



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Gerard Hamilton  
No. 3 Vandeleur Street  
Kilrush  
Co. Clare  
V15 X029**

**11th July, 2022**

**Section 5 referral Reference R22-40 – Gerard Hamilton**

Is the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, Co. Clare, from commercial use to domestic use, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 16th June 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 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**



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

**Reference No.: R22-40**



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R22-40**

**Is the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, Co. Clare, from commercial use to domestic use, considered to be development and if so, is it exempted development?**

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

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

- (a) Sections 2, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended.
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018) and (S.I. No. 75 of 2022)
- (c) Part 4 Article 10 Exempted Development – Classes of use, Class 3- use as an office.
- (d) Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities', March 2018.

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

- (a) the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is considered development which is exempted development under Article 10 of Planning and Development Regulations, 2001 as amended.

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

The proposed development consisting of the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is considered

development which is exempted development, as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in dark ink, appearing to read 'Anne O'Gorman', is written over a horizontal line.

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

**11th July, 2022**

**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:**

80116

**Reference Number:**

**R22-40**

**Date Referral Received:**

**16th June 2022**

**Further Information Received:**

**06<sup>th</sup> July 2022**

**Name of Applicant:**

**Gerard Hamilton**

**Location of works in question:**

**No. 3 Vandeleur Street, Kilrush, Co. Clare**

**Section 5 referral Reference R22-40 – Gerard Hamilton**

Is the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, Co. Clare, from commercial use to domestic use, considered to be development and if so, is it exempted development?

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

- (a) Sections 2, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended.
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018) and (S.I. No. 75 of 2022)
- (c) Part 4 Article 10 Exempted Development – Classes of use, Class 3- use as an office.
- (d) Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities', March 2018.

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

- (a) the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is considered development which is exempted development under Article 10 of Planning and Development Regulations, 2001 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 Kieran O'Donnell, Administrative Officer, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Kieran O'Donnell, Administrative Officer hereby declare that the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is considered development which is exempted development.

**Signed:**

  
KIERAN O'DONNELL  
ADMINISTRATIVE OFFICER

Ao: 6

**Date:**

**11th July, 2022**

**CLARE COUNTY COUNCIL**  
**SECTION 5 DECLARATION OF EXEMPTION APPLICATION**  
**PLANNERS REPORT 2**

<b>FILE REF:</b>	R22-40
<b>APPLICANT(S):</b>	Gerard Hamilton
<b>REFERENCE:</b>	Whether the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is or is not development and is or is not exempted development.
<b>LOCATION:</b>	No. 3 Vandeleur Street, Kilrush, County Clare
<b>DUE DATE:</b>	15 <sup>th</sup> July 2022

### **Introduction**

The following further information was requested by the Planning Authority on the 30<sup>th</sup> June 2022.

1. *You are requested to outline to submit existing and proposed floor plans (to scale) of the first floor area which include the following:*

*(a)*

*The existing floor plan and the class of commercial and/or other uses.*

*(b)*

*The proposed floor plan which demonstrates the number and type of residential units proposed. You are advised that demonstration of compliance with the minimum floor area and storage area requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" is required for the type of residential unit(s) proposed.*

2. *You are requested to outline whether the first-floor area is currently occupied or is vacant. In the instance where it is vacant you are requested to outline the period of time of the vacancy.*

3. *You are requested to outline when it is proposed to carry out the works associated with the proposed change of use.*

A response to this request was received on the 04<sup>th</sup> July 2022. Additional information was also received on the 06<sup>th</sup> July 2022. Outlined in this report is a re-assessment of the proposed development in light of the response received.

### **Clare County Development Plan 2017- 2023 (as varied)**

The front of the site is zoned "Mixed Use" whilst the rear is zoned "Existing Residential" in the Clare County Development Plan 2017-2023 (as varied).

### **Recent Onsite Planning History**

09-31010 – Granted - Mr Gerard Jnr Hamilton - (a)Change of use from a retail shop to a coffee shop  
(b)construction of a shop front.

### Pre-planning History

None.

### Section 5 Declaration History

None.

### Drawings Received

- Site location map.

### Site Description

The site is located in the settlement of Kilrush and is on the northern side of Vandeleur Street. The site accommodates a 2 storey (with attic space also) mid-terrace building which accommodates the Potters Hand café at ground floor level.

### Background

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

#### Section 2

'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.*

#### Section 3

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

S.3.(1) In this Act, "*development*" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

#### Section 4(1)(H)

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

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

## Planning & Development Regulations, 2001, as amended

### Part 2 Exempted Development

Article 6 (1) states

*'Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1'.*

Article 9 -Restrictions on Exemptions states

*'Under Article 9 (1) of the same Regulations, development to which Article 10 relates shall not be exempted development for the purposes of the Act:*

- (a) if the carrying out of such development would –*
  - i. contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
  - ii. consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
  - iii. endanger public safety by reason of traffic hazard or obstruction of road users,*
  - iv. 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. (a)*  
*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,*



- vii. (b) *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*
- vii. (c) *consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.”*
- viii. *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*
- ix. *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*
- x. *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*
- xi. *obstruct any public right of way,*
- xii. *further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area’.*

#### Article 10 Change of use

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

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

- (2) (a) *A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.*
- (b) *Nothing in any class in Part 4 of the Schedule 2 shall include any use—*
- (i) as an amusement arcade,*
  - (ii) as a motor service station,*
  - (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,*
  - (iv) for a taxi or hackney business or for the hire of motor vehicles,*
  - (v) as a scrap yard, or a yard for the breaking of motor vehicles,*
  - (vi) for the storage or distribution of minerals,*
  - (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,*
  - (vii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or*
  - (viii) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.*
- (3) *Development consisting of the provision within a building occupied by, or under the control of, a State authority of a shop or restaurant for visiting members of the public shall be exempted development for the purposes of the Act.*
- (4) *Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*
- (5) *Development consisting of the use of a house for child minding shall be exempted development for the purposes of the Act.*

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

Statutory Instrument No. 75 of 2022 has extended this exemption to 31/12/2025 and added a new use class (Class 12 - public houses), to the specified use classes that can qualify to avail of the planning exemption, subject to certain conditions and limitations.

Article 10 of the Planning and Development Regulations 2001 (S.I. No. 75 of 2022) is amended by inserting the following sub-article after sub-article (5):

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

*‘relevant period’ means the period from the 08<sup>th</sup> February 2018 until 31 December 2025.*

*(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 of 12 of Part 4 to Schedule 2.*

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

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

*3(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6, and 12.*

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

*(d) (i) The development is commenced and completed during the relevant period.*

*(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall*

*(I) affect only the interior of the structure*

*(II) retain 50 per cent or more of the existing external fabric of the building, and*

*(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

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

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

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

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

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

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

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

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

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

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

(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.

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

(I) the location of the structure, and

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and

(III) the Eircode of the property,

shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024 and 2025 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii)."

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

#### Schedule 2 Article 6 part 1 Exempted Development

#### **CLASS 14**

*Development consisting of a change of use—*

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

vehicles, to use as a shop,

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

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

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

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

(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons. The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.

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

### **Minimum Requirements for Residential Units**

The Regulations set out some minimum standards that apply to any residential units being provided, including minimum floor areas, storage space and the provision of natural light.

- A maximum of 9 residential units can be provided in any structure.
- The minimum floor area and minimum storage space requirements of the 'Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', 2018 must be complied with.

### **'Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', March 2018 and Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018(S.I. No. 30 of 2018)**

This ensures that apartments will be of adequate size and will include adequate storage.

## **Assessment**

### **Primary Legislation**

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

## The Regulations

- I refer to Part 4 Article 10 Exempted Development- Class of use- The nature of the existing/previous commercial use is not stated in the application.
- I refer to Schedule 2 part 1 Article 6 Exempted Development – General, wherein in class 14 sets out changes of use that are considered to be exempted development. I do not consider that the proposed change of use falls under the provision of class 14 of the Planning and Development Regulations 2001 as amended.
- I refer to part 2 Article 6 (1) Exempted Development and Article 9 Restrictions on Exemptions—. It is considered that the provisions of article 9 are not applicable to the query.
- I refer to Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) as amended by the Planning and Development Regulations 2018 (no 2). Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

Article 10 of the Planning and Development Regulations 2001 (S.I. No. 75 of 2022) is amended by inserting the following sub-article after sub-article (5):

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

*‘relevant period’ means the period from the 08<sup>th</sup> February 2018 until 31 December 2025.*

*(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 of 12 of Part 4 to Schedule 2.*

**It is stated that the existing use is commercial. The most recent information received on the 06<sup>th</sup> July 2022 states that this area has been used for office/storage purposes ancillary to the ground floor café (i.e. Class’ 2 and 3).**

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

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

**The structure was in place before 2018.**

*3(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6, and 12.*

**Based on the most recent information received on the 06<sup>th</sup> July 2022 the area was used as a kitchenette and an office area ancillary to the ground floor café.**

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

Based on the most recent information received on the 06<sup>th</sup> July 2022 the applicant states that the first floor area has been vacant for 2 years.

*(d) (i) The development is commenced and completed during the relevant period.*

**It is stated that no works would be required.**

*(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall*

*(I) affect only the interior of the structure*

**No external works are proposed.**

*(II) retain 50 per cent or more of the existing external fabric of the building, and*

**100% of the external fabric of the building is to be retained.**

*(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

**No external works are proposed.**

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

**No external works are proposed.**

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

**Not applicable.**

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

**Less than 9 units are proposed.**

*(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.*

The floor area of the apartment is approximately 73 metres. It would comprise of a bedroom, 2 toilets and a kitchen/living area. These guidelines set out the minimum floor area requirement for a 1 bedroom apartment is 45sqm. This is achieved in this instance.

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

**This is achieved.**

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

**Not applicable.**

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

**Not applicable.**

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

1. *an area to which a special amenity area order relates;*

**The site is within the Kilrush Architectural Conservation Area and the Core Shopping Area.**

2. *an area of special planning control;*

**The site is within the Kilrush Architectural Conservation Area and the Core Shopping Area.**

3. *within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.*

**Not applicable.**

*(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.*

**The development does not relate to these restrictions.**

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

**Not applicable.**



*(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.*

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

*(I) the location of the structure, and*

*(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and*

*(III) the Eircode of the property,*

*shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.*

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

*(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024 and 2025 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph(ii)."*

**Noted.**

### **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 7 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 proposed development 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.

### **Recommendation**

Having regard to Article 10, of the Planning and Development Regulations, 2001 (as amended).

WHEREAS a question has arisen as to whether the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is or is not development and is or is not exempted development.

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

**(a) Sections 2, 3 and 4(1) (h) of the Planning and Development Act, 2000, as amended.**

(b)Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018)and (S.I. No. 75 of 2022)

(c)Part 4 Article 10 Exempted Development – Classes of use, Class 3- use as an office.

(d)Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', March 2018.

**AND WHEREAS Clare County Council has concluded that –**

the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is considered development which is exempted development under Article 10 of Planning and Development Regulations, 2001 as amended.

**NOW THEREFORE** Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides that the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is considered development which is exempted development.

