



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**David & Caitriona Hillery
C/o Michael Hehir
McKenna Consulting Engineers
Miltown Malbay
Co. Clare**

28th April 2025

Section 5 referral Reference R25-25 – David & Caitriona Hillery

Is the construction of a rear shed at Hillery's Bar, Main Street, Miltown Malbay development and if so, is it exempted development?

A Chara,

I refer to your application received on 1st April 2025 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 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

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No:

85367

Reference Number:

R25-25

Date Referral Received:

1st April 2025

Name of Applicant:

David & Caitriona Hillery

Location of works in question:

Hillery's Bar, Main St, Miltown Malbay, Co. Clare

Section 5 referral Reference R25-25 – David & Caitriona Hillery

Is the construction of a rear shed at Hillery's Bar, Main Street, Miltown Malbay 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, 4 and 82 of the Planning and Development Act, 2000, as amended;
- (b) The Planning and Development Regulations 2001-2024 as amended, relating to various classes of works which are considered exempted development within the curtilage of a business premises.
- (c) The details received by the Planning Authority which include reference to replacement works in addition to repair and alteration.

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) and the provisions of the Planning and Development Regulations 2001- 2024 (as amended) it is considered that the proposed replacement works fall outside the scope of the aforementioned Act and Regulations and as such are not considered exempted development.

ORDER: Whereas by Chief Executive's Order No. HR 46 dated 1st January 2025, Carmel Kirby, Interim Chief Executive for Clare County Council, did, pursuant to the powers conferred on her by Section 154 of the Local Government Act 2001, delegate to Garreth 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, Garreth Ruane, Senior Executive Planner,

hereby declare that the construction of a shed at the rear of Hillery's Bar, Main St, Miltown Malbay, Co. Clare is considered development which is not exempted development.

Signed:


GARRETH RUANE
SENIOR EXECUTIVE PLANNER 

Date:

28th April 2025

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

Reference No.: R25-25



**Comhairle Contae an Chláir
Clare County Council**

Section 5 referral Reference R25-25

Is the construction of a rear shed at Hillery's Bar, Main Street, Miltown Malbay development and if so, is it exempted development?

AND WHEREAS, David & Caitriona Hillery 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, 4 and 82 of the Planning and Development Act, 2000, as amended;
- (b) The Planning and Development Regulations 2001-2024 as amended, relating to various classes of works which are considered exempted development within the curtilage of a business premises,
- (c) The details received by the Planning Authority which include reference to replacement works in addition to repair and alteration.

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) and the provisions of the Planning and Development Regulations 2001- 2024 (as amended) it is considered that the proposed replacement works fall outside the scope of the aforementioned Act and Regulations and as such are not considered 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 at the rear of Hillery's Bar, Main St, Miltown Malbay, Co. Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in blue ink, reading "Anne O'Gorman", with a horizontal line underneath.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

28th April 2025

SECTION 5 DECLARATION OF EXEMPTION APPLICATION PLANNERS REPORT

FILE REF:	25/ 25
APPLICANT(S):	David and Caitriona Hillery
REFERENCE:	Whether the construction of a rear shed at Hillery's Bar, Main St. Miltown Malbay is considered to be development and if so is or is not exempted development.
LOCATION:	Miltown Malbay, County Clare
DUE DATE:	28/04/25

Site Location

The building is located in the ACA in Miltown Malbay on lands zoned mixed use. It is bound on both sides by terraced buildings. The pattern of development is characterised by long narrow plots with rear lane access. The building is not a protected structure.

Recent Planning History on site.

None on site

History to the north 02/ 162

B Johnson. Permission granted to retain front elevation, change of use of existing ground floor to retail unit, revise existing and extend first and second floors to 2 no. studio apartments

History to the south 05/ 1562.

The Old Bakehouse Restaurant Ltd. Permission granted to change use of existing ground floor retail unit to restaurant and kitchen

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Anne Hynes.

The applicant is seeking a Section 5 Declaration as to whether the construction of a rear shed at the rear of Hillery's Bar, Main St. is or is not development and 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

S.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;

S. 82 .Notwithstanding paragraphs (a) (h) (i) (ia) (j) (k) and (l) of section 4 (1) or any regulations made under section 4 (2) the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area’.

Exempted Development Regulations

Schedule 2, Article 6 part 1 Exempted Development General

Class 50 (a) the demolition of a building or buildings within the curtilage of a business premises is considered exempted development provided no such building shall abut on another building in separate ownership and the cumulative floor area of any such building or buildings shall not exceed 100 sq.m.

Other classes of exemption for works with the curtilage of a business premises are as follows

Class 55. – dish antennae for receiving and transmitting signals from satellites.

