



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

Thomas McCann & Sinéad Malone
16 Rathborne Drive
Ashtown
Dublin 15
D15 ED98

22nd December 2023

Section 5 referral Reference R23-92 – Thomas McCann & Sinéad Malone

Is the detached shed at the rear, an attached conservatory and side rear utility room development and if so is it exempted development?

A Chara,

I refer to your application received on 1st December 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


Colette Coakley
Assistant Staff Officer
Planning Department
Economic Development Directorate

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

Reference No.: R23-92



Section 5 referral Reference R23-92

Is the detached shed at the rear, an attached conservatory and side rear utility room development and if so is it exempted development?

AND WHEREAS, Thomas McCann & Sinéad Malone 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 1 and 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The details and works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) The construction of a rear shed, rear conservatory and conversion of garage to a utility room to the side of the property at 9 Kincora Park, Lifford, Ennis, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended.
- (b) The said works constitute "*development*" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended.
- (c) The construction of a rear conservatory and the conversion of an existing garage to residential purposes (utility room) is considered to be exempted development having regard to Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The construction of a garage to the rear of the property is considered to be exempted development having regard to Class 3 of Part 1 of Schedule 2 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 the construction of a rear shed and rear conservatory and conversion of an existing garage to a utility room at 9 Kincora Park, Lifford, Ennis, Co. Clare **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.


Colette Coakley
Assistant Staff Officer
Planning Department
Economic Development Directorate

22nd December 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:

82945

Reference Number:

R23-92

Date Referral Received:

1st December 2023

Name of Applicant:

Thomas McCann & Sinéad Malone

Location of works in question:

9 Kincora Park, Lifford, Ennis, Co. Clare

Section 5 referral Reference R23-92 – Thomas McCann & Sinéad Malone

Is the detached shed at the rear, an attached conservatory and side rear utility room 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 1 and 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The details and works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) The construction of a rear shed, rear conservatory and conversion of garage to a utility room to the side of the property at 9 Kincora Park, Lifford, Ennis, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended.
- (b) The said works constitute "*development*" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended.
- (c) The construction of a rear conservatory and the conversion of an existing garage to residential purposes (utility room) is considered to be exempted development having regard to Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The construction of a garage to the rear of the property is considered to be exempted development having regard to Class 3 of Part 1 of Schedule 2 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 the construction of a rear shed and rear conservatory and conversion of an existing garage to a utility room at 9 Kincora Park, Lifford, Ennis, Co. Clare is considered development which is exempted development.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER

Date:

22nd December 2023

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF:	R23-92
APPLICANT(S):	Thomas McCann and Sinead Malone
REFERENCE:	Is the construction of a rear shed, rear conservatory and utility room to the side of the property development / not development and if so, is it exempted development / not exempted development?
LOCATION:	9 Kincora Park, Lifford, Ennis, Co. Clare
DUE DATE:	4th January 2023

Site Location

The site is located at 9 Kincora Park, Lifford, Ennis, Co. Clare, which fronts onto L-4582. The site comprises of an existing semi- detached dwellinghouse, with its own access driveway, within a mature residential development on the outskirts of Ennis town centre.

Recent Onsite Planning History

On site:

There is no recent planning history on site.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Thomas McCann and Sinead Malone, who are the potential purchasers of the subject structure. It is noted that contracts of sale have been signed and their deposit has been paid since October 2023.

“The applicant is seeking a Section 5 Declaration as to whether the construction of a rear shed, rear conservatory and utility room to the side of the property at 9 Kincora Park, Lifford, Ennis, Co. Clare is development / is not development and if so, is it exempted development / not exempted development?”

The previous owner, who owned the property from 1971 has been deceased since 2021. The vendor for the deceased owner has advised that applicant in writing that retention is required before the sale of the property can finalise. The applicant therefore is querying whether the three stated structures are exempted development or not exempted development. Below are the indicated measurements of the each of the structures in question:

- Rear Shed: 18.98sqm – located to the rear / west of the existing dwelling house. Appears to be of flat roof construction and appears to be flush with the existing block wall along the western aspect of the site. No details in relation to the height and length received.
- Conservatory: 7.24sqm – located to the rear of the dwelling and is of flat roof construction. Appears to have large door and windows to the south and west of the structure. The structure does not appear to be constructed up to the boundary wall between the subject property and the adjacent property to the north. No details have been provided in relation to the distance between the 'conservatory' and the boundary wall.
- Utility Room 14.65sqm – located to the side / south of the dwellinghouse and is stated as being a converted garage. The structure is of flat roof construction. The utility room has an entrance door to the east and window to the west and is flush with the side boundary wall between the subject dwelling and the dwelling adjacent to the south. The applicant refers to the utility room as being a 'converted garage'.

Open Space to the rear – indicated as being in excess of 25sqm.

Statutory Provisions

The vendor's solicitor has stated that the structures were constructed "a long time ago" and I note their understanding that the structures are exempted development and statute barred from enforcement action. It is not clear and the Planning Authority has no information on, the precise date that the works took place on this site. In my view therefore the Planning Authority can only assess this Section 5 based on the current provisions of the Act and Regulations as follows:

Planning and Development Act, 2000 (as amended)

In the absence of any actual dates of construction for the rear shed, rear conservatory or the utility room to the side / front of the existing structure, the Planning Authority shall assess this proposal, having regard 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 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension aboveground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

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.

