



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Damien O'Donnell
c/o Pat Hogan
Rushane
Kilnamona
Co. Clare**

21st August 2023

Section 5 referral Reference R23-56 – Damien O'Donnell

Is the construction of a shed, under 40 square metres in area (3.6 x 2.5) meters), under 4 square meters in height, with slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on to the gable of the dwelling house at No. 13 Atlantic View Holiday Homes, West End, Kilkee, Co. Clare, on lands which the owner and his predecessor, have used without objection and maintained since 2000, and which the company that is the registered owner of the lands was dissolved in 2000 considered development and if so is it exempted development?

A Chara,

I refer to your application received on 28th July 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 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.: R23-56



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R23-56

Is the construction of a shed, under 40 square metres in area (3.6 x 2.5) meters), under 4 square meters in height, with slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on to the gable of the dwelling house at No. 13 Atlantic View Holiday Homes, West End, Kilkee, Co. Clare, on lands which the owner and his predecessor, have used without objection and maintained since 2000, and which the company that is the registered owner of the lands was dissolved in 2000 considered development and if so is it exempted development?

AND WHEREAS, Damien O'Donnell has requested a declaration from Clare County Council on the said question.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer on 28th July 2023.

And whereas Clare County Council has concluded:

- (a) The development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, constitutes "*works*" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended,
- (b) The said works constitute "*development*" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (c) The said development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is not exempted development having regard to Class 3 of Schedule 2, Part of the Planning and Development Regulations 2001, as amended as the shed is within a communal area within the holiday home development and is not within the curtilage of a dwelling;

(d) The said development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is not exempted development having regard Article 9(i) of the Planning and Development Regulations 2001, as amended, as the shed contravenes condition number 17 of P96-307 which states that *"No garage, shed, awning or similar structure shall be provided without the prior consent of the Planning Authority whether or not such provision would otherwise constitute exempted development"*.

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 construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, 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

21st August 2023

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:

82248

Reference Number:

R23-56

Date Referral Received:

28th July 2023

Name of Applicant:

Damien O'Donnell

Location of works in question:

**13 Atlantic View Holiday Homes, West End,
Kilkee, Co. Clare**

Section 5 referral Reference R23-56 – Damien O'Donnell

Is the construction of a shed, under 40 square metres in area (3.6 x 2.5) meters), under 4 square meters in height, with slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on to the gable of the dwelling house at No. 13 Atlantic View Holiday Homes, West End, Kilkee, Co. Clare, on lands which the owner and his predecessor, have used without objection and maintained since 2000, and which the company that is the registered owner of the lands was dissolved in 2000 considered development and if so is it exempted development?

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer on 28th July 2023.

AND WHEREAS Clare County Council has concluded:

- (a) The development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended,
- (b) The said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (c) The said development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is not exempted

development having regard to Class 3 of Schedule 2, Part of the Planning and Development Regulations 2001, as amended as the shed is within a communal area within the holiday home development and is not within the curtilage of a dwelling;

- (d) The said development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is not exempted development having regard Article 9(i) of the Planning and Development Regulations 2001, as amended, as the shed contravenes condition number 17 of P96-307 which states that *"No garage, shed, awning or similar structure shall be provided without the prior consent of the Planning Authority whether or not such provision would otherwise constitute exempted development"*.

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 the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, Co. Clare is **considered development** which is **not exempted development**.

Signed:


GARETH RUANE
SENIOR EXECUTIVE PLANNER 

Date: 21st August 2023

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT 1

FILE REF:	R23-56
APPLICANT(S):	Damien O'Donnell
REFERENCE:	Whether the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is not development and is or is not exempted development.
LOCATION:	13 Atlantic View Holiday Homes, West End, Kilkee, County Clare
DUE DATE:	24 th August 2023

Site Location

The proposal site is located within the settlement of Kilkee and is zoned as "Existing Residential" in the Clare County Development Plan 2023-2029. It is located on the side gable of an existing end of terrace dwelling. It has a mono-pitched slate roof. The external finishes comprise of painted plaster which is consistent with the dwelling. Access to the shed structure is from the rear. The area on which the shed has been constructed was formally a footpath and a communal green area within the Atlantic View Holiday Home development. Views towards the site are local range views within the development and longer-range views from the lower ground to the north west (i.e. Diamond Rocks, pollock holes etc). From this orientation the site is elevated in the receiving landscape.