Class 56 (b) wind turbine

Class 56 (d) solar thermal collector panels

Class 56 (e) solar photovoltaic panels .

Class 56 (h) ground source heat pump

Class 56 (i) Biomass boiler, flues and overground fuel storage tank.

Part 2 Article 6 Exempted development – Advertising Class 1 .

Assessment

The agent has advised the following in the documents submitted:

Particulars of the Development

The applicant has submitted the following information:

- Urban place map 1: 1000 showing the site outlined in red.
- Aerial photograph of the back yard where the shed was located (shown with roof blown off by storm damage) .
- Drawings to scale 1: 100. Including site layout and cross section.
- A written description of the proposal as follows:

This is an existing rear shed at Hillery's bar. The shed has direct access onto the back lane. The shed was damaged in the most recent storm and the roof was taken off. The owner wants to carry out replacement and repair works. The works will involved replacing a wall on a joint boundary wall on the northern side (the owner has consented to this) and construction of a new steel frame structure within that would allow for a few flat roof construction. It is proposed to increase the wall height slightly to allow for a parapet wall surround to accommodate/ hide the oil storage tank.

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. Under Section 82 the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area'.

In this instance the shed is located at the rear of a commercial premises in an ACA. Having regard to the details submitted it does not appear that what remains of the shed after the storm contain any architectural features that contribute to the character of the ACA. Section 4 does not make provision for **replacement** works and as such having regard to the extent of works proposed which include replacement of a party boundary and an increase in the height of same to form a parapet, it is not considered that the scope of works falls within the provision of Section 4 of the Act. Similarly I have listed above the types of works considered to constitute exempted development within the curtilage of a business premises (subject to conditions and limitations) none of which are applicable to the circumstances and nature of works proposed at the subject site.

Having regard to the foregoing I do not consider that the the construction of a rear shed at Hillery's Bar Main St. Miltown Malbay which includes replacement, repair and alteration works following storm damage can be considered exempted development .

Recommendation

WHEREAS a question has arisen as to whether the construction of a rear shed at Hillery's Bar Main St. Miltown Malbay is or is not development and is or is not exempted development.

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

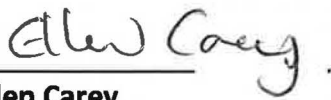
- (a) Sections 2, 3, 4 and 82 of the Planning and Development Act, 2000, as amended;
- (b) The Planning and Development Regulations 2001-2024 as amended, relating to various classes of works which are considered exempted development with the curtilage of a business premises
- (c) the details received by the Planning Authority which include reference to replacement works in addition to repair and alteration .

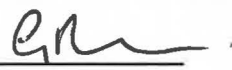
AND WHEREAS Clare County Council has concluded that –

Based on the provisions of Section 4 (1) (h) of the Planning and Development Act 2000 (as amended) and the provisions of the Planning and Development Regulations 2001- 2024 (as amended) it is considered that the proposed replacement works fall outside the scope of the aforementioned Act and Regulations and as such are not considered exempted development.

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 construction of a shed at the rear of Hillery's Bar Main St., Miltown Malbay is considered to be development which is not exempted development .


Ellen Carey
Executive Planner
Date: 25/04/25


Garreth Ruane
Senior Executive Planner
25/04/25 .

Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	R25/ 25
(b) Brief description of the project or plan:	Construction of shed at business premises
(c) Brief description of site characteristics:	Terraced building
(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
Mid Clare Coast SPA	Cormorant (Phalacrocorax carbo) [A017] Barnacle Goose (Branta leucopsis) [A045] Ringed Plover (Charadrius hiaticula) [A137] Sanderling (Calidris alba) [A144]	2.4km	None	No

	Purple Sandpiper (<i>Calidris maritima</i>) [A148] Dunlin (<i>Calidris alpina</i>) [A149] Turnstone (<i>Arenaria interpres</i>) [A169] Wetland and Waterbirds [A999]			
Carrowmore Point to Spanish point and the Islands SAC	Coastal lagoons [1150] Reefs [1170] Perennial vegetation of stony banks [1220] Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220]	2.4km	None	NO

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 • Pests 	None
<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 	None
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------

- 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

(c) Are '*mitigation*' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?

☐ Yes ☒ No

Step 4. Screening Determination Statement

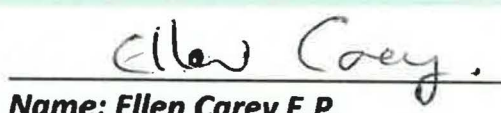
The assessment of significance of effects:

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 proposed development relates to the construction of a shed outside the SPA and SAC. No direct or indirect effects are envisaged on the qualifying interests of the European sites.

