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CONTAE AN CHLÁIR | COUNTY COUNCIL

(RL 5660 3390 418)

Registered Post

John O'Neill
Ballynagun West,
Cree,
Co. Clare

3rd June, 2021

Section 5 referral Reference R21-31 – John O'Neill

Whether the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare is considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 10th May 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

Anne O'Gorman
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



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:

77735

Reference Number:

R21-31

Date Referral Received:

10th May 2021

Name of Applicant:

John O'Neill

Location of works in question:

Ballynagun West, Cree, Co. Clare

Section 5 referral Reference R21-31 – John O'Neill

Whether the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare is considered 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 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The proposal as represented in the submitted documents from the referrer;
- (e) The comments of Senior Executive Engineer for the West Clare Municipal District

AND WHEREAS Clare County Council has concluded:

- (a) The construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act, 2000, as amended;
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) the said development consisting of the construction of a livestock slatted unit generally falls within the conditions and limitations of Class 6 of Part 3 of Schedule 2 of the Planning & Development Regulations, 2001, as amended. However it is considered that the means of access to the development from the public road would endanger public safety by reason of traffic hazard, and as such the proposal would come within the

restrictions on exemption as set out in Article 9(1)(a)(iii) of the said Regulations. It is also considered that the development would comprise development in relation to which a planning authority 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, and as such the proposal would come within the restrictions on exemption as set out in Article 9(1)(a)(viiB) of the said Regulations.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th 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 Garreth 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, Garreth Ruane, Senior Executive Planner, hereby declare that that the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare is considered development which is not exempted development.

Signed:



GARRETH RUANE
SENIOR EXECUTIVE PLANNER

As

Date:

3rd June 2021

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

Reference No.: R21-31



Section 5 referral Reference R21-31

Whether the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare is considered development and if so, is it exempted development.

AND WHEREAS, John O'Neill 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 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The proposal as represented in the submitted documents from the referrer;
- (e) The comments of Senior Executive Engineer for the West Clare Municipal District

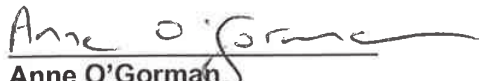
And whereas Clare County Council has concluded:

- (a) The construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act, 2000, as amended;
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) the said development consisting of the construction of a livestock slatted unit generally falls within the conditions and limitations of Class 6 of Part 3 of Schedule 2 of the Planning & Development Regulations, 2001, as amended. However it is considered that the means of access to the development from the public road would endanger public safety by reason of traffic hazard, and as such the proposal would come within the restrictions on exemption as set out in Article 9(1)(a)(iii) of the said Regulations. It is also considered that the development would comprise development in relation to which a planning authority 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, and as such the proposal would come within the restrictions on exemption as set out in Article 9(1)(a)(viiB) of the said Regulations.

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 construction of a livestock slatted unit at Ballynagin West, Cree, 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

3rd June, 2021

**CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT**

FILE REF: R21-31
APPLICANT(S): John O'Neill
REFERENCE: Whether the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare considered development and if so, is it exempted development.
LOCATION: Cree, Co. Clare.
DUE DATE: 4th June 2021

Site Location

The site of the proposed development is located c.200m south of the village boundary of Cree. The site is accessed from the L6108 public road. The existing entrance to the site is a short distance east of a recently-constructed house and c.150m west of the junction of the L6108 road and the R483 regional road. There is a large-scale waste management facility c. 700m to the west of the site, also accessed from the L6108.

The site of the proposed slatted unit is c.30m to the north of the roadside entrance, at the eastern side of a grassed field. Ground levels at this location are generally flat.

This will be the first farm building to be erected on the landholding. Land Registry details of the holding have been submitted. It comprises of c.16ha of lands at this location.

Recent Planning Application History

Adjoining site at west:

P05/1487: Permission granted to construct a dwelling house, private garage and associated site works.

Enforcement History

None.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by John O'Neill.

The applicant is seeking a Section 5 Declaration as to whether the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare is considered development and if so, is it exempted development.

On the date of my site visit (May 14th 2021), the livestock slatted unit that is subject of this query had not been constructed.

Development details and specification

The following has been submitted:

- Ordnance Survey map that clearly shows the location of the site;
- Site Layout Plan showing the location of the subject structure within the site;
- Scaled Plan, Elevations and Section drawing of the subject structure;

- Declaration request form fully completed, with written description of the proposal.

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*.

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.

‘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.

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), 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, Class 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

- 1. No such structure shall be used for any purpose other than the purpose of agriculture.*
- 2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.*
- 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution;*
- 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.*

5. *No such structure within 100 metres of any public road shall exceed 8 metres in height.*
6. *No such structure shall be situated, and no effluent from such structure shall be stored, 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.*
7. *No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.*

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 comprise 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) 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,

(vi) 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.

Environmental Impact Assessment

I do not consider that the proposed development falls within the mandatory requirements for an EIA as stated in EU Directive 85/337/EEC (as amended by Directive 97/11/EC, 2003/31/EC and 2009/31/EC). The proposed development is also not considered to fall within the sub-threshold criteria having regard

to the third schedule to the European Communities Environmental Impact Assessment (Amendment) Regulations 1999 and in Schedule 7 of the Planning and Development Regulations 2001, as amended.

Appropriate Assessment

See assessment below.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare is considered development and if so, is it exempted development.

Particulars of Proposal

The particulars of the proposal and site are set out below:

- | | |
|---------------------------|---|
| • Height | 6.5 metres |
| • Proposed Floor Area | 199.38 sqm |
| • Distance from road | Greater than 10 metres |
| • Distance from dwellings | Nearest dwellings are 125m east, 50m west and 65m SE. |

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

1. *No such structure shall be used for any purpose other than the purpose of agriculture.*
2. *The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.*
3. *Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.*
4. *No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.*
5. *No such structure within 100 metres of any public road shall exceed 8 metres in height.*
6. *No such structure shall be situated, and no effluent from such structure shall be stored, 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.*
7. *No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.*

It is proposed that the structure will be used as a livestock slatted unit, with an underground slurry storage tank, and as such corresponds with the use described in Class 6. The gross floor area is 199.38sqm.

1. *No such structure shall be used for any purpose other than the purpose of agriculture.*

The use proposed is "livestock slatted unit".

