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COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Brian MacCoitir & Carmel Breen**  
**33 St. Senan's Road**  
**Lifford**  
**Ennis**  
**Co. Clare**  
**V95 EPCO**

RL4096 6274 OIE

**03rd March, 2022**

**Section 5 referral Reference R22-11 – Brian MacCoitir & Carmel Breen**

Are the developments listed below, which were carried out in at 33 St Senan's Road, Lifford, Ennis in the early 1970's, considered to be development and if so, are they exempted development?

Development No. 1 - Extension and conversion of original attached garage to kitchen/dining room (internal dimensions 7.3m x 3m).

Development No. 2 – Construction of flat-roofed garage to rear of house (internal dimensions 8m x 3m).

Development No. 3 – Construction of a flat-roofed, unheated conservatory to rear of house (internal dimensions 8.4m x 2.4m).

A Chara,

I refer to your application received on 14th February 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

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

Mise, le meas

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

**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.: R22-11**



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R22-11**

Are the developments listed below, which were carried out in at 33 St Senan's Road, Lifford, Ennis in the early 1970's, considered to be development and if so, are they exempted development?

Development No. 1 - Extension and conversion of original attached garage to kitchen/dining room (internal dimensions 7.3m x 3m).

Development No. 2 – Construction of flat-roofed garage to rear of house (internal dimensions 8m x 3m).

Development No. 3 – Construction of a flat-roofed, unheated conservatory to rear of house (internal dimensions 8.4m x 2.4m).

**AND WHEREAS, Brían MacCoitir & Carmel Breen** 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, 1963, as amended,
- b) Section 5 of the Planning and Development Act, 2000, as amended
- c) Class 3 of Part 1 of Schedule 3 of the Planning and Development Regulations 1977, as amended.
- d) The works and times in which they were constructed as indicated in submitted documents received by the Planning Authority on 14<sup>th</sup> Feb. 2022.

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

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room

- the construction of a flat roof garage to the rear of the property
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen at No. 33 St. Senan's Road, Lifford, Ennis, County Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 1963, as amended

the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 1963, as amended.

The Planning Authority has concluded that the following development at No. 33 St. Senan's Road, Lifford, Ennis, County Clare is deemed to be exempted development

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen

having regard to Section 4(1) (g) and Section 4(1)(h) of the Planning and Development Act 1963, as amended and Class 3 of Schedule 3, Part 1 of the Planning and Development Regulations 1977, as amended.

The Planning Authority has concluded that the following development at No. 33 St. Senan's Road, Lifford, Ennis, County Clare is not deemed to be exempted development

- the construction of a flat roof garage to the rear of the property

as same would not fall under the exempted development provisions in place at that time, namely Section 4(1) (g) of the Planning and Development Act 1963, 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:

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen

is development which is exempted development

- the construction of a flat roof garage to the rear of the property

is 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**

**03rd March, 2022**

**You are advised to note that the Planning and Development Regulations 1977, as amended which provided for certain forms of exempted development did not come into operation until 15<sup>th</sup> March 1977, which post-dates the construction of the garage, and as such cannot be retrospectively applied in this instance.**

**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: 79384

Reference Number: R22-11

Date Referral Received: 14th February 2022

Name of Applicant: Brian MacCoitir & Carmel Breen

Location of works in question: 33 St. Senan's Rd, Lifford, Ennis, Co. Clare

**Section 5 referral Reference R22-11 – Brian MacCoitir & Carmel Breen**

Are the developments listed below, which were carried out in at 33 St Senan's Road, Lifford, Ennis in the early 1970's, considered to be development and if so, are they exempted development?

Development No. 1 - Extension and conversion of original attached garage to kitchen/dining room (internal dimensions 7.3m x 3m).

Development No. 2 – Construction of flat-roofed garage to rear of house (internal dimensions 8m x 3m).

Development No. 3 – Construction of a flat-roofed, unheated conservatory to rear of house (internal dimensions 8.4m x 2.4m).

**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, 1963, as amended,
- (b) Section 5 of the Planning and Development Act, 2000, as amended
- (c) Class 3 of Part 1 of Schedule 3 of the Planning and Development Regulations 1977, as amended.
- (d) The works and times in which they were constructed as indicated in submitted documents received by the Planning Authority on 14<sup>th</sup> Feb. 2022.

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

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and

- the conversion of the garage into a kitchen / dining room
- the construction of a flat roof garage to the rear of the property
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen at No. 33 St. Senan's Road, Lifford, Ennis, County Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 1963, as amended

the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 1963, as amended.

The Planning Authority has concluded that the following development at No. 33 St. Senan's Road, Lifford, Ennis, County Clare is deemed to be exempted development

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen

having regard to Section 4(1) (g) and Section 4(1)(h) of the Planning and Development Act 1963, as amended and Class 3 of Schedule 3, Part 1 of the Planning and Development Regulations 1977, as amended.

The Planning Authority has concluded that the following development at No. 33 St. Senan's Road, Lifford, Ennis, County Clare is not deemed to be exempted development

- the construction of a flat roof garage to the rear of the property

as same would not fall under the exempted development provisions in place at that time, namely Section 4(1) (g) of the Planning and Development Act 1963, as amended.

**ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby decides that:

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,

- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen

is development which is exempted development

- the construction of a flat roof garage to the rear of the property

is development which is not exempted development

**Signed:**

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

**Date:**

**03rd March, 2022**

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

|                      |  |
|----------------------|--|
| <b>FILE REF:</b>     | <b>R22 11</b>  |
| <b>APPLICANT(S):</b> | <b>Brian MacCoitor and Carmel Breen</b>  |
| <b>REFERENCE:</b>    | Whether the developments as constructed to no. 33 St. Senan's Road, Lifford, Ennis are considered to be development and if so, are they exempted development . |
| <b>LOCATION:</b>     | <b>33 St. Senan's Road, Lifford, Ennis, Co. Clare.</b>   |
| <b>DUE DATE:</b>     | <b>10<sup>th</sup> March 2022</b>  |

**Site Location**

The existing dwelling is located in a mature residential area and consists of a two story semi detached dwelling. There is a single story side return on the eastern gable.

**Site context**



**Planning History**

Planning ref no. 102/51      A special permission was granted to Permanent Estates Ltd for the erection of 34 houses at Corrovorrin, Ennis. This permission was granted pursuant to the Town and Regional Planning Acts 1934 and 1939 subject to 2 no. conditions



### **Background to Referral**

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Brian MacCoitor and Carmel Breen.

It is submitted that Brian MacCoitor and Carmel Breen are the executors of the will pertaining to the subject property.

The applicants are seeking a Section 5 Declaration as to whether the following is development and if so is it exempted development:

- Extension and conversion of original attached garage to kitchen / dining room – 7.3m x 3m
- Construction of a flat roofed garage to rear of house - 8m x 3m
- Construction of flat roofed conservatory to rear of house – 8.4m x 2.4m

### **Statutory Provisions**

#### **Relevant Statutory Legislation**

As per the documentation submitted with the subject application, the extensions / alterations were carried out in:

- In or about 1973 – the external store was removed, the back wall of the then garage was aligned with the back wall of the house, the wooden doors at the front of the garage were replaced with a window, a window was inserted into the side wall and the garage was converted into a kitchen / dining room. At this time a flat roof garage to the rear of the house was also constructed.
- 1976 – the flat roof conservatory at the rear of the house was constructed.
- In the 1980's – a pitched roof was erected over the existing flat roof of the converted kitchen

Having regard to the dates which it is stated the works were carried out, the categories of exempted developments which the subject application :

a) Section 4 (1) of the 1963 Act and,

b) In Planning Regulations made by the Minister for the Environment pursuant to section 4 (II) (VIII) of the 1963 Act. The current regulations made pursuant to this Section are:

- i. The Local Government (Planning & Development) Regulations 1977 S.I. No. 65 of 1977 - Third Schedule and Article II thereof.
- ii. Local Government (Planning & Development) (Amendment) Regulations 1981 S.I. No. 154 of 1981.
- iii. Local Government (Planning & Development) (Postal & Telecommunications) (Exempted Development) Regulations 1983 S.I. No. 403 of 1983.

- iv. Local Government (Planning & Development) (Exempted Development & Amendment) Regulations 1984 S.I. No. 4348 of 1984.

**Planning and Development Act 1963, as amended**

Section 2(1) interpretation of “works” and “structure”

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

“structure” means any building, erection, structure, excavation, or other thing constructed, erected, or made on, in, or under any land, or any part of a structure so defined, and, where the context so admits, includes the land on, in, or under which the structure is situate;

Section 3(1) meaning of “development”.

3.—(1) “Development” in this Act means, save where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land.

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

Section 4(1)(g) states the following:

The following shall be exempted developments for the purposes of this Act—

- (g) 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 such appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(1)(h) states the following:

The following shall be exempted developments for the purposes of this Act—

- (h) development consisting of the use of any structure or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

**Planning and Development Act 2000, as amended**

Section 5 set out consideration in relation to a declaration and referral on development and exempted development.

Section 5 (6) - (a) The Board shall keep a record of any decision made by it on a referral under this section and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

(c) The Board shall, from time to time and at least once a year, forward to each planning authority a copy of the record referred to in *paragraph (a)*.

Section 5 (7) - A planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with *subsection (6)(c)*.

### **The Local Government (Planning & Development) Regulations 1977 S.I. No. 65 of 1977**

These regulations came into operation on 15<sup>th</sup> March 1977

#### **Third Schedule, Part 1, Class 1**

Any works for the provision of an extension to the rear of a dwellinghouse or the conversion for use as part of a dwellinghouse of any garage, store, shed or other similar structure attached to the rear or to the side of the dwellinghouse, where the height of any structural addition does not exceed that of the dwellinghouse and the original floor area of the dwellinghouse is not increased by more than 18 square meters.