Recent Onsite Planning History

95-627 – Withdrawn - Mr Joseph Halpin - Construction of 18 no. dwellinghouses.

96-307 – Granted - Helnsar Limited - construct 44 houses, together with attending services. Condition number 17 of this permission states:

No garage, shed, awning or similar structure shall be provided without the prior consent of the Planning Authority whether or not such provision would otherwise constitute exempted development.

97-1530 – Granted - Cairnvale Builders - build 17 holiday houses and 1 administration building.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Damien O'Donnell who states that he is seeking a Section 5 Declaration as to whether the construction of a shed, with a floor area of 9sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at

number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is or is not development and is or is not exempted development. The applicant is not the stated owner of the site. However, he states that he intends to apply for registration of his ownership of the plot with shed to perfect his title.

The shed, which is in situ, has a floor area of 9 sqm and an overall height of less than 4 metres, has a slate roof, is not accessible from the dwelling, and it is stated that same is used only in connection with the dwelling. It is on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

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

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

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

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

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 3

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure, store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

1. *No such structure shall be constructed, erected or placed forward of the front wall of a house*
2. *The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres*
3. *The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.*
4. *The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.*
5. *The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.* 6.
6. *The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.*

Under Article 9 (1) of the same Regulations, development to which Article 6 relates shall not be exempted development for the purposes of the Act:

- (a) *if the carrying out of such development would –*
 - (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
 - (ii) *consist of or 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,*
 - (iii)(a) *endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*
 - (iv) *interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*
 - (vii) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.”

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is not development and is or is not exempted development.

Particulars of Proposal

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

- Height Less than 4 metres
- Floor Area 9sqm

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 3

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure, store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

The shed is not within the curtilage of a house. Whilst immediately adjacent to, and attached to an existing dwelling, the shed is located in a communal open space are within the housing development.

1. *No such structure shall be constructed, erected or placed forward of the front wall of a house*

The shed is not forward of the front wall of the dwelling.

2. *The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.*

The floor area is 9sqm.

3. *The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.*

The shed is not within the curtilage of a house.

4. *The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.*

The external finishes are consistent with the dwelling.

5. *The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.*

The overall height is less than 4 metres.

6. *The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.*

It is stated that the use of the building is ancillary to the main dwelling.

Article 9 of the Planning and Development Regulations 2001, as amended

Article 9 of the Planning and Development Regulations 2001, as amended outlines restrictions on exempted development, and these are assessed below:

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*

The shed contravenes condition number 17 of planning permission P96-307.

- (ii) *consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

Not applicable.

- (iii) *endanger public safety by reason of traffic hazard or obstruction of road users,*

Not applicable in this instance.

- (iii)(a) *endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*

Not applicable in this instance.

- (iv) *interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*

Having regard to the limited nature of the development, that nature of the proposal site and its receiving environs, and the views available towards the site I consider that development proposed would not interfere with the character of the landscape or views in the area.

- (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,*

This is not applicable in this instance.

- (vi) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

This is not applicable in this instance.

- (vii)
 - a. *consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

This is not applicable in this instance.

- 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,*

The proposal site is located circa 150 metres from Kilkee Reefs SAC. Having regard to the nature and scale of the proposed development and the absence of proximity or connectivity to a European Site, no Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects, on a European Site. An appropriate assessment screening report and determination is attached to this report.

- a. *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."*

The proposed development would not be likely to have an adverse impact on an area designated as a natural heritage area.

- (viii) *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

This is not applicable in this instance.

- (ix) *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

This is not applicable in this instance.

- (x) *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

This is not applicable in this instance.

- (xi) *obstruct any public right of way,*

Whilst the shed is constructed on a footpath and a communal grassed area the available information indicates that there is not registered right of way affected.

- (xii) *further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.*

This is not applicable in this instance.

Conclusion

Having regard to the above it is considered that the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, constitutes both works and development and is not exempted development.

Recommendation

The following question has been referred to the Planning Authority:

Whether the construction of a construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, 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) Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer on 28th July 2023.