Signed



A/Executive Planner

Date:

06<sup>th</sup> July 2022



A/Senior Planner

Date:

06-07-2022,

**Clare County Council**  
**Screening for Appropriate Assessment & Determination**

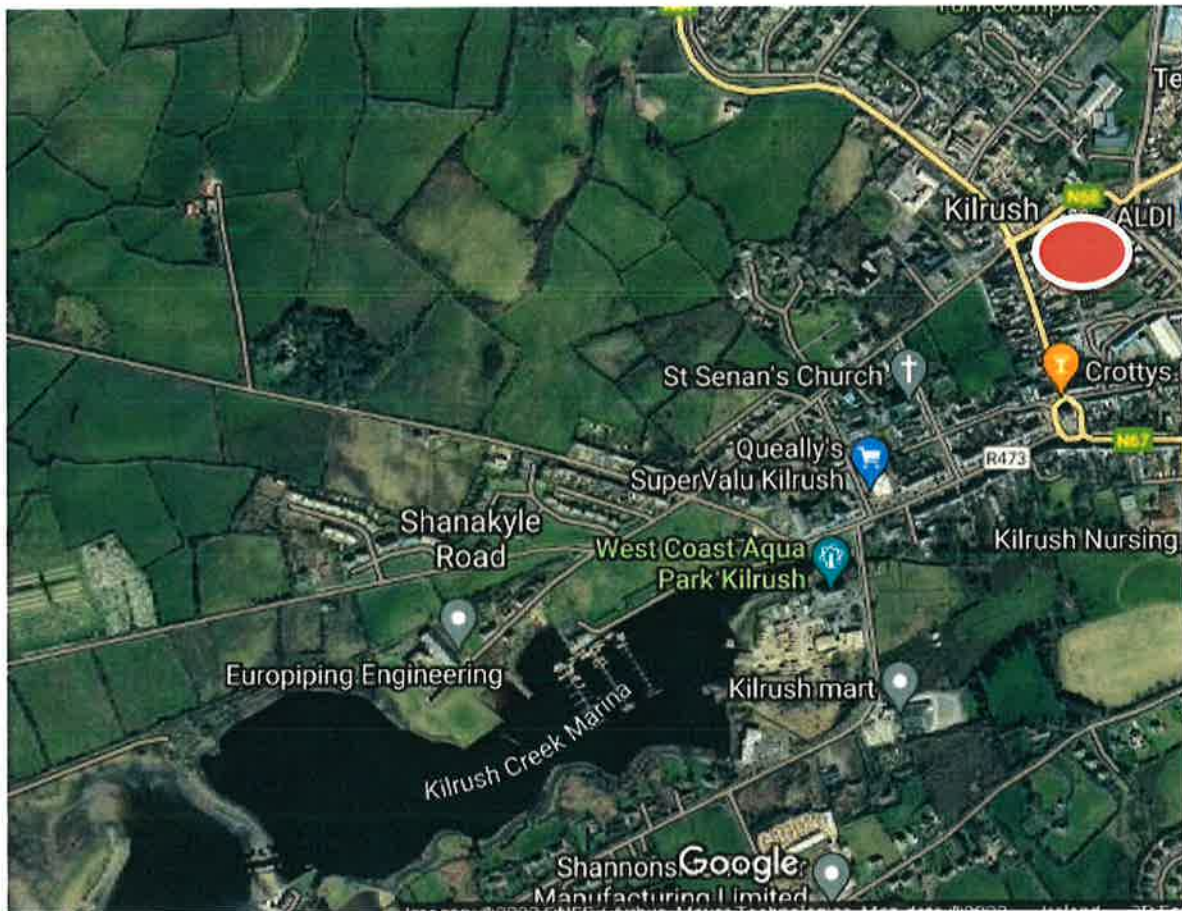
1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all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

**Table 1: Project Details**

<b>Planning File Reference</b>	R22-40
<b>Applicant Name</b>	Hamilton
<b>Development Location</b>	Vandeleur Street, Kilrush
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No

**Description of the project (To include a site location map):**

Change of Use from commercial to Residential development



**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)<sup>1</sup> 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**

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Lower River Shannon SAC	<p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachium</i> vegetation [3260]</p> <p><i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinia caerulea</i>) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnus incana</i>, <i>Salix alba</i>) [91E0]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349]</p>	1.5

<sup>1</sup> 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.

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

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
	Lutra lutra (Otter) [1355]	
River Shannon and River Fergus Estuary SPA	Cormorant (Phalacrocorax carbo) [A017] Whooper Swan (Cygnus cygnus) [A038] Light-bellied Brent Goose (Branta bernicla hrota) [A046] Shelduck (Tadorna tadorna) [A048] Wigeon (Anas penelope) [A050] Teal (Anas crecca) [A052] Pintail (Anas acuta) [A054] Shoveler (Anas clypeata) [A056] Scaup (Aythya marila) [A062] Ringed Plover (Charadrius hiaticula) [A137] Golden Plover (Pluvialis apricaria) [A140] Grey Plover (Pluvialis squatarola) [A141] Lapwing (Vanellus vanellus) [A142] Knot (Calidris canutus) [A143] Dunlin (Calidris alpina) [A149] Black-tailed Godwit (Limosa limosa) [A156] Bar-tailed Godwit (Limosa lapponica) [A157] Curlew (Numenius arquata) [A160] Redshank (Tringa totanus) [A162] Greenshank (Tringa nebularia) [A164] Black-headed Gull (Chroicocephalus ridibundus) [A179] Wetland and Waterbirds [A999]	1.5

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?	Yes
2	Impacts on terrestrial habitats & species.	Is the development within 1km of a European site with terrestrial based habitats or species?	No
3	Impacts on designated marine habitats & species.	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	No
4	Impacts on birds in SPAs	Is the development within 1km of a Special Protection Area	No
5	Indirect effects	Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site?	No impacts envisaged



		<i>Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?</i>	
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**Table 3: Identification of potential impacts.**

<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b> <i>Please answer the following if the answer to question 1 in table 2 was "yes" or "unknown".</i> <b>Does the development involve any of the following:</b>	
<b>1.1</b>	Removal of or interference with habitat within a European 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
<b>1.2</b>	Discharges either directly (via pipe from the development) or indirectly (via sewer) to surfacewater or groundwater What is the likely volume of the discharge?	To public sewer
<b>1.3</b>	Abstraction from surfacewater or groundwater in or adjacent to a European 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
<b>1.4</b>	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
<b>1.5</b>	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
<b>1.6</b>	Construction of drainage ditches - (scale?) Where the run off is directed to? Is the drainage run off directed to a European site where species are identified and whose conservation status may be impacted by this drainage?	No
<b>1.7</b>	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	No
<b>1.8</b>	Construction within a floodplain or within an area liable to flood (See <a href="http://www.floodmaps.ie">www.floodmaps.ie</a> , internal flood risk maps, County Development Plan SFRA and <a href="http://www.cframs.ie">www.cframs.ie</a> )	No
<b>1.9</b>	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	No
<b>1.10</b>	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	No

1.11	Development within catchment of a European 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

<b>Appropriate Assessment Screening Determination</b>	
Planning File Reference	R22-40
Proposed Development	Change of Use from commercial unit to residential
Development Location	Kilrush
European sites within impact zone	As per report
<b>Description of the project:</b>	
Change of Use from commercial unit to residential	
<b>Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site</b>	
As per report	
<b>Describe how the project or plan (alone or in combination) is likely to affect the European site(s).</b>	
Water quality & general disturbance	
<b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b>	
Public sewer connection Distance from designation Minor nature of works	
<b>Documentation reviewed for making this statement</b>	
<ul style="list-style-type: none"> <li>- County Development Plan</li> <li>- NPWS website</li> <li>- Documents received as part of the planning application</li> </ul>	
<b>Conclusion of assessment (a, b, c or d)</b>	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) <sup>3</sup>	
(b) There is no potential for significant effects to European Sites <sup>3</sup>	Yes
(c) The potential for significant effects to	

<sup>3</sup> 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.



<b>European Site(s) cannot be ruled out<sup>4</sup></b>	
<b>(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<sup>5</sup></b>	
<b>Completed By</b>	John O'Sullivan
<b>Date</b>	06 <sup>th</sup> July 2022

<sup>4</sup> 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](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.

<sup>5</sup> 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.

## John O Sullivan

---

**From:** Gerard Hamilton <  
**Sent:** Wednesday 6 July 2022 14:13  
**To:** John O Sullivan  
**Subject:** No 3, Vandeleur Street, Kilrush. Co. Clare (The Potters Hand Coffee Shop) V15X029  
(Referral Reference R22-40-Gerard Hamilton)

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi John,

Many thanks for your call earlier. As discussed, I wish to clarify the following:

1. The 1st floor has not been occupied within the last two years.
2. Prior to this, the 1st floor was used for the sole purpose of the ground floor (coffee Shop) staff for:
  - a. Office facilities.
  - b. Kitchenette.
  - c. Toilets.
  - d. Storage.

If you have any more questions, please, do not hesitate to contact me.

Many thanks in advance.

Kind Regards,

Gerard Hamilton

## Brian Fahy

---

**From:** Planning Office  
**Sent:** Monday 4 July 2022 16:38  
**To:** Brian Fahy  
**Subject:** FW: No 3, Vandeleur Street, Kilrush. Co. Clare (The Potters Hand Coffee Shop) V15X029 (Referral Reference R22-40-Gerard Hamilton)  
**Attachments:** Ground Floor (Shop) 1 of 3.pdf; First Floor 2 of 3.pdf; Loft (Storage) 3 of 3.pdf; Vandeleur Plans.pdf; Referral Reference R22-40-Gerard Hamilton 30.06.2022.pdf

---

**From:** Gerard Hamilton <  
**Sent:** Monday 4 July 2022 16:18  
**To:** Planning Office <planoff@clarecoco.ie>  
**Subject:** Re: No 3, Vandeleur Street, Kilrush. Co. Clare (The Potters Hand Coffee Shop) V15X029 (Referral Reference R22-40-Gerard Hamilton)

Hi Anne,

Hope all is good with you. I am replying to a letter that I got from **Josephine Connors** last week. I have already spoken to Brian on this and he said to send my response by mail to you so that you can forward to Josephine.

Please see attached documents requested to question 1a and 1b. These drawings 1 of 3, 2 of 3 and 3 of 3 outline the ground, 1st floor and loft (Storage)

Also is a copy of the drawings that were used as part of the planning in 2009.

In relation to question 2, it has been occupied on a private basis for myself only.

In relation to question 3, There is NO works to be carried out or any development to commence.

All I am looking for is to change the use of the 1st floor to domestic so that I can register it with the LPT.

Please come back to me if you have any more questions.

If you feel that a telephone call is quicker to answer any questions, please call me on 0872308796

Many thanks in advance.

Regards,

Gerard Hamilton.



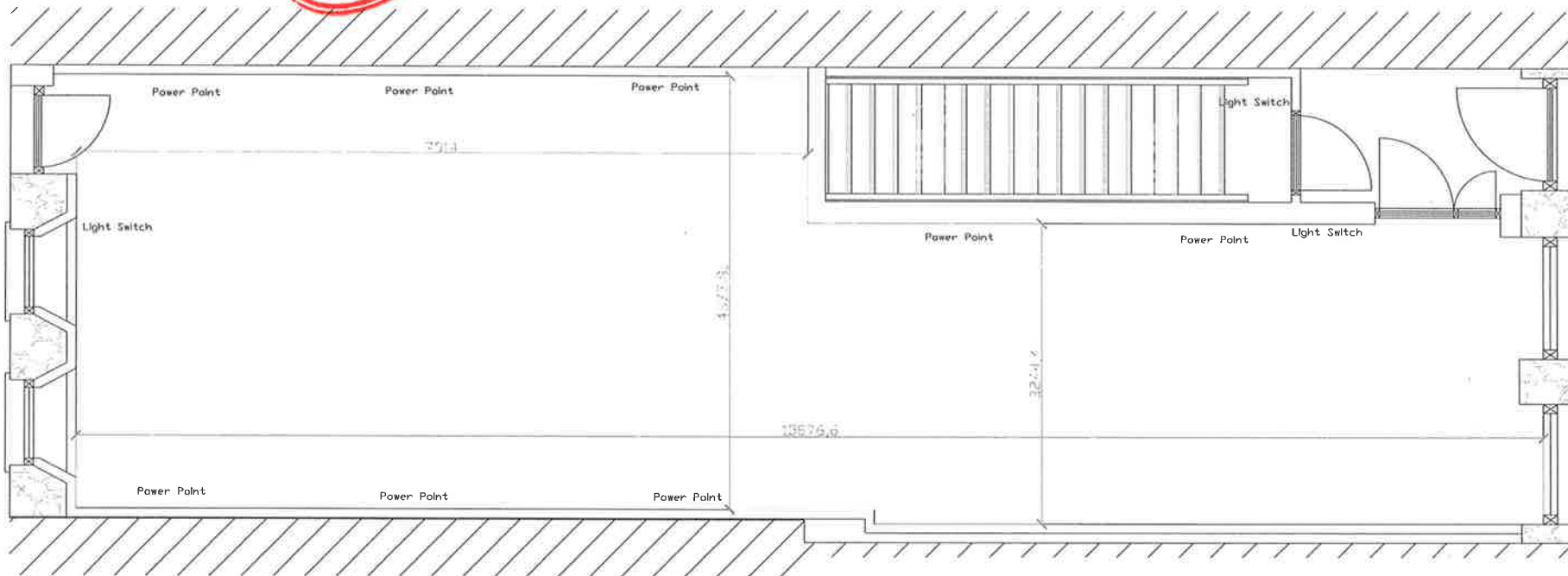
On Wednesday, 15 June 2022, 12:36:15 GMT+1, Planning Office <planoff@clarecoco.ie> wrote:

Hi Gerard,

I acknowledge receipt of your email and have forwarded same to the Area Planner for comment.

