



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

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**Gabriel McCarthy
C/o Deirdre Foran
Lisdoonvarna
Co. Clare**

29th January 2025

Section 5 referral Reference R25-3 – Gabriel McCarthy

Is the storage shed and yard area being built on the site of the former forge at the lane off the square and Main Street, Ennistymon development and if so, is it exempted development?

A Chara,

I refer to your application received on 9th January 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 Stiúirthóireacht Forbairt Gheilleagrach**

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department
Economic Development Directorate**

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



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:

84834

Reference Number:

R25-3

Date Referral Received:

9th January 2025

Name of Applicant:

Gabriel McCarthy

Location of works in question:

Main Street, Ennistymon, Co. Clare

Section 5 referral Reference R25-3 – Gabriel McCarthy

Is the storage shed and yard area being built on the site of the former forge at the lane off the square and Main Street, Ennistymon 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 and 3 of the Planning and Development Act 2000, as amended,
- (b) The details and drawing as indicated in submitted documents from the referrer and the intended use of the structure.

AND WHEREAS Clare County Council has concluded:

- (a) The development consisting of a shed constitutes “works” and “development” which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- (b) The structure would not meet the exempted development requirements of Article 6 of the Planning and Development Regulations 2001, as amended.
- (c) There are no other provisions under the Planning Acts or Regulations to render the subject structure as 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 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 storage shed and yard area being built

on the site of the former forge at the lane off the square and at Main Street, Ennistymon, Co. Clare is **considered development** which is **not exempted development**.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER 

Date:

29th January 2025

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

Reference No.: R25-3



Section 5 referral Reference R25-3

Is the storage shed and yard area being built on the site of the former forge at the lane off the square and Main Street, Ennistymon development and if so, is it exempted development?

AND WHEREAS, Gabriel McCarthy 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 and 3 of the Planning and Development Act 2000, as amended,
- (b) The details and drawing as indicated in submitted documents from the referrer and the intended use of the structure.

And whereas Clare County Council has concluded:

- (a) The development consisting of a shed constitutes “works” and “development” which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- (b) The structure would not meet the exempted development requirements of Article 6 of the Planning and Development Regulations 2001, as amended.
- (c) There are no other provisions under the Planning Acts or Regulations to render the subject structure as 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 storage shed and yard area being built on the site of the former forge at the lane off the square and Main Street, Ennistymon, Co. Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

Anne O'Gorman

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

29th January 2025

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

FILE REF: R 25/ 3

APPLICANT(S):

REFERENCE: Whether the storage shed and yard are being built on the site of the former forge at the lane off the Square, Main St Ennistymon is or is not development and is or is not exempted development.

LOCATION: Ennistymon, Co. Clare

DUE DATE: 05/04/2025

Site Description.

The brown field site is a infill site between a two storey dwelling with lean -to stone building and a flat roof library building in the town centre. It is bound to the west by the grounds surrounding the library building and lands which appear to be within the curtilage of the adjoining dwelling. There is a low stone wall running though the centre of the site in an east / west direction. A short section of wall running in a north south direction remains. It appears that the site was formerly a forge.

Zoning and Designations

The site is zoned existing residential and it falls within the Architectural Conservation Area.

Planning History on site

22/ 841 invalid

22/ 945 Gabriel Mc Carthy. Permission granted by CCC to build a single bedroomed maisonette, connect to public services & all other associated site and ancillary works. The decision as appealed to ABP who over turned the decision of the Council and refused permission.

Article 10 Notification made by the applicant

Gabriel Mc Carthy- Notification of Change of Use of former auctioneer's office to residential use at Main Street, Ennistymon, Co. Clare V95 D2F3

The Planning Authority had regard to :

a)Sections 2, 3 and 4(1)(h) of the Planning and Development Act, 2000, as amended.

(b)Articles 6, 9 and 10 of the Planning and Development Regulations, 2001 as amended and in particular Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018).

(c)The Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', March 2018 (as amended 2020 and 2022 and 2023).

(d) The fact that the existing shop front is not changing

The Planning Authority determined that having regard to the above, the proposals to which this notification relates are in compliance with Article 10(6) of the Planning and Development Regulations 2001 (as amended). The proposed development therefore constitutes development which is 'exempted development'

UD History

19/ 57 A file was opened regarding the construction of a block wall along the front of the site which was not considered to be exempted development . However no warning notice was served because the wall subsequently removed following exchange of correspondence. The file is closed.