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

- (a) the development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, constitutes "*works*" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "*development*" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- (c) the said development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is not exempted development having regard to Class 3 of Schedule 2, Part of the Planning and Development Regulations 2001, as amended, as the shed is within a communal area within the holiday home development and is not within the curtilage of a dwelling;
- (d) the said development of the construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare, is not exempted development having regard Article 9(i) of the Planning and Development Regulations 2001, as amended, as the shed contravenes condition number 17 of P96-307 which states that "*No garage, shed, awning or similar structure shall be provided without the prior consent of the Planning Authority whether or not such provision would otherwise constitute exempted development*".

Now therefore Clare County Council (Planning Authority) hereby decides that the construction of a construction of a shed, with a floor area of 9 sqm and an overall height of less than 4 metres, with a slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on the gable of the dwelling house at number 13 Atlantic View Holiday Homes, West End, Kilkee, County Clare is development and is not exempted development.



A/Executive Planner
Date: 17th August 2023



Senior Executive Planner
Date: 21/08/23

Clare County Council

Screening for Appropriate Assessment & Determination

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

Table 1: Project Details

Planning File Reference	R23-42
Applicant Name	Brehony
Development Location	Derrynacarragh, Kilmaley, Co Clare
Application accompanied by an EIS	No
Application accompanied by an NIS	No
Description of the project (To include a site location map):	
Machinery storage shed	
	

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

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

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

European Sites²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
Kilkee Reefs SAC	Large shallow inlets and bays [1160] Reefs [1170] Submerged or partially submerged sea caves [8330]	0.15

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

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

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

		<i>developments likely to impact on an adjacent European site? Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?</i>	
--	--	---	--

Appropriate Assessment Screening Determination	
Planning File Reference	R23-52
Proposed Development	Domestic shed
Development Location	Kilkee
European sites within impact zone	As per report
Description of the project	
Domestic shed	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
As per report	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
General disturbance	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
Distance from the site, limited extent of works in an urban area	
Documentation reviewed for making this statement	
NPWS website Plans and particulars received GIS mapping database	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) ³	No
(b) There is no potential for significant effects to European Sites ³	Yes
(c) The potential for significant effects to European Site(s) cannot be ruled out ⁴	No
(d) Significant effects to European	No

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

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

Alternatively, where other planning concerns arise the proposal could be refused planning permission.

sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010 ⁵	
Completed By	John O'Sullivan
Date	17 th August 2023

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







COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Damien O'Donnell
c/o Pat Hogan
Rushane
Kilnamona
Co. Clare

28/07/2023

Section 5 referral Reference R23-56 – Damien O'Donnell

Is the construction of a shed, under 40 square metres in area (3.6 x 2.5) meters), under 4 square meters in height, with slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on to the gable of the dwelling house at No. 13 Atlantic View Holiday Homes, West End, Killee, Co. Clare, on lands which the owner and his predecessor, have used without objection and maintained since 2000, and which the company that is the registered owner of the lands was dissolved in 2000 considered development and if so is it exempted development?

A Chara,

I refer to your application received on 28th July 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 Chláir
New Road
Ennis
Co Clare

28/07/2023 09:36:35

Receipt No. : L1CASH/0/352468

***** REPRINT *****

DAMIEN O'DONNELL
C/O PAT HOGAN
KILNAMONA CO CLARE

COMHAIRLE

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

Total : 80.00 EUR

Tendered :
Cash

80.00

Change :

0.00

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

P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

R23-56

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

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



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

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration	DAMIEN O'DONNELL NO 13 ATLANTIC VIEW HOLIDAY HOMES WEST END KILKEE CO. CLARE.
(b) Telephone No.:
(c) Email Address:	.
(d) Agent's Name and address:	PAT HOGAN RUSHANE KILNAMONA CO. CLARE.

2. DETAILS REGARDING DECLARATION BEING SOUGHT

- (a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
Note: only works listed and described under this section will be assessed.

Sample Question: Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?

Is the construction of a shed, under 40 square meters in area (3.6 x 2.5 meters), under 4 square meters in height, with slate roof, not accessible from the dwelling, and used only in connection with the dwelling, on to the gable of the dwelling house at No13 Atlantic View Holiday Homes, West End, Kilkee, Co.Clare, on lands which the owner and his predecessor, have used without objection and maintained since 2000, and which the company that is the registered owner of the lands was dissolved in 2000 considered exempted development.