2. *The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.*

The 300 sqm threshold is not exceeded by the subject building.

3. *Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.*

The proposed underground slurry storage tank will have a volume of 189.85 m3.

4. *No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.*

The structure is c.30m from the public road.

5. *No such structure within 100 metres of any public road shall exceed 8 metres in height.*

The structure is shown to be a maximum of 6.5m in height.

6. *No such structure shall be situated, and no effluent from such structure shall be stored, 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.*

The nearest dwelling is 50m west, which is the applicant's residence. The other neighbouring houses are 125m east and 65m SE. The owners of both of these houses have provided letters of consent to the development.

7. *No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.*

The structure is to be clad in reinforced fibre cement cladding.

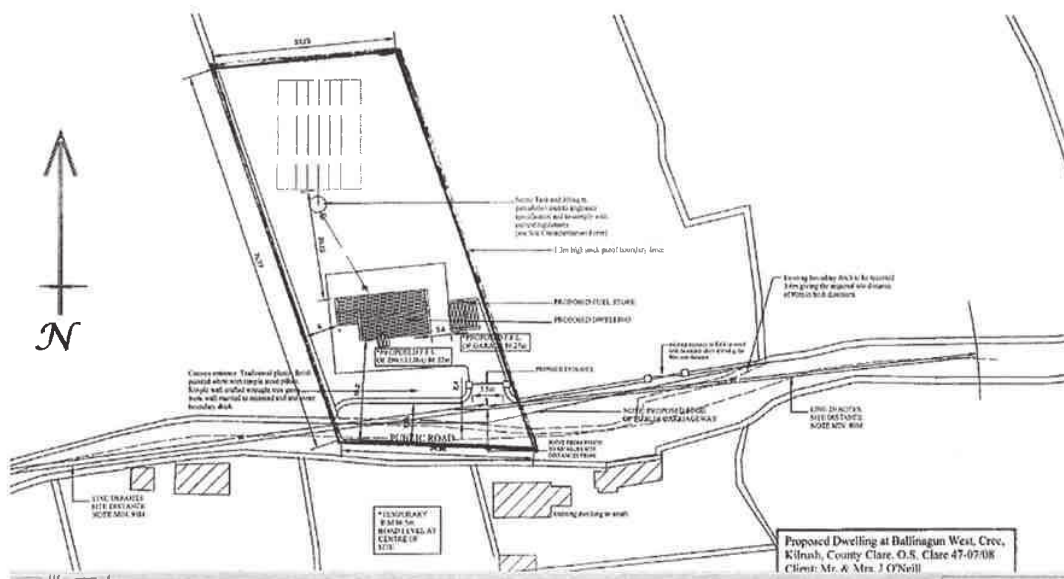
Article 9 of the Planning and Development Regulations 2001, as amended, states that Development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would:

- No on-site planning permissions exist.

- The entrance which it is proposed to use appears to have been materially widened since c.2009, when the most recent Google Streetview image was captured. The submitted site layout plan shows a 5m-wide opening at the entrance. It is not clear whether further widening of the existing gateway is intended.

- The Council's Senior Executive Roads Engineer for the West Clare Municipal District has examined the proposal and concludes that the proposal would unduly endanger public safety by reason of traffic hazard because the sightlines available for vehicles emerging from the entrance are inadequate – please see the attached email.

It is noted by the Planning Authority that when permitting the applicant's dwelling house at the west (P05/1487), the approved layout plan (excerpt below) included setting back the roadside boundary in a substantial manner, along the front of the site itself and across the adjoining field (within which the current entrance lies). These alterations have not been implemented.



(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,

Not applicable in this instance.

(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,

Not applicable in this instance.

(vi) 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.

This site is located within a Settled Landscape. Having regard to the nature of the proposed development, the nature of the proposal site and its receiving environs, the views available towards the site and the absence in the Development Plan of an objective to preserve the character of the landscape at this location, or to preserve a view or prospect of special amenity value at this location, it is considered that the proposed development would not interfere with the character of the landscape or views in the area.

(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,

This is not applicable in this instance.

(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,

This is not applicable in this instance. The nearest archaeological monument is c. 300m to the south.

- (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,*

Having regard to the nature and scale of the proposed development and the proximity and connectivity of the slurry spreadlands to European Sites, Appropriate Assessment issues may arise and it is considered that the proposed development may be likely to have a significant effect individually or in combination with other plans or projects, on those European Sites. An appropriate assessment screening report is attached to this report.

- (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."*

This is not applicable in this instance.

- (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

Having regard to the above it is considered that the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare constitutes both 'works' and 'development'. Regard has been had to Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, which may ordinarily provide an exemption for the development that is described in the documentation. The provisions of Article 9 (iii) and (viiB) of the Planning and Development Regulations 2001 exclude the proposed structure from being considered exempt under Class 6.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare considered development and if so, is it exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The proposal as represented in the submitted documents from the referrer;
- (e) The comments of Senior Executive Engineer for the West Clare Municipal District

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

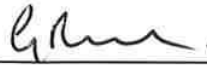
- (a) The construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act, 2000, as amended;
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) the said development consisting of the construction of a livestock slatted unit generally falls within the conditions and limitations of Class 6 of Part 3 of Schedule 2 of the Planning & Development Regulations, 2001, as amended. However it is considered that the means of access to the development from the public road would endanger public safety by reason of traffic hazard, and as such the proposal would come within the restrictions on exemption as set out in Article 9(1)(a)(iii) of the said Regulations. It is also considered that the development would comprise development in relation to which a planning authority 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, and as such the proposal would come within the restrictions on exemption as set out in Article 9(1)(a)(viiB) of the said Regulations.

Now therefore Clare County Council (Planning Authority), hereby decides that the construction of a livestock slatted unit at Ballynagin West, Cree, Co. Clare is development and is not exempted development.



Assistant Planner

Date: 2nd June 2021



Name: Garreth Ruane

Senior Executive Planner

Date 03/06/21

Clare County Council
Screening for Appropriate Assessment & Determination

1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all developments regardless of location which require an EIS

Table 1: Project Details


Planning File Reference	R21/31
Applicant Name	John O'Neill
Development Location	Ballynagun West, Cree, Co. Clare
Application accompanied by an EIS	No
Application accompanied by an NIS	No
Description of the project	
construction of a slatted unit	
	

Table 2: Identification of European sites which may be impacted by the proposed development.

