



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

Mairead Ryan & John Minogue
C/o Brian Foudy & Associates Consulting Engineers
Osprey House
Ennis
Co. Clare
V95 F720

2nd August 2024

Section 5 referral Reference R24-55 – Mairead Ryan & John Minogue

Is the removal of a chimney to provide additional internal space to our family home development and if so, is it exempted development?

A Chara,

I refer to your application received on 12th July 2024 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 Stiúarthóireacht 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.: R24-55



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R24-55

Is the removal of a chimney to provide additional internal space to our family home development and if so, is it exempted development?

AND WHEREAS, Mairead Ryan & John Minogue 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) The details received by the Planning Authority.

And whereas Clare County Council has concluded:

- (a) Based on the provisions of Section 4 (1) (h) of the Planning and Development Act 2000 as amended, the removal of a chimney to provide additional internal space to family home would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures.

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

The proposed development consisting of the removal of a chimney to provide additional internal space to family home at Ballyea, Maurices Mills, Co. Clare **constitutes development** which is **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

2nd August 2024

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: 83979
Reference Number: R24-55
Date Referral Received: 12th July 2024
Name of Applicant: Mairead Ryan & John Minogue
Location of works in question: Ballyea South, Maurices Mills, Co. Clare

Section 5 referral Reference R24-55 – Mairead Ryan & John Minogue

Is the removal of a chimney to provide additional internal space to our family home 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) The details received by the Planning Authority.

AND WHEREAS Clare County Council has concluded:

- (a) Based on the provisions of Section 4 (1) (h) of the Planning and Development Act 2000 as amended, the removal of a chimney to provide additional internal space to family home would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures.

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 removal of a chimney to provide additional internal space to family home at Ballyea, Maurices Mills, Co. Clare is **considered development** which is **exempted development**.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER

Date:

2nd August 2024

**SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT**

FILE REF:	24/ 55
APPLICANT(S):	Mairead Ryan and John Minogue
REFERENCE:	Whether the removal of a chimney to provide additional internal space to family home is development and if so is or is not exempted development.
LOCATION:	Ballyea South, Maurcies Mills , County Clare
DUE DATE:	08/08/24

Site Location

The dwelling is located at Ballyea Maurcies Mills.

Recent Planning History on site.

03/ 1912 Mairead Ryan and John Minogue . Permission granted to construct a bungalow, private garage, entrance and waste water treatment system.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Mairead Ryan and John Minogue.

The applicant is seeking a Section 5 Declaration as to whether the removal of a chimney to provide additional internal space to family home is development and if so is or is not exempted development .

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*.

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

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.

Section 2 (1) '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.

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.

Exempted Development

4.—(1) The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Assessment

The agent has advised the following in the documents submitted:

Particulars of the Development

The applicant has submitted the following information:

- Record place map 1:10,000 with site outlined in red.
- Rural place map 1:2500 with site outlined in red.
- Folio map of the site shown dotted and land registry 6 inch map
- House plans as per planning permission 03/ 1912
- Completed application form.
- Description of works: Removal of chimney from roof to ground level and installed the necessary building products RSJ to ensure the house was structurally sound.

Planning Exemption Assessment

Under Section 4 (1) (h) of the Planning and Development Act 2000 as amended, works for maintenance and repair as well as works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures are generally considered to constitute exempted development . Having regard to the information received to date it is considered that the works are not considered inconsistent with the character of the structure or neighbouring structures and as such complies with the provisions of Section 4 (1) (h) of the Planning and Development Act 2000 as amended .

Recommendation

WHEREAS a question has arisen as to whether the removal of a chimney to provide additional internal space to family home is development and if so is or is not exempted development .

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) the details received by the Planning Authority.

AND WHEREAS Clare County Council has concluded that –

Based on the provisions of Section 4 (1) (h) of the Planning and Development Act 2000 as amended, the removal of a chimney to provide additional internal space to family home would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures.

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

The removal of a chimney to provide additional internal space to family home at Ballyea, Maurices Mills Co. Clare is considered development which is exempted development.

Ellen Carey

Ellen Carey
Executive Planner

Date: 31st July 24.

Garreth Ruane

Garreth Ruane
Senior Executive Planner

31/07/24.

Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	R24/ 55
(b) Brief description of the project or plan:	Removal chimney from dwelling
(c) Brief description of site characteristics:	Dwelling and garden
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	None

STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.				
European Site (code)	List of Qualifying Interest/Special Conservation Interest ¹	Distance from proposed development ² (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
Inagh River estuary SAC	Annex I Habitats • Salicornia and other annuals colonising mud and sand [1310] • Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330] • Mediterranean salt meadows Juncetalia maritime) [1410] •	8km	None	No

<p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] • *Fixed coastal dunes along the shoreline with herbaceous vegetation (grey dunes) [2130]</p>	
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- ¹ Short paraphrasing and/or cross reference to NPWS is acceptable – it is not necessary to reproduce the full text on the QI/SCI.
- ² If the site or part thereof is within the European site or adjacent to the European site, state here.

STEP 3. Assessment of Likely Significant Effects	
(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:	
Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
<p>Construction phase e.g.</p> <ul style="list-style-type: none"> • Vegetation clearance • Demolition • Surface water runoff from soil excavation/infill/landscaping (including borrow pits) • Dust, noise, vibration • Lighting disturbance • Impact on groundwater/dewatering • Storage of excavated/construction materials • Access to site 	<p>None</p>

<ul style="list-style-type: none"> • Pests 	
<p>Operational phase e.g.</p> <ul style="list-style-type: none"> • Direct emission to air and water • Surface water runoff containing contaminant or sediment • Lighting disturbance • Noise/vibration • Changes to water/groundwater due to drainage or abstraction • Presence of people, vehicles and activities • Physical presence of structures (e.g. collision risks) • Potential for accidents or incidents 	None
In-combination/Other	None

(b) Describe any likely changes to the European site:	
<p>Examples of the type of changes to give consideration to include:</p> <ul style="list-style-type: none"> • Reduction or fragmentation of habitat area • Disturbance to QI species • Habitat or species fragmentation • Reduction or fragmentation in species density • Changes in key indicators of conservation status value (water or air quality etc.) • Changes to areas of sensitivity or threats to QI • Interference with the key relationships that define the structure or ecological function of the site 	None

(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

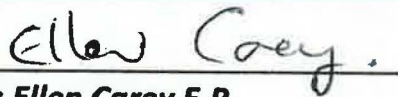
Step 4. Screening Determination Statement

The assessment of significance of effects:

Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

The development comprises an alteration of an existing dwelling by the removal of a chimney in a dwelling. No direct or indirect effects are envisaged on the qualifying interests of the nearest European sites are envisaged.

Conclusion: The development is not likely to have significant effects on European site(s) in view of its conservation objectives.

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
(iii) Significant effects are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
Signature and Date of Recommending Officer:	<div style="text-align: center;">  <hr/> Name: Ellen Carey E.P. </div>	
	31/07/24	
Signature and Date of the Decision Maker:		



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V95 F720

15/07/2024

Section 5 referral Reference R24-55 – Mairead Ryan & John Minogue

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A Chara,

I refer to your application received on 12th July 2024 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

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



R24-55

**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	Mairead Ryan and John Minogue Ballyea South Ennistymon County Clare Eircode: V95AX70
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	Brian Foudy & Associates Consulting Engineers Osprey House ENNIS V95 F720 CO CLARE (065) 689 3565

2. DETAILS REGARDING DECLARATION BEING SOUGHT

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?*

- Removal of chimney, to provide additional internal space to our family home.

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

- We removed the existing chimney from roof level to ground level and installed necessary building products i.e. RSJ and associated building works, to ensure the home was structurally sound.

(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)

- Planning Permission Previously Granted P03 – 1912 on file with Clare CoCo includes original house plans.

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

(a) Postal Address of the Property/Site/Building for which the declaration sought:	Ballyea South Maurices Mills Ennis Co Clare V95AX70
(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):	Yes
(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>	N/A
(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>	No
(g) Were there previous planning application/s on this site? <i>If so, please supply details:</i>	Previous planning reference P03 - 1912
(h) Date on which 'works' in question were completed/are likely to take place:	2019