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. 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.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration whether the construction of a rear shed, rear conservatory and utility room to the side of the property at 9 Kincora Park, Lifford, Ennis, Co. Claire is development / is not development and if so, is it exempted development / not exempted development?

Particulars of the Development:

- Rear Shed: 18.98sqm – located to the rear / west of the existing dwelling house. Appears to be of flat roof construction and appears to be flush with the existing block wall along the western aspect of the site. No details in relation to the height and length received but from inspection would appear to be less than 3m in height and I note the stated floor area is 18.98sqm.
- Conservatory: 7.24sqm – located to the rear of the dwelling and is of flat roof construction. Appears to have large door and windows to the south and west of the structure. The structure does not appear to be constructed up to the boundary wall between the subject property and the adjacent property to the north. No details have been provided in relation to the distance between the 'conservatory' and the boundary wall.
- Utility Room 14.65sqm – located to the side / south of the dwellinghouse and is stated as being a converted garage. The structure is of flat roof construction. The utility room has an entrance door to the east and window to the west and is flush with the side boundary wall between the subject dwelling and the dwelling adjacent to the south. The applicant refers to the utility room as being a 'converted garage'.

Open Space to the rear – indicated as being in excess of 25sqm.

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

*The extension of a house, by the construction or erection of an extension (including a conservatory) to the **rear** of the house or by the **conversion** for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the **side** of the house.*

- The extensions (conservatory and utility room) are located to the rear of the existing dwelling and to the side of the existing dwelling respectfully.

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

The conservatory is 7.24sqm, the utility room is 14.65sqm – 21.89sqm.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

The house is a semi- detached dwelling. The extensions are located on the ground floor only.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

The extensions are located on the ground floor only.

2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

Floor area of extension is 21.89sqm.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

n/a

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

The proposed extensions are located on the ground floor area only.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

Not applicable – extensions are on the ground floor only.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

Not applicable.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

Not applicable.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

Not applicable.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

The dwelling occupies a generously sized residential site and the applicant has indicated that the garden will remain in excess of 25m².

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

Not applicable.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

Not applicable – each of the structures are of single storey.

(c) Where the house is detached and the floor area of the extension aboveground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

Not applicable.

7. The roof of any extension shall not be used as a balcony or roof garden.

Not applicable.

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.

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
– n/a
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. – this is met
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 – private open space retained.
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 – n/a
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 – height does not exceed 3m.
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 – n/a for residential purposes.

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

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

The proposal does not appear to contravene a condition of any previous permission.

(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,

No access points onto the public road network are affected by the proposal.

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

The proposal does not create a traffic hazard or obstruct road users in the area.

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

The proposal site is not located in a solar safeguard zone.

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

Not applicable to the proposal

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies

Not applicable to this proposal

(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.

The works are not considered to impact on the character of the landscape.

(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,

Not applicable to this proposal

(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,

There are no known archaeological features in the vicinity of the proposal site.

(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,

The developments being assessed in this application, will not have a significant effect on European sites.

(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."

Not applicable in this instance

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

Not applicable.

(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,

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,

Not applicable in this instance

(xi) obstruct any public right of way,

Not applicable in this instance

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

The development site is not within an Architectural Conservation Area.

Conclusion:

The following question has been referred to the Planning Authority:

Whether (i) the construction of a rear shed, (ii) rear conservatory and (iii) utility room to the side of the property at 9 Kincora Park, Lifford, Ennis, Co. Clare is development / is not development and if so, is it exempted development / 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 1 and 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The details and works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council (Planning Authority) has concluded:

- (a) the construction of a rear shed, rear conservatory and conversion of garage to a utility room to the side of the property at 9 Kincora Park, Lifford, Ennis, Co. Clare constitutes “works” which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute “development” which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended.

(c) The construction of a rear conservatory and the conversion of an existing garage to residential purposes (utility room) is considered to be exempted development having regard to Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

(d) The construction of a garage to the rear of the property is considered to be exempted development having regard to Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

NOW THEREFORE, Clare County Council (Planning Authority), hereby decides that the construction of a rear shed and rear conservatory and conversion of an existing garage to a utility room at 9 Kincora Park, Lifford, Ennis, Co. Clare is development and is exempted development.



Royston Kerin

Assistant Planner

Date: 22nd December 2023



Garreth Ruane

Senior Executive Planner

Date: 22/12/23



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Thomas McCann & Sinéad Malone
16 Rathborne Drive
Ashtown
Dublin 15
D15 ED98

01/12/2023

Section 5 referral Reference R23-92 – Thomas McCann & Sinéad Malone

Is the detached shed at the rear, an attached conservatory and side rear utility room development and if so is it exempted development?