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)¹ is recommended. For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in combination effects. Qualifying Interests/Special conservation Interests for each site and the distance relevant to the proposal are listed (Table 2 (a)).

Table 2 (a): European Sites within 15km of Applicant Site

¹ European Sites that are more than 15km from the proposal may have to be considered. For example in the case of sites with water dependent habitats or species and where a proposal could affect water quality or quantity it may be necessary to consider the full extent of the upstream and/or downstream catchment.

European Sites ²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
Carrowmore Dunes SAC	Reefs [1170] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Vertigo angustior (Narrow-mouthed Whorl Snail) [1014]	5km
Mid-Clare Coast SPA	Dunlin Sanderling Cormorant Ringed Plover Turnstone Barnacle Goose Purple Sandpiper Wetland and Waterbirds	5km

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	<i>Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?</i>	Yes
2	Impacts on terrestrial habitats & species.	<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	No
3	Impacts on designated marine habitats & species.	<i>Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs</i>	No
4	Impacts on birds in SPAs	<i>Is the development within 1km of a Special Protection Area</i>	No
5	Indirect effects	<i>Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site? Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?</i>	No

² European Site details are available on <http://webgis.npws.ie/npwsviewer/> or maybe obtained from internal mapping systems.

Table 3: Identification of potential impacts.

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species. <i>Please answer the following if the answer to question 1 in table 2 was "yes" or "unknown".</i> <i>Does the development involve any of the following:</i>	
1.1	Removal of or interference with habitat within the Natura 2000 site. This may include any element of a project liable to interfere with breeding, nesting or roosting sites of birds, bats, water based species	No
1.2	Discharges either directly (via pipe from the development) or indirectly (via sewer) to surfacewater or groundwater What is the likely volume of the discharge?	Yes, spreading of slurry on lands.
1.3	Abstraction from surfacewater or groundwater in or adjacent to a Natura 2000 site, where hydrology is a critical element in the protection of habitat and species at the site? What is the likely volume of the abstraction?	No
1.4	Is removal of topsoil proposed within 500m of watercourses? What transportation requirements are provided? Does the removal involve reduction in area, population density or fragmentation of area of any habitat or species?	No
1.5	Infilling or raising of ground levels within 500m of watercourses? What transportation requirements are provided? Does the infilling or raising involve interference with area, population density or fragmentation of area of any habitat or species?	No
1.6	Construction of drainage ditches - (scale?) Run off directed to Is the drainage run off directed to a Natura 2000 site where species are identified and whose conservation status may be impacted by this drainage?	No
1.7	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	No
1.8	Construction within a floodplain or within an area liable to flood	No
1.9	Crossing or culverting of rivers or streams, installation of weirs,	No
1.10	Storage of chemicals hydrocarbons (including oils and fuels) within 500m of a watercourse	No
1.11	Development within catchment of a Natura 2000 site of a scale or type which involves the production of an EIS	No
1.12	Consideration of effects in combination with existing development?	No

Appropriate Assessment Screening Determination	
Planning File Reference	R21/31
Proposed Development	construction of a slatted unit
Development Location	Ballynagun West, Cree, Co. Clare
European sites within impact zone	Carrowmore Dunes SAC, Mid-Clare Coast SPA
Description of the project: construction of a slatted unit	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site As above	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
No Effect likely	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
N/A	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> - County Development Plan (including Flood Maps, SEA & AA) - Documents received as part of the planning application - NPWS mapping 	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) ³	
(b) There is no potential for significant effects to European Sites ³	
(c) The potential for significant effects to European Site(s) cannot be ruled out ⁴	Yes
(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010 ⁵	
Completed By	Tadhg MacNamara
Date	2 nd June 2021

³ Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no material changes may be made to the proposed development after this conclusion has been reached as this would invalidate the findings of the screening exercise.

⁴ In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf Alternatively, where other planning concerns arise the proposal could be refused planning permission.

⁵ The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.









From: Alan Kennelly
Sent: 01 June 2021 14:12
To: Tadhg MacNamara
Subject: Farm entrance at Cree - Section 5 Declaration R21-31

Hi Tadhg,

I hope that all is well with you.

I was on a day's leave yesterday and so am only replying to your e-mail today.

You have an applicant seeking a Section 5 Declaration for a slatted unit.

I do not have an issue with the slatted unit. However an exempted development will remove the ability of the West Clare MD – as the Road Authority – to deal with the access junction by way of condition.

Access is onto the L-6108 via a farm gate. At the public road junction sightlines are deficient (*i.e. less than c.145m in either direction, as required by the 80 km/h speed limit in place at the access*). The existing stone pillars would have to be removed and the access realigned. The access is in my view, substandard for access to a slatted unit. A slatted unit is likely to generate traffic movements by large agricultural machinery, as the unit is stocked and emptied.

The West Clare MD would like the opportunity to submit an observation on the Traffic Safety aspects of this access, should a planning application be deemed necessary. We certainly need more detail on the proposed access layout. A drawing showing available sightlines is required. A swept path analysis of the access might be helpful. Will the access impact on existing roadside drainage? &c.

I request that this development shall not be deemed exempted development as the carrying out of the development would endanger public safety by reason of traffic hazard.

Please contact me with any queries.

Kind regards,

Alan.

Alan Kennelly
Senior Executive Engineer
Town Hall, The Square, Kilrush. V15 XK70.

West Clare Municipal District
Clare County Council
T: 065 9054322 | E: akennelly@clarecoco.ie | W: www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

From: Tadhg MacNamara <tamacnamara@clarecoco.ie>
Sent: Tuesday 1 June 2021 08:44
To: Alan Kennelly <AKennelly@clarecoco.ie>
Subject: farm entrance at Cree - Section 5 Declaration R21-31

Hi Alan,

The Decision is due on this by Thursday June 3rd but I'm off that day so I'm hopeful that I can get my report to Garreth by tomorrow afternoon.

It's a Section 5 Declaration request for a Livestock Slatted Unit on a site at Cree. The site is on the L6108 public road, which links the R483 regional road to the Clean Ireland waste management facility c. 700m to the west of the site.

