change of use from commercial to residential of vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is development and if so is it exempted development.

AND WHEREAS, Ayo Conneely 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, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended;
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018);
- (c) Part 4 Article 10 Exempted Development – Classes of use, Class 1- use as a shop ;
- (d) The planning history on site;
- (e) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', December 2020.

And whereas Clare County Council has concluded:

The change of use from commercial to residential of an existing vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is considered development which is exempted development having regard to the provisions of Article 10 of Planning and Development Regulations, 2001 as amended.

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 change of use from commercial to residential of an existing vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Josephine Connors
Staff Officer
Planning Department
Economic Development Directorate

8th **February, 2021**

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:

27117.

Reference Number:

R21-1

Date Referral Received:

13th January 2021

Name of Applicant:

Ayo Conneely

Location of works in question:

Patrick Street, Clarecastle, Co. Clare

Section 5 referral Reference R21-1 – Ayo Conneely

Whether the change of use from commercial to residential of vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is 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, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended;
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018);
- (c) Part 4 Article 10 Exempted Development – Classes of use, Class 1- use as a shop ;
- (d) The planning history on site;
- (e) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', December 2020.

AND WHEREAS Clare County Council has concluded:

The change of use from commercial to residential of an existing vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is considered development which is exempted development having regard to the provisions of Article 10 of Planning and Development Regulations, 2001 as amended.

ORDER: Whereas by Chief Executive's Order No. HR 334 dated 2nd June 2020, 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 Kieran O'Donnell, Administrative Officer, 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, Kieran O'Donnell, Administrative Officer, hereby declare that the change of use from commercial to residential of an existing vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is considered development which is exempted development

Signed:



**KIERAN O'DONNELL,
ADMINISTRATIVE OFFICER**

Date: 8th February 2021

CLARE COUNTY COUNCIL

SECTION 5 REFERRAL

Reference No:	R21 1
Applicant:	Ayo Conneely
Location:	Patrick Street, Clarecastle, Co. Clare
Proposal:	Whether the change of use from commercial to residential of vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is development and if so is it exempted development.
Due Date:	9th Feb. 2021

Introduction

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) to determine whether or not the change of use from commercial to residential of vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is development constitutes development and is / is not exempted development.

Site location

The site is located within the village centre of Clarecastle, along Patrick Street. The unit adjoins an existing commercial unit which occupies a cafe. The site is bound to the south by an access which serves a recently constructed dwelling.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Ayo Conneely.

It is submitted that the applicant is the owner of the subject lands.

The applicant is seeking a Section 5 Declaration as to whether the change of use from commercial to residential of vacant ground floor retail unit is development and if so is it exempted development.

It is stated in the submitted application form that the ground floor retail unit has been vacant for over 2 years. The applicant is looking to convert same to a 1 bedroom apartment.

Planning History

- P19 764 Application by Ayo Conneely for planning permission to RETAIN the existing Ground floor Cafe and separate retail unit and full planning PERMISSION for alterations to the existing apartment areas on the second floor, (2no) and the change of use from retail area to residential on the 1st floor to provide 2 new apartment units and all associated site works. Permission granted subject to 9 no. conditions.
- P09 197 Application by The Coachhouse Partnership for planning permission for change of use of shop unit number 1, as previously granted under planning reference number P07/902, to bookmakers. Permission granted subject to 6 no. conditions
- P08 1899 Application by The Coachhouse Partnership for planning permission for change of use of shop unit number 1, as previously granted under planning reference number P07/902, to bookmakers. Incomplete application.
- P08 1857 Application by The Coachhouse Partnership for planning permission for change of use of shop unit number 1, as previously granted under planning reference number P07/902, to bookmakers. Permission granted subject to 6 no. conditions.
- P07 902 Application by The Coachhouse Partnership for planning permission for development which is within the Clarecastle Architectural Conservation Area, to consist of (a) the removal of existing sheds and toilets to the rear and side of the existing public house, the Coach House Inn and to extend and renovate the building to provide two ground floor shop units, a first floor restaurant, and two second floor apartments. The side

