



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Brian & Rosarie Melican  
Dunlicky Road  
Knockroe  
Kilkee  
Co. Clare  
V15 K310**

**16th July 2025**

**Section 5 referral Reference R25-55 – Brian & Rosarie Melican**

Is the 'change of use' of former retail shop (now vacant) at O'Curry St, Kilkee, Co. Clare to proposed one bed apartment development and if so, is it exempted development?

A Chara,

I refer to your application received on 30th June 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 Coimisiún Pleanála of the required fee, refer a declaration for review by An Coimisiún 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](http://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:

85918

Reference Number:

R25-55

Date Referral Received:

30th June 2025

Name of Applicant:

Brian & Rosarie Melican

Location of works in question:

O'Curry Street, Kilkee, Co. Clare

**Section 5 referral Reference R25-55 – Brian & Rosarie Melican**

Is the 'change of use' of former retail shop (now vacant) at O'Curry St, Kilkee, Co. Clare to proposed one bed apartment 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(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) and (S.I. No. 75 of 2022)
- (c) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', 2025.

**AND WHEREAS Clare County Council has concluded:**

- (a) The change of use of the former retail shop (now vacant) at O'Curry Street Kilkee, to a proposed one-bedroom apartment for permanent occupation is considered development which is exempted development under Article 10 of Planning and Development Regulations, 2001 as amended.

**ORDER:** Whereas by Chief Executive's Order No. HR 343 dated 19<sup>th</sup> May 2025, Gordon Daly, 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 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 change of use of the former retail shop (now vacant) to a proposed one-bedroom apartment for permanent occupation at O'Curry



Street, Kilkee, Co. Clare is considered development which is exempted development.

Please note that the proposed works must be completed by the end of 2025 to avail of this planning exemption (unless the date is further extended by the Minister).

Signed:

  
GARRETH RUANE  
SENIOR EXECUTIVE PLANNER 

Date:

16th July 2025

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

**Reference No.: R25-55**



**Comhairle Contae an Chláir  
Clare County Council**

**Section 5 referral Reference R25-55**

**Is the 'change of use' of former retail shop (now vacant) at O'Curry St, Kilkee, Co. Clare to proposed one bed apartment development and if so, is it exempted development?**

**AND WHEREAS, Brian & Rosarie Melican** 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(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) and (S.I. No. 75 of 2022)
- (c) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', 2025.

**And whereas Clare County Council has concluded:**

- (a) The change of use of the former retail shop (now vacant) at O'Curry Street Kilkee, to a proposed one-bedroom apartment for permanent occupation is considered development which is exempted development under Article 10 of 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 change of use of the former retail shop (now vacant) to a proposed one-bedroom apartment for permanent occupation at O'Curry Street, Kilkee, Co. Clare **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

**Please note that the proposed works must be completed by the end of 2025 to avail of this planning exemption (unless the date is further extended by the Minister).**





Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate

16th July 2025

**CLARE COUNTY COUNCIL  
SECTION 5 DECLARATION OF EXEMPTION APPLICATION  
PLANNERS REPORT 2**

<b>FILE REF:</b>	R25-55
<b>APPLICANT(S):</b>	Brian & Rosemary Melican
<b>REFERENCE:</b>	Whether the change of use of the former retail shop (now vacant) at O'Curry Street Kilkee, to a proposed one-bedroom apartment for permanent occupation is or is not development and is or is not exempted development.
<b>LOCATION:</b>	O'Curry Street, Kilkee, County Clare
<b>DUE DATE:</b>	25 <sup>th</sup> July 2025

**Site Description**

The site comprises the ground floor of a 2-storey mid-terrace building along O'Curry Street. The ground floor comprises of a vacant shop.

**Clare County Development Plan 2023-2029**

The site is zoned "*Mixed Use*" development. It is within the Kilkee Architectural Conservation Area and Town Centre area.

**Recent Planning History**

90-1225 – Granted - Rosarie Haugh - permission to construct retail shop with upstairs living accommodation.

94-102 – Granted - Mr. & Mrs. Rosaire and Brian Melican - Retain ground floor, convert first floor to lobby, living room, kitchen/dining room and 4 bedrooms.

**Pre-planning History**

None.

**Drawings Received**

- Site location map, floor plan, & elevations.

**Site Description**

This site is located in the settlement of Kilkee and is zoned for "*Mixed-Use*" development. It is also within the Town Centre Area and Architectural Conservation Area of Kilrush. The site accommodates a vacant ground floor shop with residential above. It is accessed via O'Curry Street.