You will be provided with a response in due course.

Kind regards,



Ground Floor

- TIMBER
- EXISTING STONE WALL
- INSULATION
- NEW BLOCK LAYOUT
- BOUNDARY WALL

Drawing Title

FIRST FLOOR

General Notes

Revision No.	Date
04	27/08/08

Firm Name and Address

Hamilton  
No. 9, The Rise, Huntsfield,  
Doonadoyle,  
Limerick  
Tel: 0872308796

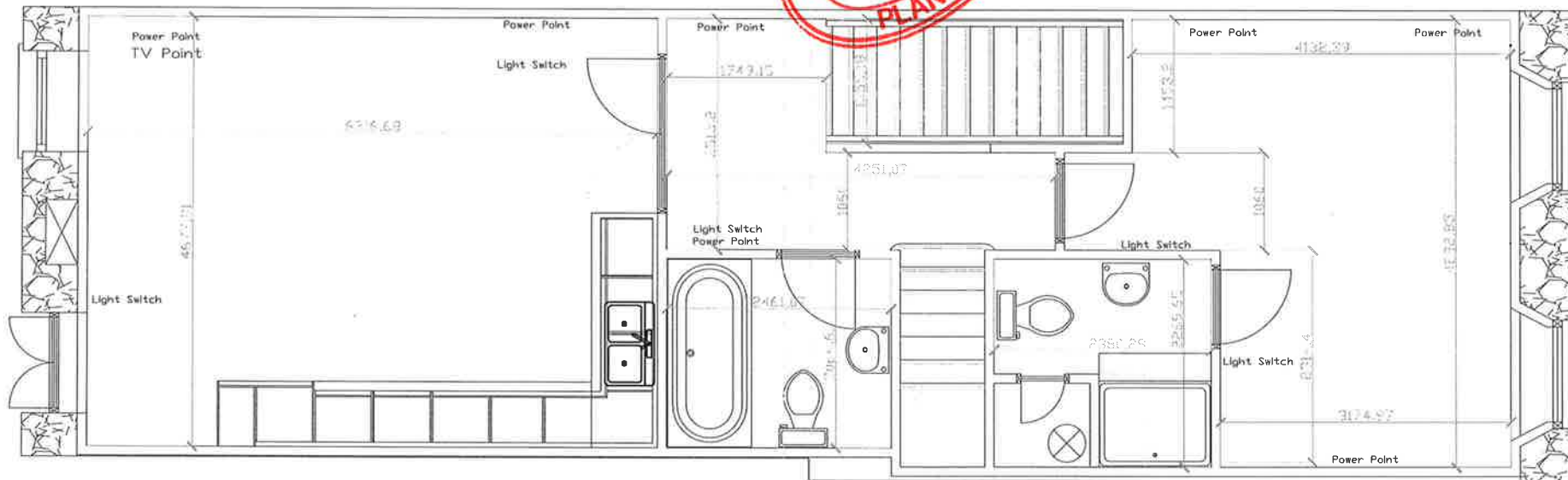
Project Name and Address

Vandeleur St  
Gerard Hamilton  
No. 3, Vandeleur St.  
Kilrush  
Co. Clare.  
Tel: 0872308796

Project	App. Block	Sheet
Date	27/08/08	1 of 3
Scale	1 : 3	



CLARE CO. COUNCIL  
04 JUL 2022  
PLANNING SECTION



First Floor

Drawing Title

FIRST FLOOR

General Notes

Revision No.	Date
04	27/08/08

Firm Name and Address

Hamilton

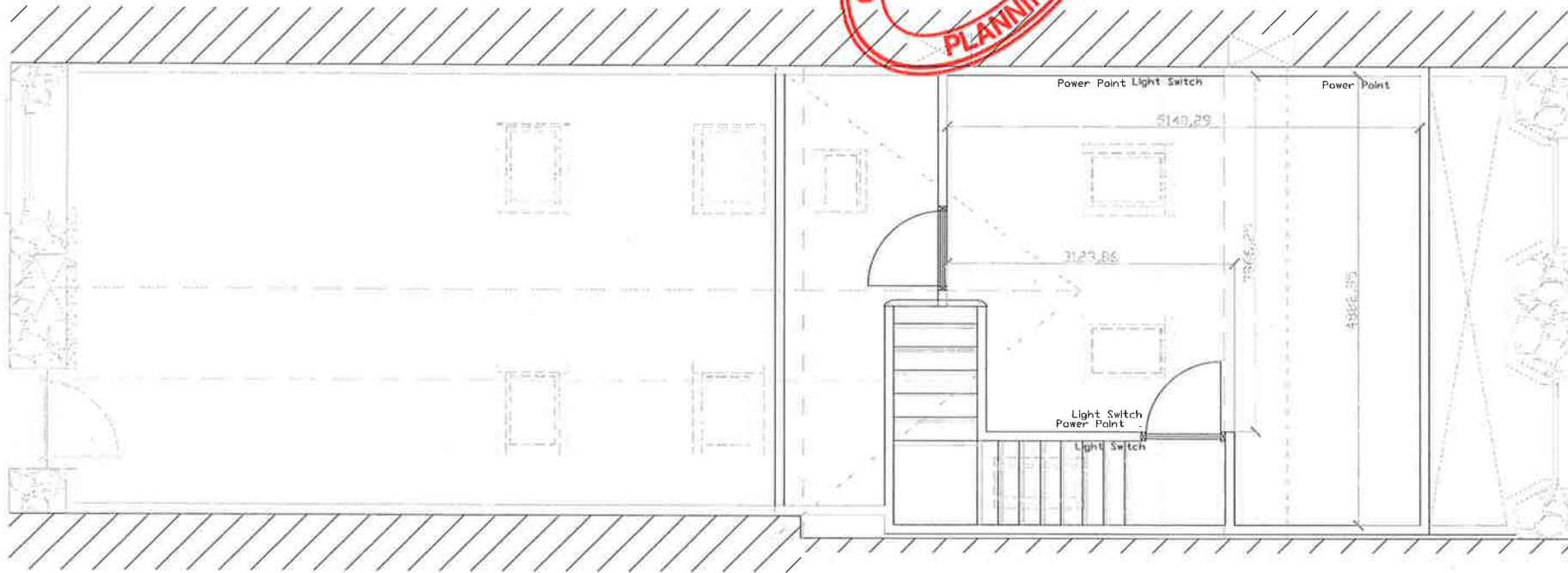
No. 9, The Rise, Huntsfield,  
Doonadyle,  
Limerick.  
Tel: 0872308796






Project Name and Address

Vandeleur St

Gerard Hamilton  
No. 3, Vandeleur St.  
Kilrush  
Co. Clare.  
Tel: 0872308796

Project	App. Block	Sheet
Date	27/08/08	2 of 3
Scale	1 : 3	



-  TIMBER
-  EXISTING STONE WALL
-  INSULATION
-  NEW BLOCK LAYOUT
-  BOUNDARY WALL

Second Floor

Drawing Title

FIRST FLOOR

General Notes

Revision No.	Date
04	27/08/08

Firm Name and Address

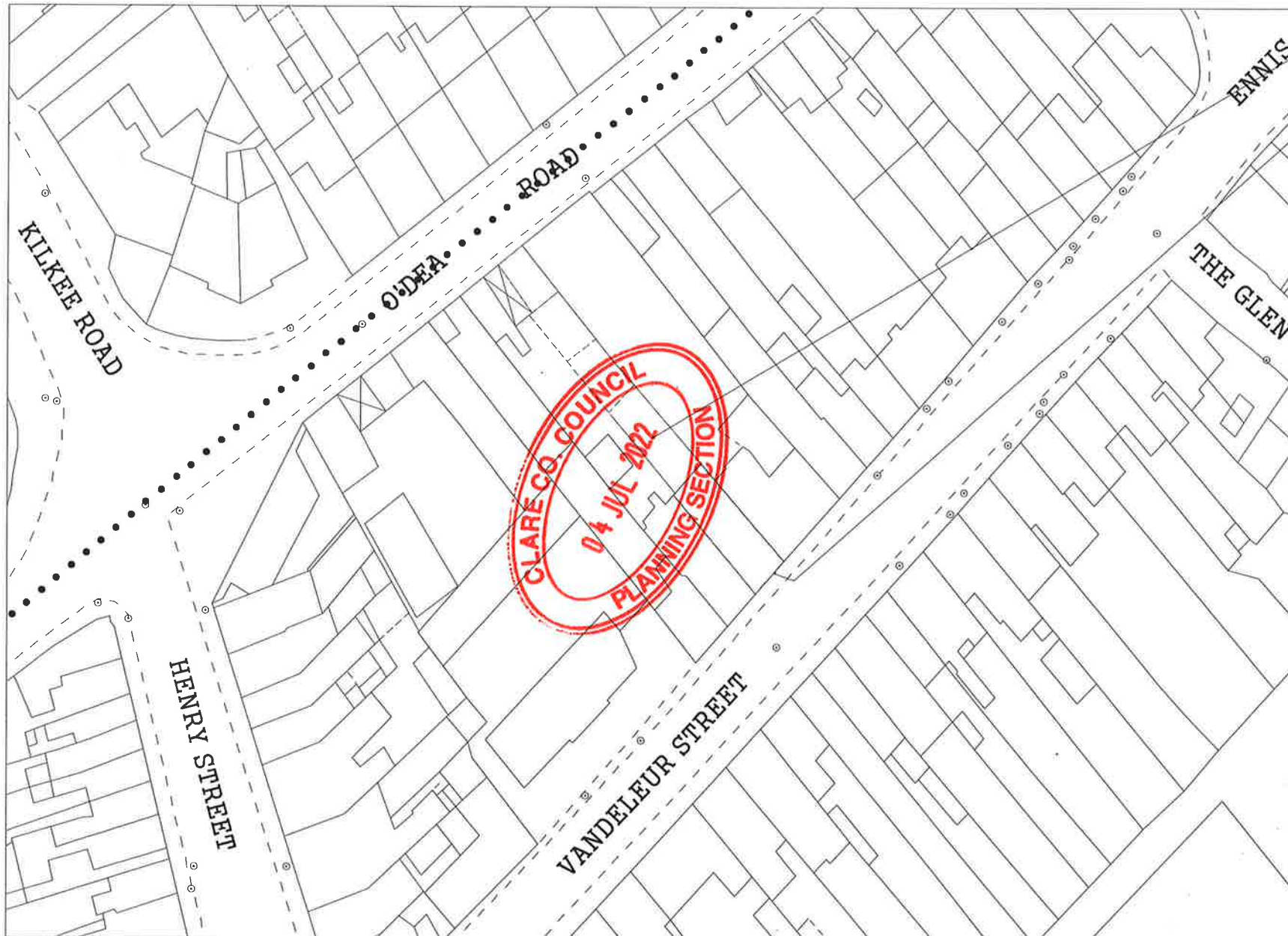
**Hamilton**  
No. 9, The Rise, Huntsfield,  
Doonadyle,  
Limerick.  
Tel: 0872308796

Project Name and Address

**Vandeleur St**  
Gerard Hamilton  
No 3, Vandeleur St.  
Kilrush  
Co. Clare,  
Tel: 0872308796

Project	App. Block	Sheet
Date	27/08/08	3 of 3
Scale	1 : 3	





SITE AREA:  
0.0293 HECTARES

POSITION OF  
SITE NOTICE

— SITE BOUNDARY  
— SITE LOCATION  
No. 3,  
VANDELEUR ST.,  
KILRUSH



TITLE

NO. 3,  
VANDELEUR  
STREET

SITE LAYOUT  
PLAN

General Notes

No.	Revision/Issue	Date
1	N/A	N/A

Firm Name and Address

Gerard Hamilton Jnr.  
No. 9, The Rise, Huntsfield,  
Booradaley,  
Limerick,  
Tel: 0872308796

Project Name and Address

G. Hamilton Jnr.  
No 3, Vandeleur St  
Kilrush  
Co. Clare

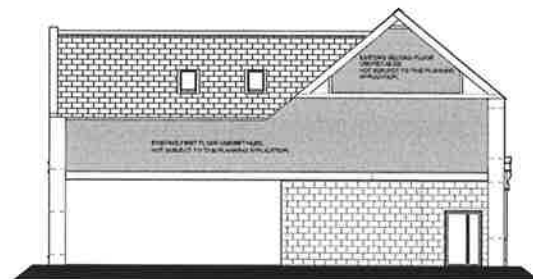
Project	CDFFEC SHP	Sheet
Date	25/03/09	6 of 6
Scale	1:500	



EXISTING FRONT ELEVATION,



OUTLINED IN RED IS THE GROUND FLOOR,  
THE GROUND FLOOR IS SUBJECT TO  
PLANNING ONLY.