SIGNED: *Mairéad Ryan*DATE: 11th July 2024

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

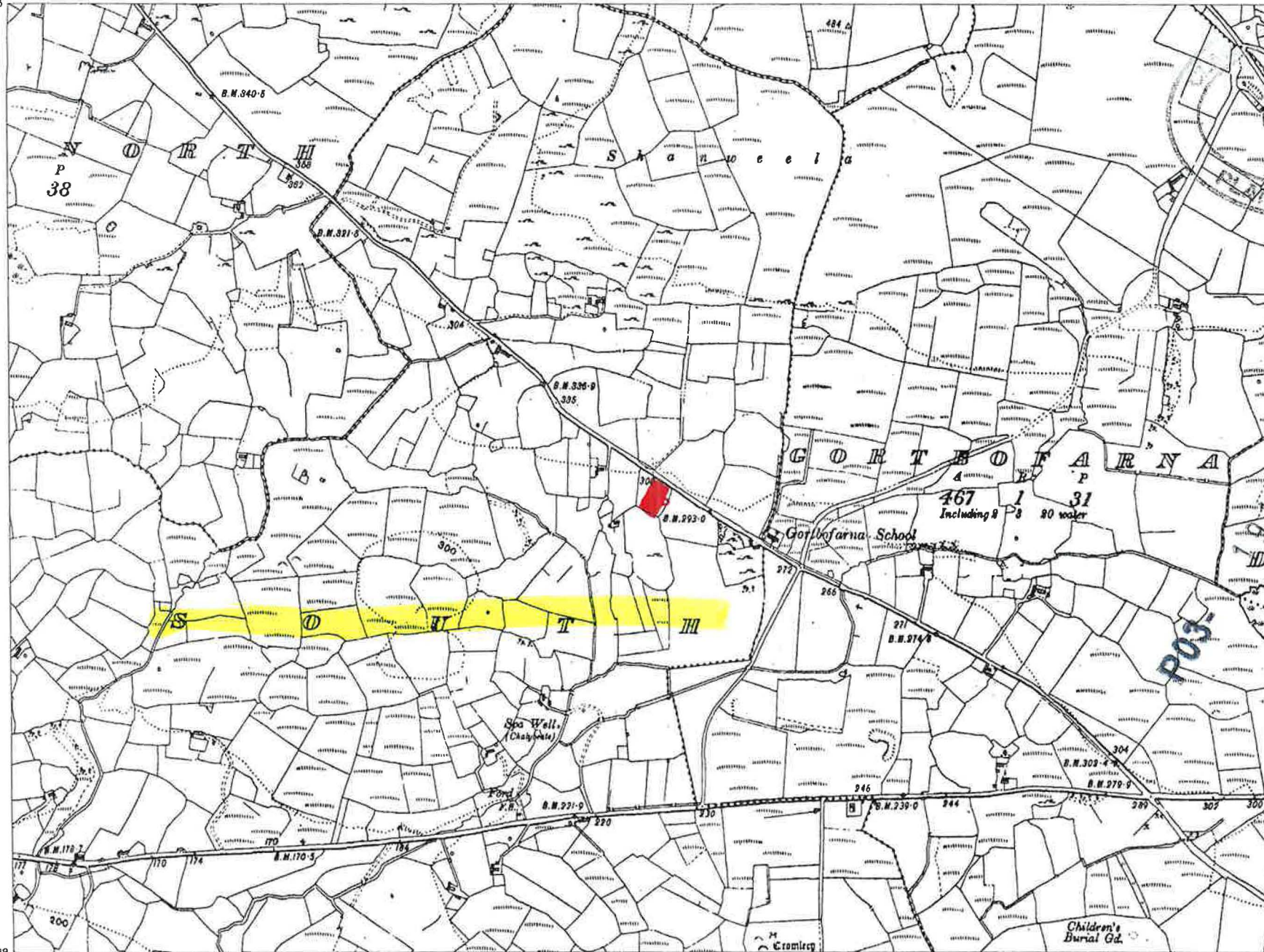
Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:	.....	

Surveyed 1840
Revised 1914
Levelled 1915

Record PLACE Map



185383



121487

185383

DESCRIPTION

19 SEP 2003

MAP SCALES

6inch
CE024

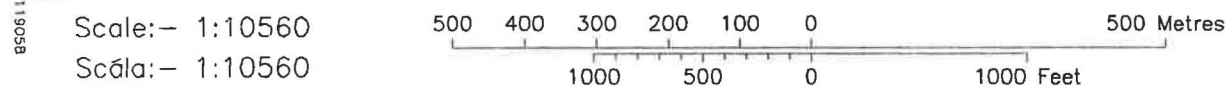


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183588



Plot Ref. No. 10525_1_10
Plot Date 10-SEP-2003

183588

121487

Number CF 40822F

520420 mE, 684620 mN

Application Number: D2009LR232427R

The Property
Registration Authority
An tÚdarás
Clárúcháin Maoinne



Folio: [REDACTED]

This map should be read in conjunction with the folio. The description of the land on the folio and map is not conclusive as to the boundaries or extent of the land (see Section 85 of the Registration of Title Act, 1964), as substituted by Section 62 of the Registration of Deeds and Title Act 2006.

For details of the terms of use, and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see www.pra.ie.

This map incorporates Ordnance Survey Ireland (OSI) mapping data under a licence from OSI. Copyright © OSI and Government of Ireland.