## **Background**

### **Planning and Development Act, 2000 (as amended)**

#### **Section 2**

'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.*

#### **Section 3**

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

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

#### **Section 4(1)(H)**

Section 4 (1)(H) states that the following shall be exempted development for the purpose of the Act.-

*'development consisting for the carrying out of works for maintenance, improvement or other alterations 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 neighbouring structures'.*

### **Planning & Development Regulations, 2001, as amended**

#### **Part 2 Exempted Development**

Article 6 (1) states

*'Subject to article 9, development of a class specified in column 1 of Part 1 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 1 opposite the mention of that class in the said column 1'.*

#### Article 9 -Restrictions on Exemptions states

'Under Article 9 (1) of the same Regulations, development to which Article 10 relates shall not be exempted development for the purposes of the Act:

*(a) if the carrying out of such development would –*

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

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

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

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

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

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

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

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

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

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



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

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

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

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

#### Article 10 Change of use

*Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—*

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

- (2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.
- (b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—
- (i) as an amusement arcade,
  - (ii) as a motor service station,
  - (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,
  - (iv) for a taxi or hackney business or for the hire of motor vehicles,
  - (v) as a scrap yard, or a yard for the breaking of motor vehicles,
  - (vi) for the storage or distribution of minerals,
  - (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,
  - (viii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or
  - (viii) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.
- (3) Development consisting of the provision within a building occupied by, or under the control of, a State authority of a shop or restaurant for visiting members of the public shall be exempted development for the purposes of the Act.
- (4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted



*development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*

- (5) *Development consisting of the use of a house for child minding shall be exempted development for the purposes of the Act.*

Planning & Development Regulations, Amendment no. 2 Regulations 2018 , ( s.i.no 30 of 2018)

*Article 2 of these Regulations amends Article 10 of the Principal Regulations, by inserting a new sub-article, to provide that development consisting of the change of use, and any related works, from an existing specified use class to residential use, in certain circumstances and subject to conditions and limitations, is exempt from the requirement to obtain planning permission. The exemption shall apply from when these Regulations come into force until 31 December 2021.*

Statutory Instrument No. 75 of 2022 has extended this exemption to 31/12/2025 and added a new use class (Class 12 - public houses), to the specified use classes that can qualify to avail of the planning exemption, subject to certain conditions and limitations.

Article 10 of the Planning and Development Regulations 2001 (S.I. No. 75 of 2022) is amended by inserting the following sub-article after sub-article (5):

*“(6) (a) In this sub-article—‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;*

*‘relevant period’ means the period from the 08<sup>th</sup> February 2018 until 31 December 2025.*

*(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 of 12 of Part 4 to Schedule 2.*

*(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—*

*(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018, Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 13<sup>th</sup> February 2018.[30]*

*3(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6, and 12.*

*(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,*

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d) (i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall

(I) affect only the interior of the structure

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency

*Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.*

*(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.*

*(ii) Details of each notification under subparagraph (i), which shall include information on—*

*(I) the location of the structure, and*

*(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and*

*(III) the Eircode of the property,*

*shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.*

*(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024 and 2025 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii)."*

**Part 4 Article 10 Exempted Development- Class of use- Class 1 is use as a shop.**

**Schedule 2 Article 6 part 1 Exempted Development**

**CLASS 14**

*Development consisting of a change of use—*

*(a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,*

*(b) from use as a public house, to use as a shop,*

*(c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,*

*(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,*

*(e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling,*

*(f) from use as a house, to use as a residence The number of persons with an intellectual or*

*for persons with an intellectual or physical disability or a mental illness living in physical disability or mental illness and any such residence shall not exceed 6 and the persons providing care for such persons. number of resident carers shall not exceed 2.*

**Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018 (S.I. No. 30 of 2018)**

**Minimum Requirements for Residential Units**

The Regulations set out some minimum standards that apply to any residential units being provided, including minimum floor areas, storage space and the provision of natural light.

- A maximum of 9 residential units can be provided in any structure.
- The minimum floor area and minimum storage space requirements of the 'Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', 2018 must be complied with.

**'Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', March 2018 and Appendix 1 Planning and Development (Amendment)(No. 2) Regulations 2018(S.I. No. 30 of 2018)**

This ensures that apartments will be of adequate size and will include adequate storage.

<b>Assessment</b>
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**Primary Legislation**

Having regard the details submitted it is considered that the proposal constitutes 'works' as defined by to section 2 of the Act. It is also considered that the proposal constitutes 'development' having regard to the definition of development which includes for making of any material change in the use of any structures. In respect of Section 4 (1)(H) it is noted that while the section makes provision for development consisting for the carrying out of works for maintenance, improvement or other alterations 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 neighbouring structures' to be considered exempted development , it does not expressly clarify that the internal alterations can result in a change of use and that this new use is exempted development. I therefore consider that section 4 (1) (h) is not relevant to the query.

**The Regulations**

- I refer to Part 4 Article 10 Exempted Development- Class of use- The permitted use is commercial.