A Chara,

I refer to your application received on 1st December 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 Stiúthóireacht 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

01/12/2023 14:31:08

Receipt No. : L1CASH/0/357853

***** REPRINT *****

THOMAS McCANN & SINEAD MALONE
16 RATHBORNE DRIVE
ASHTOWN, DUBLIN 15, D15 ED98
REF. R23-92

AN CHLÁIR

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

R23-92

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	Thomas Mc Cann & Sinéad Malone <hr/> 16 Rathborne Drive <hr/> Ashtown <hr/> Dublin 15 <hr/> D15 ED98
(b) Telephone No.:	
(c) Email Address:	1
(d) Agent's Name and address:	<hr/> <hr/> <hr/> <hr/>

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?*

The property we are in the process of buying with an address of 9 Kincora Park, Lifford, Ennis was built pre planning (pre 1964). There is an detached shed at the rear, an attached conservatory and side rear utility room (which was potentially a converted garage).
 Are the shed, conservatory and utility at this property exempt developments?

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

Myself and partner went sale agreed the property, back in June (2023). Signed contracts and paid deposit start of October. The sale is being held up due to a query over planning compliance raised by the solicitor acting on behalf of our mortgage lender. The house is a 2 story 4 bed semi-detached, and there is a detached shed in the rear garden, an attached conservatory at the rear, and what an engineer in his pre-purchase survey report has stated appears to be a converted garage attached to the side of the house. The floor areas in the attached drawing have been taken from the above-mentioned Engineers report. The house itself was built pre 1964 (pre planning regulations).
 A Planning searches from 1964 onwards was conducted but there are no planning records on file for the property. This house is being sold as an executor sale on behalf of a legal representative as the previous owner passed away (in Nov 2021). The previous owner owned the house from 1971 until she passed away (in Nov 2021). The vendor/seller's solicitor has stated in writing that the shed, utility/converted garage, and conservatory were erected a long time ago and contends that the developments are exempt. Google street view photos time stamped captures as June 2009, showing that these structures were there in their current state as of June 2009.
 Question therefore is: Are the below listed developments at the property (9 Kincora Park) exempt from planning permission or is a Grant of Retention needed for ANY or ALL of these? (Please also see files and drawings attached).

- (1) Detached shed in the rear garden of the property with total floor area of 18.98m²
 (2) Attached Conservatory with total floor area of 7.24m²
 (3) Attached Utility room (which the engineer stated appeared to be a converted garage) with floor area of 14.65m².

- (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)

Scale drawing of existing property boundary and developments.pdf, Land Registry Location Map.pdf

Planning search results 9 Kincora Park.pdf, Selling solicitor letter contending that developments are exempt.pdf

Reference Photos of the developments in question.pdf, Google Street View Photos Time stamped Jun 2009.pdf

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	9 Kincora Park Lifford Ennis Co. Clare V95 XF6V
(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):	We are in the proces of buying this property as a family home. Sale agreed since June 27th 2023 and we signed contracts and paid deposit on October 6th.
(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>	Executor sale by solicitor John Halpin of KERIN, HICKMAN & O'DONNEL Solicitors of Ennis, Clare on behalf of the legal personal representative of the Estate of Mary Francis Riedy Deceased.
(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? <i>If so please supply details:</i>	None found on record. Planning search results attcahed.
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	None found on record. Planning search results attcahed.
(h) Date on which 'works' in question were completed/are likely to take place:	Unknown