See below for Google Streetview of the entrance:

https://www.google.ie/maps/@52.7399996,-9.4309999,3a,75y,2.01h,80.95t/data=!3m7!1e1!3m5!1sXzslgpC9jIYSOQcl6Z1KUA!2e0!6shttps:%2F%2Fstreetviewpixels-pa.googleapis.com%2Fv1%2Fthumbnail%3Fpanoid%3DXzslgpC9jIYSOQcl6Z1KUA%26cb_client%3Dmaps_sv.tactile.gps%26w%3D203%26h%3D100%26yaw%3D240.32854%26pitch%3D0%26thumbfov%3D100!7i13312!8i6656?hl=en

The entrance has been upgraded with piers, gates, since the Streetview was captured – see photo attached.

The slatted unit has not yet been built. I attach a site location map and a site layout plan. I had to scan the site layout plan in two parts, east and west.

It appears that it may meet the exemption under Class 6 of the Exemptions, but all exemptions are contingent on Article 9 of the Regs – development shall not be exempted development:

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

(ii) *consist of or comprise 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,*

We could deem this not to be exempt if (iii) applies. I note that the permission for the house to the west P05/1487 is for the same applicant. The roadside boundary containing the farm entrance to be used in this instance was to be altered in accordance with this drawing (but those works appear not to have taken place):





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

John O'Neill
Ballynagun West,
Cree,
Co. Clare

11th May 2021

Section 5 referral Reference R21-31 – John O'Neill

Whether the construction of a livestock slatted unit at Ballynagun West, Cree, Co. Clare considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 10th May 2021 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

Mark Kerin
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

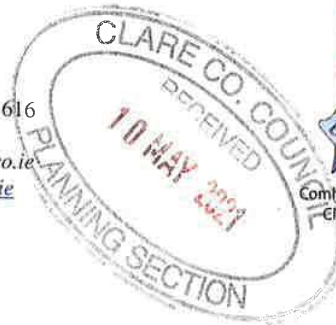


P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

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

MR JOHN O'NEILL

BALLYNAGUN WEST CREE

Co CLARE

Eircode: V15 HY 80

(b) Telephone No.:

(c) Email Address:

(d) Agent's Name and address:

N/A

EIRCODE: ~~V15 HY 80~~

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 LIVESTOCK SLATTED UNIT DEVELOPMENT & IF SO IS IT EXEMPTED DEVELOPMENT AT BALLYNAGUN WEST, CREE, G. CLARE?

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

PROPOSAL TO CONSTRUCT 3 - BAY SLATTED UNIT
 FLOOR AREA UNDER 200 m²

NO EXISTING FARM BUILDINGS

SITE 30M FROM PUBLIC ROAD

RIDGE HEIGHT 6.5m.

LETTERS OF CONSENT ATTACHED FROM BOTH PROPERTY OWNERS WITHIN 100M OF SITE.

EXISTING AGRICULTURAL ENTRANCE ON SITE FROM PUBLIC ROAD WITH ADEQUATE SIGHT LINE AVAILABLE TO EAST WHEREAS SIGHT LINES AVAILABLE TO WEST IS LIMITED BUT CAN BE OVERCOME BY ERECTION OF CONVEX MIRROR OPPOSITE SITE ENTRANCE. EXISTING HEDGERON ARE RELATIVELY LOW IN HEIGHT. LARGE MACHINERY USING ENTRANCE WILL BE MINIMAL AS FARMLANDS ARE LOCATED SURROUNDING THE SUBJECT SITE. APPLICANT WILL PATROL ENTRANCE ALSO ON ARRIVAL/DEPARTURE OF LARGE MACHINERY.

- (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 LOCATION MAP (1:1000) X 2

FARM LAYOUT PLAN (1:500) X 2

STRUCTURAL DRAWINGS (1:100)+(1:200) X 2

LAND HOLDING MAP X 2

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	BALLYNAGUN WEST CREE 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):	APPLICANT IS 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)?:	YES
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	No
(g) Were there previous planning application/s on this site? If so please supply details:	No
(h) Date on which 'works' in question were completed/are likely to take place:	JULY 2021 - DEC.

SIGNED: John O'Neill

DATE: 6/05/2021

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:	