SOUTH WEST GABLE ELEVATION  
OUTLINED IN RED IS THE GROUND FLOOR,  
THE GROUND FLOOR IS SUBJECT TO  
PLANNING ONLY.  
SECTION A-A



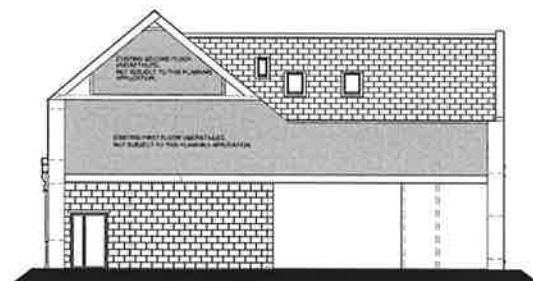
BACK ELEVATION,



FRONT ELEVATION  
WITH PROPOSED SHOP FRONT,



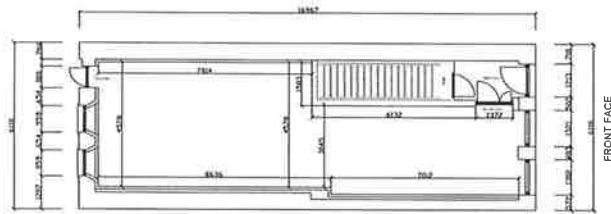
FRONT ELEVATION  
WITH PROPOSED INCORPORATED SHOP FRONT,  
THIS IS AN EXAMPLE ONLY,  
FOR ILLUSTRATION USE ONLY.



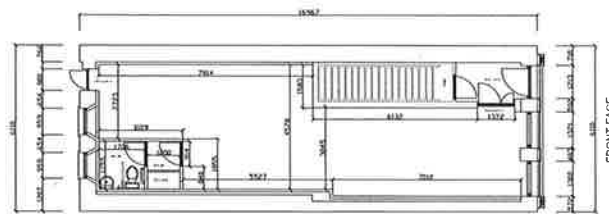
NORTH EAST GABLE ELEVATION  
OUTLINED IN RED IS THE GROUND FLOOR,  
THE GROUND FLOOR IS SUBJECT TO  
PLANNING ONLY.  
SECTION B-B

TITLE	
NO 3, VANDELEUR STREET	
General Notes	
1	N/A
No	Revision/Issue/Date
Team Name and Address	
Gerard Hamilton Jrn. No. 9, The Rise, Huntsfield, Boonadaville, Limerick Tel: 0872308796	
Project Name and Address	
G. Hamilton Jrn. No 3, Vandeleur St Kilrush Co. Clare	
Project	COFFEE SHOP
Date	25/03/09
Scale	1 : 200
Sheet	1 of 4

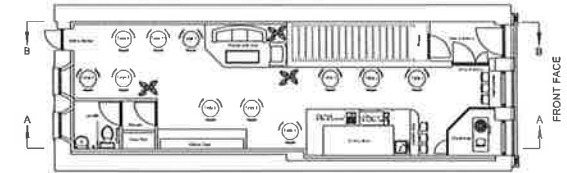




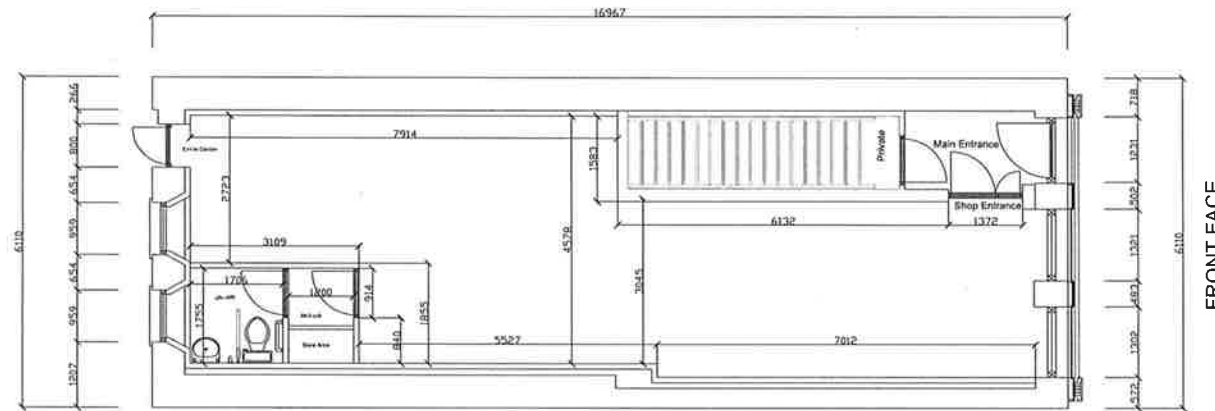
EXISTING GROUND FLOOR



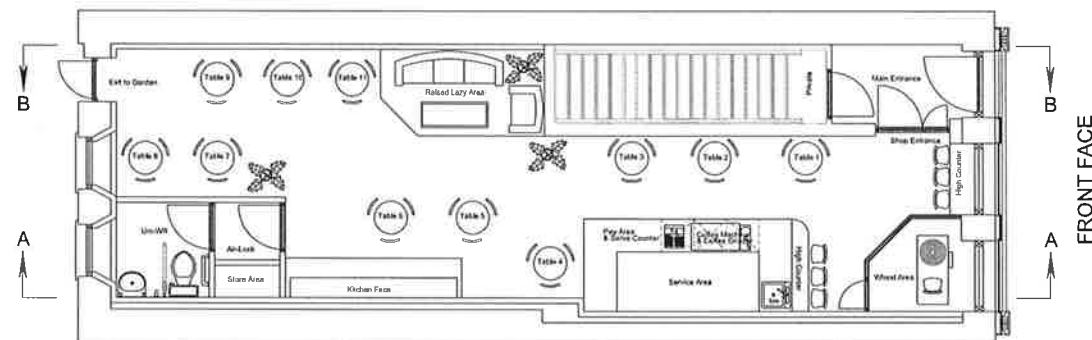
PROPOSED GROUND FLOOR



PROPOSED GROUND FLOOR LAYOUT



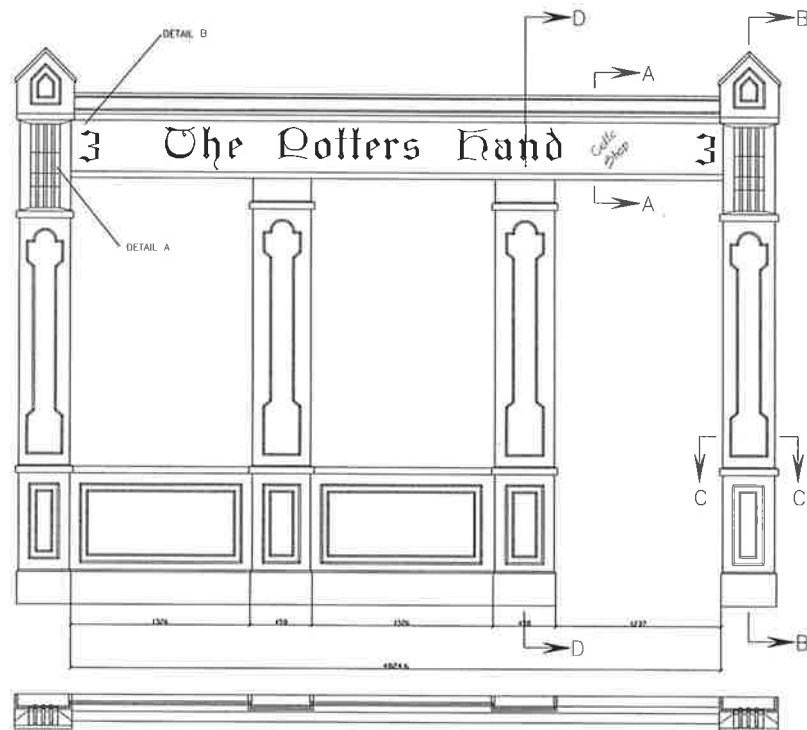
PROPOSED GROUND FLOOR SCALE: 1:2



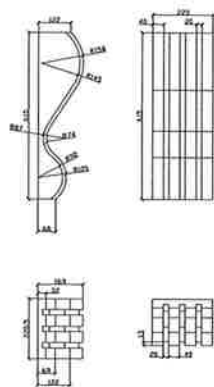
PROPOSED GROUND FLOOR LAYOUT SCALE: 1:2



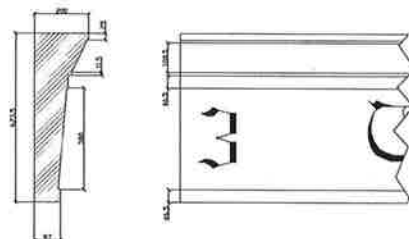
TITLE		
EXISTING GROUND FLOOR		
PROPOSED GROUND FLOOR & PROPOSED GROUND FLOOR LAYOUT		
General Notes		
ALL DIMENSIONS IN MILLIMETERS		
	N/A	N/A
No. Revision/Issue	Date	
Firm Name and Address		
Gerard Hamilton Jnr. No 9, The Rise, Huntsfield, Boorodale, Limerick Tel: 0872308796		
Project Name and Address		
G. Hamilton Jnr. No 3, Vandeleur St Kilrush Co. Clare		
Project	Sheet	
COFFEE SHOP	2 of 6	
Date	Scale	
25/03/09	1:200	



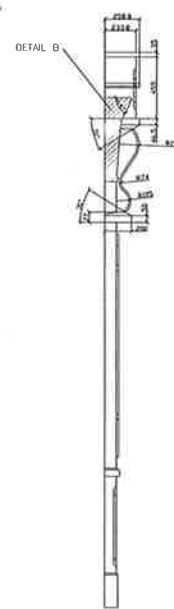
PROPOSED SHOP FRONT  
SCALE 1/8"



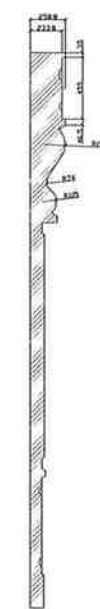
DETAIL A  
PROFILE OF CONSOLE  
SCALE 1/16"



SECTION A-A & DETAIL B  
CROSS SECTION OF RAINBOARD  
SCALE 1/16"



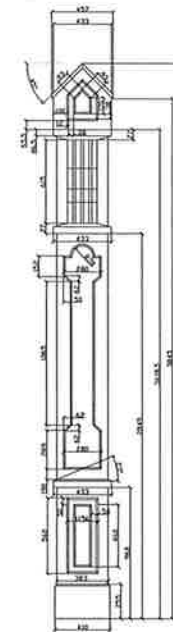
SECTION A-A  
SCALE 1/8"



SECTION B-B  
SCALE 1/8"



SECTION C-C  
SCALE 1/8"



SECTION D-D  
SCALE 1/8"



FRONT ELEVATION  
WITH PROPOSED SHOP FRONT

# TITLE

DIMENSIONED  
DETAILED SHOP  
FRONT

## General Notes

ALL DIMENSIONS  
IN MILLIMETERS

No.	Revision/Issue	Date
1	N/A	N/A

No. Revision/Issue Date

## Firm Name and Address

Gerard Hamilton Jnr.  
No. 9, The Rise, Huntsfield,  
Doonadyle,  
Limerick.  
Tel: 0872308796

