



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Paul Morgan
c/o Michael Hehir
McKenna Consulting Engineers
Bank Place
Miltown Malbay
Co. Clare**

20th June 2023

Section 5 referral Reference R23-36 – Paul Morgan

Can Ennistymon Credit Union occupy the vacant ground floor unit at 4,5 New Road, Ennistymon for a period of two years under exempted development planning guidelines?

A Chara,

I refer to your application received on 29th May 2023 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

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

Mise, le meas


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

**An Roinn Pleanála
An 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 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No:

81943

Reference Number:

R23-36

Date Referral Received:

29th May 2023

Name of Applicant:

Paul Morgan

Location of works in question:

Unit 4 & 5 New Road, Ennistymon, Co. Clare

Section 5 referral Reference R23-36 – Paul Morgan

Can Ennistymon Credit Union occupy the vacant ground floor unit at 4,5 New Road, Ennistymon for a period of two years under exempted development planning guidelines?

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Article 10(1) of the Planning and Development Regulations 2001, as amended;
- (d) Classes 1 and 2, Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (e) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare for a period of two years constitutes "works" which come within the scope of section 2(1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare for a period of two years is not exempted development having regard to Article 10(1) of the Planning and Development Regulations. 2001 (as amended), as it would constitute a change of use from a use under class 1 to a use under class 2 of Part 1 of the second schedule of the Planning and Development Regulations 2001, as amended.

ORDER:

Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers

conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare is **considered development** which is **not exempted development**.

Signed:


GARETH RUANE
SENIOR EXECUTIVE PLANNER 

Date:

20th June 2023

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

Reference No.: R23-36



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R23-36

Can Ennistymon Credit Union occupy the vacant ground floor unit at 4,5 New Road, Ennistymon for a period of two years under exempted development planning guidelines?

AND WHEREAS, Paul Morgan has requested a declaration from Clare County Council on the said question.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Article 10(1) of the Planning and Development Regulations 2001, as amended;
- (d) Classes 1 and 2, Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (e) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare for a period of two years constitutes "works" which come within the scope of section 2(1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare for a period of two years is not exempted development having regard to Article 10(1) of the Planning and Development Regulations. 2001 (as amended), as it would constitute a change of use from a use under class 1 to a use under class 2 of Part 1 of the second schedule of the 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 Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare **constitutes development**

which is not exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.


Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

20th June 2023

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF:	R23-36
APPLICANT(S):	Paul Morgan
REFERENCE:	Whether Ennistymon Credit Union occupying the vacant ground floor unit for a period of two years is or is not development and is or is not exempted development.
LOCATION:	Unit 4 & 5 New Road, Ennistymon, Co. Clare
DUE DATE:	23/06/2023

Site Location

The site is located on the east side of New Road in Ennistymon. It comprises a terraced, two-storey building, the ground floor of which is laid out for retail use.

Recent Planning History on the Landholding

P17/811 GRANTED for development which will consist of alterations to the front of the premises by a) Removing the existing shop canopy; b) Replacing exterior doors and windows and c) Plastering the exterior

P21/655 GRANTED to retain 2 No. Dormer windows (replacing original roof lights) to the existing second floor dwelling unit, and elevational alterations to the rear of the existing first floor dwelling unit at No's 4, 5 and 6

P21/1294 GRANTED for the construction of a new external stepped access route from the rear of the site to the existing first and second floor dwelling units, associated internal alterations including the removal of the internal stairs between first and second floor, and all associated elevational changes and external works at No.'s 4,5 and 6.

Background to Referral

This Referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by Paul Morgan. He is a perspective leaseholder of the property.

The applicant is seeking a Section 5 Declaration as to whether Ennistymon Credit Union occupying the vacant ground floor unit for a period of two years at Unit 4 & 5 New Road, Ennistymon, Co. Clare is or is not development and is or is not exempted development.

It is submitted that Ennistymon Credit Union require a premises for a period of two years while their current premises at Church Street is being renovated. The unit at New Road will be used for offices and public banking services.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

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

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

'Works' are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Article 10(1) of the Planning and Development Regulations, 2001 (as amended)

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

Schedule 2, Part 4, of the Planning and Development Regulations, 2001 (as amended)

Class 1

Use as a shop.