extension will match the existing 3 storey building with a side entrance lane to the restaurant and apartments from Patrick St., and the rear extension will consist of new stairwell and lift to the restaurant and apartments, and ancillary accommodation, (b) Change of use of the existing ground and first floor licensed premises at the Coach House Inn to 2 no. shops on the ground floor, and a licensed restaurant to the first floor, (c) to block up the exiting connection between the Coach House Inn and the existing building on Barrack St. and to extend and renovate the existing building to Barrack St. to form a new ground floor shop unit, and first and second floor office accommodation. The extension to the rear of the building will provide a new stairwell to the office accommodation, as well as providing alternative means of escape to the first floor restaurant, and (d) Change of use of the ground floor to the barracks from licensed premises and residential use to a Ground Floor shop unit, and change of use of existing first and second floor apartments to office accommodation. Permission granted subject to 15 no. conditions

R14 30 A declaration was requested on the following:

Whether Change of Use from a Public House to a Shop at the 'Coach House Pub', Clarecastle, Co. Clare and is/is not exempted development

The Council decided that:

- (a) There is a permitted use on this site on the ground and first floor of this property for a public house.
- (b) The proposed change of use from the public house (ground and first floor) to a shop constitutes development and development which is exempted development.
- (c) The proposed change of use from the second floor of the premises, which has a residential use, to a shop results in a material change of use and as such constitutes development which is not exempted development.

The following declaration was issued:

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, Brian McCarthy, Senior Executive Planner, hereby **declare that the said works constitute development** which are **exempted development** on the **ground and first floor only**. The change of use of the **second floor** of the premises to a shop **constitutes development** and **development which is not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

To the rear

P17 986 Application by Michael & Sarah Jacob for planning permission for development which consists of the construction of a dwelling house to the rear of existing dwellings on the street with connection to main public sewer and associated site works. Permission granted subject to 9 no. conditions.

Designations

The subject site located within the Clarecastle settlement boundary as per the provisions of the Clare County Development Plan 2017-2023, as varied. The site is zoned for 'mixed use' development and within the Clarecastle ACA.

Relevant Statutory Legislation

Planning and Development Act 2000, as amended

Section 2

Section 2 of the Planning and Development 2000, as amended also defines the terms used within the Act and the following terms are relevant for the purposes of this referral.

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

Works - include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3

Section 3 (1) of the Act defines development except where the context otherwise requires the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.

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

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.

Section 4

Section 4 (1)(H)

Section 4 1 (h) states that the following shall be exempted development for the purpose of the Act.-

'development consisting for the carrying out of works for maintenance, improvement or other alterations of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures'.

Section 4 sets out development which is deemed to be exempted development.

Section 4(1) states that the following shall be exempted development for the purposes of the Act :

- (a) Development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied, together with the land so used.
- (h) relates to development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structure

Planning & Development Regulations, 2001, as amended

Part 2 Exempted Development

Article 6 (1) states

'Subject to article 9, development of a class specified in column 1 of Part 1 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 1 opposite the mention of that class in the said column 1'.

Article 9 -Restrictions on Exemptions states

'Under Article 9 (1) of the same Regulations, development to which Article 10 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,
- (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.
- (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'.

Article 10 Change of use

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such

a permission, or

- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

- (2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

- (b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—

- (i) as an amusement arcade,

- (ii) as a motor service station,

- (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,

- (iv) for a taxi or hackney business or for the hire of motor vehicles,

- (v) as a scrap yard, or a yard for the breaking of motor vehicles,

- (vi) for the storage or distribution of minerals,

- (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,

- (vii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or

- (viii) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.

- (3) Development consisting of the provision within a building occupied by, or under the control of, a State authority of a shop or restaurant for visiting members of the public shall be exempted development for the purposes of the Act.

- (4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

- (5) Development consisting of the use of a house for child

minding shall be exempted development for the purposes of the Act.

Planning & Development Regulations, Amendment no. 2 Regulations 2018, (s.i.no 30 of 2018)

Article 2 of these Regulations amends Article 10 of the Principal Regulations, by inserting a new sub-article, to provide that development consisting of the change of use, and any related works, from an existing specified use class to residential use, in certain circumstances and subject to conditions and limitations, is exempt from the requirement to obtain planning permission. The exemption shall apply from when these Regulations come into force until 31 December 2021.

Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

“(6) (a) In this sub-article—‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from the making of these Regulations until 31 December 2021.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018, Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 13th February 2018.[30]

3(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d). (d) (i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing:

Design Standards for New Apartments — Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

- (I) an area to which a special amenity area order relates;
- (II) an area of special planning control;
- (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.
- (xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.
- (xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.
- (e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall accordingly notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.
- (ii) Details of each notification under subparagraph (i), which shall include information on—
 - (I) the location of the structure, and
 - (II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.
- (iii) During the years 2019, 2020, 2021 and 2022, each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii)."

Part 4 Article 10 Exempted Development- Class of use- Class 1 is use as a shop.

Schedule 2 Article 6 part 1 Exempted Development CLASS

14

Development consisting of a change of use—

(a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,

(b) from use as a public house, to use as a shop,

(c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,

(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,

(e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling,

(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such

The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not

persons.

exceed 2.

Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018)

- **Minimum Requirements for Residential Units**

The minimum floor area and minimum storage space requirements of the 'Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', 2017* must be complied with. This ensures that apartments will be of adequate size and will include adequate storage. The minimum floor areas allowed are:

Studio apartment: 37 sq. m
1 bedroom apartment: 45 sq. m
2 bedroom apartment (3 person): 63 sq. m
2 bedroom apartment (4 person) : 73 sq. m
3 bedroom apartment: 90 sq.m

The minimum storage space requirements are:

Studio apartment: 3 sq. m
1 bedroom apartment: 3 sq. m
2 bedroom apartment (3 person): 5 sq. m
2 bedroom apartment (4 person): 6 sq. m
3 bedroom apartment: 9 sq. m

The minimum floor areas for private amenity space are:

Studio apartment: 4 sq. m
1 bedroom apartment: 5 sq. m
2 bedroom apartment (3 person): 6 sq. m
2 bedroom apartment (4 person): 7 sq. m
3 bedroom apartment: 9 sq. m

* amended by Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities December 2020

Assessment

Primary legislation

Having regard to the details submitted it is considered that the proposal constitutes 'works' as defined by section 2 of the Act. It is also considered that the proposal constitutes 'development' having regard to the definition of development which includes for making of any material change in the use of any structures. In respect of Section 4 (1)(H) of the Act, it is noted that while the section makes provision for development consisting for the carrying out of works for maintenance, improvement or other alterations of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures' to be considered exempted development, it does not expressly clarify that the internal alterations can result in a change of use and that this new use is exempted development. I therefore consider that section 4 (1) (h) is not relevant to the query.

The Regulations

- I refer to Part 4 Article 10 Exempted Development- Class of use- Class 1 is use as a shop. It is considered that the existing use falls under this class of use and definition of 'Shop'.
- I refer to Schedule 2 Part 1 Article 6 Exempted Development – General, wherein in class 14 sets out changes of use that are considered to be exempted development. I do not consider that the proposed change of use falls under the provision of class 14 of the Planning and Development Regulations 2001 as amended.

- I refer to Part 2 Article 6 (1) Exempted Development and Article 9 Restrictions on Exemptions. I note Article (9) (1) (a) (iii) states the following:

Development to which article 6 relates shall not be exempted development for the purposes of the Act

if the carrying out of such development would—

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

It is considered that the provisions of article 9 are applicable to the query. It is noted that no onsite parking has been provided on site. However public off street parking is available in the vicinity of the site.

- I refer to Part 2 Article 10 (1) – (5) Changes of Use - it is considered that the provision of Article 10 have been met
- I refer to Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) as amended by the Planning and Development Regulations 2018 (no 2). Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

“(6) (a) In this sub-article—‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from the making of these Regulations until 31 December 2021.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018, Notice of the making of this Statutory Instrument was published in “*Iris Oifigiúil*” of 13th February 2018.[30]. **The structure has been in existence prior to the coming in to effect of the amendment.**

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

The structure has been used as commercial purposes (shop class 1) for a number of years and has been vacant for over 2 years.