Conclusion: The proposed 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:	24/04/25	<div> Name: Ellen Carey E.P.</div>
Signature and Date of the Decision Maker:		



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

David & Caitriona Hillery
C/o Michael Hehir
McKenna Consulting Engineers
Miltown Malbay
Co. Clare

01/04/2025

Section 5 referral Reference R25-25 – David & Caitriona Hillery

Is the construction of a rear shed at Hillery's Bar, Main Street, Miltown Malbay development and if so, is it exempted development?

A Chara,

I refer to your application received on 1st April 2025 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



01/04/2025 10:41:38

Receipt No. : L1CASH/0/377170
***** REPRINT *****

DAVID & CATRIONA HILLERY
C/O MCKENNA CONSULTING ENGINEER
MILTOWN MALBAY
CO. CLARE

R25-25

CONTAE

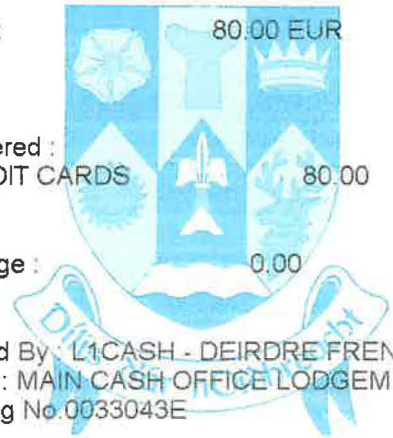
SECTION 5 REFERENCES 80.00
GOODS 80.00
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Total : 80.00 EUR

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CREDIT CARDS 80.00

Change : 0.00

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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



R25-25

**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	David & Catherine Hillery Hilley's Bar Main Street Milltown Malbay Co. Clare
(b) Telephone No.:	()
(c) Email Address:	—
(d) Agent's Name and address:	c/o Michael Hehir McKenna Consulting Engineers Milltown Malbay 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 rear shed at
 Hillery's Bar, Main street, Milltown Malbay
 exempted Development

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

There is an existing rear shed at Hillery's Bar. The shed has direct access onto the Back Lane. The shed was damaged in the most recent storm (the roof was 'taken off') and the owner wants to carry out replacement + improvement works. The works will involve replacing a wall on a joint boundary wall on the northern side (the owner has consented to this) and construction of a new steel frame structure within that would allow for a new flat roof construction. It is proposed to increase the wall height slightly to allow for a proper wall surround to accommodate / hide an oil storage tank

- (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)

+ Current + Existing Photos
 + Proposed sketch Plans
 + Site location map

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Hillery's Bar Main Street Milltown Malbay Co. Clare V95 K5RT
(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
(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>	
(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>	No
(h) Date on which 'works' in question were completed/are likely to take place:	April 2025

SIGNED:

Michael Hehir
(Agent)

DATE:

25/3/2025

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:	