SIGNED: Thomas Mc Cam Smalone

DATE: 01/12/2023

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

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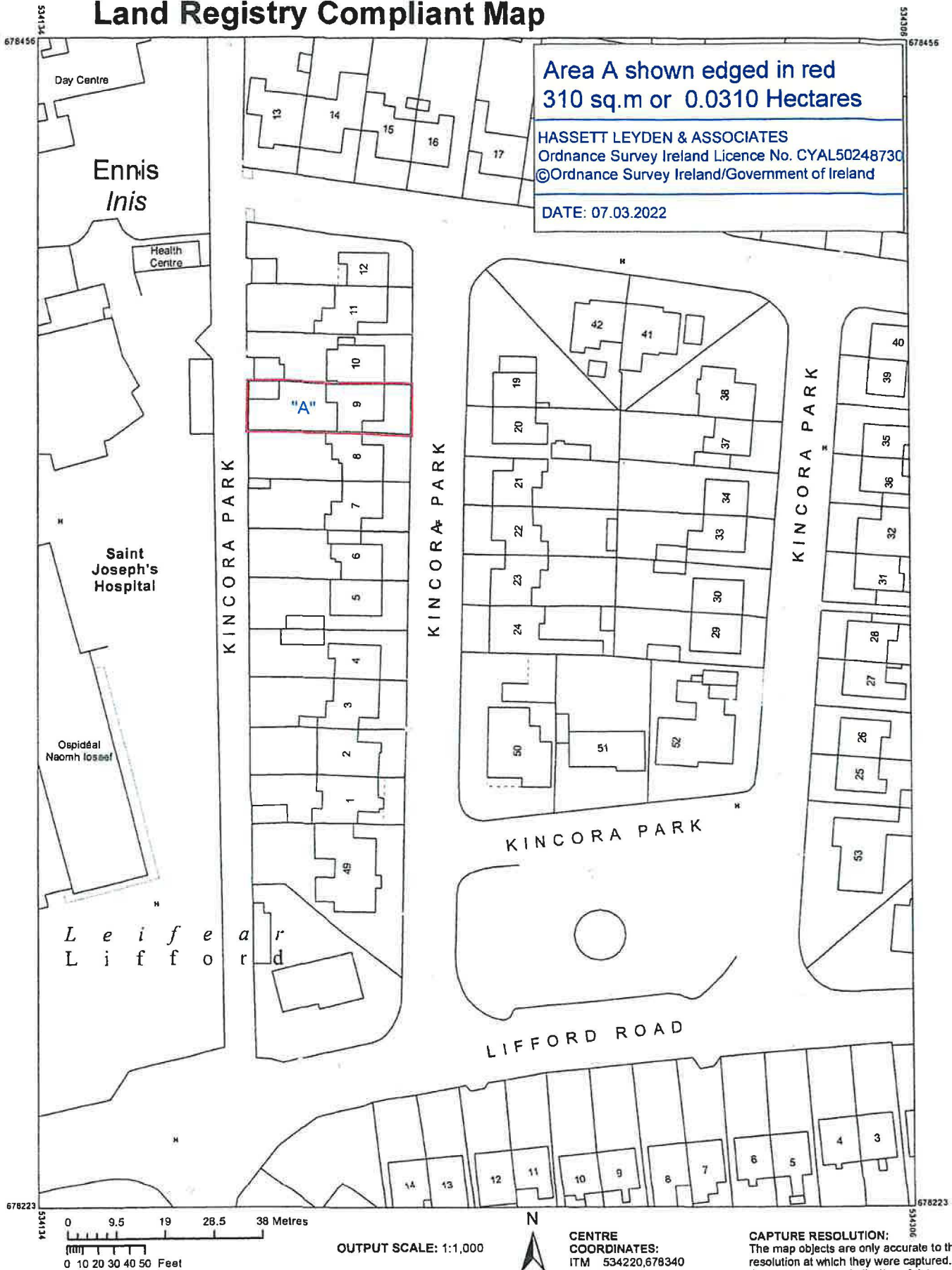
Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:	

Land Registry Compliant Map

Area A shown edged in red
310 sq.m or 0.0310 Hectares

HASSETT LEYDEN & ASSOCIATES
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DATE: 07.03.2022



OUTPUT SCALE: 1:1,000

CENTRE
COORDINATES:
ITM 534220,678340

PUBLISHED: 07/03/2022
MAP SERIES: 1:1,000
ORDER NO.: 50254891_1
MAP SHEETS: 4264-23

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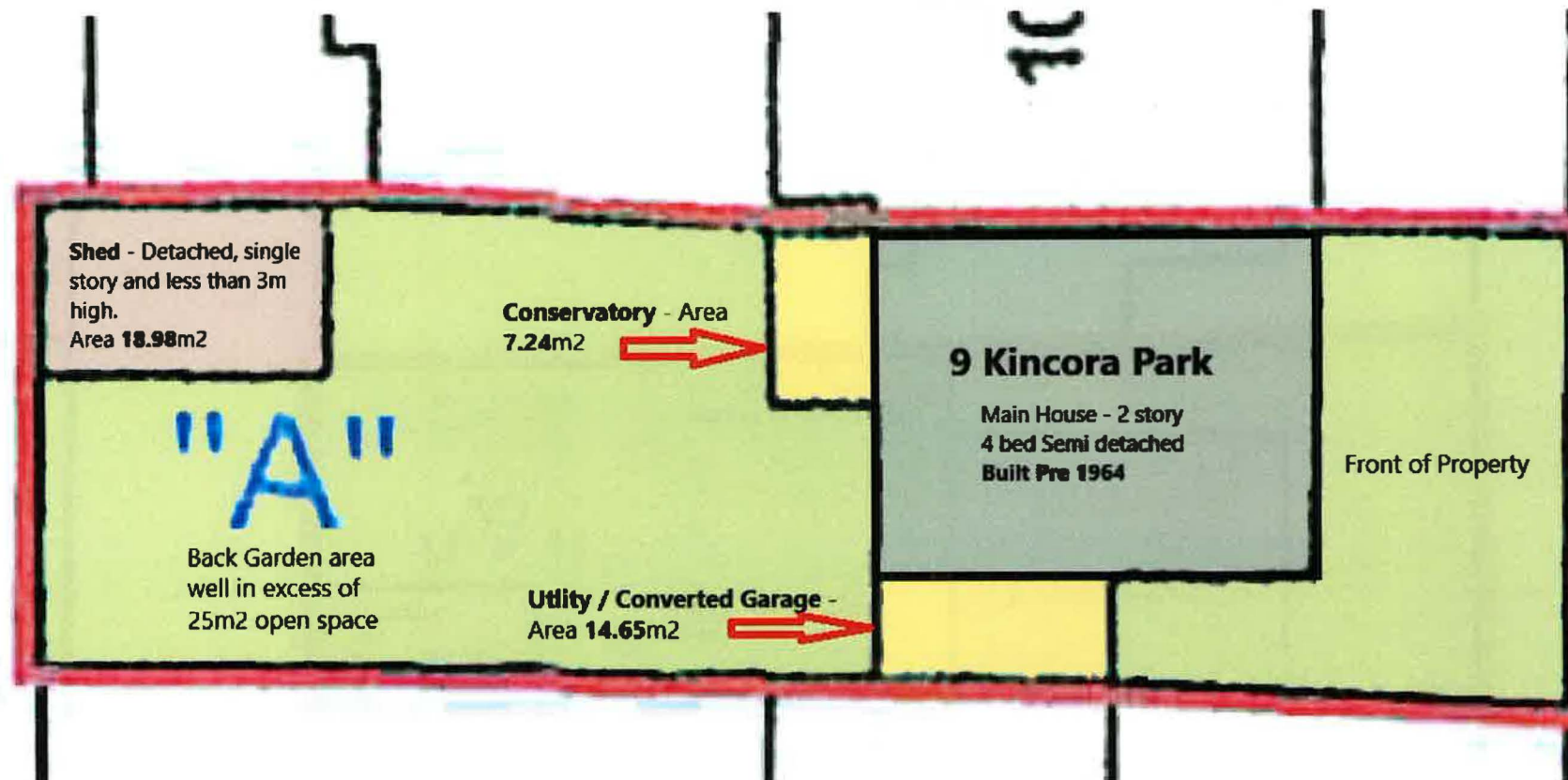
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9 Kincora Park, Existing structures