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

No 13 Atlantic view is 1 of a row of 21 houses in West End, Kilkee, made up of 3 blocks of 3 houses and 3 blocks of 3 houses. This means that there are 12 houses with gables. 10 of these including the present house, have sheds constructed (Numbers 1,3,4,6,9,10,13,17,18,21),

The shed constructed is highlighted orange on the attached site location map, and is in compliance with exempted development Class 3 "The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure", and is located as indicated on the attached site location map.

The applicant is the registered owner of the dwelling highlighted green on the location map, while the remaining site area outlined in red, is still registered to the original developers company which was dissolved in 2000, and has been used and maintained without objection by the applicant since that time. See letter from Brookes and company solicitors detailing 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)

(1) SITE LOCATION MAP

(2) LETTER FROM BROOKS & COMPANY SOLICITORS.

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT

(a) Postal Address of the Property/Site/Building for which the declaration sought:	NO 13 ATLANTIC VIEW HOLIDAY HOMES NEST END KILKEE CO. CLARE.
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO.
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWNER OF DWELLING + SEE LETTER ATTACHED.
(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>	SEE LETTER ATTACHED.
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	N/A.
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	UD 22-113
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	ORIGINAL ESTATE NOT KNOWN.
(h) Date on which 'works' in question were completed/are likely to take place:	2023

SIGNED: _____

DATE: _____

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 487722 660102

PUBLISHED: 17/07/2023 **ORDER NO.:** 50346504_1

MAP SERIES: 1:1,000 4604-25
1:2,500 4664-B
1:2,500 7049-D

COMPILED AND PUBLISHED BY:
National Mapping Division of
Tailte Éireann,
Phoenix Park,
Dublin 8,
Ireland.
D08F6E4

www.tailte.ie

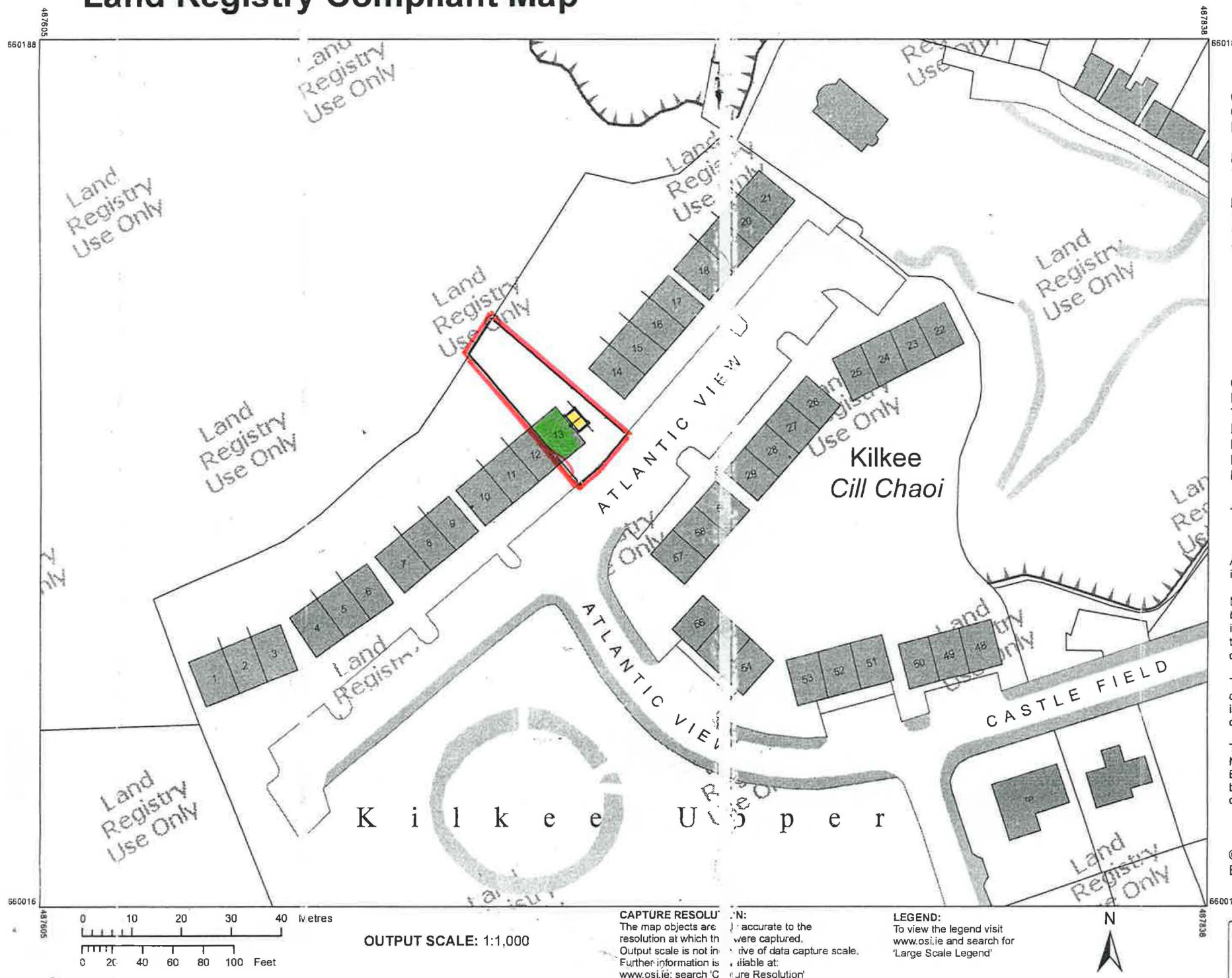
Any unauthorised reproduction
infringes Tailte Éireann copyright.