Details submitted with the application

- Site location map scale 1: 1000
- Site layout plan scale 1; 500
- Plans and elevations of the shed
- The shed is for domestic storage.
- Completed application form.

The agent has advised that the shed is for the storage of household items for the owner who owns two buildings opposite the site.

Materials are stone walls railing and slate roof. The shed is to be fitted in Spring 25.

Th agent further advises that the site is a concern from a health and safety aspect and a danger that it may attract anti-social behaviour. There is no storage in the other nearby properties owned by the applicant. It is intended to provide a secure area and shed for the storage of domestic items bins etc. for the properties, as well as improving the appearance of the site and doing works to safeguard the area.

Background to Referral

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*.

'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.

‘Development’ are defined in Section 3 of the *Planning and Development Act 2000*, as amended as follows:

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.

Article 6 (3) Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), 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.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the storage shed and yard are being built on the site of the former forge at the lane off the Square, Main St. Ennistymon is development and is or is not exempted development.

Having regard to Section 2 and Section 3 of the Act it is considered that the structure constitutes works and that the works constitute development. I do not consider that the development falls under the scope of Class 3 (Schedule 2 Article 6 Part 1) of the Planning and Development Regulations 2001 (as amended) because the shed is not to be located within the curtilage of a house although the use is for domestic purposes having regard to the information received. Neither is it considered that the shed falls under the scope of class 9 (Part 2, Article 6 Rural) because the shed is not for the purposes of storage in connection with agricultural use and in any event the provisions of Article 6 (3) apply.

Conclusion

Having regard to the above it is considered that the proposed development constitutes both ‘works’ and ‘development’ and that there are no classes within Article 6 of the Planning and

Development Regulations (as amended) under which it could be considered that the development would fall.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the storage shed and yard are being built on the site of the former forge at the lane off the Square, Main St Ennistymon is or is not development and is or is not exempted development.

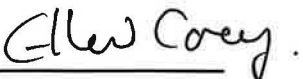
The Planning Authority in considering this referral had regard to:

- (a) Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) The details and drawing as indicated in submitted documents from the referrer and the intended use of the structure .


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

- a) the development consisting of a shed constitutes "works" and "development" which come within the scope of sections 2 and 3 of the Planning and Development Act 2000, as amended.
- b) The structure would not meet the exempted development requirements of Article 6 of the Planning and Development Regulations 2001, as amended.
- c) There are no other provisions under the Planning Acts or Regulations to render the subject structure as exempted development.

Now therefore Clare County Council (Planning Authority), hereby decides that the storage shed and yard are being built on the site of the former forge at the lane off the Square, Main St. Ennistymon Co. Clare is development and is not exempted development.



Ellen Carey
Executive Planner
Date: 23/01/25.



Gareth Ruane
Senior Executive Planner
Date: 27/01/25 .

Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	Section 5 R25/ 03
(b) Brief description of the project or plan:	Construction of shed
(c) Brief description of site characteristics:	Built surfaces
(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	Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Shifting dunes along the	85m	None	No

shoreline with Ammophila arenaria (white dunes) [2120]				
Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]				

- 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.)
Construction phase e.g. <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 	Surface water runoff from soil excavation

<p>materials</p> <ul style="list-style-type: none"> • Access to site • 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
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(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.

It is not envisaged that the proposed development will have significant effects on a European sites in view of their conservation objectives. There are no hydrological path ways linking the subject site to the SAC.

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:

Ellen Carey.
Name: Ellen Carey E.P.

23/ 01/25

Signature and Date of the
Decision Maker:

1225-3.



R 25-3.





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Gabriel McCarthy
C/o Deirdre Foran
Lisdoonvarna
Co. Clare

10/01/2025

Section 5 referral Reference R25-3 – Gabriel McCarthy

Is the storage shed and yard area being built on the site of the former forge at the lane off the square and Main Street, Ennistymon development and if so, is it exempted development?