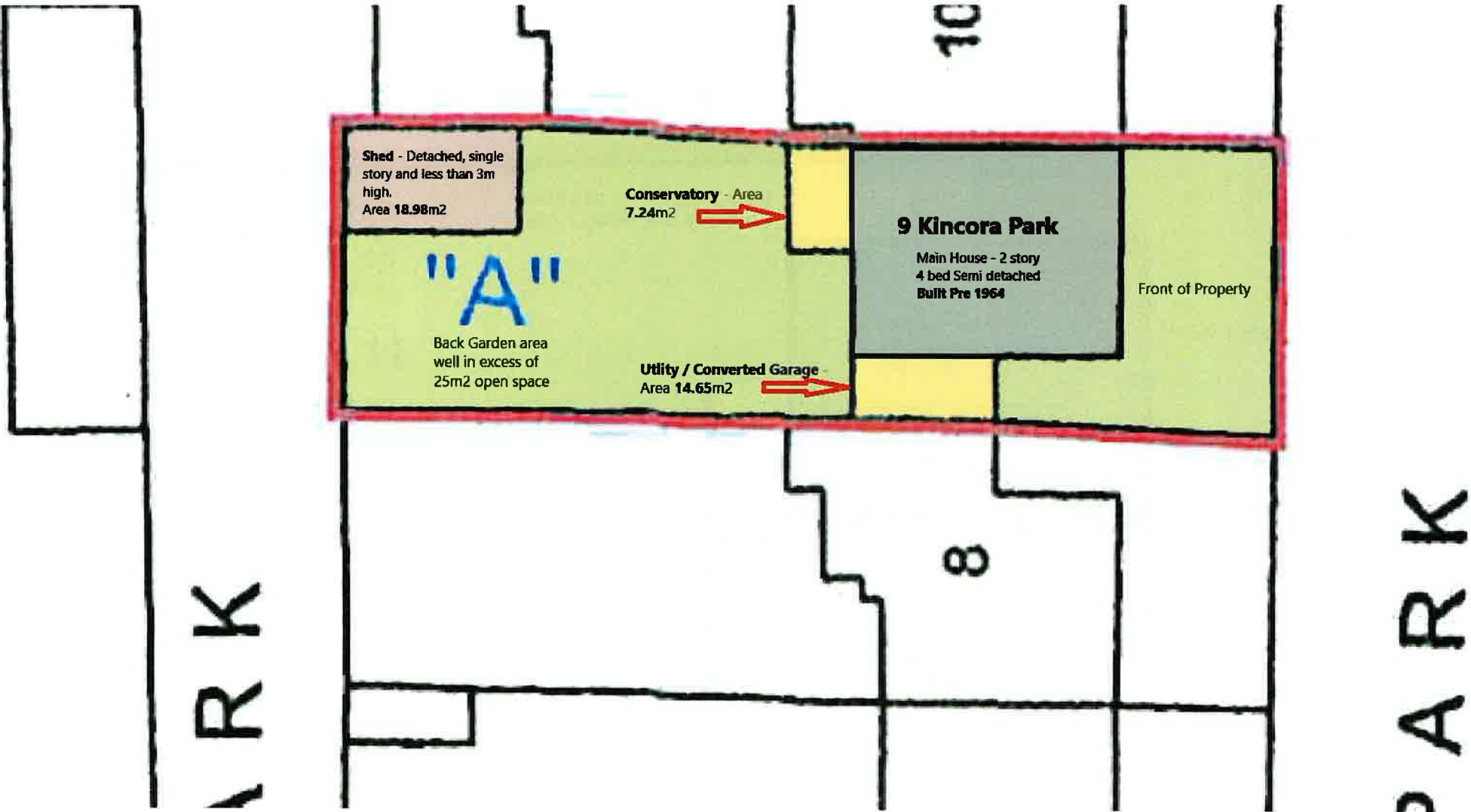
Larger version of drawing shown on previous page:



9 Kincora Park, Existing structures

Drawing of existing dwelling, shed and extensions/conversions. Drawing is based on Land Registry Compliant Map of 9 Kincora Park, Lifford, Ennis, Co. Clare, V95 XF6V

All floor areas shown in the below image for the Shed, Conservatory and Utility (/converted garage) have been taken from an engineer's pre-purchase survey report.