#### **Conditions**

None specified

#### **Third Schedule, Part 1, Class 3**

The erection, construction or placing within the curtilage of a dwellinghouse of any tent, awning, shade or other object, greenhouse, garage, shed or other similar structure

#### **Conditions**

1. The height above ground level of any such structure shall not exceed, in the case of a building with a tiled or slated ridged roof, 4 meters or any other case 3 meters
2. The structure shall not be used for human habitation or for the keeping of pigs or poultry or for any other purpose other than a purpose incidental to the enjoyment of the dwellinghouse as such

**I have consulted the other above mentioned Regulations, and there is no provision contained therein that would be relevant to the subject Section 5 declaration.**

|                   |
|-------------------|
| <b>Assessment</b> |
|-------------------|

Having regard to the stated times in which the alterations / extensions were constructed, regard shall be had to the provisions of:

- Planning and Development Act 1963, as amended
- The Local Government (Planning & Development) Regulations 1977 S.I. No. 65 of 1977

#### Is it development?

Under Section 2(1) of the Planning and Development Act 1963, as amended 'Works' includes "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal."

The erection of an extension / garage to a residential dwelling and conversion of a garage into habitable accommodation and the subsequent alterations to same comes within the scope of works as defined in the aforementioned Act. As such it can be reasonably and logically concluded that works as outlined in the Section 5 declaration constitutes "development" under the meaning of development as stipulated in Section 3(1) of the aforementioned Act, as development is defined as, inter alia, "the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land."

#### Is / is not exempted development?

A question now arises as to whether or not development constitutes exempted under the broader provisions of Section 4 of the Planning and Development Act 2000, namely Section 4 (1)(g) and (h) Planning and Development Act 1963, as amended

Section 4(1)(g) of the Act states the following shall be considered exempted development -

(g) 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 such appearance inconsistent with the character of the structure or of neighbouring structures;

I would not consider that the works as carried out in 1973 (i.e. the removal of the external store, the alignment of the back wall of the original garage with that of the dwelling, the replacement of the wooden doors of the garage with a window, and the insertion of a window on the gable elevation of the garage) materially affects the external appearance of the structure so as to render such appearance inconsistent with the character of the structure or of neighbouring structures.

Regarding the construction of a garage to the rear of the property, which the applicants' state was erected in 1973, there is no provision in Section 4 of Planning and Development Act 1963, as amended, which would exempt same. At this time there were no Regulations in place which provided for an exemption in relation to the construction of any garage or similar structures. These Regulations came into operation on 15<sup>th</sup> March 1977, which would post date the construction of the garage.

Regarding the "conservatory" as erected in 1976, having regard to the location of the conservatory attached to the rear of the dwelling, as well as the scale and extent of same, I would consider that

same would constitute an “alteration” to the existing dwelling and I would not consider that same materially affects the external appearance of the structure so as to render such appearance inconsistent with the character of the structure or of neighbouring structures. It is located to the rear of the dwelling and is not visible from the public road to the south.

Section 4(1)(h) states the following:

The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the use of any structure or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

I would consider that the works to the original garage which include the change of use of the garage to habitable accommodation to accommodate a kitchen / dining room, would be considered exempt having regard to the provisions of Section 4(1)(h) of the Planning and Development Act 1963, as amended

It is noted that there is no relevant regulations in place at that time under which to consider the development as outlined above. Therefore for the avoidance of doubt, the works as carried out in 1973 would be considered exempted development

Regarding the remainder of the works which it is stated comprise a pitched roof was erected over the existing flat roof of the converted kitchen, constructed in 1980's.

Class 1 of the Third Schedule, Part 1, of the Local Government (Planning & Development) Regulations 1977 would be broadly applicable, which provided an exemption from the requirements of planning permission in relation to the following:

Any works for the provision of an extension to the rear of a dwellinghouse or the conversion for use as part of a dwellinghouse of any garage, store, shed or other similar structure attached to the rear or to the side of the dwellinghouse, where the height of any structural addition does not exceed that of the dwellinghouse and the original floor area of the dwellinghouse is not increased by more than 18 square meters.

While I would consider that the conversion of the garage would have been considered exempted development under Section 4(1)(h) of the Planning and Development Act 1963, as amended, the provision of the pitched roof may be considered exempt from the requirements of planning permission having regard to Section 4(1)(g) of the Planning and Development Act 1963, as amended, as it does not materially affects the external appearance of the structure so as to render such appearance inconsistent with the character of the structure or of neighbouring structures, and under Class 1 Class 1 of the Third Schedule, Part 1, of the Local Government (Planning & Development) Regulations 1977 as the height of same does not exceed that of the dwellinghouse.

#### **Environmental Impact Assessment**

In assessing this application I have had regard to the provisions of EU Directive 2014/52/EU (which amends EU Directive 2011/92/EU), and which has been transposed into Irish legislation by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (SI No. 296 of 2018). The subject development does not fall within the mandatory requirements for EIA as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. I therefore consider that the proposal constitutes a sub-threshold development and note the requirements of Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended. As such having regard to the nature and scale of the development as constructed and the nature of the receiving environment I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **Appropriate Assessment**

The development as constructed is located within an established residential area and comprises the construction of a wall.