- I refer to Schedule 2 part 1 Article 6 Exempted Development – General, wherein in class 14 sets out changes of use that are considered to be exempted development. I do not consider that the proposed change of use falls under the provision of class 14 of the Planning and Development Regulations 2001 as amended.
- I refer to part 2 Article 6 (1) Exempted Development and Article 9 Restrictions on Exemptions—. It is considered that the provisions of article 9 are not applicable to the query.
- I refer to Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) as amended by the Planning and Development Regulations 2018 (no 2). Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

Article 10 of the Planning and Development Regulations 2001 (S.I. No. 75 of 2022) is amended by inserting the following sub-article after sub-article (5):

*“(6) (a) In this sub-article—‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres; ‘relevant period’ means the period from the 08<sup>th</sup> February 2018 until 31 December 2025.  
(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 of 12 of Part 4 to Schedule 2.*

**It is stated that the existing use is as a shop. The unit is currently vacant.**

*(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—*

*(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018, Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 13<sup>th</sup> February 2018.[30]*

**The structure was in place before 2018.**

*3(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6, and 12.*

**Applicable.**

*(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,  
then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).*

**The unit is vacant for 3 years.**

*(d) (i) The development is commenced and completed during the relevant period.*

**The time period for the carrying out and completion of the proposed change of use would include 2025.**

*(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall*

*(I) affect only the interior of the structure*

**No external works are proposed.**

*(II) retain 50 per cent or more of the existing external fabric of the building, and*

**100% of the external fabric of the building is to be retained.**

*(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

**No external works are proposed.**

*(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*

**No external works are proposed.**

*(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.*

**Not applicable.**

*(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.*

**The total number of units in the overall structure would be less than 9.**

*(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.*

**The proposal meets the minimum floor area requirement for a one-bedroom apartment.**

*(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.*

**The rooms would have adequate natural lighting.**

*(Viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.*

**Not applicable.**

*(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*

**Not applicable.**

*(x) No development shall relate to any structure in any of the following areas:*

- 1. an area to which a special amenity area order relates;*

**Not applicable.**

- 2. an area of special planning control;*

**Not applicable.**

- 3. within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.*

**Not applicable.**

*(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.*

**Not applicable.**

*(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.*

**Not applicable.**

*(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.*

*(ii) Details of each notification under subparagraph (i), which shall include information on—*

*(I) the location of the structure, and*

*(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and*

*(III) the Eircode of the property,*

*shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.*

**Notification by the applicant is pending the determination by the Planning Authority or An Bord Pleanála that the section 5 query re proposed change of use is considered to be exempted development.**

*(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024 and 2025 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph(ii)."*

**Noted.**

### **Environmental Impact Assessment**

In assessing this application I have had regard to the provisions of EU Directive 2014/52/EU (which amends EU Directive 2011/92/EU), and which has been transposed into Irish legislation by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (SI No. 296 of 2018). The subject development does not fall within the mandatory requirements for EIA as set out in Schedule 7 of the Planning and Development Regulations 2001, as amended. I therefore consider that the proposal constitutes a sub-threshold development and note the requirements of Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended. As such having regard to the nature and scale of the proposed development and the nature of the receiving environment I consider that there



is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **Recommendation**

Having regard to Article 10, of the Planning and Development Regulations, 2001 (as amended).

WHEREAS a question has arisen as to whether the change of use of the former retail shop (now vacant) at O'Curry Street Kilkee, to a proposed one-bedroom apartment for permanent occupation 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 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) and (S.I. No. 75 of 2022)

(d) Sustainable Urban Housing: Design Standards for New Apartments -Guidelines for Planning Authorities', ~~March 2018~~ 2025.

**AND WHEREAS Clare County Council has concluded that –**

The change of use of the former retail shop (now vacant) at O'Curry Street Kilkee, to a proposed one-bedroom apartment for permanent occupation is considered development which is exempted development under Article 10 of Planning and Development Regulations, 2001 as amended.

NOW THEREFORE Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides that the change of use of the former retail shop (now vacant) at O'Curry Street Kilkee, to a proposed one-bedroom apartment for permanent occupation. The applicant should be informed that the proposed works must be completed by the end of 2025 to avail of this planning exemption (unless the date is further extended by the Minister). *is development which is exempted development.*

Signed



Executive Planner

Date:

11<sup>th</sup> July 2025



Senior Executive Planner

Date:

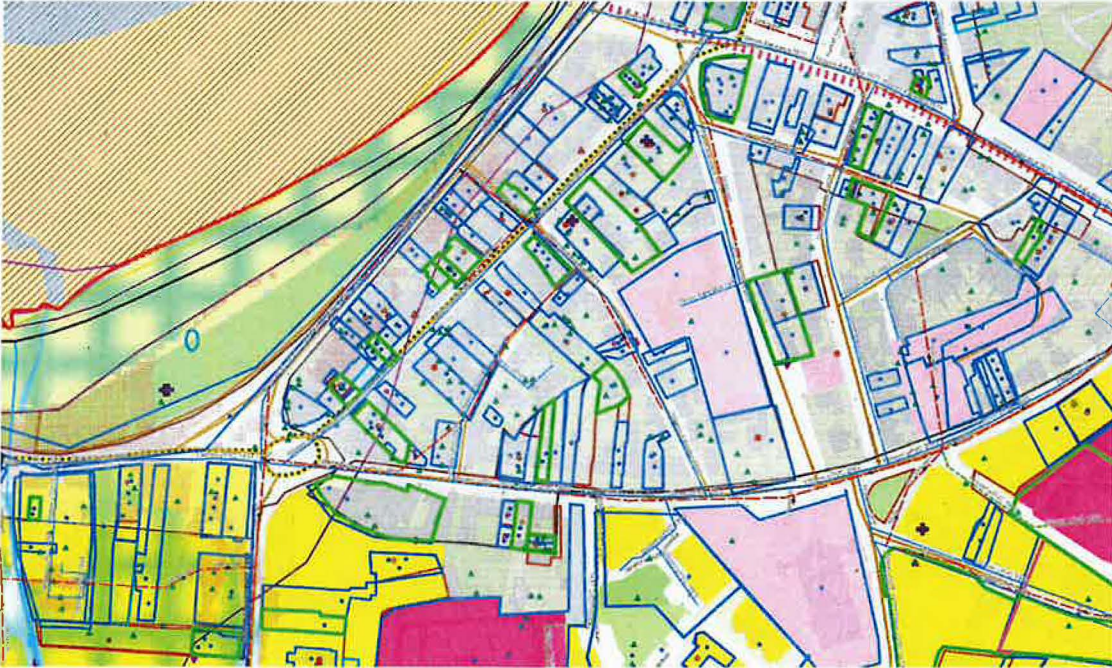
14/07/25

## Clare County Council

### Screening for Appropriate Assessment & Determination

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

**Table 1: Project Details**

<b>Planning File Reference</b>	R25-55
<b>Applicant Name</b>	Melican
<b>Development Location</b>	O'Curry Street Kilkee
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No
<b>Description of the project (To include a site location map):</b>	
Change of use – Shop to residential	
	



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

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

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

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Kilkee Reefs SAC	Large shallow inlets and bays [1160] Reefs [1170] Submerged or partially submerged sea caves [8330]	0.12

---

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

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

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

**Conclusion:** If the answer to all of the above is no, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.  
If the answer is "unknown" or "yes" proceed to Table 3 and refer to the relevant sections of Table 3.



### Appropriate Assessment Screening Determination

Planning File Reference	R25-55
Proposed Development	Change of use – shop to residential
Development Location	Kilkee
European sites within impact zone	Kilkee Reefs SAC
<b>Description of the project</b>	
Change of use – shop to residential	
<b>Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site</b>	
As per report	
<b>Describe how the project or plan (alone or in combination) is likely to affect the European site(s).</b>	
Water quality	
General disturbance	
<b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b>	
Connection to public utilities	
Minor works in an urban area	
<b>Documentation reviewed for making this statement</b>	
NPWS website	
Plans and particulars received	
GIS mapping database	
<b>Conclusion of assessment (a, b, c or d)</b>	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) <sup>3</sup>	
(b) There is no potential for significant effects to European Sites <sup>3</sup>	Yes
(c) The potential for significant effects to European Site(s) cannot be ruled out <sup>4</sup>	
(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of	

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

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

[http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf)

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

<b>the Planning and Development (Amendment) Act 2010<sup>5</sup></b>	
<b>Completed By</b>	John O'Sullivan
<b>Date</b>	11 <sup>th</sup> July 2025

---

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











COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

Brian & Rosarie Melican  
Dunlicky Road  
Knockroe  
Kilkee  
Co. Clare  
V15 K310

30/06/2025

**Section 5 referral Reference R25-55 – Brian & Rosarie Melican**

Is the 'change of use' of former retail shop (now vacant) at O'Curry St, Kilkee, Co. Clare to proposed one bed apartment development and if so, is it exempted development?

A Chara,

I refer to your application received on 30th June 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 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



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](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://www.clarecoco.ie)

CLARE  
COUNTY COUNCIL

30 JUN 2025

Received  
Planning Section



Comhairle Contae an Chláir  
Clare County Council

R25-55

**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

BRIAN & ROSARIE MELICAN  
DUNLICKY ROAD  
KNOCKROE  
KILKEE CO CLARE

(b) Telephone No.:

(c) Email Address:

(d) Agent's Name and address:

AS above



## 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 'Change of Use' of former Retail Shop (Now Vacant) at O'Curry St. Kilkee, Co Clare to Proposed One Bed Apartment Development?  
 & 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.