A Chara,

I refer to your application received on 9th January 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

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

A25-3



**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	<u>GABRIEL MC CARTHY,</u> <u>MAIN ST.,</u> <u>ENNISTYMON, CO CLARE</u>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	<u>DEIRDRE FORAN</u> <u>LISDOONVARNA</u> <u>CO CLARE</u>

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 STORAGE SHED AND YARD AREA BEING BUILT ON THE SITE OF THE
FORMER FORGE AT THE LANE OFF THE SQUARE & MAIN STREET,
ENNISTYMON, DEVELOPMENT AND IF SO IS IT EXEMPTED DEVELOPMENT

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

A SHED FOR STORING HOUSEHOLD ITEMS FOR THE OWNER, WHO OWNS
TWO BUILDINGS OPPOSITE THE SITE. MATERIALS ARE STONE WALLS,
RAILING AND SLATE ROOF

(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)

DRAWINGS; SITE LOCATION MAP; SITE LAYOUT PLAN

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	OFF THE SQUARE & MAIN ST ENNISTYMON, CO CLARE
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	GABRIEL OWNS THIS SITE, HARHENS FORMER PUB PREMISES & THE BUILDING AT THE CORNER OF THE LANE
(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>	YES REF P22/ 945
(h) Date on which 'works' in question were completed/are likely to take place:	SHED TO BE FITTED IN SPRING 2025

SIGNED: _____
AGENT

DATE: 28-12-2024

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:	.....	



Deirdre Foran B.Eng. (Civil) M.I.E.I.
dforandesign, Lisdoonvarna.
087 675 0327



ENGINEERS
IRELAND



Dec 28th 2024

Planning Section,
Clare County Council,
Ennis.

Reference: Derelict Site, Off Main St. & The Square, Ennistymon

A chara,

I enclose an application on exemption from planning permission in relation to a derelict site off the Square and Main St., Ennistymon, owned by Gabriel McCarthy.

Planning permission was previously granted under Ref P22/945 by Clare Co Co but refused when appealed to ABP by a third party. The site is a cause for concern from a health and safety aspect and a danger that it may attract anti social behaviour.

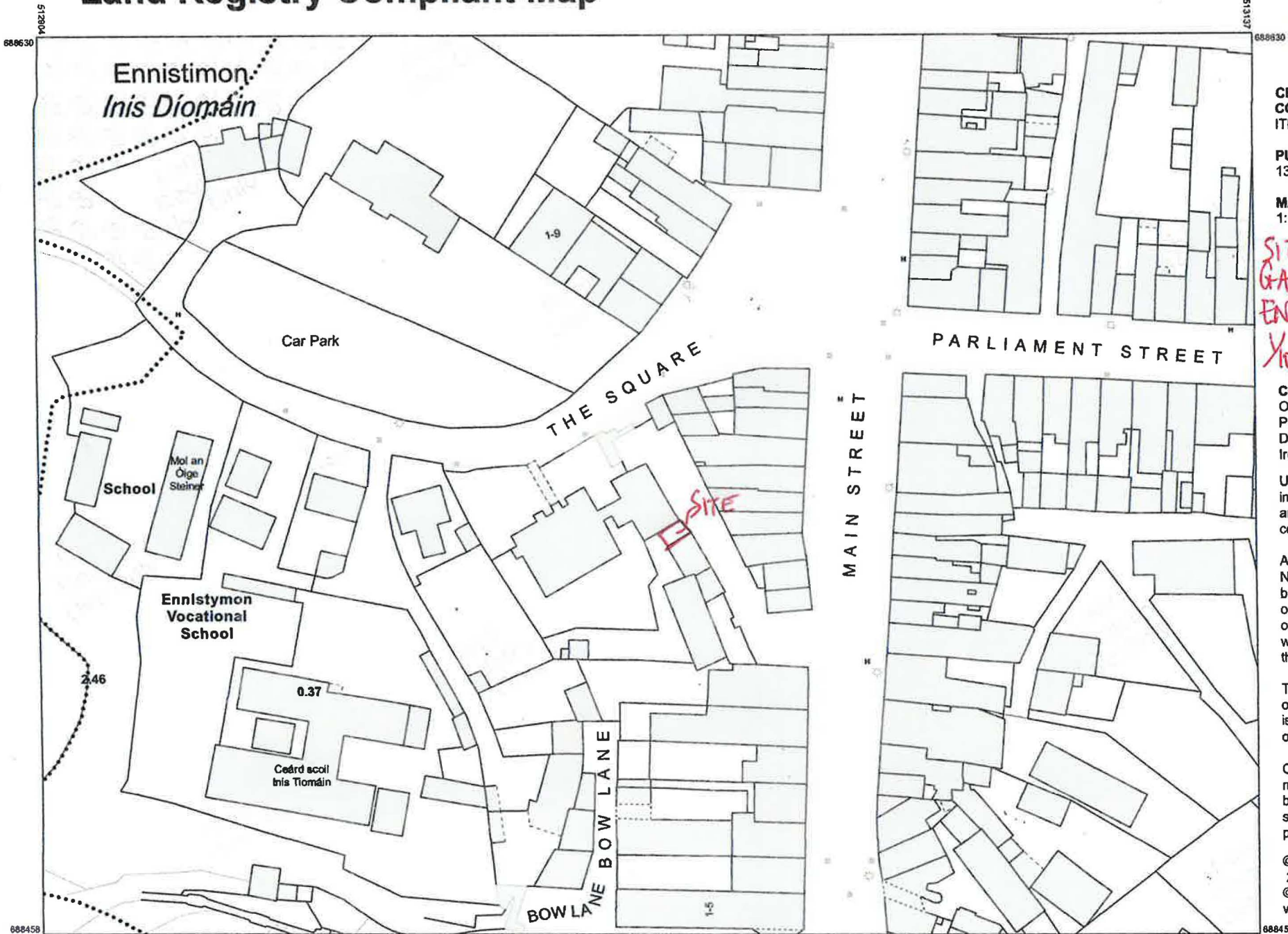
Gabriel owns two properties opposite the subject site and has no storage on either property. His intention is to provide a secure area and shed for storage of domestic items, bins etc for the properties, as well as improving the appearance of the site and doing works to safeguard the area.