PLANNING SEARCH

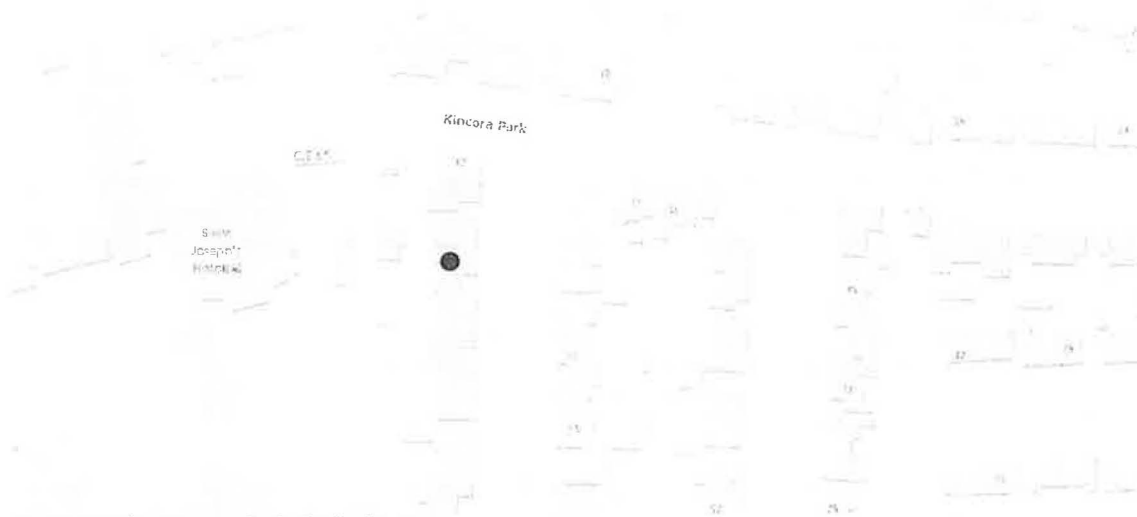
MADE BY

ELLIS & ELLIS, LAW AGENTS & RECORD SEARCHERS
THE ORMOND BUILDING, 31-36 ORMOND QUAY UPPER, DUBLIN 7
D.X. 261003 Ormond Building.

Tel: +353 1 8723460 Fax: +353 1 8734129
e-mail: info@ellis.ie Website: www.ellis.ie

RE: 9 Kincora Park, Ennis, Co. Clare

In accordance with your instructions, we attended at the Planning Offices of Clare County Council to make a search against the above premises. On search from 1964 we noted the following:



Property at No. 9 Kincora Park, Ennis, Co. Clare

Details of Planning Applications

There are no online details of Planning Applications relating to this property.

NOTE: A planning file relating to the property is maybe in archive in Clare County Council Offices and can maybe ordered if need to.

Zoning

The property is located within the settlement boundary of 'Ennis' and is designated as 'Existing residential' in the Interim Version of the Clare County Development Plan 2023-2029, which came into force on 20th April 2023.

Enforcement Proceedings

No evidence of any current

Compulsory Purchase Orders CPO's

No evidence of any current

Road Widening

No evidence of any current

Protected Structure

No evidence of any current

Over/....

Orders

National Inventory of Architectural Heritage NIAH	No
Recorded Monuments	No
Derelict Sites	No
Vacant Sites	No
Dangerous Building	No
Tree Preservation	No
Special Areas of Conservations SAC	No
Proposed Natural Heritage Area PNHA	No
Special Protection Area SPA	No
Zone of Archaeological Potential ZAP	No
Architectural Conservation Area ACA	No

Search carried out on: 12th September 2023

Notes/ Terms:

*While 'Original' Planning applications may be returned by a planning agent as a by-product of conducting a search, 'ORIGINAL' planning applications for the description of the property searched are not returned unless specifically requested. If you require 'ORIGINAL' applications, some Local Councils require that you supply as many (as possible) of the following:

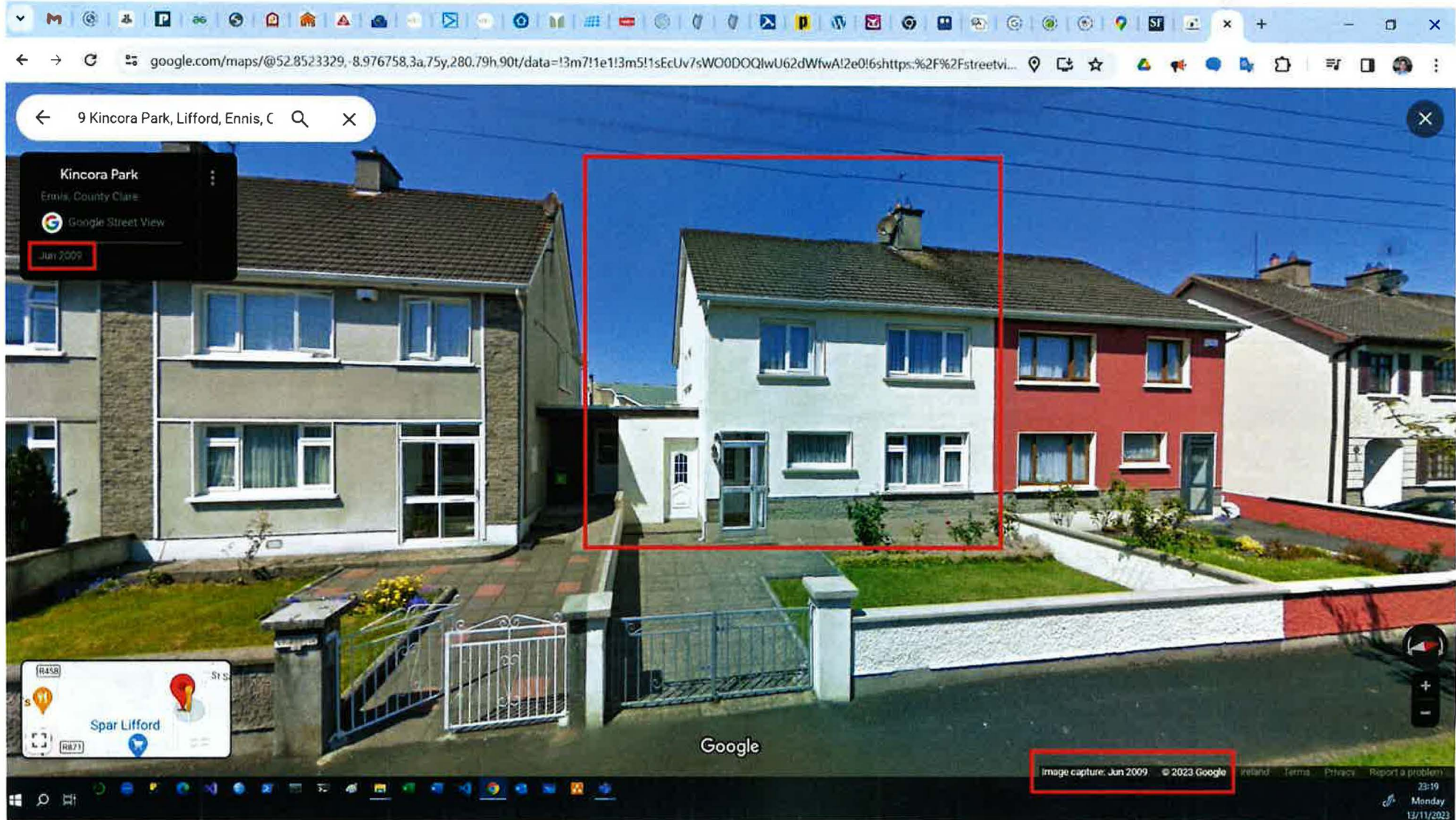
1. The original description of the property, i.e. the site name before it became known by its current address.
2. A map with the site boundaries clearly marked and the area of interest cross-hatched.
3. Any relevant application(s) number(s) that you have on file
4. The name of the builder(s)/ applicant(s)

This search was strictly carried out on the terms of your requisition only as set out and solely against the Registers noted below. This search was not conducted against any alternative description(s) of the address, or against areas outside the boundaries of any map(s) provided. No responsibility is or can be taken for any errors or omissions in the records of any register including computer software faults/ glitches in the records of any database.