Permission is sought for conversion of existing unused space of former Retail Shop now vacant for past 3 years to proposed One-bed Apartment with Kitchen, Living, Utility & Storage Area. All door & Window openings are Existing with no Elevation change proposed and only minor alterations internally for proposed Dev. Total Floor Area = 82.23 m<sup>2</sup>. Ceiling height 2.75m.

The Planning & Dev (Amendment) (Nº.2) Reg. 2018 - S.I Nº. 30 of 2018 provides for Exemption from full planning permission in respect of 'Change of Use' of Certain Vacant Commercial premises to Residential Use. The premises of this application was previously operating as Commercial Retail Shop. The proposed One-bed Apartment will be used for permanent accommodation and will contribute to the greater housing need locally.

- (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)

Site Location Map (1:1000) x 2 Copies

Site Layout Plan (1:500) x 2 Copies

Structural Drawings (Floor Plans, X-SECTION + Elevations) x 2 Copies  
 (1:100 + 1:200)

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	O' CURRY ST KILKEE CO CLARE
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWNER
(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? If so please supply details:	NO
(g) Were there previous planning application/s on this site? If so please supply details:	YES P. 90/12 25
(h) Date on which 'works' in question <del>were</del> completed/are likely to take place:	2025 / 2026

SIGNED:

Brian Melican  
Rosale Melican

DATE:

26/6/2025



### **GUIDANCE NOTES**

*The 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 Chláir,  
New Road,  
Ennis,  
Co. Clare  
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