No part of this publication may
be copied, reproduced or transmitted
in any form or by any means without
the prior written permission of the
copyright owner.

The representation on this map
of a road, track or footpath
is not evidence of the existence
of a right of way.

Topographic maps produced by the
National Mapping Division of Tailte
Éireann never show legal property
boundaries, nor do they show
ownership of physical features.

© National Mapping Division of Tailte
Éireann, 2023. All rights reserved.



CAPTURE RESOLUTION:
The map objects are
resolution at which they
were captured.
Output scale is not
indicative of data capture scale.
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'



This map was produced by
the National Mapping Division
of Tailte Éireann, formerly
Ordnance Survey Ireland (OSI)



BROOKS & COMPANY
SOLICITORS

Baldwin Street,
Mitchelstown,
Co. Cork.
P67 RD63

Tel. 025-24833
Fax. 025-24766

E-Mail. info@brooksandco.com
DX 30002 Mitchelstown

Our ref: SOR.COF.12892

Your Ref :

Date : 7th July, 2023

TO WHOM IN MAY CONCERN

**Re: Our Client: Damien O'Donnell, 13, Atlantic View Holiday Homes,
West End, Kilkee, Co. Clare**



Dear Sirs,

We confirm that we act for the above named Damien O'Donnell the registered owner of the dwellinghouse and premises comprised in folio _____ and known as 13, Atlantic View Holiday Homes, West End, Kilkee, Co. Clare. The house forms part of a development registered in the name of Cairnvale Builders Limited on Folio _____

The house was initially constructed in 1998/99 as part of the development. All the dwellinghouses in the development were sold however, Cairnvale Builders Limited the developer/registered owner of the common areas was dissolved in 2000, before the common areas were taken in charge by the local authority. Our client constructed a small shed at the side of his premises to accommodate his wheelie bin which is situate within the confines of Folio _____ registered in the name of the now dissolved company, Cairnvale Builders Limited. Our client declares that he and his predecessors on title have maintained, used and enjoyed that part of Folio _____ upon which the shed is now built, continuously and without objection, interruption or threat of discontinuance since the dwellinghouse was constructed. Our client advises us that he intends applying for registration of his ownership of the plot with shed to perfect his title.

Yours faithfully,

This letter is sent electronically and accordingly bears no signature

Sarah O'Regan
Brooks and Company
cofarrell@brooksandco.com

John Brooks, B.C.L

Mary Hayes L.L.B., Sarah O'Regan B.C.L. Alison O'Mahony B.C.L. Brigid O'Donnell BCLF, LLM

Michael Prendeville, B.C.L. Consultant