Having regard to:

- the small scale and domestic nature of the development,
- the location of the development in a serviced urban area so that any construction surface water runoff will be managed via the existing drainage system,
- the consequent absence of a pathway to the European site,

it is considered that the development as constructed would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

### **Conclusion**

I would consider the following works to constitute exempted development having regard to the legislation (i.e. Planning and Development Act 1963, as amended and The Local Government (Planning & Development) Regulations 1977) governing same that was in place at the time of construction:

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room.
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen

However having regard to the stated date at which the flat roof garage was constructed (1973) which was done prior to the enactment of the Local Government (Planning & Development) Regulations 1977, it is considered that the exempted development provisions as contained therein, cannot be retrospectively applied. The Planning and Development Act 1963, as amended did not provide an exemption from the requirements of planning permission to construct a shed, garage, etc.

### **Recommendation**

**The following question has been referred to the Planning Authority:**

Whether the developments as constructed to no. 33 St. Senan's Road, Lifford, Ennis are considered to be development and if so, are they exempted development

**The Planning Authority in considering this referral had regard to:**

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 1963, as amended,
- (b) Section 5 of the Planning and Development Act, 2000, as amended
- (c) Class 3 of Part 1 of Schedule 3 of the Planning and Development Regulations 1977, as amended.
- (d) The works and times in which they were constructed as indicated in submitted documents received by the Planning Authority on 14<sup>th</sup> Feb. 2022.

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

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room
- the construction of a flat roof garage to the rear of the property
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen  
at No. 33 St. Senan's Road, Lifford, Ennis, County Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 1963, as amended

the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 1963, as amended.

The Planning Authority has concluded that the following development at No. 33 St. Senan's Road, Lifford, Ennis, County Clare is deemed to be exempted development

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen

having regard to Section 4(1) (g) and Section 4(1)(h) of the Planning and Development Act 1963, as amended and Class 3 of Schedule 3, Part 1 of the Planning and Development Regulations 1977, as amended.

The Planning Authority has concluded that the following development at No. 33 St. Senan's Road, Lifford, Ennis, County Clare is not deemed to be exempted development

- the construction of a flat roof garage to the rear of the property

as same would not fall under the exempted development provisions in place at that time, namely Section 4(1) (g) of the Planning and Development A Act 1963, as amended.

**NOW THEREFORE** Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, as amended, hereby decides

- the removal of the external store,
- the realignment of back wall of the then garage with the back wall of the house,
- the replacement of wooden doors at the front of the garage with a window,
- the insertion of a window into the side wall and
- the conversion of the garage into a kitchen / dining room
- the construction of a flat roof conservatory at the rear of the house.
- The erection of a pitched roof over the existing flat roof of the converted kitchen

Is development which is exempted development

- the construction of a flat roof garage to the rear of the property

is development which is not exempted development





Fiona Barry

Executive Planner

Date: 02.03.2022



Garreth Ruane

Senior Executive Planner

Date: 02/03/22

**You are advised to note that the Planning and Development Regulations 1977, as amended which provided for certain forms of exempted development did not come into operation until 15<sup>th</sup> March 1977, which post-dates the construction of the garage, and as such cannot be retrospectively applied in this instance.**



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**Brían MacCoitir & Carmel Breen**  
**33 St. Senan's Road**  
**Lifford**  
**Ennis**  
**Co. Clare**  
**V95 EPCO**

**14/02/2022**

**Section 5 referral Reference R22-11 – Brían MacCoitir & Carmel Breen**

Are the developments listed below, which were carried out in at 33 St Senan's Road, Lifford, Ennis in the early 1970's, considered to be development and if so, are they exempted development?

Development No. 1 - Extension and conversion of original attached garage to kitchen/dining room (internal dimensions 7.3m x 3m).

Development No. 2 – Construction of flat-roofed garage to rear of house (internal dimensions 8m x 3m).

Development No. 3 – Construction of a flat-roofed, unheated conservatory to rear of house (internal dimensions 8.4m x 2.4m).

A Chara,

I refer to your application received on 14th February 2022 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

  
**Tadhg Holmes**  
**Planning Department**  
**Economic Development Directorate**

**An Roinn Pleanála**  
**An Stiúirthóireacht 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

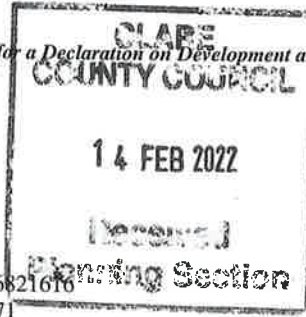


P07

**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  
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COMHAIRLE CONTAE AN CHLÁIR  
CLARE COUNTY COUNCIL

**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 | BRIAN MAZCOITIR & CARMEL BREEN<br>CHILDREN & EXECUTORS OF WILL OF LATE<br>MARY C. COTTER<br>33 ST. SEYMUN'S RD,<br>LIFFORD, ENNIS, CO. CLARE. |
| (b) Telephone No.:                                     | /   |
| (c) Email Address:                                     |   |
| (d) Agent's Name and address:                          | NONE,<br><br><br><br>EIRCODE:   |

## 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?

CONFIRM THAT 3 (THREE) DEVELOPMENTS AT 33 SE. SENNA'S RD, LIFFORD, ENNIS CARRIED OUT IN EARLY 1970'S WERE EXEMPTED DEVELOPMENTS AT THE TIME OF CONSTRUCTION.