Land Registry Compliant Map

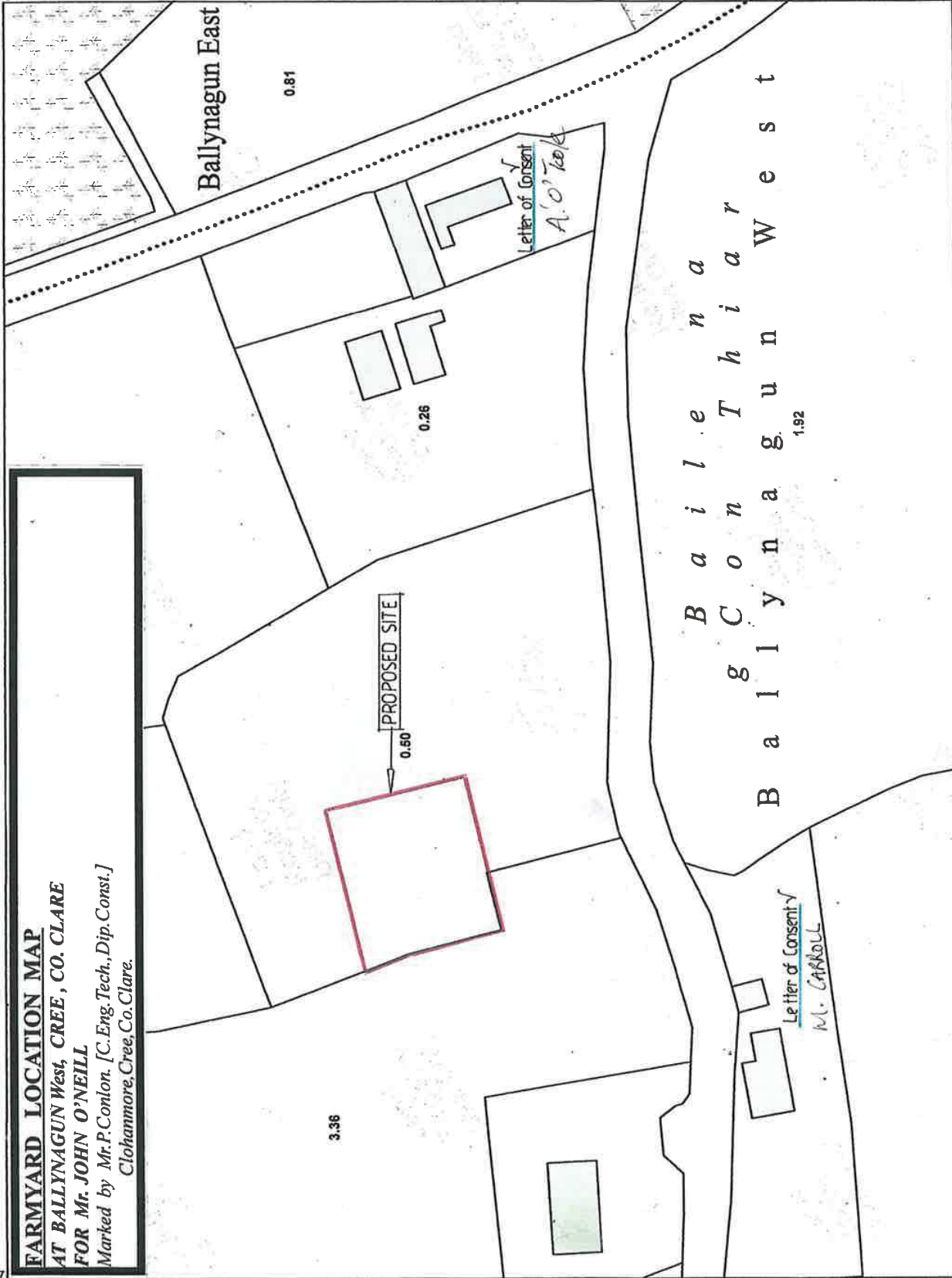
FARMYARD LOCATION MAP

AT BALLYNAGUN WEST, CREE, CO. CLARE

FOR Mr. JOHN O'NEILL

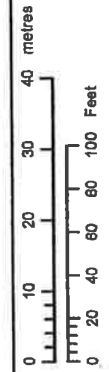
Marked by Mr. P. Conlon. [C. Eng. Tech., Dip. Const.]

Clohanmore, Cree, Co. Clare.



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OUTPUT SCALE: 1:1,000



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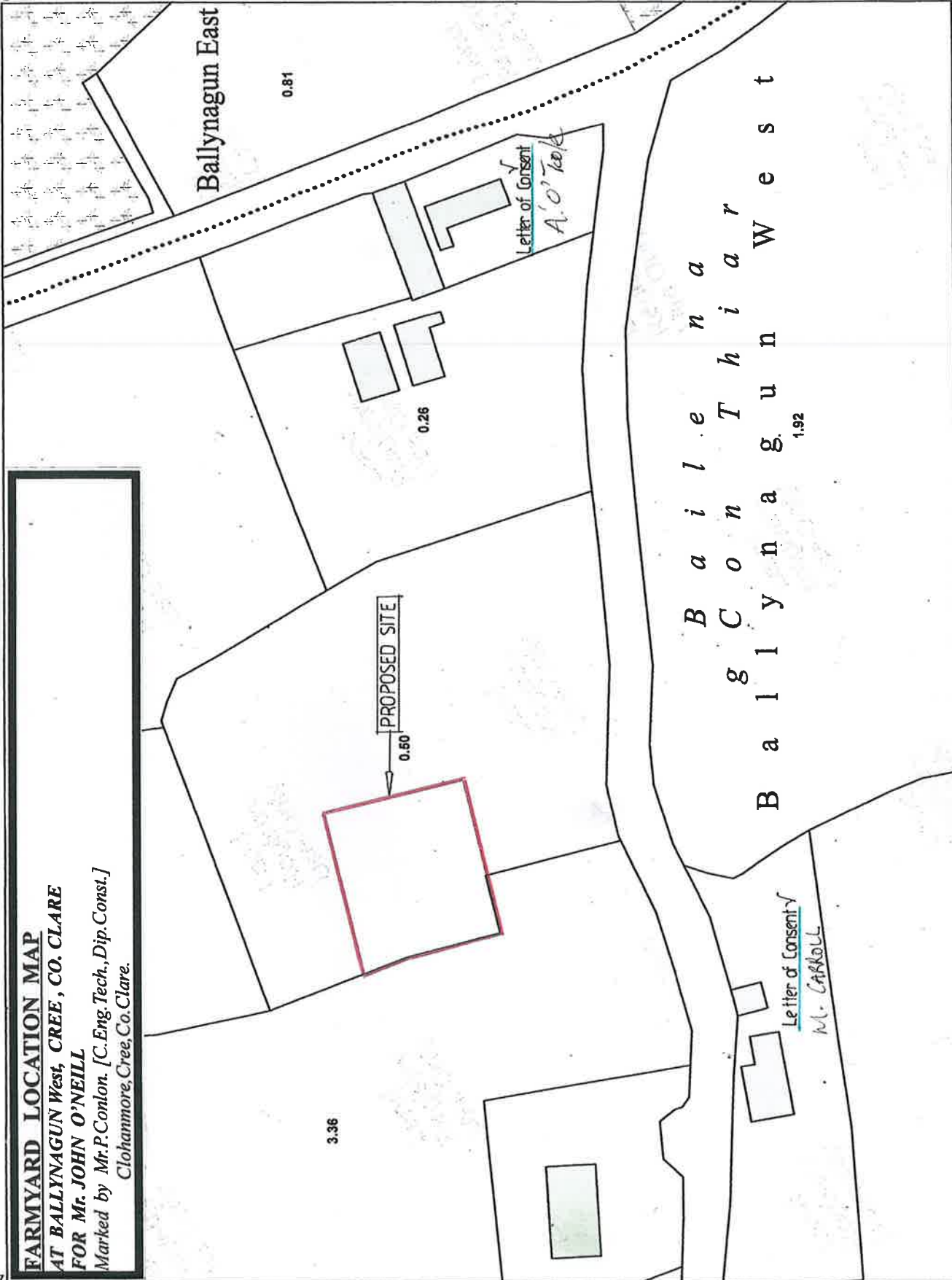
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Land Registry Compliant Map

FARMYARD LOCATION MAP
AT BALLYNAGUN WEST, CREE, CO. CLARE
FOR Mr. JOHN O'NEILL
Marked by Mr. P. Conlon. [C. Eng. Tech., Dip. Const.]
Clohanmore, Cree, Co. Clare.