Planning Pack Map

CENTRE COORDINATES:
ITM 505646,679170

PUBLISHED: 10/03/2023
ORDER NO.: 50322638_2

MAP SERIES: 1:2,500
MAP SHEETS: 4257-C

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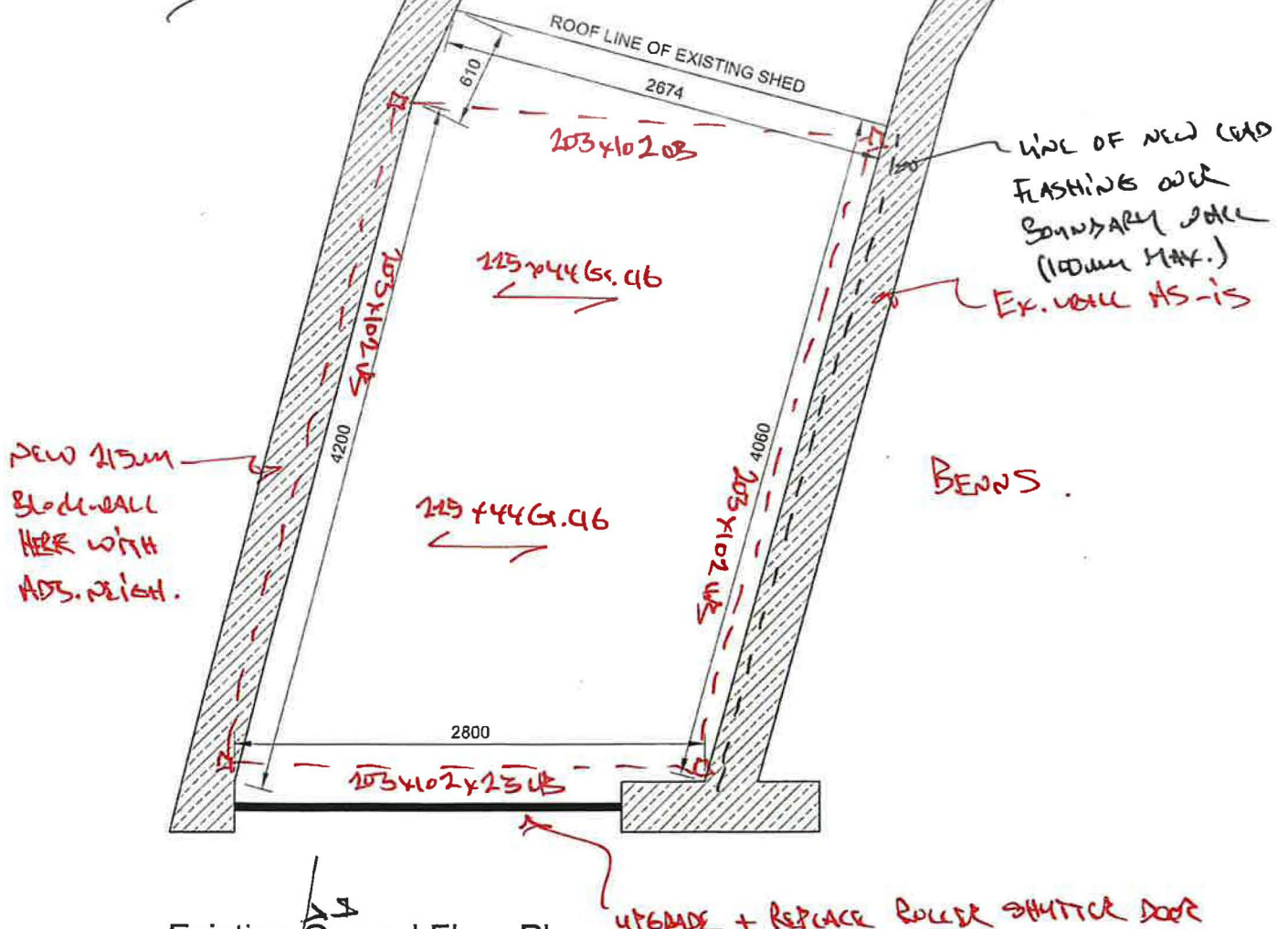
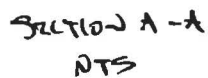
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2023
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LEGEND:
<http://www.osi.ie>;
search 'Large Scale Legend'



McKenna Consulting Engineers
Civil & Structural Engineering Services
Miltown Malbay
Co Clare
Tel: 086-8657569
Email: mckennaconsultingengineers@gmail.com

July 20. 24189 Hilly's BK
Microtus Mulsy.



Existing Ground Floor Plan

SCALE 1:100
FLOOR AREA = 12.0m²

Photographic Survey



Photo 1: Current view of storm damaged shed

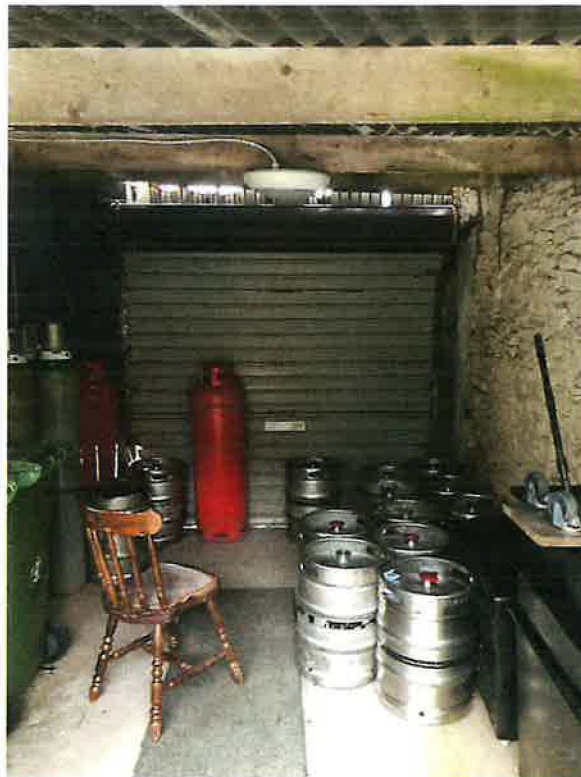


Photo 2: Previous view of inside of shed