## Project Name and Address

G. Hamilton Jnr.  
No 3, Vandeleur St  
Kilrush  
Co. Clare

## Project

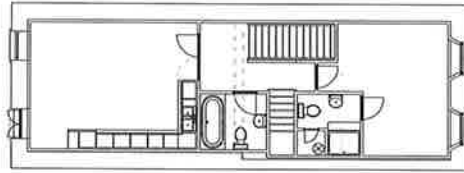
COFFEE  
SHOP

Date 25/03/09

Scale 1:200

## Sheet

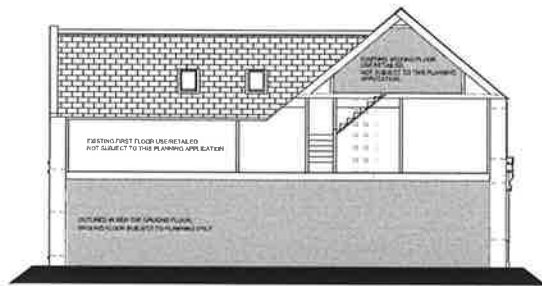
5 of 6



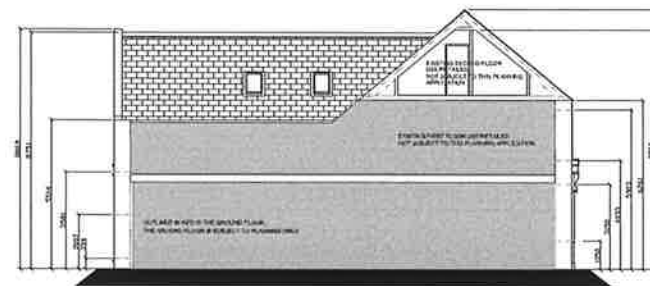
FIRST FLOOR  
EXISTING FIRST FLOOR USE/RETAINED,  
NOT SUBJECT TO THIS PLANNING APPLICATION.



SECOND FLOOR  
EXISTING SECOND FLOOR USE/RETAINED,  
NOT SUBJECT TO THIS PLANNING APPLICATION.



SOUTH WEST GABLE ELEVATION  
FIRST FLOOR  
SECTION A-A



SOUTH WEST GABLE ELEVATION  
SECOND FLOOR  
SECTION A-A



TITLE		
FIRST FLOOR		
SECOND FLOOR		
SECTION A-A		
SECTION B-B		

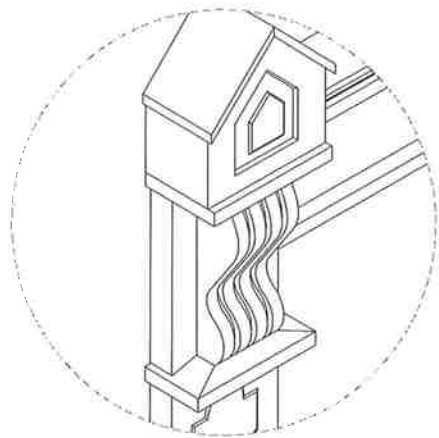
General Notes		
ALL DIMENSIONS IN MILLIMETERS		

No.	Revision/Issue	Date
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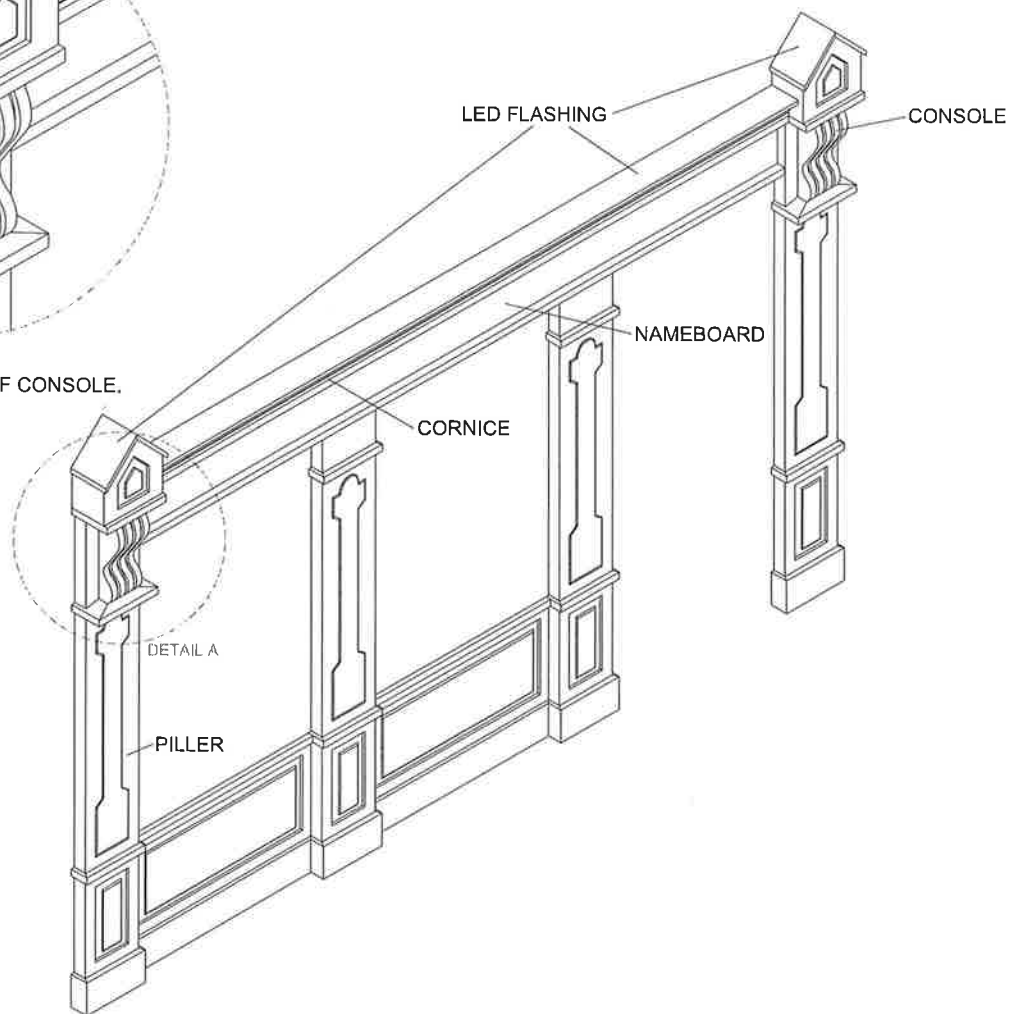
Firm Name and Address	
Gerard Hamilton Jnr. No. 9, The Rise, Huntsfield, Doonbeg, Limerick, Tel: 08723087796	

Project Name and Address	
G. Hamilton Jnr. No 3, Vandeleur St Kilrush Co. Clare	

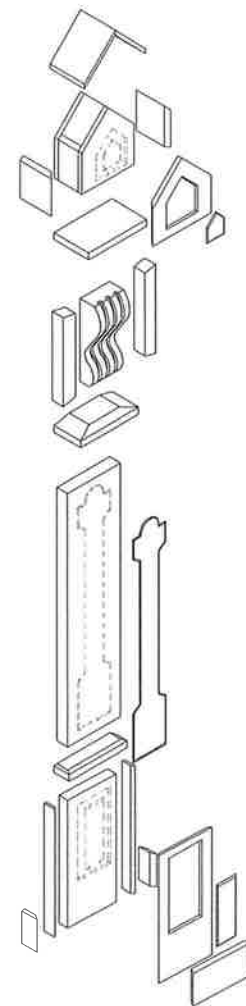
Project	COFFEE SHOP	Sheet
Date:	25/03/09	3 of 6
Scale:	1 : 200	



DETAIL A  
ISOMETRIC PROFILE OF CONSOLE.  
SCALE 1:10



ISOMETRIC VIEW  
PROPOSED SHOP FRONT  
SCALE 1:5



EXPLODED VIEW  
SHOP FRONT PILLAR  
SCALE 1:5



FRONT ELEVATION  
WITH PROPOSED SHOP FRONT

#### TITLE

ISOMETRIC VIEW  
&  
EXPLODED VIEW  
OF SHOP FRONT  
PILLAR

#### General Notes

NOTE THAT THE LETTERING ON  
THE BANNER WILL BE OLD IRISH  
SPELLED IN ENGLISH.

THE LETTERING WILL BE RAISED  
FROM THE SURFACE 10mm AND  
WILL BE 18mm THICK.  
THE SIZE WILL BE 225mm HIGH  
AND APPROX 155mm TO 180mm  
WIDE.

MATERIAL OF THE SHOP FRONT  
WILL BE COMPRISED FROM  
TIMBER AND WITH A PAINTED  
FINISH.

No.	Revision/Issue	Date
1	N/A	N/A

#### Client Name and Address

Gerard Hamilton Jnr.  
No. 9, The Rise, Huntsfield,  
Booradale,  
Limerick,  
Tel: 0872308796

#### Project Name and Address

G. Hamilton Jnr.  
No 3, Vandeaur St  
Kilrush  
Co. Clare

Project	COFFEY SHOP	Sheet
Date	25/02/09	4 of 6
Scale	1:200	



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

Gerard Hamilton  
No. 3 Vandeleur Street  
Kilrush  
Co. Clare  
V15 X029

RL 5660 3332 SIE

30/06/2022

**Section 5 referral Reference R22-40 – Gerard Hamilton**

Is the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, Co. Clare, from commercial use to domestic use, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 16th June 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

I wish to advise that in accordance with Section 5 (2) (b) of the Planning & Development Act, 2000, as amended, the following further information is requested by the Planning Authority:

1. You are requested to submit existing and proposed floor plans (to scale) of the first floor area which include the following:
  - (a) The existing floor plan and the class of commercial and/or other uses.
  - (b) The proposed floor plan which demonstrates the number and type of residential units proposed. You are advised that demonstration of compliance with the minimum floor area and storage area requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" is required for the type of residential unit(s) proposed.
2. You are requested to outline whether the first-floor area is currently occupied or is vacant. In the instance where it is vacant you are requested to outline the period of time of the vacancy.
3. You are requested to outline when it is proposed to carry out the works associated with the proposed change of use.

Mise, le meas

**Josephine Connors**

**Staff Officer**

**Planning Department**

**Economic Development Directorate**

An Roinn Pleanála

An Stiúirtheacht 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 DECLARATION OF EXEMPTION APPLICATION**  
**PLANNERS REPORT 1**

<b>FILE REF:</b>	R22-40
<b>APPLICANT(S):</b>	Gerard Hamilton
<b>REFERENCE:</b>	Whether the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, County Clare, from commercial use to domestic use is or is not development and is or is not exempted development.
<b>LOCATION:</b>	No. 3 Vandeleur Street, Kilrush, County Clare
<b>DUE DATE:</b>	11 <sup>th</sup> July 2022

**Clare County Development Plan 2017- 2023 (as varied)**

The front of the site is zoned “Mixed Use” whilst the rear is zoned “Existing Residential” in the Clare County Development Plan 2017-2023 (as varied).

**Recent Onsite Planning History**

09-31010 – Granted - Mr Gerard Jnr Hamilton - (a)Change of use from a retail shop to a coffee shop  
(b)construction of a shop front.

**Pre-planning History**

None.

**Section 5 Declaration History**

None.

**Drawings Received**

- Site location map.

**Site Description**

The site is located in the settlement of Kilrush and is on the northern side of Vandeleur Street. The site accommodates a 2 storey (with attic space also) mid-terrace building which accommodates the Potters Hand café at ground floor level.