Let me know if anything further is required and I hope that you look favourably on this application.

Regards and thank you

Deirdre Foran B.Eng.

Land Registry Compliant Map



CENTRE COORDINATES:
ITM 513021,688544

PUBLISHED: 13/12/2019
ORDER NO.: 50099225_2

MAP SERIES: 1:1,000
MAP SHEETS: 4034-12

*SITE LOCATION MAP
GABRIEL MCCARTHY
ENNISTYMON
X000 DEC 2024*

COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

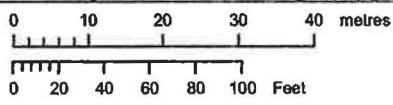
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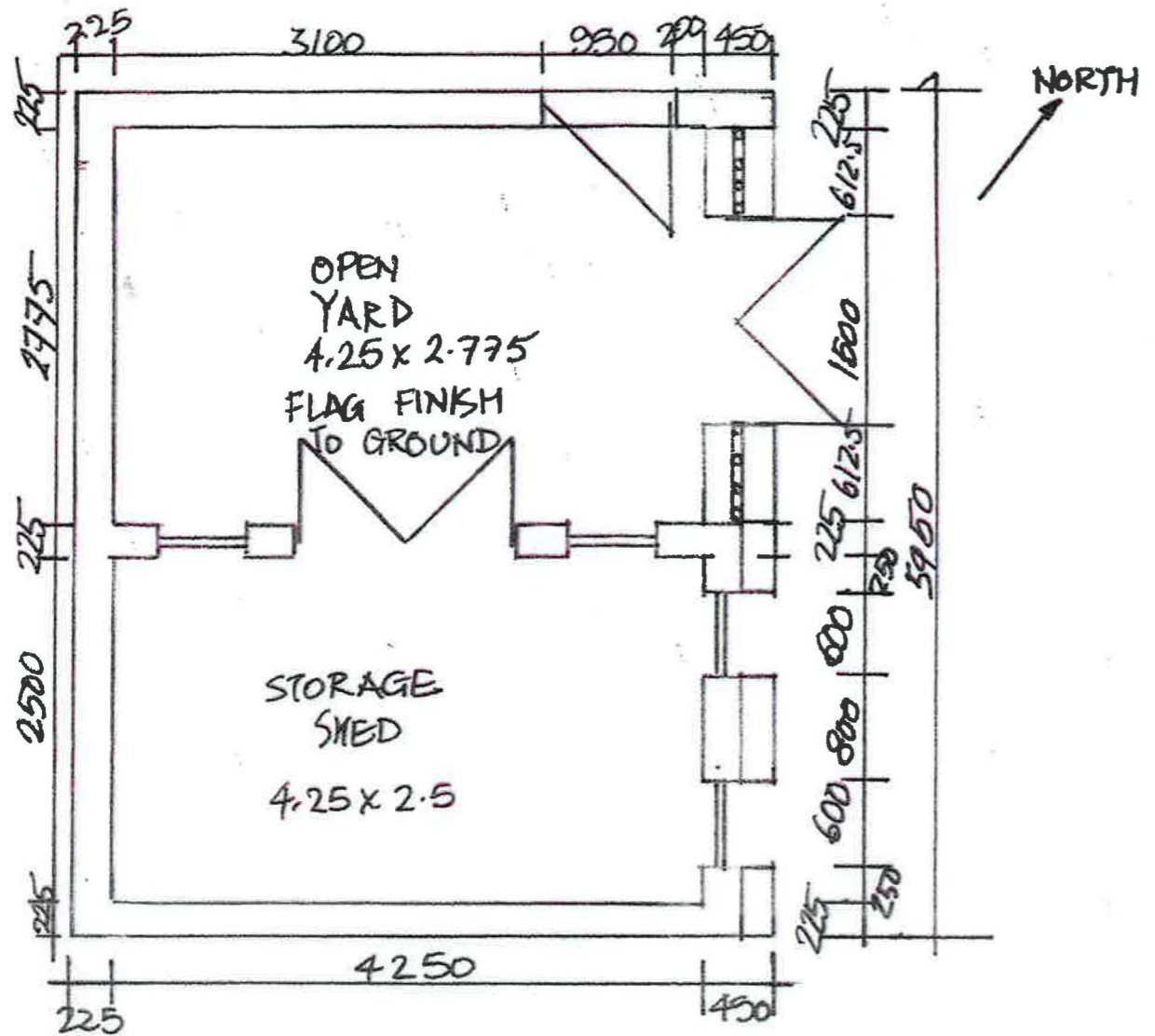