(d) (i) The development is commenced and completed during the relevant period. **The applicant advised that it is intended to commence works in 2021.**

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures. **It is noted that no exterior changes are proposed to the front elevation (facing Patrick Street). An enlarged window is proposed on the NW elevation to serve a bedroom. This window is not readily visible from the public realm, as it faces a private accessway. Having regard to the drawings submitted it is considered that the proposal complies with this requirement. It is considered that proposed changes to the elevations are consistent with the character of the structure or of neighbouring structures.**

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures. **Having regard to the drawings submitted it is considered that the proposal complies with this requirement.**

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned. **There is no objective in the Co. Development Plan requiring ground floor use to remain as retail in Clarecastle.**

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure. **One residential unit is proposed and as such part V does not apply but the applicant may be required to secure an exemption certificate as the amendment to this regulation do not quash the requirement to comply with Section 96 of the Planning and Development Act 2000 as amended.**

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines. **This document was up dated in December 2020. The proposed change of complies with these standards. The Guidelines specify that the minimum required floor area for a one bedroom apartment is 45sqm. The gross floor area of the proposed apartment is 62sqm. It is noted that private open space has not been provided however the Regulations does not specifically mention same. In addition the relevant Guidelines allow for a relaxation of private open space provision where the development is comprises a refurbishment scheme on sites of any size.**

Minimum storage space requirement for a one bedroom apartment is 3sq.m. **The proposed storage space complies with this.**

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting. **Having regard to the drawings submitted it appears that 1 no. window is provided on the front elevation. Same is to serve the open plan kitchen, living, dining area.**

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure. **The structure is not a protected structure.**

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission. **Not applicable.**

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates; **Not applicable.**

(II) an area of special planning control; **Not applicable.**

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply. **The site is does not lie within the relevant perimeter distance area of any type establishment to which the Major Accident Regulations apply. Roche is no longer listed.**

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply. **The proposal appear to comply with internal space standards referred to in 6 (d)(vi).**

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it. **The building is connected to public sewer.**

(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall accordingly notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure, and

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

Notification by the applicant is pending the determination by the Planning Authority or An Bord Pleanala that the section 5 query re proposed change of use is considered to be exempted development.

(iii) During the years 2019, 2020, 2021 and 2022, each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii). **Noted**

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 **Not applicable.**

(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, **Not applicable.**

(iii) endanger public safety by reason of traffic hazard or obstruction of road users, **It is noted that parking has not been provided to serve the proposed apartment, however there is on street parking in the vicinity of the site.**

(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. **Not applicable**

(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, **Not applicable.**

(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, **Not applicable.**

(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, **Not applicable.**

(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.” **Not applicable.**

(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, **Not applicable.**

(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, **Not applicable.**

(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, **Not applicable**

(xi) obstruct any public right of way, **Not applicable.**

(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. **Not applicable.**

Conclusion

With reference to the above assessment, and the stated restrictions on exempted development, in particular Article 10 of the Planning and Development Regulations 2001, as amended, that the proposed development may be considered exempted development. it is considered that the proposed development complies with the stipulations contained in the Regulations. In addition, the internal space dimensions meet minimum design standards as set out in the 'Sustainable Urban Housing: Design Standards for New Apartments' as issued in Dec. 2020.

Recommendation

WHEREAS a question has arisen as to whether the change of use from commercial to residential of a vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is development and if so is it exempted development

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

- (a) Sections 2, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended;
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018);
- (c) Part 4 Article 10 Exempted Development – Classes of use, Class 1- use as a shop ;
- (d) The planning history on site;
- (e) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', December 2020.

AND WHEREAS Clare County Council has concluded that –

The change of use from commercial to residential of an existing vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is considered development which is exempted development having regard to the provisions of Article 10 of Planning and Development Regulations, 2001 as amended.

NOW THEREFORE Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides that the change of use from commercial to residential of an existing vacant ground floor retail unit at Patrick Street, Clarecastle, Co. Clare is considered development which is exempted development



Fiona Barry
Executive Planner
Date: 02.02.2021

Garreth Ruane
A/Senior Executive Planner
Date:

Technical Solutions

Registered Building Surveyors & Chartered Construction Managers

Clarevue, Ballykeefe, Fr. Russell Road, Co. Limerick

Email: iansheehy99@gmail.com, Phone 0879202500



08/01/2020

To whom it may concern,

Ayo Conneely is requesting a declaration on development and existing development in regardst o the change of use of an existing ground floor vacant retail unit to a 1 bedroom apartment at The Coach House, Patrick Street, Clarecastle, Co. Clare

Please find attached.