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OUTPUT SCALE: 1:1,000

0 10 20 30 40 metres
0 20 40 60 80 100 Feet

CENTRE
COORDINATES:
ITM 503424,666430

PUBLISHED: 04/05/2021
ORDER NO.: 50190023_1

MAP SERIES: 1:5,000
MAP SHEETS: 4489

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LAND HOLDING MAP
AT BALLYNAGUN West, CREE, CO. CLARE
FOR Mr. JOHN O'NEILL
Marked by Mr. P. Conlon. [C.Eng. Tech., Dip. Const.]
Clohanmore, Cree, Co. Clare.

Registration Map

This map should be read in conjunction with the folio.

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(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold
- 'S' Register

(see Section 8(b)(II) of Registration of Title Act 1964 and Rule 224 & 225 Land Registration Rules 1972 - 2010).

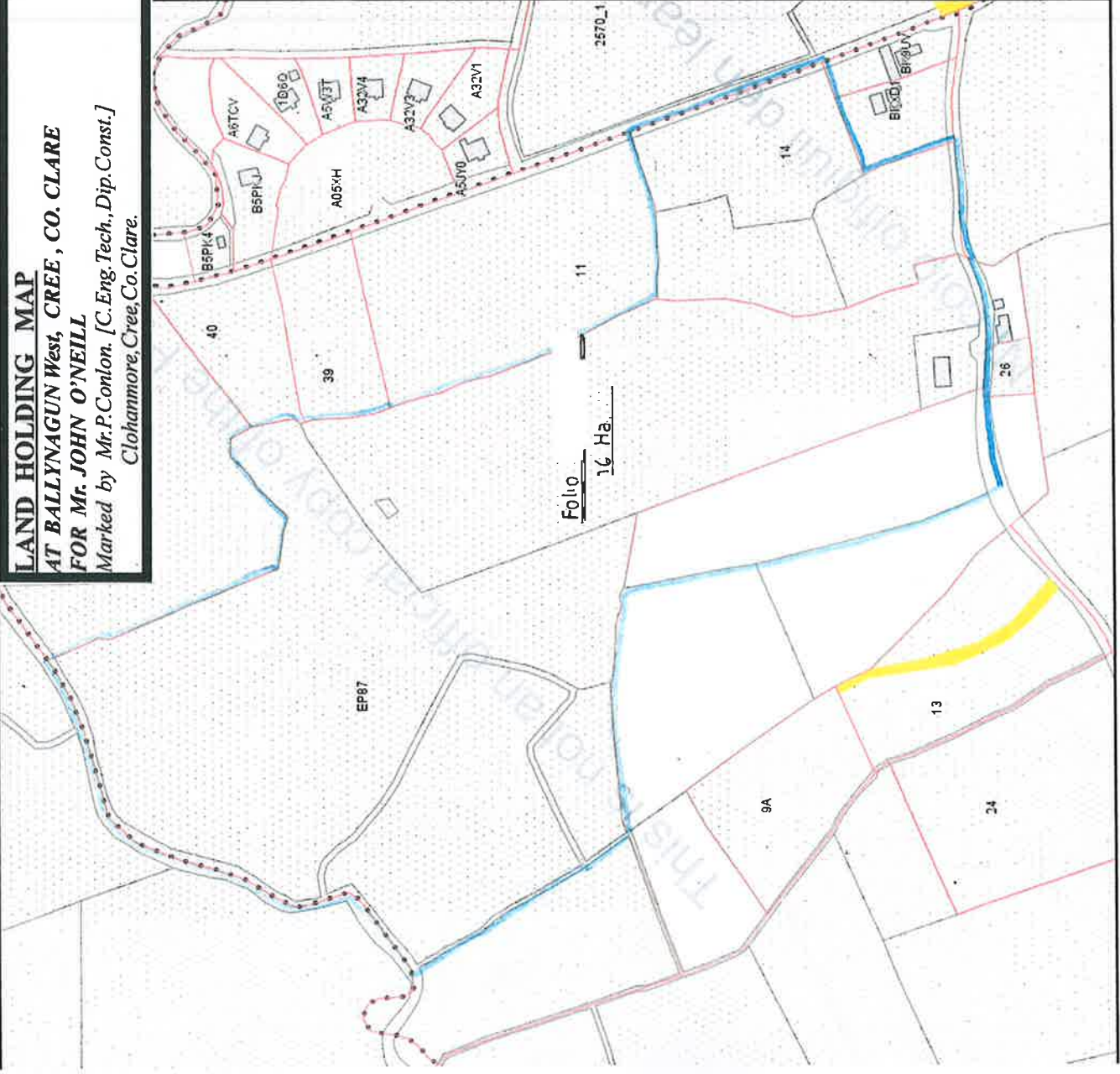
Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- Soak Pit

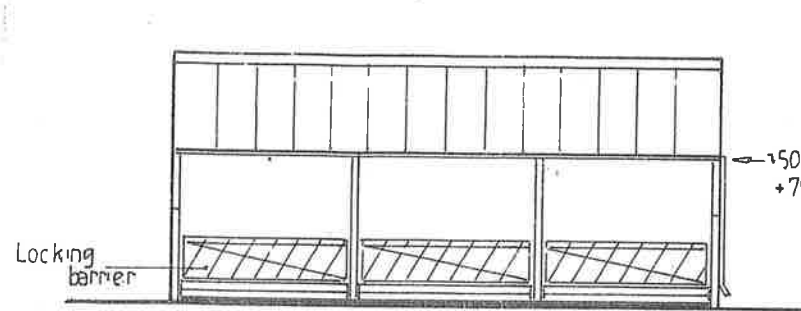
A full list of burdens and their symbology can be found at: www.landdirect.ie

The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent.