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

DEVELOPMENT 1: EXTENSION AND CONVERSION OF ORIGINAL ATTACHED GARAGE TO KITCHEN/DINING ROOM. INTERNAL DIMENSIONS 7.3m x 3m.

DEVELOPMENT 2: CONSTRUCTION OF FLAT ROOFED GARAGE TO REAR OF HOUSE. INTERNAL DIMENSIONS 8m x 3m.

DEVELOPMENT 3: CONSTRUCTION OF FLAT ROOFED, UNHEATED CONSERVATORY TO REAR OF HOUSE. INTERNAL DIMENSIONS 8.4m x 2.4m

ADDITIONAL SUPPORTING INFORMATION SHEET ATTACHED.

- (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. (SCALE-1:1,000)

GROUND FLOOR PLAN OF HOUSE.

Co. Co. PLANNING MAP SHOWING DEVELOPMENTS.

VARIOUS PHOTOS.

ORIGINAL GARAGE LAYOUT.

| 3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT   |   |
|---|---|
| (a) Postal Address of the Property/Site/Building for which the declaration sought:  | 33 ST. SENAN'S ROAD,<br>LIFFORD,<br>ENNIS,<br>CO. CLARE V95 EPCO.         |
| (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):  | REQUIRED FOR SALE OF HOUSE<br>AS EXECUTORS OF WILL.                       |
| (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:<br><br><i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>                        | MARY C. COTTER (DECEASED)<br>COPY OF WILL & GRANT OF<br>PROBATE ATTACHED. |
| (e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:   | N/A   |
| (f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:   | NONE.   |
| (g) Were there previous planning application/s on this site? If so please supply details:   | NONE.   |
| (h) Date on which 'works' in question were completed/are likely to take place:  | 1973 → 1975.  |

SIGNED: Brian MacLoistin  
Carral Breen

DATE: 14-2-2022.  
14. 2. 2022.

### **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:.....         |       |                |       |



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

ADDITIONAL SUPPORTING INFORMATION

**Applicants:** Brian MacCoitir & Carmel Breen

**Property:** 33 St. Senan's road, Lifford, Ennis, Co. Clare. V95 EPC0

The house was constructed in 1962 by Permanent Estates Ltd. Cahardavin, Limerick as part of a development of 34 houses granted special permission (**Ref. 102/51**) under Section 57 of The Town & Regional Planning Acts of 1934 & 1939. This was prior to the enactment of The Local Government (Planning & Development) Act, 1963.

Searches carried out of the paper planning application records held in the Clare Co. Co. planning office have revealed no subsequent planning applications submitted for this property for construction between 1962 to 2019 when current owner died. This is contrary to the understanding of deceased owners' family who were of the understanding that in early 1980's planning was sought and refused for a 2-story extension for the side/rear of the house. It would have been the first 2-story extension request but was declined stating that it was out of sync with the rest of the houses on the road. No evidence of this is available.

The original construction consisted of the house with attached hollow block, flat roofed garage and external store at the side of the house. Following a number of similar extensions that were carried out on the road, which were exempted development at the time, in or about 1973, the external store was removed, the back wall was aligned with the back wall of the house, the wooden doors at the front of the garage were replaced with a window, a window was inserted into the side wall and the garage was converted into a kitchen/dining room.

It is worth noting that there were 10 children resident in the house at this stage. In addition, Mary C. Cotter (property owner) was involved with community development in Clare Social Services. As part of this work, rehabilitation of clients from Our Lady's Hospital were hosted at this property as part of their social and personal integration back into the community. Advice and guidance in relation to the three (3) extensions completed would have been assisted by the County Manager Joe Boland, as well as assistance of other councillors at the time. In order to progress the Rehabilitation Plan of Dr's Power and O'Beirn of Our Ladies Hospital, every assistance was given by CCC to keep the extensions within the Exempted Guidelines of the day.

In the 1980's, the external walls of the kitchen/dining room were dry lined/insulated and a tiled pitched roof erected over the existing flat roof to allow the roof to be insulated. Attached photographs show the kitchen/dining room with pitched roof attached to house.

At the same time as the kitchen/dining room was being converted, the 9" hollow block walled, corrugated flat roofed garage to the rear of the house was also constructed. Attached photographs show the side of the garage from the back garden.

In 1976, the hollow block, flat roofed (unheated) conservatory at the rear of the house was built. The conservatory was reroofed in the late 1980s with profile cladding and a number of clear panels inserted into the roof. Photograph shows conservatory from rear garden.