**Background**

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

**Section 2**

‘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.*

### Section 3

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

*S.3.(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

### Section 4(1)(H)

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

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

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

#### Part 2 Exempted Development

Article 6 (1) states

*‘Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.*

Article 9 -Restrictions on Exemptions states

*‘Under Article 9 (1) of the same Regulations, development to which Article 10 relates shall not be exempted development for the purposes of the Act:*

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

- i. contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
- ii. consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
- iii. endanger public safety by reason of traffic hazard or obstruction of road users,*
- iv. 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. (a) *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,*
- vii. (b) *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*
- vii. (c) *consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000."*
- viii. *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*
- ix. *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*
- x. *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*
- xi. *obstruct any public right of way,*
- xii. *further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area'.*



## Article 10 Change of use

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

- (a) involve the carrying out of any works other than works which are exempted development,*
  - (b) contravene a condition attached to a permission under the Act,*
  - (c) be inconsistent with any use specified or included in such a permission, or*
  - (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*
- (2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.*
- (b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—*
- (i) as an amusement arcade,*
  - (ii) as a motor service station,*
  - (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,*
  - (iv) for a taxi or hackney business or for the hire of motor vehicles,*
  - (v) as a scrap yard, or a yard for the breaking of motor vehicles,*
  - (vi) for the storage or distribution of minerals,*
  - (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,*
  - (vii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or*
  - (viii) as a shop, associated with a petrol station, the total net retail sales space of which exceeds*

100 square metres.

- (3) Development consisting of the provision within a building occupied by, or under the control of, a State authority of a shop or restaurant for visiting members of the public shall be exempted development for the purposes of the Act.
- (4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.
- (5) Development consisting of the use of a house for child minding shall be exempted development for the purposes of the Act.

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

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

Statutory Instrument No. 75 of 2022 has extended this exemption to 31/12/2025 and added a new use class (Class 12 - public houses), to the specified use classes that can qualify to avail of the planning exemption, subject to certain conditions and limitations.

Article 10 of the Planning and Development Regulations 2001 (S.I. No. 75 of 2022) is amended by inserting the following sub-article after sub-article (5):

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

*‘relevant period’ means the period from the 08<sup>th</sup> February 2018 until 31 December 2025.*

*(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 of 12 of Part 4 to Schedule 2.*

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

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

*3(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6, and 12.*

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

(d) (i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall

(I) affect only the interior of the structure

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

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

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

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

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

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

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

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

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

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

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

(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.

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

- (I) the location of the structure, and  
 (II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and  
 (III) the Eircode of the property,  
 shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.
- (iii) During the years 2019, 2020, 2021, 2022, 2023, 2024 and 2025 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph(ii)."

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

**Schedule 2 Article 6 part 1 Exempted Development**

**CLASS 14**

*Development consisting of a change of use—*

- (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,*
  - (b) from use as a public house, to use as a shop,*
  - (c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,*
  - (d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,*
  - (e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling,*
  - (f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.*
- The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.*

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

**Minimum Requirements for Residential Units**

The Regulations set out some minimum standards that apply to any residential units being provided, including minimum floor areas, storage space and the provision of natural light.

- A maximum of 9 residential units can be provided in any structure.
- The minimum floor area and minimum storage space requirements of the 'Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', 2018 must be complied with.

**'Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', March 2018 and Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018(S.I. No. 30 of 2018)**

This ensures that apartments will be of adequate size and will include adequate storage.

<b>Assessment</b>
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**Primary Legislation**

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

**The Regulations**

- I refer to Part 4 Article 10 Exempted Development- Class of use- The nature of the existing/previous commercial use is not stated in the application.
- I refer to Schedule 2 part 1 Article 6 Exempted Development – General, wherein in class 14 sets out changes of use that are considered to be exempted development. I do not consider that the proposed change of use falls under the provision of class 14 of the Planning and Development Regulations 2001 as amended.
- I refer to part 2 Article 6 (1) Exempted Development and Article 9 Restrictions on Exemptions-. It is considered that the provisions of article 9 are not applicable to the query.
- I refer to Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) as amended by the Planning and Development Regulations 2018 (no 2). Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

**Article 10 of the Planning and Development Regulations 2001 (S.I. No. 75 of 2022) is amended by inserting the following sub-article after sub-article (5):**

*"(6) (a) In this sub-article—'habitable room' means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;  
'relevant period' means the period from the 08<sup>th</sup> February 2018 until 31 December 2025.  
(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 of 12 of Part 4 to Schedule 2.*

It is stated that the existing use is commercial. However, it is not specified what commercial use the first floor area was/is used for. Also, the use is not indicated on the drawings associated with the 2009 planning application on the site. Further information is required on this issue.

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

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

**The structure was in place before 2018.**

*3(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6, and 12.*

**Based on previous correspondence it would appear that the first floor uses comprise a mix of office use and a bedsit. However, this is unclear. Further information is required on this issue.**

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

**It is not specified if the first floor area is in use or whether it is vacant. In the instance where it is vacant the period of time is unknown. Further information is required on this issue.**

*(d) (i) The development is commenced and completed during the relevant period.*

**The time period for the carrying out and completion of the proposed change of use has not been specified. Further information is required on this issue.**

*(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall*

*(I) affect only the interior of the structure*

**No external works are proposed.**

*(II) retain 50 per cent or more of the existing external fabric of the building, and*

**100% of the external fabric of the building is to be retained.**

*(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

**No external works are proposed.**

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

**No external works are proposed.**

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

**Not applicable.**

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

**Less than 9 units are proposed.**

*(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.*

**The applicant has not stated the number of units proposed or provided floor plans of the proposed residential use. Referring to the floor plans of a 2009 planning application is insufficient. Further information is required on this issue.**

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

**No floor plan of the proposed residential use has been received. Further information is required on this issue.**

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

**Not applicable.**

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

**Not applicable.**

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

1. *an area to which a special amenity area order relates;*

**The site is within the Kilrush Architectural Conservation Area and the Core Shopping Area.**

*2. an area of special planning control;*

**The site is within the Kilrush Architectural Conservation Area and the Core Shopping Area.**

*3. within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.*

**Not applicable.**

*(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.*

**As outlined earlier in the report further information is required on a number of these restrictions.**

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

**Not applicable.**

*(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.*

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

*(I) the location of the structure, and*

*(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and*

*(III) the Eircode of the property,*

*shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.*

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

*(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024 and 2025 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii)."*

**Noted.**



## 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 7 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 proposed development 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.

### **Recommendation**

I recommend that the following FURTHER INFORMATION be requested by the Planning Authority:

1. You are requested to outline to submit existing and proposed floor plans (to scale) of the first floor area which include the following:
  - (a)  
The existing floor plan and the class of commercial and/or other uses.
  - (b)  
The proposed floor plan which demonstrates the number and type of residential units proposed. You are advised that demonstration of compliance with the minimum floor area and storage area requirements of the *"Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities"* is required for the type of residential unit(s) proposed.
2. You are requested to outline whether the first-floor area is currently occupied or is vacant. In the instance where it is vacant you are requested to outline the period of time of the vacancy.
3. You are requested to outline when it is proposed to carry out the works associated with the proposed change of use.

Signed



A/Executive Planner

Date:

30<sup>th</sup> June 2022



Senior Executive Planner

Date:

30/06/22

**Clare County Council**  
**Screening for Appropriate Assessment & Determination**

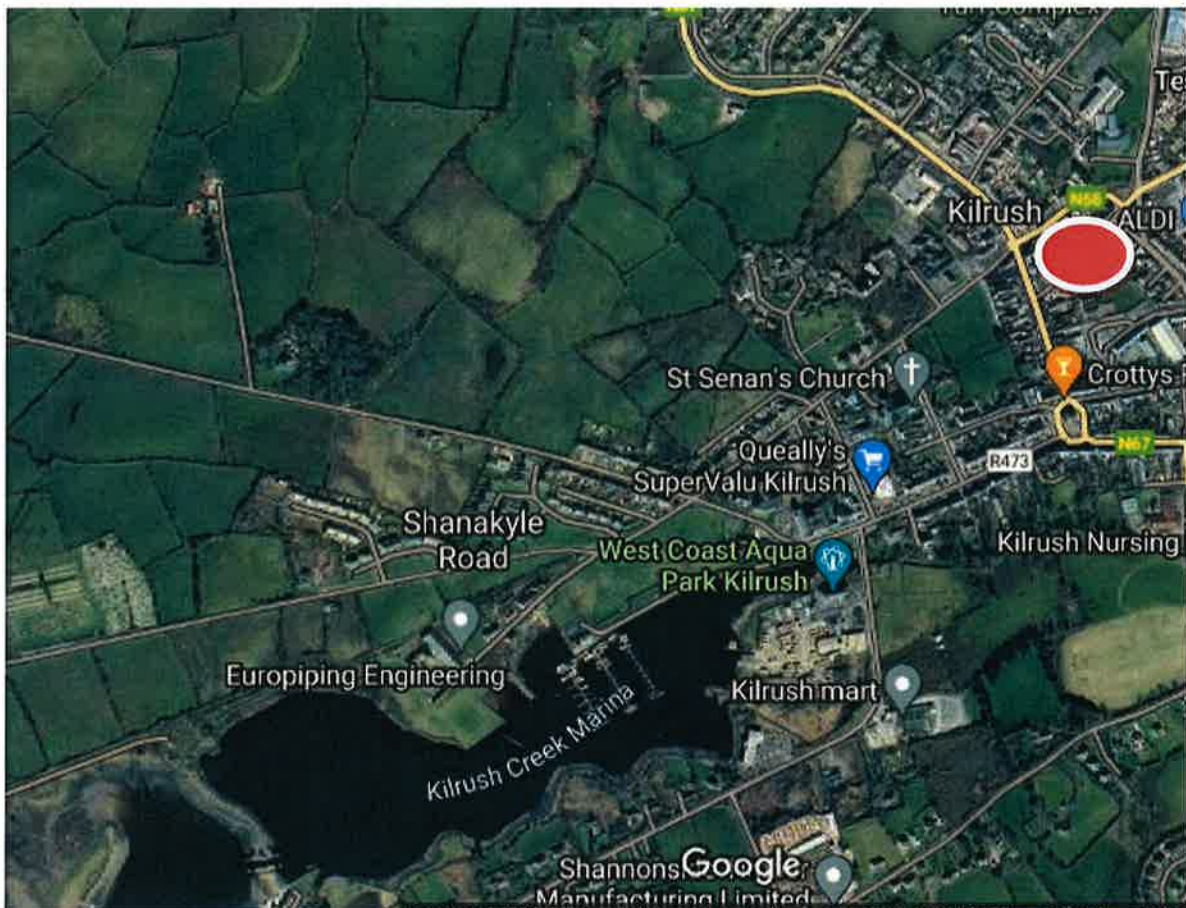
1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all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

**Table 1: Project Details**

<b>Planning File Reference</b>	R22-40
<b>Applicant Name</b>	Hamilton
<b>Development Location</b>	Vandeleur Street, Kilrush
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No

**Description of the project (To include a site location map):**

Change of Use from commercial to Residential development



**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)<sup>1</sup> 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**

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Lower River Shannon SAC	Sandbanks which are slightly covered by sea water all the time [1110] Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Coastal lagoons [1150] Large shallow inlets and bays [1160] Reefs [1170] Perennial vegetation of stony banks [1220] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritimae</i> ) [1330] Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410] Water courses of plain to montane levels with the <i>Ranunculum fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260] Molinia meadows on calcareous, peaty or clayey-silt-laden soils ( <i>Molinia caerulea</i> ) [6410] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> ( <i>Alno-Padion</i> , <i>Alnus incanae</i> , <i>Salix albae</i> ) [91E0] <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] <i>Petromyzon marinus</i> (Sea Lamprey) [1095] <i>Lampetra planeri</i> (Brook Lamprey) [1096] <i>Lampetra fluviatilis</i> (River Lamprey) [1099] <i>Salmo salar</i> (Salmon) [1106] <i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349]	1.5

<sup>1</sup> 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.