### **FOR OFFICE USE ONLY**

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

# Land Registry Compliant Map



**Tailte  
Éireann**

## **SITE LOCATION MAP**

**AT O'CURRY St., KILKEE, CO. CLARE**

**FOR BRIAN & ROSARIE MELICAN**

*Marked by Mr.P.Conlon. [C.Eng.Tech.,Dip.Const.]*

*Clohanmore,Cree,Co.Clare.*

**CENTRE  
COORDINATES:**  
ITM 488435,659819

**PUBLISHED:** 16/05/2025  
**ORDER NO.:** 50466780\_1

**MAP SERIES:** 1:1,000  
**MAP SHEETS:** 4604-25  
1:1,000 4665-01

**COMPILED AND PUBLISHED BY:**  
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Dublin 8,  
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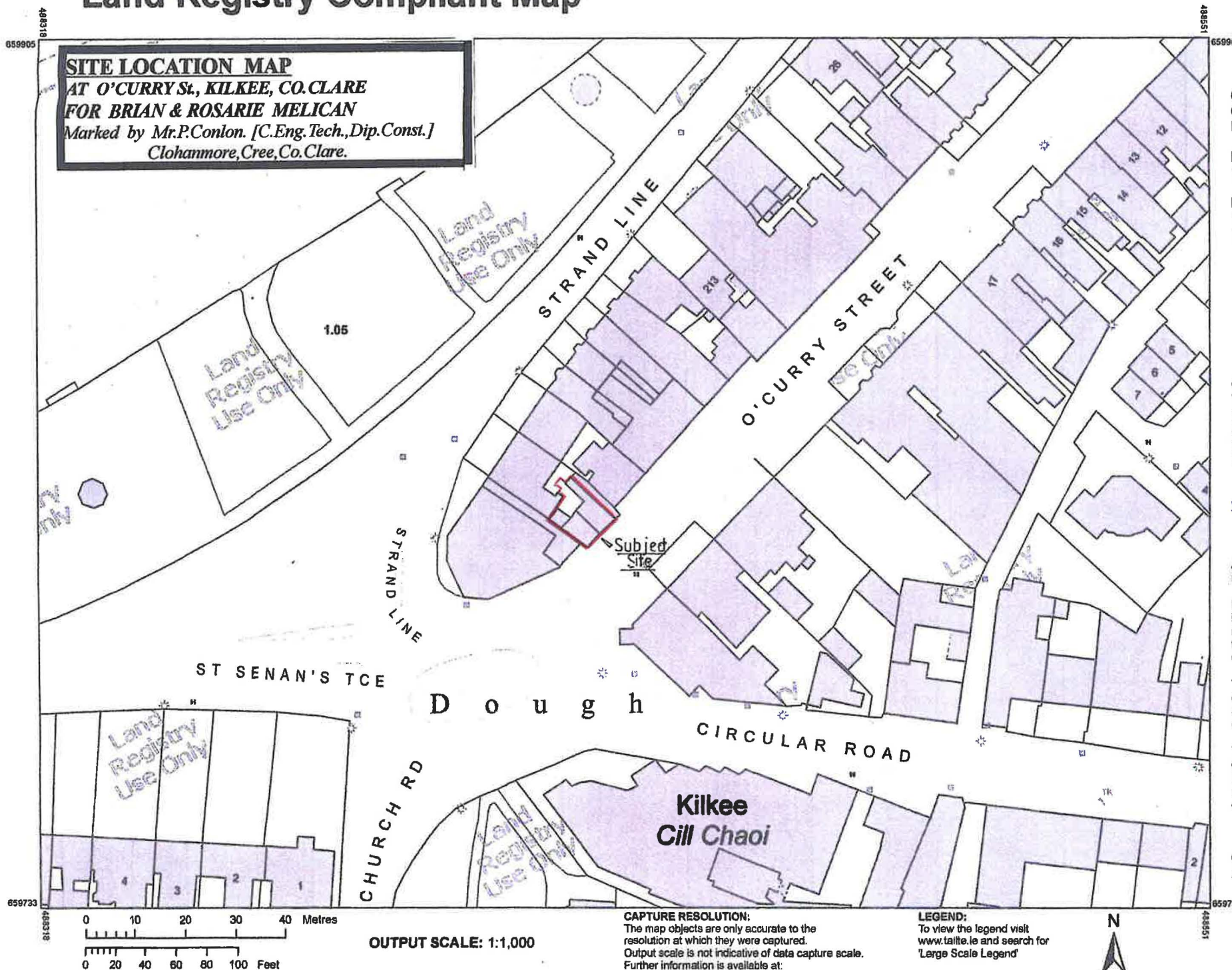
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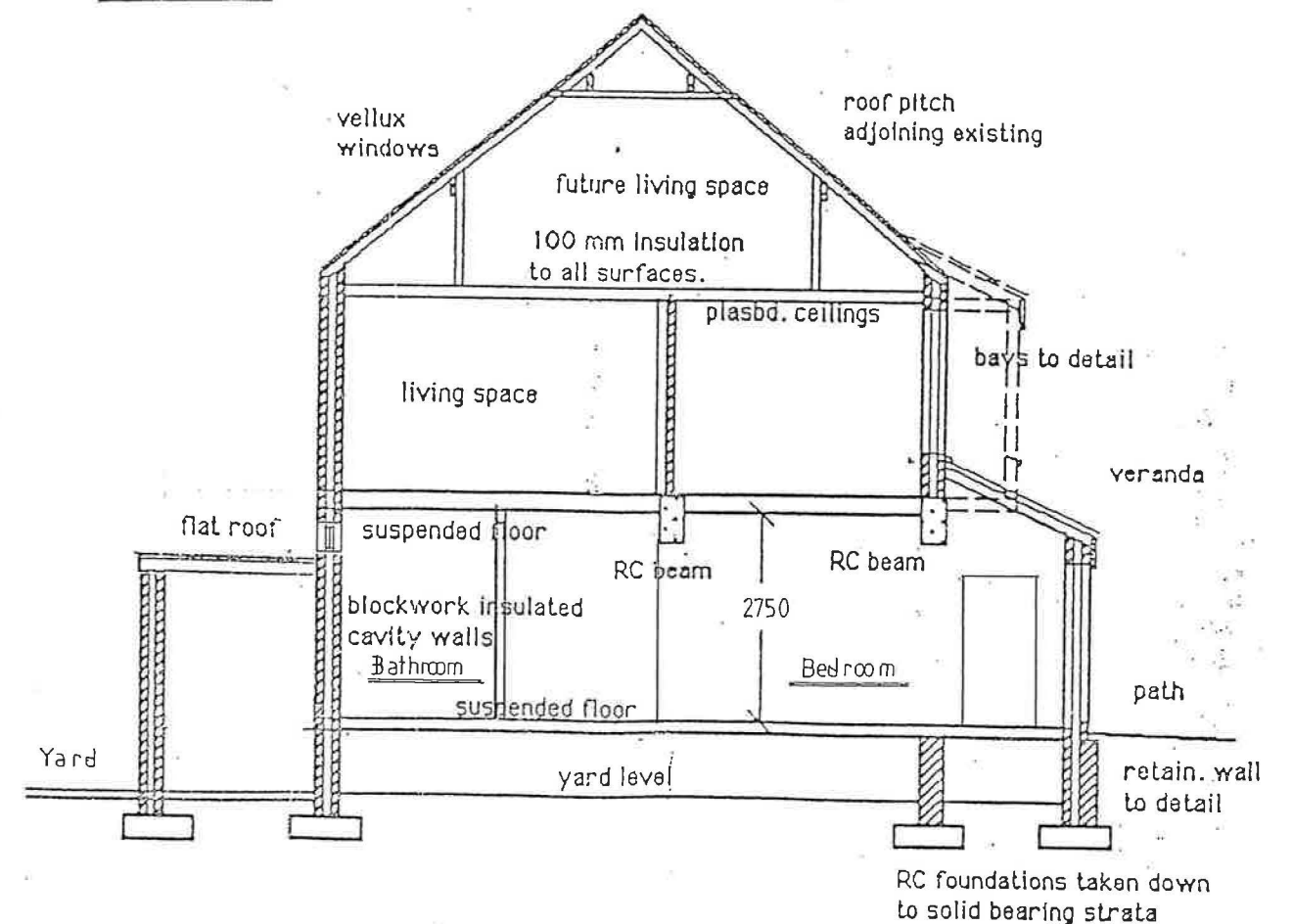
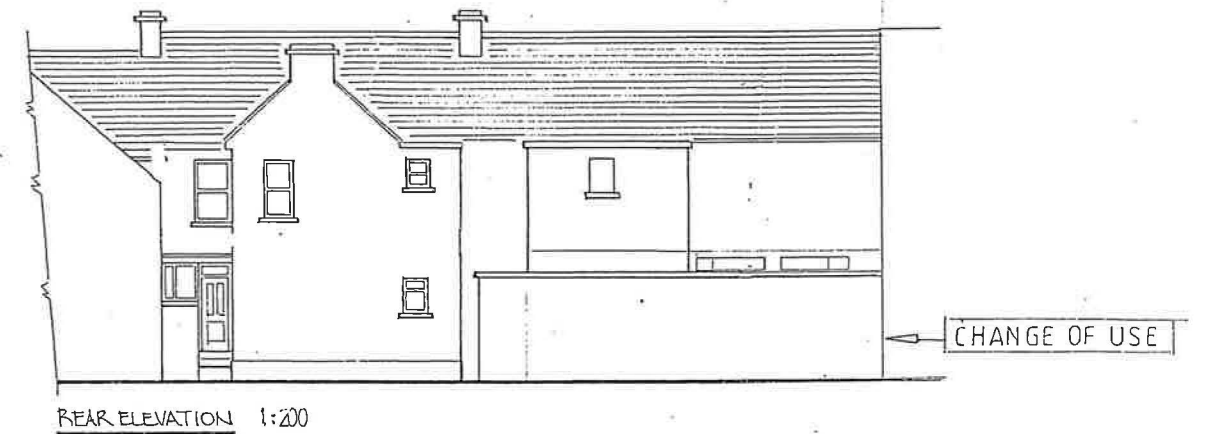
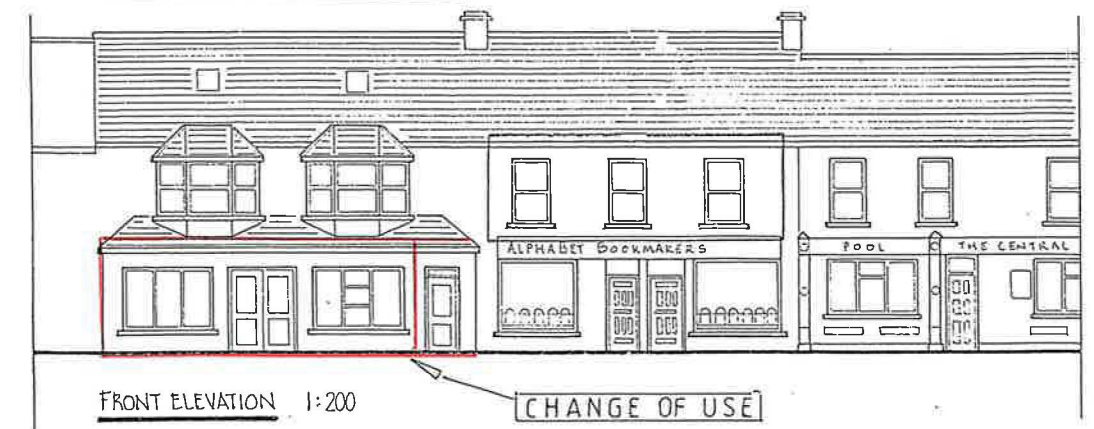
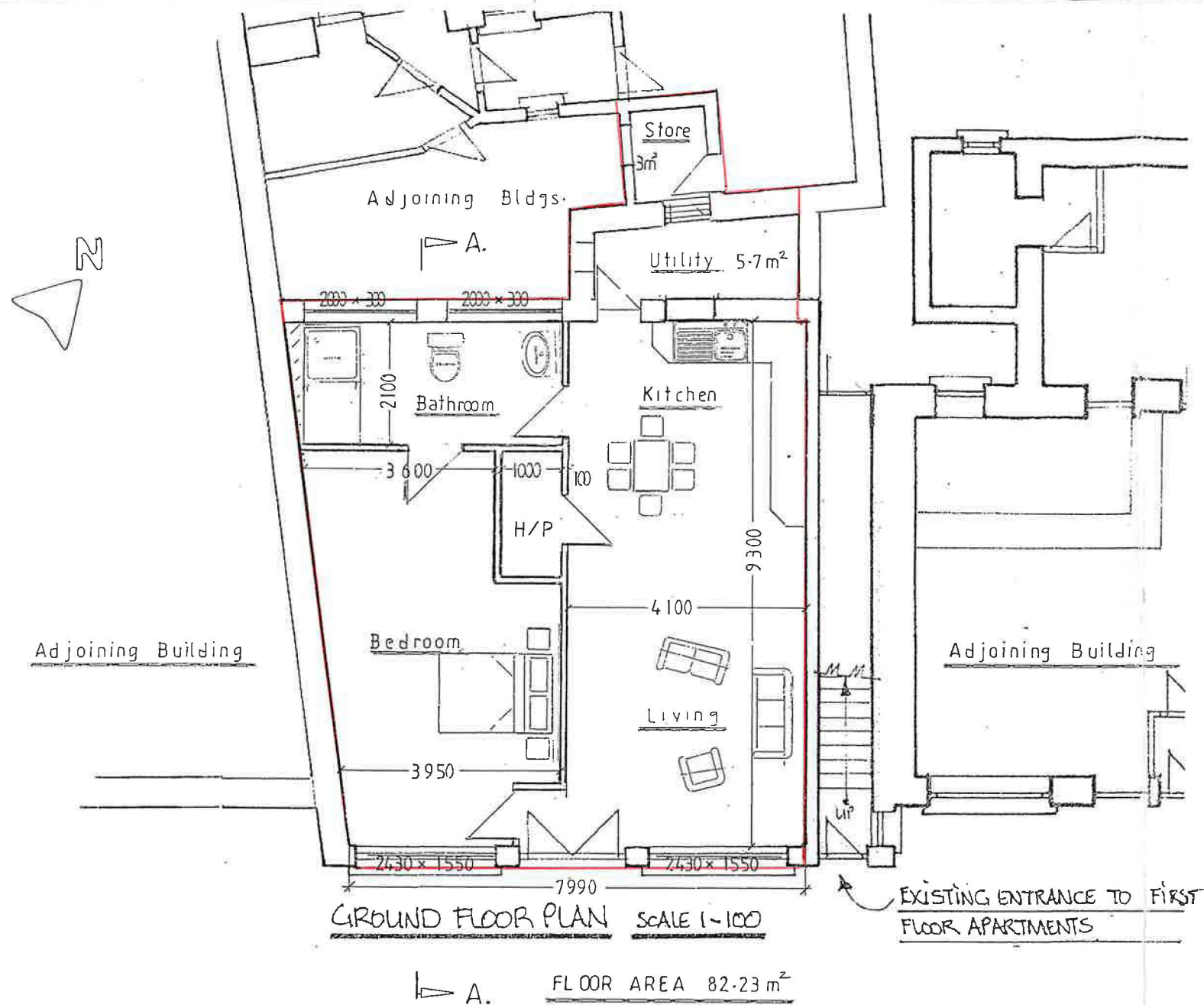