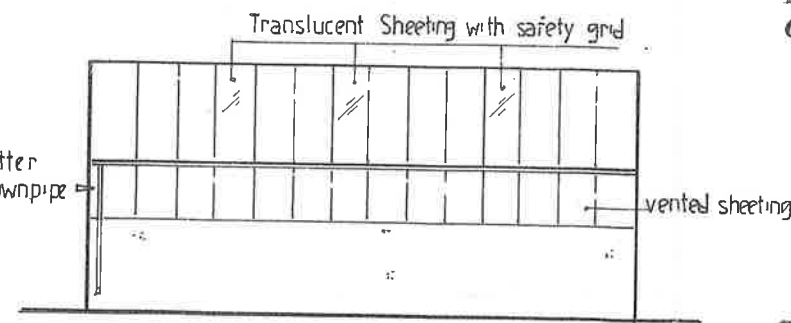
(see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.



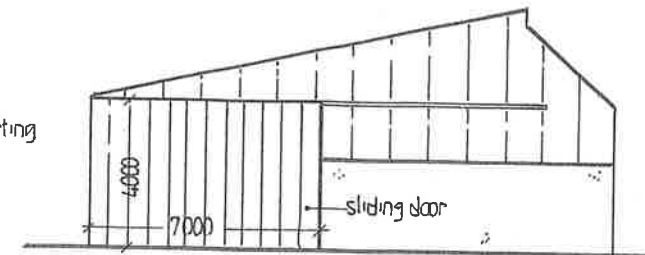
THESE DRAWINGS HAVE BEEN PREPARED FOR THE PURPOSES OF MAKING A PLANNING APPLICATION ONLY.



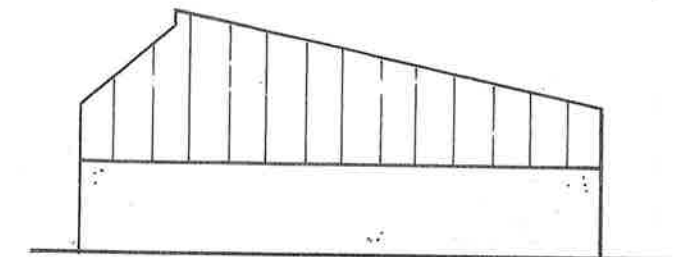
FRONT ELEVATION (1:200)



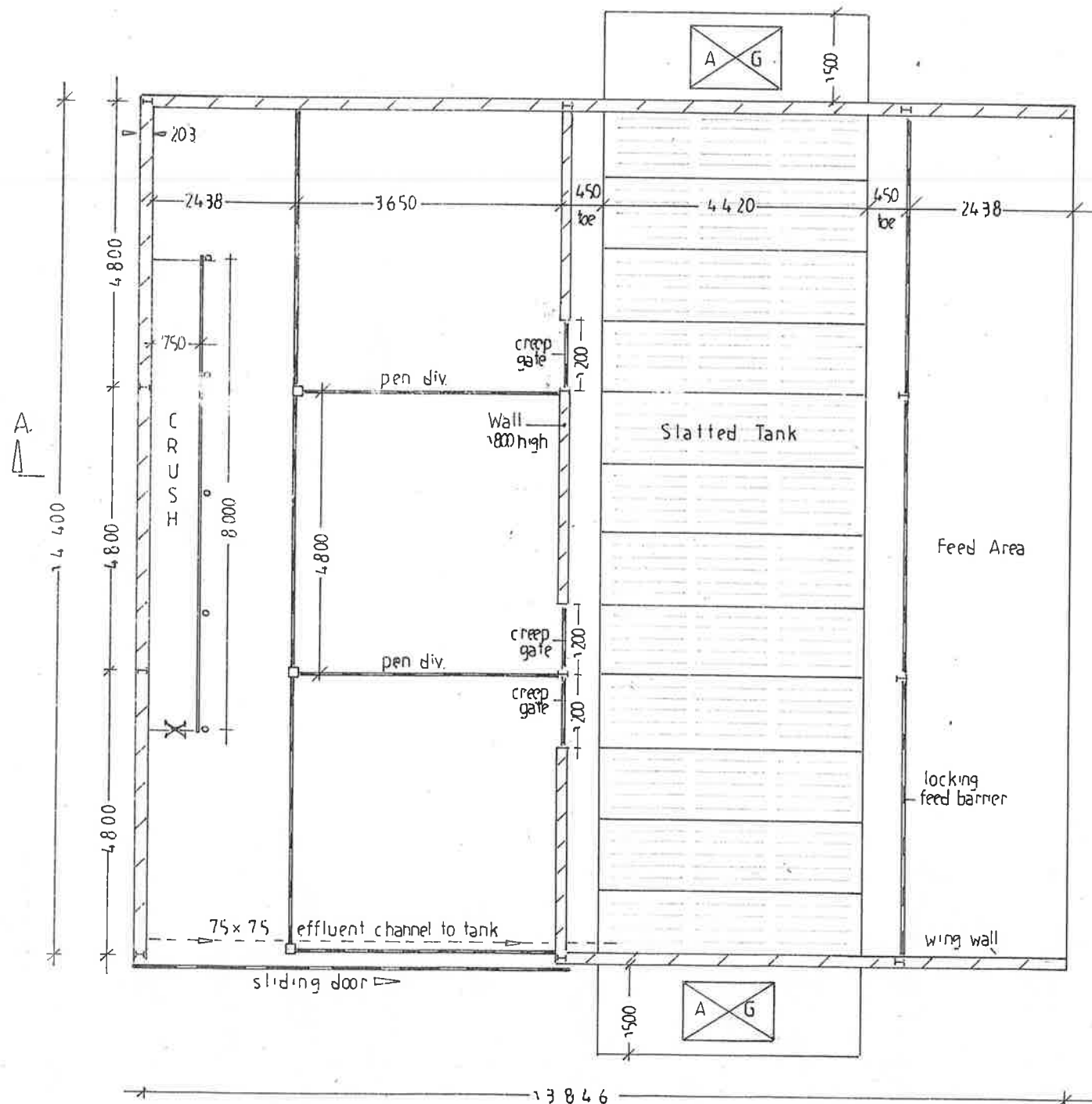
REAR ELEVATION (1:200)



SIDE ELEVATION (1:200)



SIDE ELEVATION (1:200)



PLAN. (1:100)

FLOOR AREA = 199.38 m².