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

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
	Lutra lutra (Otter) [1355]	
River Shannon and River Fergus Estuary SPA	Cormorant (Phalacrocorax carbo) [A017] Whooper Swan (Cygnus cygnus) [A038] Light-bellied Brent Goose (Branta bernicla hrota) [A046] Shelduck (Tadorna tadorna) [A048] Wigeon (Anas penelope) [A050] Teal (Anas crecca) [A052] Pintail (Anas acuta) [A054] Shoveler (Anas clypeata) [A056] Scaup (Aythya marila) [A062] Ringed Plover (Charadrius hiaticula) [A137] Golden Plover (Pluvialis apricaria) [A140] Grey Plover (Pluvialis squatarola) [A141] Lapwing (Vanellus vanellus) [A142] Knot (Calidris canutus) [A143] Dunlin (Calidris alpina) [A149] Black-tailed Godwit (Limosa limosa) [A156] Bar-tailed Godwit (Limosa lapponica) [A157] Curlew (Numenius arquata) [A160] Redshank (Tringa totanus) [A162] Greenshank (Tringa nebularia) [A164] Black-headed Gull (Chroicocephalus ridibundus) [A179] Wetland and Waterbirds [A999]	1.5

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?	Yes
2	Impacts on terrestrial habitats & species.	Is the development within 1km of a European site with terrestrial based habitats or species?	No
3	Impacts on designated marine habitats & species.	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	No
4	Impacts on birds in SPAs	Is the development within 1km of a Special Protection Area	No
5	Indirect effects	Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site?	No impacts envisaged



		<i>Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?</i>	
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**Table 3: Identification of potential impacts.**

<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b> <i>Please answer the following if the answer to question 1 in table 2 was “yes” or “unknown”. Does the development involve any of the following:</i>	
1.1	Removal of or interference with habitat within a European 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?	To public sewer
1.3	Abstraction from surfacewater or groundwater in or adjacent to a European 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?) Where the run off is directed to? Is the drainage run off directed to a European 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 (See <a href="http://www.floodmaps.ie">www.floodmaps.ie</a> , internal flood risk maps, County Development Plan SFRA and <a href="http://www.cframs.ie">www.cframs.ie</a> )	No
1.9	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	No
1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	No

1.11	Development within catchment of a European 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

<b>Appropriate Assessment Screening Determination</b>	
<b>Planning File Reference</b>	R22-40
<b>Proposed Development</b>	Change of Use from commercial unit to residential
<b>Development Location</b>	Kilrush
<b>European sites within impact zone</b>	As per report
<b>Description of the project:</b>	
Change of Use from commercial unit to residential	
<b>Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site</b>	
As per report	
<b>Describe how the project or plan (alone or in combination) is likely to affect the European site(s).</b>	
Water quality & general disturbance	
<b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b>	
Public sewer connection Distance from designation Minor nature of works	
<b>Documentation reviewed for making this statement</b>	
<ul style="list-style-type: none"> <li>- County Development Plan</li> <li>- NPWS website</li> <li>- Documents received as part of the planning application</li> </ul>	
<b>Conclusion of assessment (a, b, c or d)</b>	
<b>(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s)<sup>3</sup></b>	
<b>(b) There is no potential for significant effects to European Sites<sup>3</sup></b>	Yes
<b>(c) The potential for significant effects to</b>	

<sup>3</sup> 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.

<b>European Site(s) cannot be ruled out<sup>4</sup></b>	
<b>(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<sup>5</sup></b>	
<b>Completed By</b>	John O'Sullivan
<b>Date</b>	30 <sup>th</sup> June 2022

<sup>4</sup> 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](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.

<sup>5</sup> 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.







COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Gerard Hamilton**  
**No. 3 Vandeleur Street**  
**Kilrush**  
**Co. Clare**  
**V15 X029**

**16/06/2022**

**Section 5 referral Reference R22-40 – Gerard Hamilton**

Is the change of use of the first floor of No. 3 Vandeleur Street, Kilrush, Co. Clare, from commercial use to domestic use, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 16th June 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 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](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://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	GERARD HAMILTON No 3. Vandeleur Street BILRUSH. Co. CLARE U15X029
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	N/A

## 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?

Can I change the use of the 1st Floor from commercial use  
 to domestic use.

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

This is not a development, Only change of use. Planning  
 was granted in 2009. Planning # 09/10. No alterations are  
 required. Everything will remain the same.

- (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)*

Attached.

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	<u>No 3. Vandeleur street</u> <u>KILRUSH</u> <u>Co. CLARE</u> <u>V15X 029</u>
(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?	<u>No</u>
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	<u>None</u>
(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>	<u>N/A</u>
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	<u>N/A</u>
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	<u>None</u>
(g) Were there previous planning application/s on this site? If so please supply details:	<u>yes</u>
(h) Date on which 'works' in question were completed/are likely to take place:	<u>Planning Ref: 09/10.</u>

SIGNED: Gerard HarteDATE: 13/June/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: .....	





# DIARMUID KEANE + ASSOCIATES LTD

Architecture

Engineering

Surveying

## OPINION OF COMPLIANCE WITH PLANNING PERMISSION AND BUILDING REGULATIONS

I, Dylan Casey, BEng, BSc MA MEIE of Diarmuid Keane + Associates, O'Curry Street, Kilkee, Co. Clare aged twenty-one years and upwards do solemnly declare and say the following:

1. I am qualified to issue this certificate by virtue of being a properly qualified Registered Building Surveyor with an Honours Degree in Civil Engineering, a qualification listed in Chapter 7 of the Law Society Conveyancing Handbook.
2. I am the Engineer retained by Gerard Hamilton Jr. for the purpose of furnishing a Certificate of Compliance with Planning Permission & Building Regulations for the property located at No. 3 Vandeleur Street, Kilrush, Co. Clare hereinafter referred to as the Relevant Works.
3. I have inspected plans, site layout plan, specification and other drawings and documents which were presented by the Planning Authority as those on foot of which the Planning Permission mentioned at paragraph 4 hereunder was granted.
4. I say that Planning Permission reference no. 0931010 refers to the Relevant Works at No. 3 Vandeleur Street, Kilrush, in the County of Clare and that consequently this certificate relates to Planning Permission reference no. 0931010.
5. Having inspected the Relevant Works, it is my opinion that the Relevant Works are carried out in substantial compliance with the Grant of Planning Permission reference no. 0931010 dated the 17<sup>th</sup> day of July 2009 as granted by Clare County Council.
6. I say that the layout of the site is in substantial compliance with the layout plans as lodged with the Planning Authority.
7. The comparison of the site layout plans with the actual layout was visual only. I say that if the site had not been laid out in strict accordance with the Planning Permission granted, the differences are unlikely to affect the planning and development of the area as envisaged by the Planning Authority and expressed through the above mentioned grant of planning permission.
8. I have not carried out periodic inspections throughout the construction phase of the project.
9. I am of the opinion that the Relevant Works is in Substantial Compliance with Building Regulations and other regulatory construction standards.
10. No Commencement Notice of the intention to undertake the Relevant Works is on record with the Clare County Council register.

11. In relation to TGD Part B, I say that there is no Fire Safety Certificate for the Relevant works recorded with the Clare County Council register, however I am of the opinion that the Relevant Works is in Substantial Compliance in this regard. Any minor outstanding items in relation to Part B Compliance have been outlined in the Fire Safety Audit which is enclosed. I am also of the opinion that residential aspect, which did not form part of the Relevant Works as per Planning Ref No. 0931010, is exempt from any requirement for the making of an application for a Fire Safety Certificate by virtue of being constructed and remaining unaltered since the original date of construction, which predates the Fire Safety Act 1981.
12. Take notice that this certificate is issued solely with a view to providing evidence for title purposes of the compliance of the Relevant works with the requirements of Planning Legislation and of the Building Control Act. Except insofar as it relates to such compliance with the said requirements and regulations it is not a report or survey on the physical condition or structure of the Relevant Works nor does it warrant, represent or take into account any of the following matters:
- a) The accuracy of dimensions in general save where arising out of the conditions of the Planning Permission or the Building Regulations aforesaid.
  - b) Matters in respect of private rights or obligations.
  - c) The satisfactory working of the sewerage system, plumbing or electrics.
  - d) Matters of financial contributions or bonds.
  - e) Development of the Relevant Works, which may occur after the date of issue of this certificate.

Dated the 10<sup>th</sup> day of March 2022

Signed: \_\_\_\_\_

Dylan Casey B.Eng B.Sc MA MEIE  
*Diarmuid Keane + Associates*



## **DEFINITIONS:**

**'Building Control Act'** means the Building Control Act 1990 and any statutory modification or re-enactment thereof current at the date of the Commencement Notice aforesaid

**'Building', 'Works', and 'Construction'** have the meaning respectively assigned by the Building Control Act

**'Building Regulations'** means regulations made under the Building Control Act

**'Design'** has the meaning assigned by the Building Control Act, but accepting such design could, in my opinion, reasonably be outstanding pending the construction stage.

**'Substantial Compliance when applied to Design'** means that in my opinion the Design of the relevant Building or Works is in accordance with the Building Regulations, saving and excepting such deviations as would not in my opinion warrant the issue of enforcement proceedings as provided for in the Building Control Act

**'Substantial Compliance when applied to Construction'** means that such Construction of the Relevant Building or Works, as is evidenced by Visual Inspection, is in accordance with the Building Regulations, saving and excepting such deviations as would not in my opinion warrant the issue of enforcement proceedings as provided for in the Building Control Act.

**'Visual Inspection'** means the inspection of the Relevant Building or Works as existed on the Inspection Date. No opening up was carried out. The inspection was therefore superficial only and took no account of Works covered up, inaccessible or otherwise obscured from view.

**KILRUSH TOWN COUNCIL**

**LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS 2000-2007**

**NOTIFICATION OF FINAL GRANT**

**TO:** Gerard Hamilton (Junior)  
No. 9 The Rise  
Huntsfield  
Dooradoyle  
Limerick

**Planning Register Number:** 09/10  
**Valid Application Receipt Date:** 20<sup>th</sup> April 2009

In pursuance of the powers conferred upon them by the above-mentioned Acts, Kilrush Town Council has by Order dated 15<sup>th</sup> June 2009 **GRANTED PERMISSION** to the above named for the development of land, namely:

**PERMISSION** for a) Change of Use from a Retail Shop to a Coffee Shop and b) Construction of a Shop Front at 3 Vandeleur Street, Kilrush, Co Clare.

Subject to the **9** Conditions set out in the attached Schedule.

**FIRST SCHEDULE – REASON FOR DECISION:**

Having regard to the town centre zoning for the area as set out in the Kilrush Development Plan 2008, it is considered that the proposed development subject to compliance with the conditions set out in the second schedule, will not injure the amenity of adjoining premises, and is in the interest of proper planning and orderly development.

**SECOND SCHEDULE - CONDITIONS AND REASONS:**

- (1) The development shall be carried out in accordance with details submitted to the Planning Authority on the 20 April 2009 and 2 June 2009, except where altered or amended by the conditions of this permission.

**Reason:** To clarify the extent of the permission granted.

- (2) Prior to commencement of development the developer shall submit to the Planning Authority full details of appropriately sized grease trap to be fitted on the sewer connection facilitating the premises. The premises shall not be open for business until the grease trap is fitted.

**Reason:** In the interest of orderly development.

- (3) The premises shall not be used as a hot food takeaway. No sale of hot food for consumption off the premises shall take place without a prior grant of planning permission from the Planning Authority.

**Reason:** In the interests of proper planning and orderly development and to protect amenity of adjoining properties.

- (4) (a) Full details of all proposed signage shall be submitted to and agreed with the Planning Authority prior to commencement of the development.
- (b) No adhesive material shall be affixed to the windows of the shopfront.
- (c) Details of all external finishes shall be agreed with the Planning Authority prior to commencement of development.

**Reason:** In the interests of visual amenity.

- (5) All details of proposed bin storage compound, including location and design shall be submitted to and agreed with the Planning Authority prior to commencement of development. No bins associated with the premises shall be stored on the public footpath.

**Reason:** In the interests of orderly development and public health.

- (6) No surface water shall be permitted to flow into the public sewer. Prior to commencement of development the developer shall submit to the Planning Authority for written agreement full details of surface water collection and disposal.

**Reason:** To prevent over loading of the public sewer.

- (7) (a) The development shall include proposals for water conservation measures within the development (i.e. sanitary fittings designed to reduce the level of water consumption). Full details shall be submitted to the Planning Authority for written agreement prior to the commencement of development.

(b) The water supply to the coffee shop shall be metered. Prior to commencement of development the developer shall submit to the Planning Authority for written agreement full details of metering arrangements.

**Reason:** In the interest of orderly and sustainable development and public health.

- (8) Full details of opening hours of the premises shall be submitted to the Planning Authority for agreement prior to units being occupied.

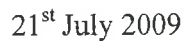
**Reason:** In the interest of amenity.