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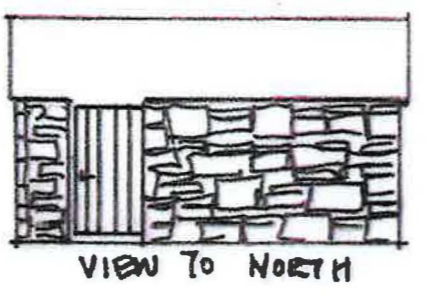
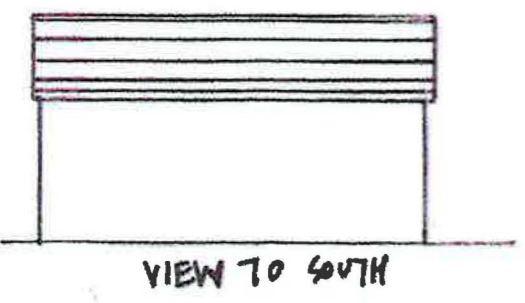
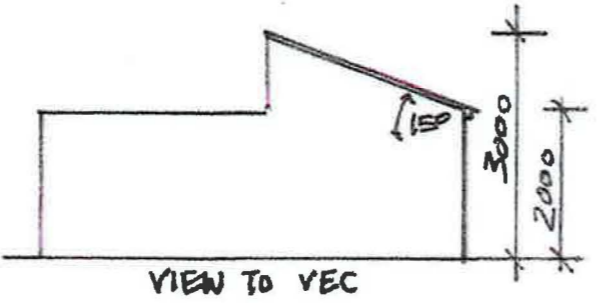
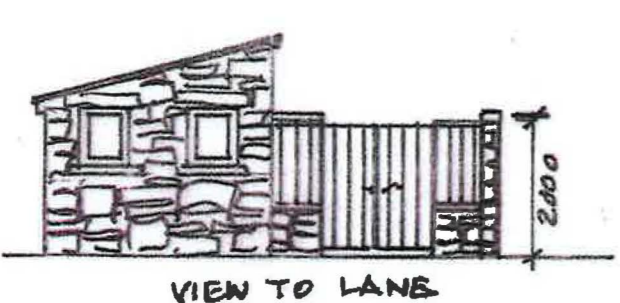
CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'