1 x application from

2 x Site location map

2 x site layout plan

2 x existing ground floor pan

2 x Proposed ground floor plan

Mr. Conneely can be contacted on _____ to arrange payment of the prescribed fee over the phone.
If any further information is required, please do not hesitate to contact me

Kind Regards

Ian Sheehy MCIQB,

BSc (Hons) Building Surveying,

Registered Building Surveyor

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) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie



**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	Ayo Conneely <hr/> Ballysheen More <hr/> Sixmilebridge <hr/> Co. Clare <hr/>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	Ian Sheehy <hr/> Clarevue <hr/> Ballykeefe <hr/> Dooradoyle, Co. Limerick <hr/>

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 change of use from commercial to residential of vacant ground floor retail unit at Patrick Street Clarecastle, Co. Clare 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 existing ground floor retail unit has been vacant for over 2 years. An exemption certificate under article 6 a is being requested for the change of use to a 1 bedroom apartment.

- (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)

1. Site Location Map, 2. Site layout plan, 3. Existing ground floor plan, 4. Proposed Floor Plan

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Patrick Street Clarecastle 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>	
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	Yes 19764
(h) Date on which 'works' in question were completed/are likely to take place:	2021

SIGNED: San Sheehy AgentDATE: 08/01/2021

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:.....			

Planning Pack Map

Site Boundary in red
Retail unit in blue

CENTRE COORDINATES:
ITM 534937,674130

PUBLISHED:
26/08/2019

ORDER NO.:
50080670_1

MAP SERIES:
1:1,000

MAP SHEETS:
4380-09

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LEGEND:

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

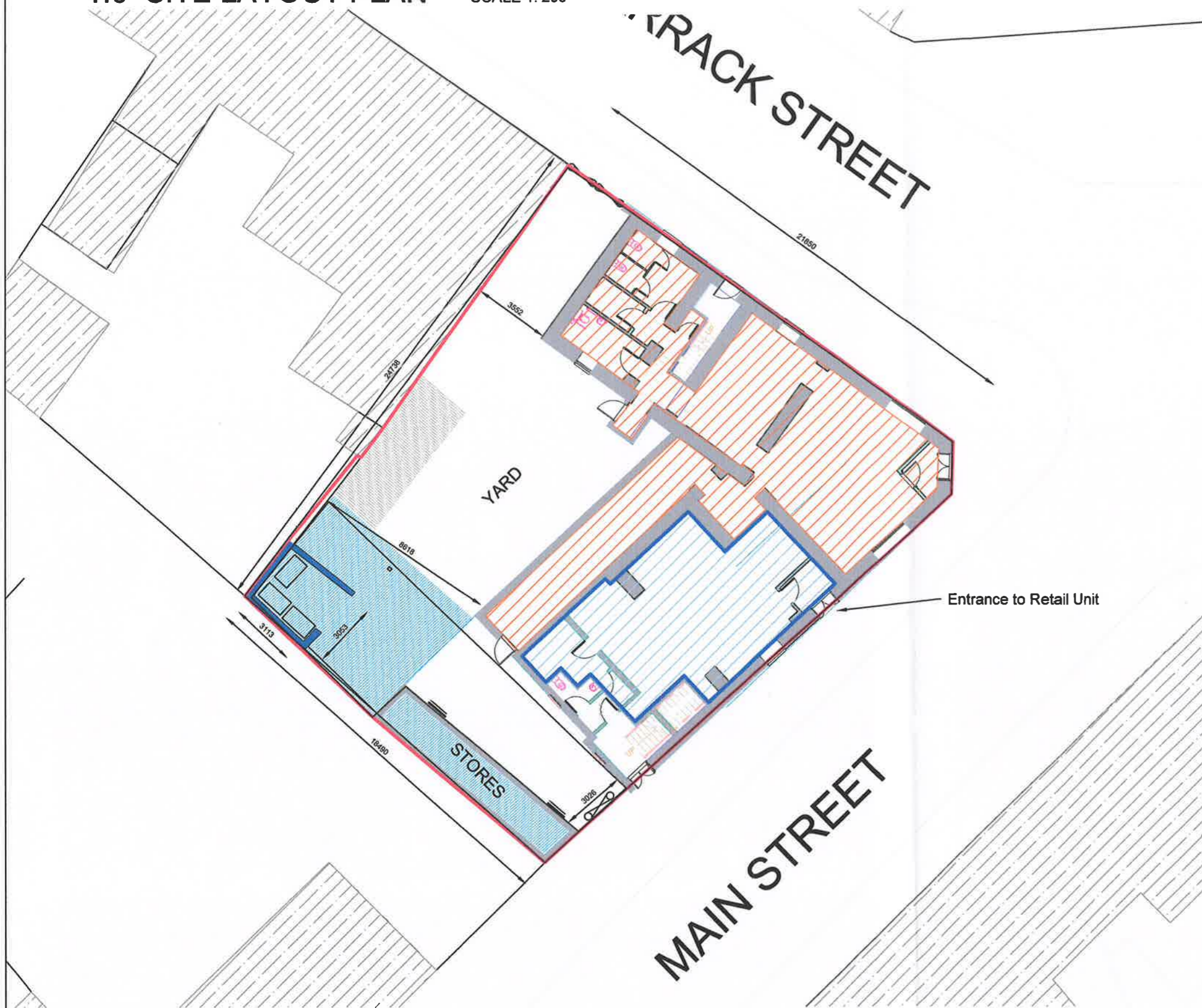


OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'