- (9) No heating or ventilation equipment, air conditioning units, exhaust ducts or fans or any other apparatus shall be mounted on the front elevation of the proposed development.

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

Signed on behalf of the said Council this 17<sup>th</sup> day of July 2009.

Mary McMahon  
**Mary McMahon**  
**Senior Staff Officer**



Gerard Hamilton (Junior)  
No. 9 The Rise  
Huntsfield  
Dooradoyle  
Limerick

Arus an Bhaile,  
Cill Ruis,  
Co. an Chlair.

**RE: Planning Ref. 09/10**  
**PERMISSION for a) Change of Use from a Retail Shop to a Coffee Shop and b) Construction of a Shop Front at 3 Vandeleur Street, Kilrush, Co Clare.**

## A Chara

I refer to the above Planning Application and your letter dated 25<sup>th</sup> June 2009, your proposals to comply with conditions 1,2,3,4,5,6,7, 7a, 8 & 9 are satisfactory.

Mise le meas

Tel: 065 9051047

Fax: 065 9052821

Email:  
Kilrush@clarecoco.ie

Web:  
[www.kilrush.ie](http://www.kilrush.ie)

Mary McMahon  
Mary McMahon  
Senior Staff Officer

W:\Planning\Planning 2009\Planning Applications 2009\09-10 Gerard Hamilton for Gosnold.doc 09/09/2009

All correspondence to be addressed to the Clerk of  
The Town Clerk, Kilrush Town Council, Town Hall, Kilrush, Co. Clare

## Tadhg Holmes

---

**From:** Planning Office  
**Sent:** Thursday 16 June 2022 10:24  
**To:** Tadhg Holmes  
**Subject:** FW: No 3, Vandeleur Street, Kilrush. Co. Clare (The Potters Hand Coffee Shop) V15X029  
**Attachments:** 1437 - Certs of Compliance.pdf; 1437 - Ger Hamilton Jr - 3 Vandeleur Street Kilrush Model (1).pdf; Notification of Final Grant of planning 20.04.2009, 3 Vandeleur st, Kilrush. Co. Clare..pdf; Request for a declaration on Exempt development.pdf

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**From:** Gerard Hamilton  
**Sent:** Monday 13 June 2022 16:03  
**To:** Planning Office <planoff@clarecoco.ie>; Anne Moloney <amoloney@clarecoco.ie>  
**Subject:** Re: No 3, Vandeleur Street, Kilrush. Co. Clare (The Potters Hand Coffee Shop) V15X029

Hi Anne,

Please see attached supporting documents that may be reliant to my request. Please let me know if you require anything else.

I would like to get this resolved as soon as possible. Many thanks again for your help on this.

All drawings reliant to the planning granted should be filed in your office under planning reference number: 0931010.

Kind Regards,

Gerard Hamilton.

On Wednesday, 8 June 2022, 11:30:27 GMT+1, Gerard Hamilton <

ote:

Hi Anne,

Many thanks for coming back to me. It terms of change of use, this is only on paper. There is nothing to be modified, rendered or changed to the building as it will remain the same. Planning was complete on 2009. Please see attached. This was more in relation to change the use of the shop and shop front on the ground floor.

Nothing has been altered since and nothing will need to be adjusted or altered now.

What do you need from me to allow this change of use to happen?

Many thanks in advance for your help.

Kind regards,

Gerard Hamilton

On Tuesday, 7 June 2022, 13:09:04 GMT+1, Planning Office <planoff@clarecoco.ie> wrote:

A Chara,



The Planning Authority refers to your recent query and would like to respond as follows:-

Based on the available information it would appear that the first floor area accommodates office space, staff toilets and a bed sit. There is a planning exemption currently in place for the conversion of certain classes of use to residential use subject to a number of conditions. Of the uses outlined the use that may be converted in this instance would be the office (i.e. Class 3 under the Planning & Development Regulations 2002 (as amended)). It would only apply in the instance where the office has been vacant for the full 2 years prior to the commencement of the works. Also compliance with the following is required:

(d)(i) The development is commenced and completed during the relevant period. (before 31<sup>st</sup> December 2025)

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall –

(I) primarily affect the interior of the structure,

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

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

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

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

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

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

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

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

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

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

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

(e) (i) Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in

whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;

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

(I) the location of the structure,

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and

(III) the Eircode for the relevant property,

shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

Based on the available information it cannot be determined whether or not the above exemption may be applied in this instance.

In accordance with **Section 5 of Planning and Development Act, 2000** any person on payment of the fee (€80.00) may request a declaration as to whether development is **exempted** from requirement for planning permission.

<https://www.clarecoco.ie/services/planning/forms/english/p07-request-for-a-declaration-on-development-and-exempted-development-section-5-11801.pdf>

Kind regards,

Anne Moloney

Assistant Staff Officer



**From:** Planning Office

**Sent:** Tuesday 24 May 2022 12:11

**To:** 'hamilton\_gerard@yahoo.co.uk

**Subject:** FW: No 3, Vandeleur Street, Kilrush. Co. Clare (The Potters Manu Coffee Shop)

A Chara,

The Planning Authority acknowledges receipt of your email and wishes to advise you will be provided with a response in due course.

Kind regards,

Anne Moloney

Assistant Staff Officer

Planning Department

Economic Development Directorate

Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2

T: 065 6846232 | E: [amoloney@clarecoco.ie](mailto:amoloney@clarecoco.ie) | W: [www.clarecoco.ie](http://www.clarecoco.ie)

**From:** Gerard Hamilton

**Sent:** Tuesday 24 May 2022 12:01

**To:** Planning Office <[planoff@clarecoco.ie](mailto:planoff@clarecoco.ie)>

**Subject:** Re: No 3, Vandeleur Street, Kilrush. Co. Clare (The Potters Hand Coffee Shop)

Re-sending...

On Tuesday, 24 May 2022, 11:05:03 GMT+1, Gerard Hamilton

wrote:

Re-sending...

On Tuesday, 24 May 2022, 10:56:58 GMT+1, Gerard Hamilton

wrote:

Re-sending...

On Tuesday, 24 May 2022, 10:50:23 GMT+1, Gerard Hamilton

wrote:

Sorry, my contact details are as follows:

Regards,

Gerard,

On Tuesday, 24 May 2022, 10:49:53 GMT+1, Gerard Hamilton

wrote:

Hi there,

I am looking for advice on the above property. This property is a commercial unit. First floor Coffee Shop and second floor.

The second floor was used for, office space, staff toilets, bed sit etc. Rates are paid annually on this building and is exempt for LPT.

I am now looking for the upper part (first floor) to be changed to residential, ground floor to remain commercial.

I have spoken with revenue, they have indicated to me that there is not issue to change this but I need a letter from planning stating that there is no need for planning requirements.

First, is there a requirement for planning? if not, can I obtain a letter from planning to state that there is no requirement for planning to change the use of the first floor to residential?

Many thanks in advance for your help on this.

Kind regards,

Gerard Hamilton.

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Surveyed 1986  
Revised 2014  
Levelled 1978

# Land Registry Compliant Map



499722

655457

ITM CENTRE PT COORDS

499606,655371

DESCRIPTION

MAP SHEETS

1:1000  
4728-15



Arna thionsu agus arna fhoilsiú ag Suirbhéireacht Ordnáis Éireann, Páirc an Fhionnuisce, Baile Átha Cliath 8, Éire.  
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655285



499722

499489

655457

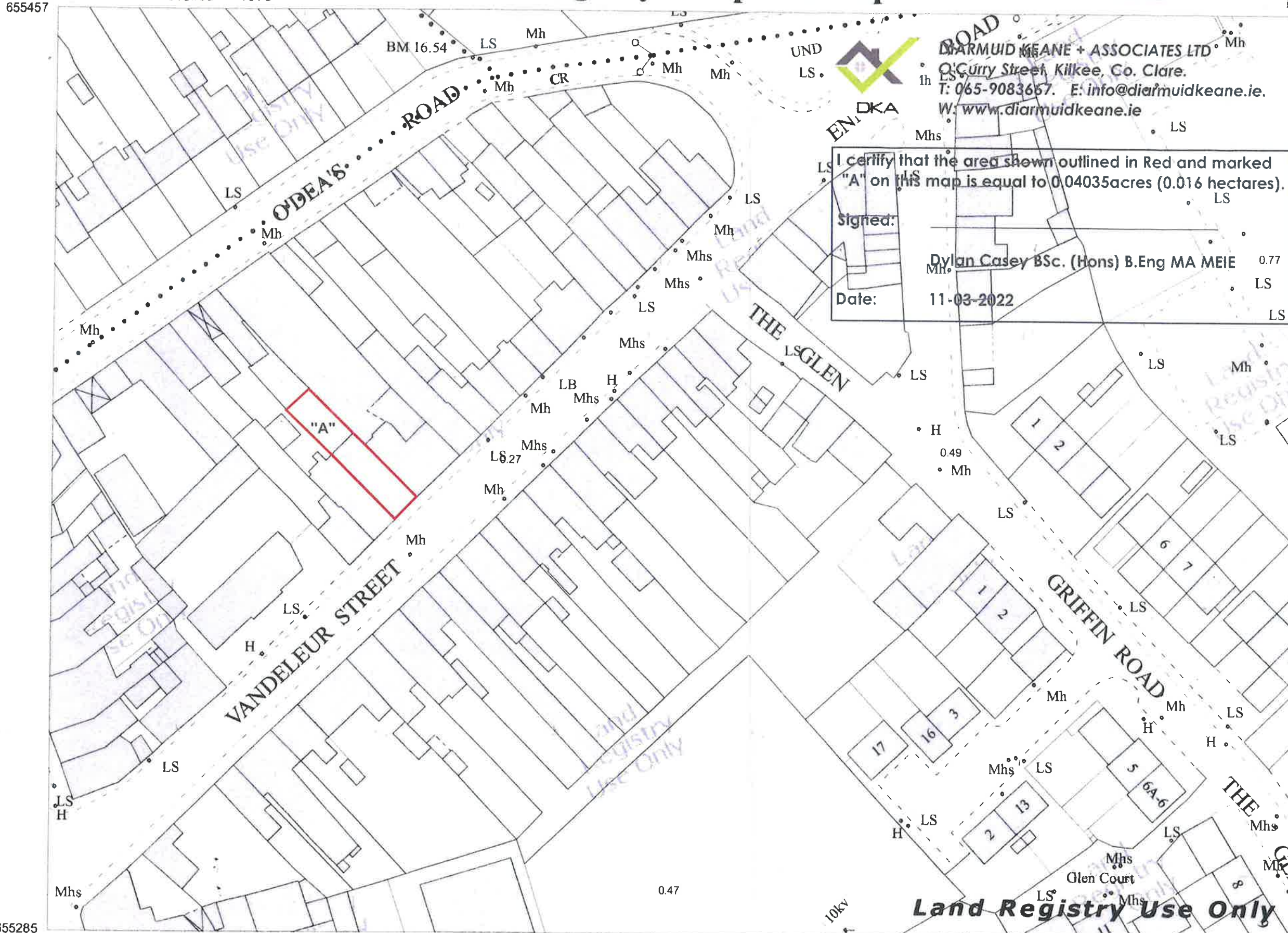
655285

499489

Scale:- 1:1,000  
Scála:- 1:1,000

0 20 40 60 80 100 Metres  
0 50 100 150 200 250 Feet

Plot Ref. No. 19674628\_1\_1  
Plot Date 07-JAN-2015



DKA

I certify that the area shown outlined in Red and marked "A" on this map is equal to 0.04035 acres (0.016 hectares).

Signed:

Date:

DIARMUID KEANE + ASSOCIATES LTD  
O'Curry Street, Kilkee, Co. Clare.  
T: 065-9083667. E: info@diarmuidkeane.ie.  
W: www.diarmuidkeane.ie

Dylan Casey BSc. (Hons) B.Eng MA MEIE

11-03-2022

Land Registry Use Only





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

16/06/2022 11:29:27

Receipt No. : L1CASH/0/334035  
\*\*\*\*\* REPRINT \*\*\*\*\*

GERARD HAMILTON  
NO. 3 VANDELEUR STREET  
KILRUSH  
CO. CLARE  
R22-40

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

Total : 80.00 EUR

Tendered :  
CREDIT CARDS 80.00

Change : 0.00

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