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

**ADDITIONAL SUPPORTING INFORMATION**

**Documents Submitted:**

- P07 Application form – 1 copy.
- Site Location Map – OSI 1,1000 scale with property highlighted – 2 copies.
- Clare Co. Co. Planning map 4264.23 – showing property with construction outlined – 2 copies.
- House layout (ground floor) inclusive of kitchen/dining room and conservatory (sunroom) – 2 copies.
- Will of Mary C. Cotter of 33 St. Senan's Road, Lifford, Ennis – 2 Copies.
- Grant of Probate Mary C. Cotter of 33 St. Senan's Road, Lifford, Ennis – 2 Copies.

**Photographs Submitted (notated):**

- Front of property showing line of kitchen/dining room – 2 copies.
- Front of property showing kitchen/dining room with tiled roof – 2 copies.
- Conservatory from back garden – 2 copies.
- Garage from back garden – 2 copies.



**CENTRE COORDINATES:**  
ITM 534205,678497

**PUBLISHED:** 30/12/2021 **ORDER NO.:** 50241326\_1

**MAP SERIES:** 1:1,000 **MAP SHEET:** 4264-23

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**LEGEND:**

<http://www.osi.ie>

Summit and 1/2 274. 7.1.21.  
Total to use - 2017 31-12-2021

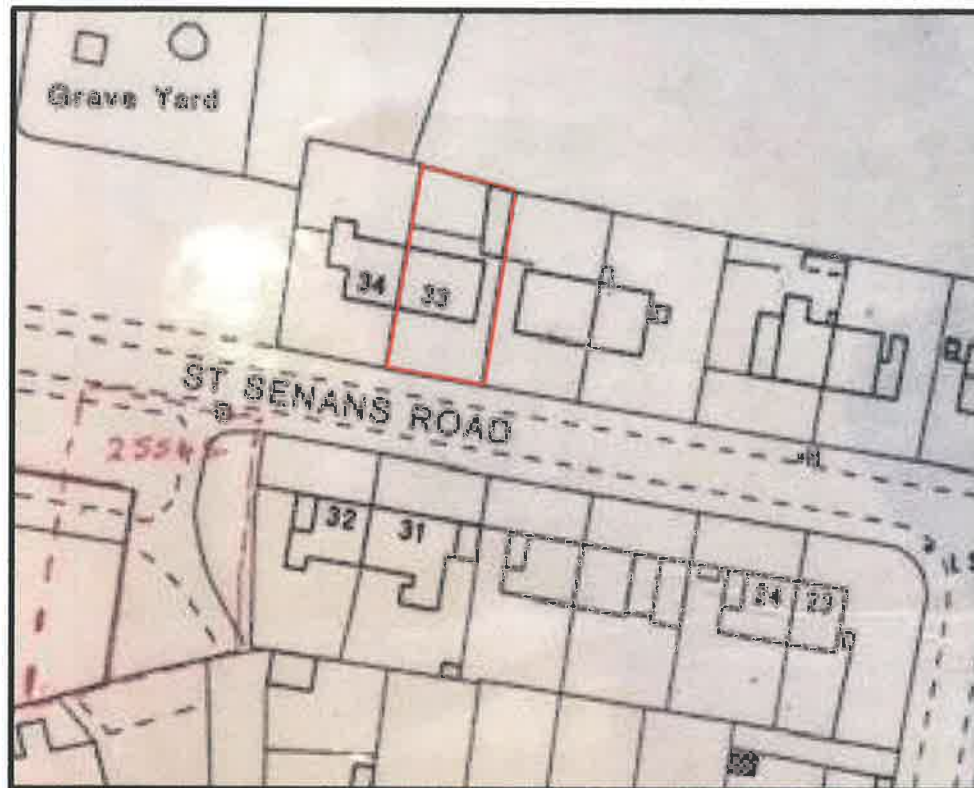


**OUTPUT SCALE:** 1:1,000

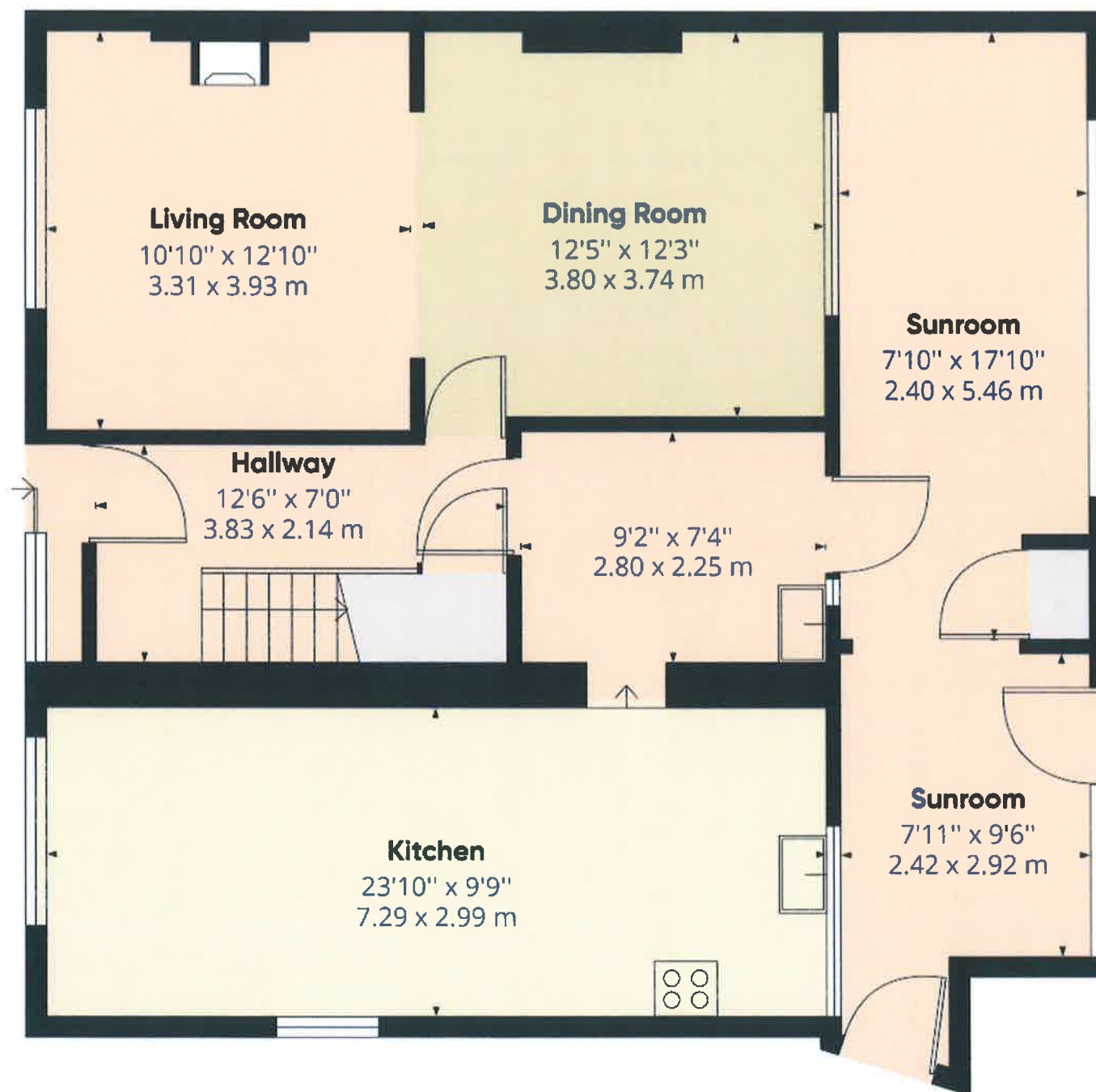
**CAPTURE RESOLUTION:**  
The map objects are only accurate to the  
resolution at which they were captured.  
Output scale is not indicative of data capture scale.  
Further information is available at:







4264.23



**Approximate total area<sup>(1)</sup>**

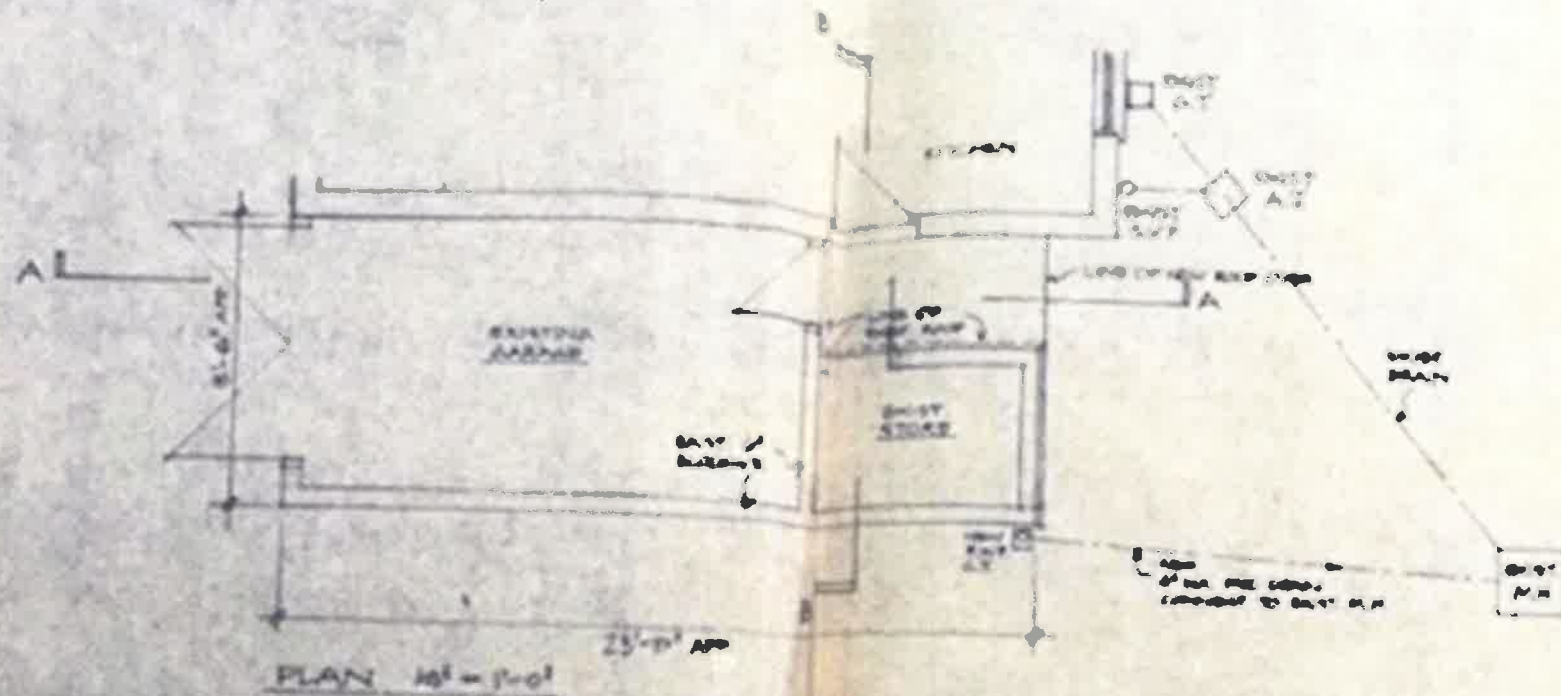
934,72 ft<sup>2</sup>

86,84 m<sup>2</sup>

<sup>(1)</sup> Excluding balconies and terraces

While every attempt has been made to ensure accuracy, all measurements are approximate, not to scale. This floor plan is for illustrative purposes only.

**GIRAFFE 360**

















# THE HIGH COURT

## PROBATE

BE IT KNOWN that on the <sup>14<sup>th</sup></sup> day of July 2021 the last Will a copy of which signed by me is hereunto annexed of **MARY COTTER** late of 33 St Senan's Road Lifford Ennis in the County of Clare

Homemaker

deceased who died on or about the 22nd day of November 2019 at same place was proved and registered in the Probate Office and that the Administration of all the estate which devolves on and vests in the personal representative of the said deceased was granted by the Court to **CARMEL BREEN** of Clifden Upper Doonbeg Kilrush in the County of Clare Civil Servant daughter of the deceased and **BRIAN COTTER (OTHERWISE BRIAN MAC COITIR)** of 2 Drimeen Kilmoran Kilrush Road Ennis in the County of Clare Safety Professional son of the deceased the Executors named in the said Will

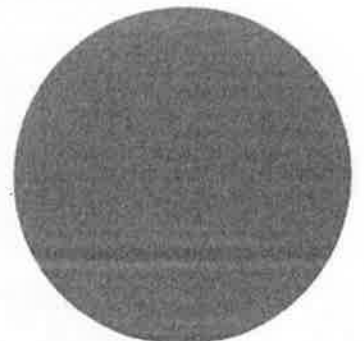
they having been first sworn faithfully to administer the same

*And it is hereby acknowledged by the Revenue Commissioners that the gross value of all the Estate of the said deceased within this jurisdiction (exclusive of what the deceased may have been possessed of or entitled to as a Trustee and not beneficially) amounts to Eur 118,499.09 and that the net value thereof amounts to Eur 110,254.09*

*John Glennon*

Probate Officer

Extracted by Applicant in person  
Eur €400.00



This is the last Will and Testament of Mary Cotter of 33 St. Senans Road, Ennis in the County of Clare.

1. I hereby revoke all former Wills and testamentary dispositions of any kind heretofore made by me.
2. I declare that I am of sound mind, memory and understanding.
3. I appoint my son Brian Cotter and my daughter Carmel Breen to be co-executors of this my will and I direct them to pay all my lawful debts and my funeral and testamentary expenses.

I give devise and bequeath all my estate of every nature and description and kind, wheresoever situate to my ten children, Carmel, Deirdre, Brian, Edel, Kevin, Sheila, Seamus, Niamh, Anne and Marie Therese in equal shares for their own absolute use and benefit.

IN WITNESS WHEREOF I have set my hand this Twenty Seventh day of November 2013.

Mary Cotter.

Signed by the said Testatrix as and for her last Will and Testament in our presence who in her presence and at her request (all three being present at the same time) have hereunto subscribed our names as witnesses. This Will having been printed on the front side only of this single sheet of A4 sized paper.

Suithen Dechen  
Sinton  
Ennis  
Co. Clare

Arlaig Kelly  
Legal Executive  
Ennis  
Co. Clare.

(Page 1 of 1)

John Glennon  
Probate Officer

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

14/02/2022 11:55:48

Receipt No. LICASH 328499  
REPRINT

BRIAN MCCOITIR & CARMEL BREEN  
CHILDREN & EXECUTORS OF WILL OF LATE MAE  
33 ST SENANS ROAD  
LIFFORD  
ENNIS  
CO. CLARE

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

Total : 80.00 EUR

Tendered :  
CHEQUES

80.00

Change :

0.00

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