Class 2

Use for the provision of-

- (a) Financial services
- (b) Professional services (other than health or medical services)
- (c) Any other services (including use as a betting office)

Where the services are provided principally to visiting members of the public.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether Ennistymon Credit Union occupying the vacant ground floor unit for a period of two years at Unit 4 & 5 New Road, Ennistymon, Co. Clare is or is not development and is or is not exempted development.

Particulars of Proposal

The ground floor unit at Unit 4 & 5, New Road, Ennistymon has a long-established retail use which can be categorized as Class 1 under Schedule 2, Part 4 of the Planning and Development Regulations i.e. *use as a shop*.

The occupancy of the premises by Ennistymon Credit Union, albeit on a temporary basis, will involve the use of the property for financial services where the service will principally be provided to visiting members of the public. This can be categorized as Class 2 under Schedule 2, Part 4 of the Regulations.

Article 10(1) of the Regulations states *inter alia* that a change of use within any one of the classes of use specified in Part 4 of Schedule 2 shall be exempted development. However, in this case the proposal will result in a change of use from Class 1 to Class 2. This constitutes a material change in the use of the structure. The proposal for Ennistymon Credit Union to occupy the vacant ground floor units at Unit 4 & 5 New Road, Ennistymon is therefore *development* in accordance with the definition set out in Section 3(1) of the Planning and Development Act, 2000 (as amended).

The change of use from Class 1 to Class 2 does not come within the meaning of descriptions for any of the Classes of Development provided for in Schedule 2 of the Planning and Development Regulations nor is it considered exempt under any other section of the Planning and Development Act or any article of the Planning and Development Regulations.

The use of the ground floor unit of Unit 4 & 5 New Road, Ennistymon by Ennistymon Credit Union for a period of two years is development which is not exempted development.

Recommendation

The following questions have been referred to the Planning Authority:

Whether Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare for a period of two years is or is not development and is or is not exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Article 10(1) of the Planning and Development Regulations 2001, as amended
- (d) Classes 1 and 2, Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (e) The works as indicated in submitted documents from the referrer.

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

- (a) Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare for a period of two years constitutes "works" which come within the scope of section 2(1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;

- (c) Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare for a period of two years is not exempted development having regard to Article 10(1) of the Planning and Development Regulations, 2001 (as amended), *as it would constitute a change of use from a use under Class 1 to a use under Class 2 of Part 1 of the Second Schedule of the P&D Regs 2001, namely,*

Now therefore Clare County Council (Planning Authority), hereby decides that Ennistymon Credit Union occupying the vacant ground floor unit at Unit 4 & 5, New Road, Ennistymon, Co. Clare for a period of two years is development and is not exempted development.


Executive Planner

Date: 19/06/2023


Senior Executive Planner

Date: 20/06/23



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Paul Morgan
c/o Michael Hehir
McKenna Consulting Engineers
Bank Place
Miltown Malbay
Co. Clare

29/05/2023

Section 5 referral Reference R23-36 – Paul Morgan

Can Ennistymon Credit Union occupy the vacant ground floor unit at 4,5 New Road, Ennistymon for a period of two years under exempted development planning guidelines?

A Chara,

I refer to your application received on 29th May 2023 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


Brian Fahy
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



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

29/05/2023 10:44:25

Receipt No. L1CASH/0/349860
***** REPRINT *****

PAUL MORGAN
C/O MICHAEL HEHIR
McKenna Consulting Engineers
Bank Place, Miltown Malbay, Co Clare

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

Total : 80.00 EUR

Tendered :
CREDIT CARDS 80.00

Change : 0.00

P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie



Comhairle Contae an Chláir
Clare County Council

R23-36

**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	<p>Paul Morgan</p> <p>c/o Mckenna Consulting Engineers</p> <p>Bank Place</p> <p>Miltown Malbay</p> <p>Co. Clare</p>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	<p>Michael Hehir</p> <p>Mckenna Consulting Engineers</p> <p>Bank Place</p> <p>Miltown Malbay</p> <p>Co. Clare</p>

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 Ennistymore Credit Union occupy the vacant ground floor unit at 4,5 New Road, Ennistymore for a period of two years under exempt planning guidelines?

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

The vacant ground floor unit was used for retail purposes since before the planning act came into force. Ennistymore Credit Union require a premises for a period of two years to operate while their current premises, at Church Street, is being renovated. Ennistymore Credit Union will use the vacant unit for offices + public banking services. Ennistymore Credit Union need to move as soon as possible due to health + safety issues at their current premises which is affecting both staff + members.