Freehold (centre-line of parcel edge aligned)



Leasehold (centre-line of parcel aligned)



Burdens (may not all be represented on map)

Right of Way / Wayleave

A full list of burdens and their symbology can be found at: www.landdirect.ie

For use by The Property
Registration Authority only

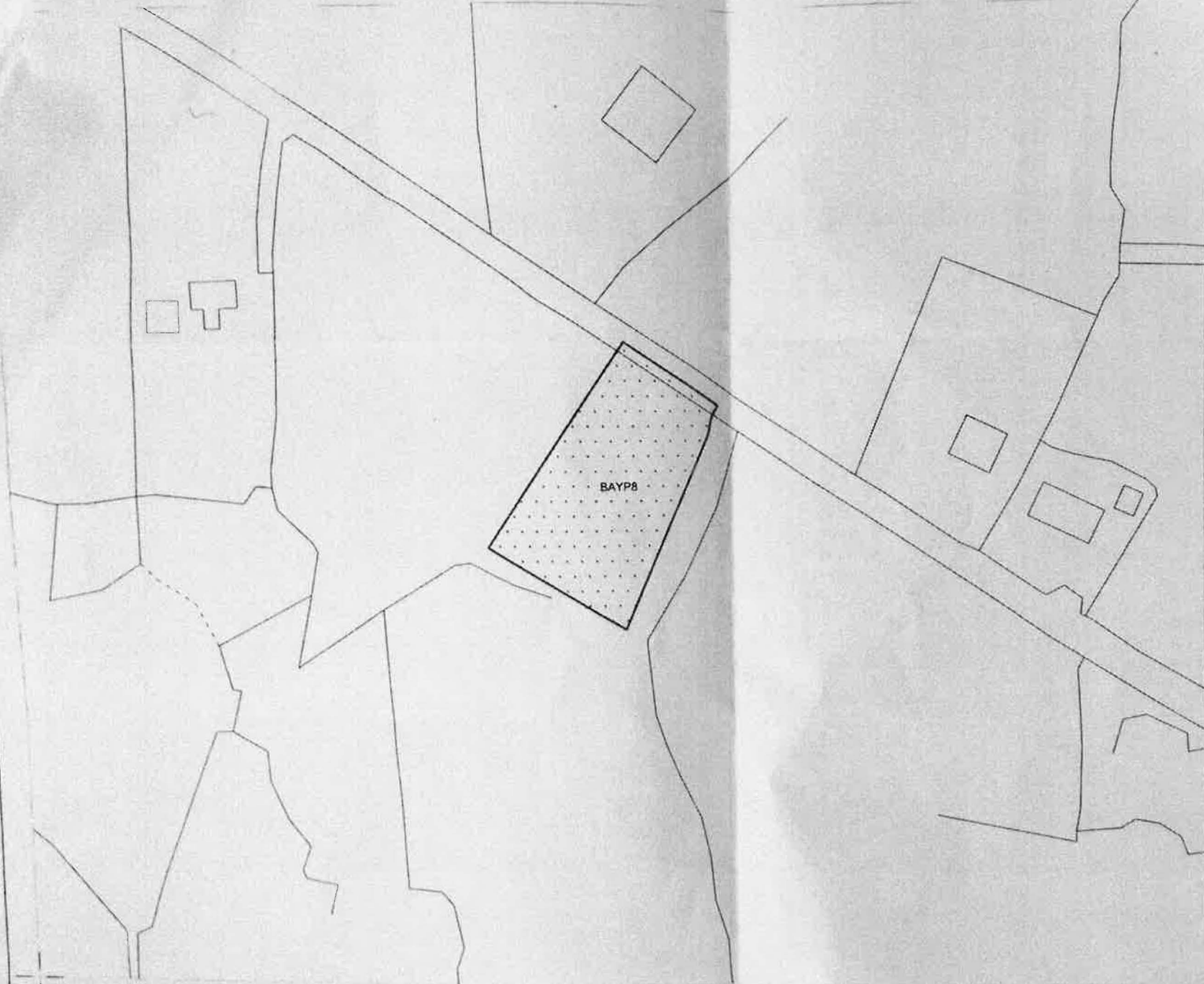


Created

Application No.: D2009LR232427R

Date: 02 June 2010 10:20:15

1:1000 Scale



520100 mE, 684360 mN



240
(101)

240

Rf: John Minogue

Sites / Land Plots at Ballyea South
Errisaymon
Co. Clare

The area outlined in blue and marked "A"
(4.0 59 acres (0.24 Hectares))

Signed

Ray O'Grady

Ray O'Grady B. Eng. M.T.E.I.

Date 22nd May 2006

BAYP8

100

2405
(104)