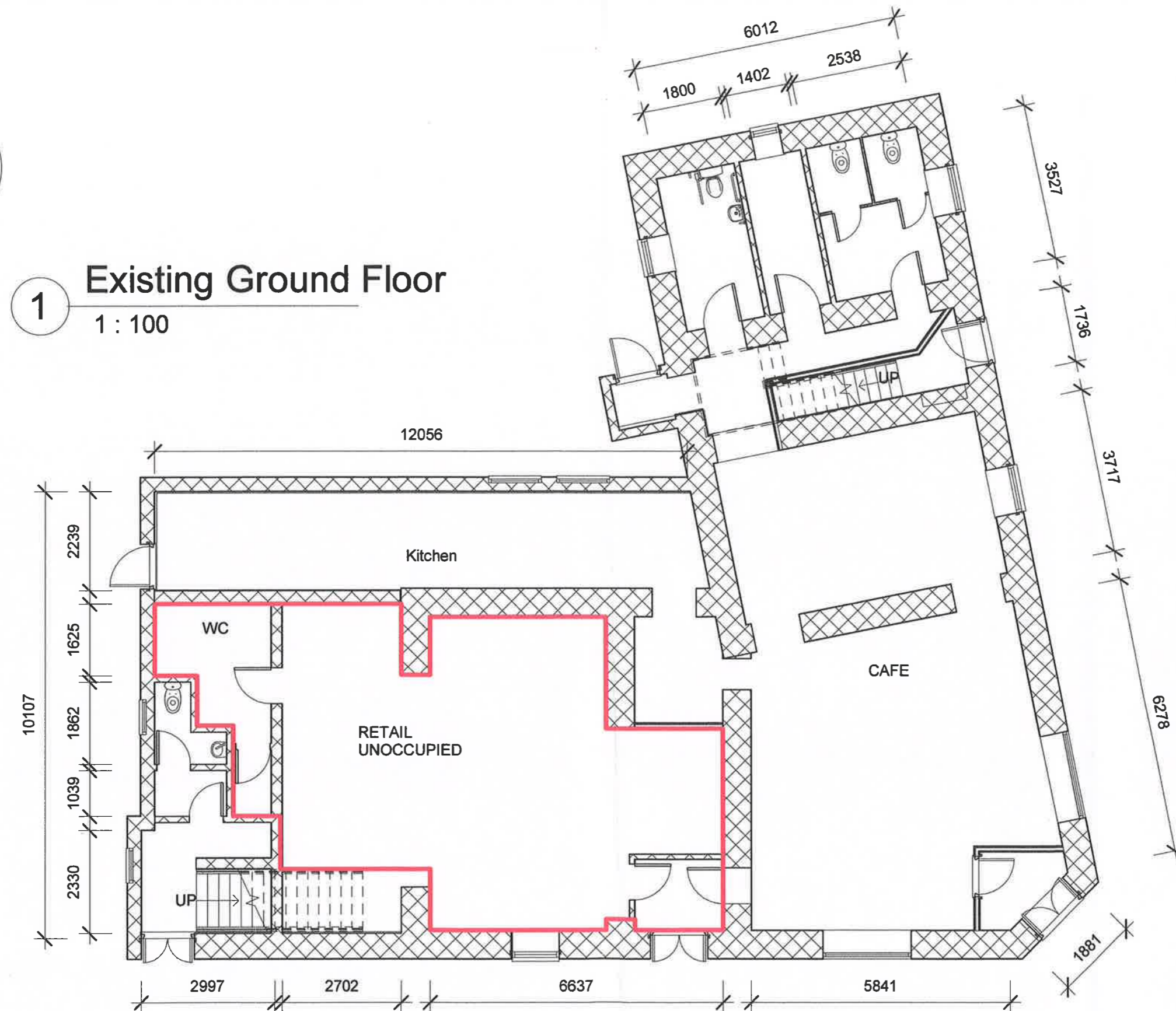
1.0 SITE LAYOUT PLAN

SCALE 1: 200



- SITE BOUNDARY
- EXISTING RETAIL SUBJECT TO APPLICATION

TITLE SITE LAYOUT PLAN RETAIL UNIT COACH HOUSE CLARECASTLE CO. CLARE	CLIENT: AYO CONNEELY BALLYSHEEN MORE SIXMILE BRIDGE CO.. CLARE	TECHNICAL SOLUTIONS PLANNING, SURVEYING, DESIGN, SUPERVISION & CERTIFICATION Ian Sheehy BSc. Building Surveying, MCIQB Registered Building Surveyor Chartered Construction Manager CLAREVUE, BALLYKEEFE, DOORADOYLE, CO. LIMERICK	iانشههه
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TITLE Existing Ground Floor Plan Coach House Clarecastle, Co. Clare		CLIENT: Ayo Conneely Ballysheen More Sixmilebridge Co. Clare		TECHNICAL SOLUTIONS PLANNING, SURVEYING, DESIGN, SUPERVISION & CERTIFICATION Ian Sheehy BSc. Building Surveying, MCIOB Registered Building Surveyor Chartered Construction Manager CLAREVUE, BALLYKEEFE, DOORADOYLE, CO. LIMERICK		REV Scale (@ A3) 1 : 100 Project number 19/723		<table border="1"> <thead> <tr> <th>No.</th> <th>Description</th> <th>Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>			No.	Description	Date																					
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DRAWING NUMBER EXP 002		DRAWN BY: IAN SHEEHY MCIOB BSc. BSurv: DATE: 08/01/2021		Iansheehy99@gmail.com 0879202500																														

CONTAE

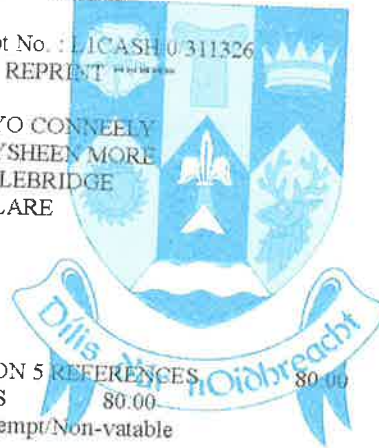
Clare County Council
Aras Contae an Chláir
New Road
Ennis
Co Clare

AN CHLÁIR

14/01/2021 12:02:09

Receipt No. : LICASH 0 311326
REPRESENT

MR AYO CONNEELY
BALLYSHEEN MORE
SIXMILEBRIDGE
CO. CLARE
R21-1



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 : LICASH - DEIRDRE FRENCH
From : MAIN CASH OFFICE LODGEMENT AREA
Vat reg No.0033043E