- (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)

+ O.S. MAP

+ Floor Plan

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	4, 5 New Road, Enniskerry, Co. Clare
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	leaseholder (prospective)
(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>	Liza Fitzpatrick 28 Woodmark Ballindereen Co. Galway
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	yes
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	No
(g) Were there previous planning application/s on this site? If so please supply details:	yes, P8/13995, P8/18206, P17/811 P21/655, P21/1294
(h) Date on which 'works' in question were completed/are likely to take place:	IN 2/3 months time

SIGNED:

Michael Hehir
 (Agent - Michael Hehir)

DATE:

25/5/2023

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY

Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:.....			

Land Registry Compliant Map



Tailte
Éireann

**CENTRE
COORDINATES:**
ITM 513080,688389

PUBLISHED: 26/05/2023
ORDER NO.: 50337071_3

MAP SERIES: 1:1,000
MAP SHEETS: 4084-12

COMPILED AND PUBLISHED BY:
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Tailte Éireann,
Phoenix Park,
Dublin 8,
Ireland,
D08F6E4

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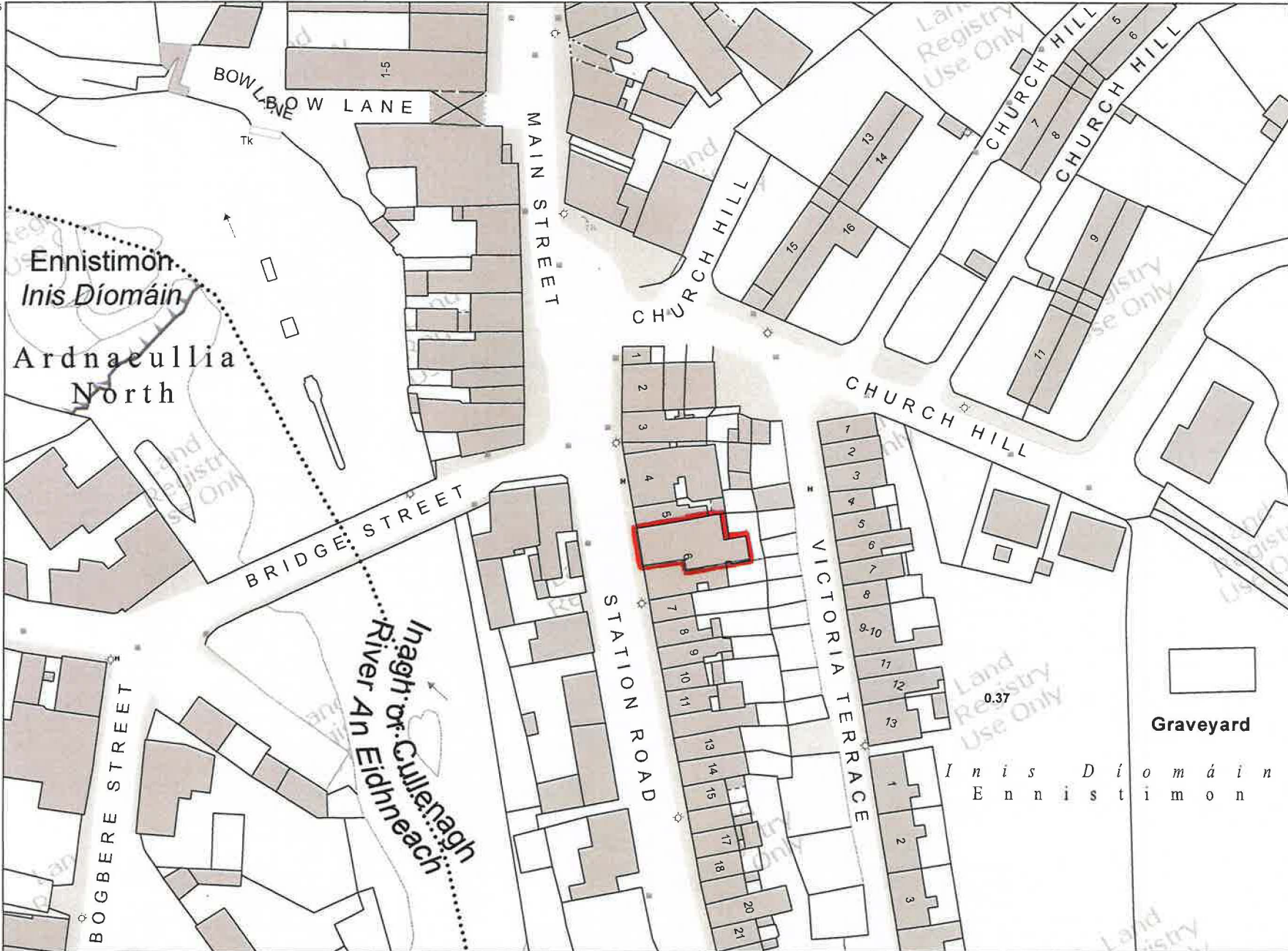
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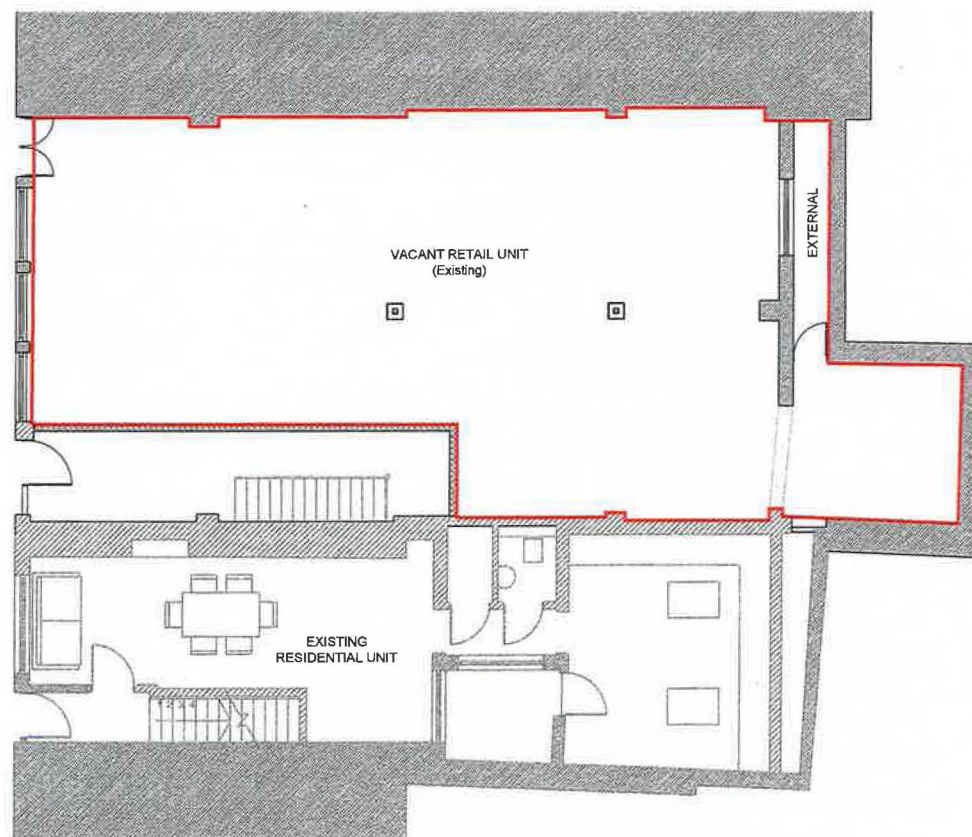


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CAPTURE RESOLUTION:
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Further information is available at:
www.osi.ie search 'Capture Resolution'

LEGEND:
To view the legend visit
www.osi.ie and search for
'Large Scale Legend'





GROUND FLOOR PLAN

SCALE 1:100

AREA OUTLINED IN RED = 115.56m²

* VACANT UNIT TO BE OCCUPIED IN RED

REV.	DESCRIPTION	DATE	BY
L1	EXTERNAL AREA INCLUDED	2004/23	MM
L-	FIRST ISSUE	17/04/23	SC

CLIENT **Lisa Fitzpatrick**

JOB **Retail Unit at New Road
Ennistymon, Co. Clare**

TITLE **Ground Floor Plan**

McKenna Consulting Engineers
Civil & Structural
Barr. Place, Miltown Malboy, Co. Clare
Email - info@mckennaconsultingengs.com
Tel - 055 7955651 / 086 865 7561

SCALES	AS SHOWN	DRG. No.
DATE	17/04/23	22250/L/001/L1
DRAWN	MM	
CHECKED	SC	
APPROVED	TMCK	