**OUTPUT SCALE: 1:1,000**

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CROSS SECTION (1:100)

# **PROPOSED CHANGE OF USE** **FROM RETAIL SHOP TO APARTMENT** [Vacant]

AT O'CURRY St., KILKEE , CO. CLARE.

FOR BRIAN & ROSARIE MELICAN

DRAWN BY Mr.P. CONLON C.Eng.Tech.,Dip.Const.  
 Clohanmore,Cree,Kilrush,Co.Clare.

SCALE 1:100 +1:200

DATE Jun. 2025

THESE DRAWINGS HAVE BEEN PREPARED FOR THE  
 PURPOSES OF MAKING A PLANNING APPLICATION  
 ONLY.



# SITE LAYOUT PLAN

AT O'CURRY St., KILKEE , CO. CLARE.

FOR BRIAN & ROSARIE MELICAN

DRAWN BY Mr.P. CONLON C.Eng.Tech.,Dip.Const.  
Clohanmore,Cree,Kilrush,Co.Clare.

SCALE 1:500

DATE Jun. 2025



Tailte  
Éireann

MAP SHEETS:  
4604-25  
4665-01

1.05

STR

O'CURRY STREET

STRAND LINE

ST SENAN'S TCE

D o u g h

CIRCULAR ROAD

CHURCH RD

Kilkee  
Cill Chaoi

MH

MH

existing sewer

existing connection  
uisce éireann

Subject Site  
(vacant)

H

H

Land  
Registry  
Use Only

Land  
Registry  
Use Only

4

3

2

1

17