PROPOSED LIVESTOCK SLATTED UNIT

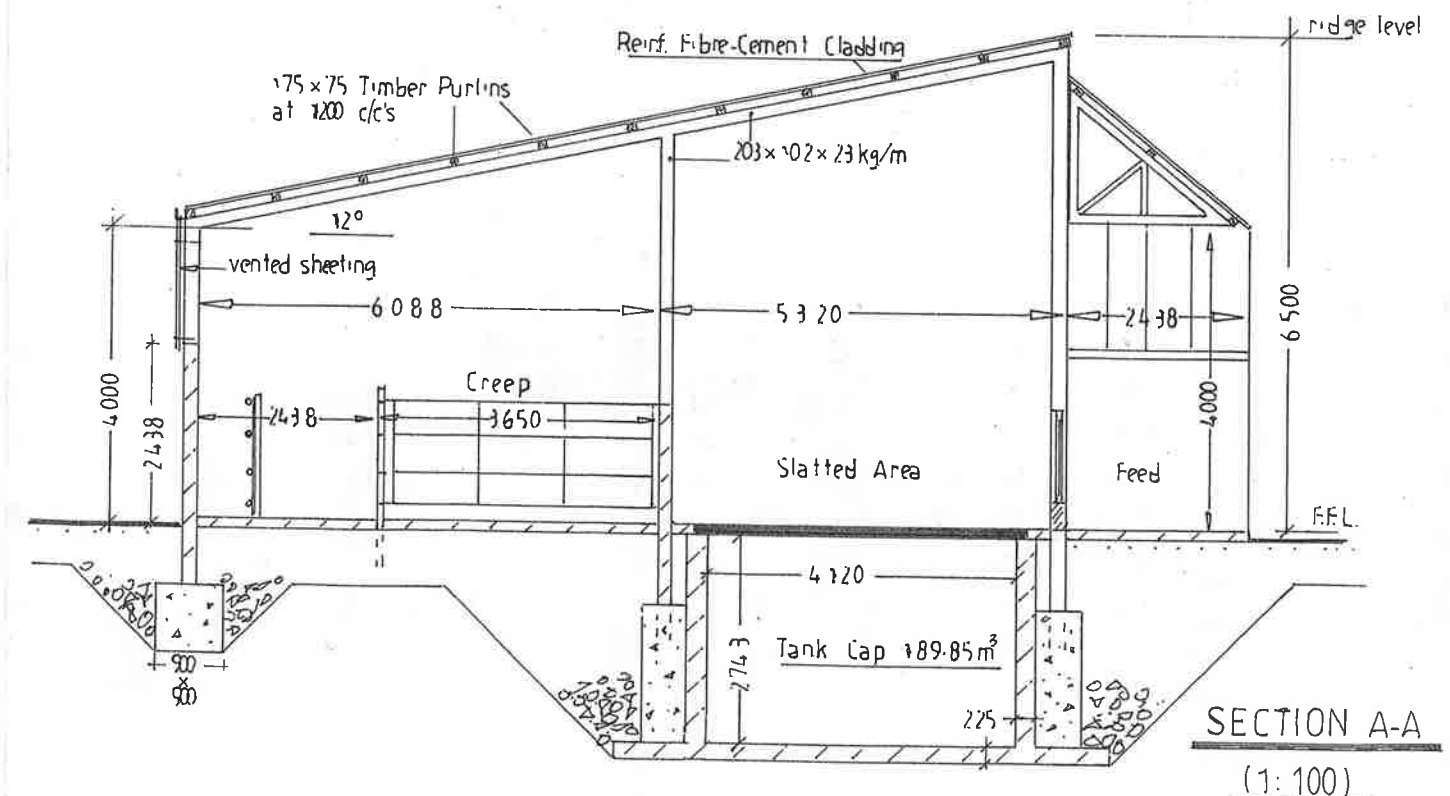
AT BALLYNAGUN West, CREE, CO. CLARE.

FOR MR. JOHN O'NEILL

DRAWN BY Mr. P. CONLON C.Eng. Tech., Dip. Const.
Clohanmore, Cree, Kilrush, Co. Clare.

SCALE 1:100 + 1:200

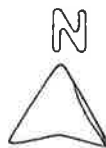
DATE APR. 2021



SECTION A-A
(1:100)

THESE DRAWINGS HAVE BEEN PREPARED FOR THE PURPOSES OF MAKING A PLANNING APPLICATION ONLY.

3.36



PROPOSED SLATED UNIT

P.EEL. 18.45
P.R.L. 24.95

0.50

0.26

store

store

store

Neighbour Dwelling

Applicants Dwelling + Garage

Doonbeg

low level hedgerows well maintained

Existing Agricultural Entrance

PUBLIC ROAD

+ TBM. 2000 mOD

Sight distance 120m

Cree

Unoccupied Derelict Structure

store

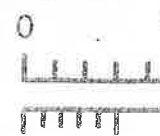
B a i l e n a
g C o n T h i a r
B a l l y n a g u n W

A convex safety mirror may also be erected to further enhance road safety measures.
Detailed plan of the gated entrance with access gate opening inward away from public road. Large farm machinery using this entrance will be minimal as farmlands are located behind the proposed site and all agricultural works will be executed on site. Surface/Storm water cannot discharge onto public road as ground levels dictate gradient is towards proposed site. The existing agricultural access roadway is to be resurfaced with 250mm crushed limestone hardcore well compacted.

Surface/Storm water measures along the entire length of existing agricultural roadway are not necessary as the soils are free draining and any storm water is already routed to existing land drains.

666344

503307



0 20 40 60 80 100 Feet

FARMYARD LAYOUT PLAN

AT BALLYNAGUN West, CREE, CO. CLARE.

FOR MR. JOHN O'NEILL

DRAWN BY Mr. P. CONLON C.Eng.Tech., Dip.Const.
Clohanmore, Cree, Kilrush, Co. Clare.

SCALE 1:500

DATE APR. 2021

O.S. Map 4489

COMHAIRLE

Clare County Council

Aras Contae an Chlair

New Road

Ennis

Co Clare

CONTAE

12/05/2021 09:23:40

AN CHLÁIR

Receipt No. : LICASH/0/316268

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JOHN O' NEILL

BALLYNAGUN WEST

CREE

CO CLARE

P21-31 MANUAL RC 115479

SECTION 5 REFERENCES 80.00

GOODS 80.00

VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered :

CHEQUES 80.00

Change : 0.00

COMHAIRLE

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