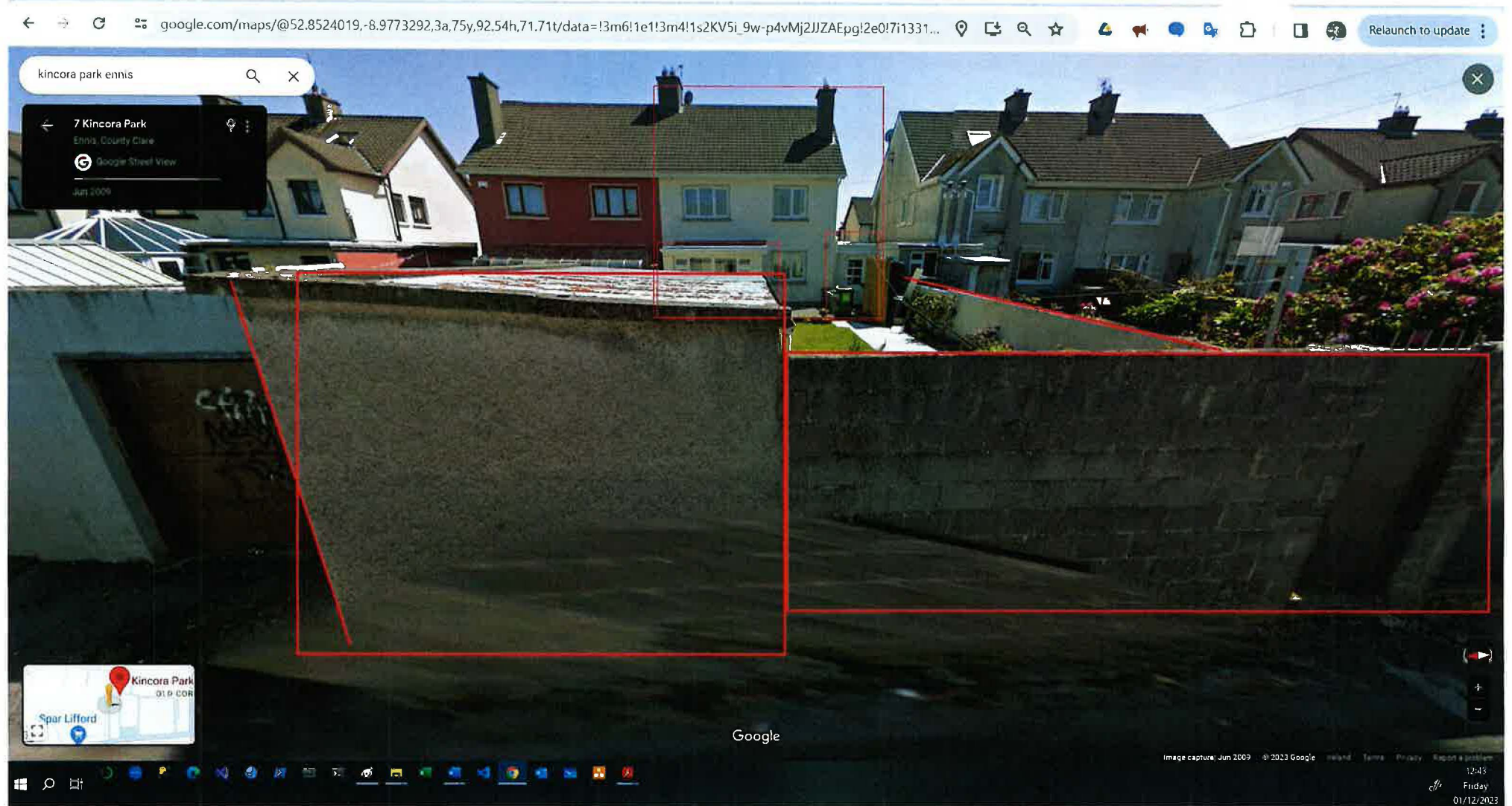
Dated:- (09am) 13th September 2023

All Images included in this document are from **Google Street View** show the date of image capture as June 2009

Front of Property



Rear of Property

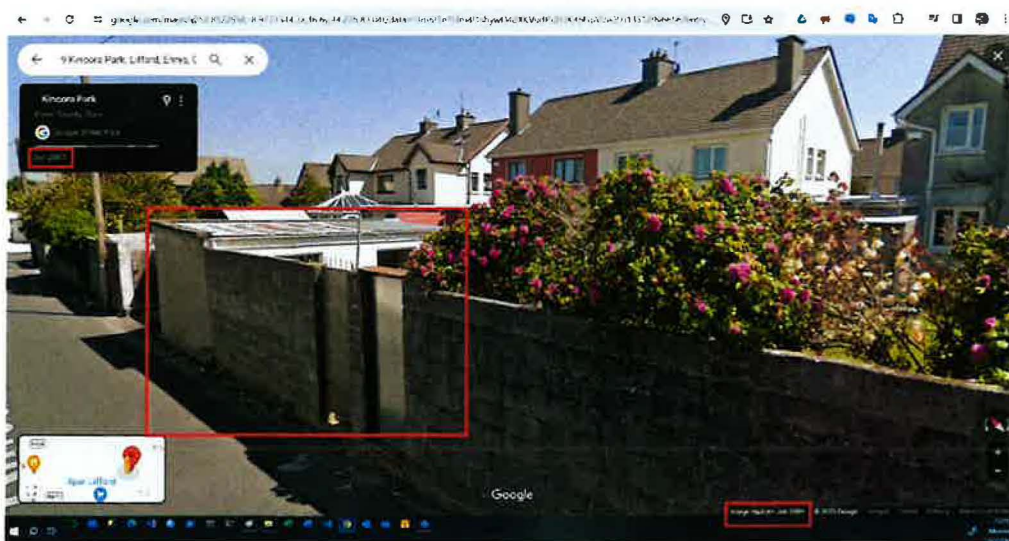


Recent photos of the Property (9 Kincora Park, Lifford, Ennis) for explanatory purposes. The main house and any extensions/conversions are being highlighted with a red box for clarity.

Shed at rear:



June 2009 Google Street view image of shed at boundary wall from back street.



Conservatory at rear:



Utility room (possible converted garage)