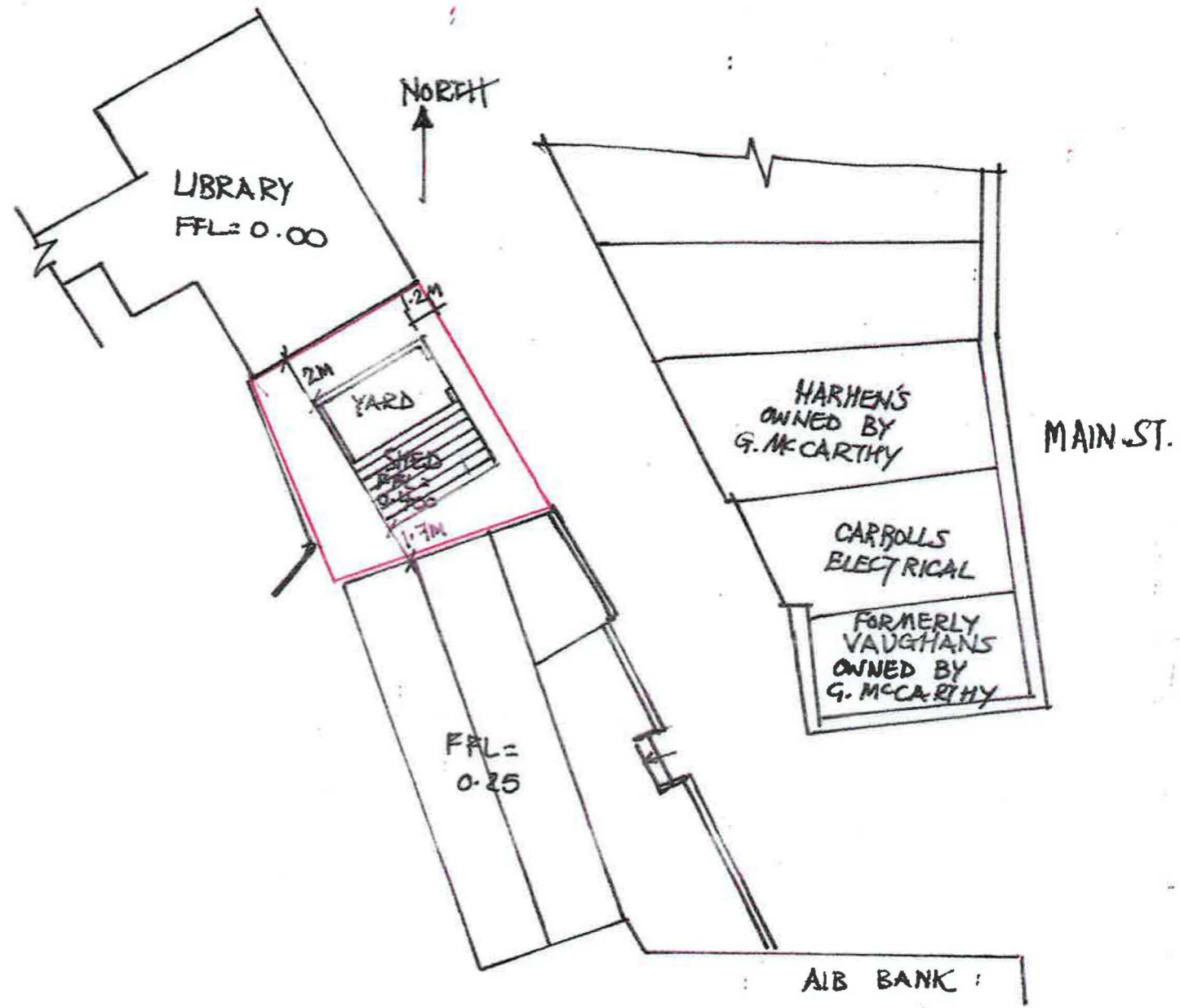
LEGEND:
<http://www.osi.ie>;
search 'Large Scale Legend'



- FLOOR PLAN - 1/50



VIEWS 1/100



- SITE LAYOUT PLAN - 1/250

GABRIEL MCCARTHY
 OFF THE SQUARE @ MAIN ST.
 ENNISTYMON
 PLANS; VIEWS; SITE PLAN:
 1/50; 1/100; 1/250
 D. FORAN B. ENG
 089 6750327