



Comhairle Contae Chill Mhantáin Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

Áras An Chontae / County Buildings
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18th

November 2024

Shane Wherity
Wherity Chartered Surveyors Ltd
Unit 4, Block 4
City North Business Campus
Stamullen
Co. Meath
K32 KC65

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) – EX97/2024 – Joe McGinley – Farriers Inn, Kilcashel, Avoca, Co. Wicklow

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000.

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

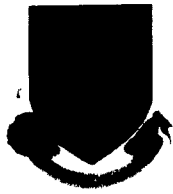
ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT



*Ta an doic. mead seo ar fáil i bhformáid eile ar iarratas
This document is available in alternative formats on request*

Ba chóir gach comhfhreagras a sheoladh chuig an Stúirthóir Seirbhísí, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development





COMHAIRLE CONTAE CHILL Mhantáin Wicklow County Council

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DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS AMENDED

Applicant: Joe McGinley

Location: Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14 CX96

Reference Number: EX97/2024

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1370

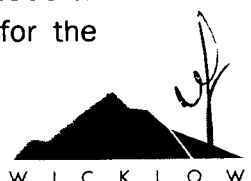
Section 5 Declaration as to whether “the change of use of pub/restaurant to 6 no. residential units” at Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14 CX96 constitutes exempted development within the meaning of the Planning and Development Act, 2000(as amended).

Having regard to:

- a) The details submitted with the Section 5 Declaration
- b) PRR 07/382 and PRR 06/5875
- c) An Bord Pleanála Referral Declaration Reference RL2879, and RL2886
- d) Sections 2 , 3 and 4 of the Planning and Development Act 2000 (as amended)
- e) Article 2, 9, 10 (6), and Schedule 2: Part 4 of the Planning and Development Regulations 2001 (as amended).
- f) Sustainable Urban Housing : Design Standards for New Apartments : Guidelines for Planning Authorities :DOE : July 2023

Main Reasons with respect to Section 5 Declaration:

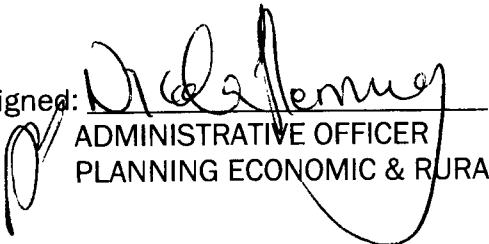
- i. The change of use of the structure to use as 6 residences would be materially different in character, have differing traffic movement, patterns of usage, and amenity requirements to usage as a public house/ restaurant. Therefore the change of use would be a material change of use and hence would be development.
- ii. The structure the subject of this exemption declaration was extended and converted, by reference to PRR 07/382 and PRR 06/5875 to a public house and restaurant. From the details within PRR 07/382, the public house was located on the ground floor with the restaurant on the upper floor.
- iii. The use of the structure as a restaurant and use as a public house are considered two separate/ different uses. In this regard Public House is defined under Schedule 2 : Part 4 : Class 12 as a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018. The use as a restaurant is different, in that the primary use is for the



consumption of food on the premises. As such the use as a public house and the use as a restaurant are two distinct uses.

- iv. The change of use would not come within the provisions of Article 10 (6) as use as a Restaurant would not come within any of the use Classes identified in Schedule 2: Part 4 of the Planning and Development Regulations 2001(as amended) , and therefore would not accord with Article 10(6) (b) and (c) (ii) as it would not be for a change of use from Class 1, 2, 3, or 6 or 12 of Part 4 of Schedule 2 as restaurant would not come within such use classes.
- v. The change of use would not accord with the limitations set out in Article 10 (6) (c)(iii) , (d)(i),(d)(vi),(d) (xii) as the details submitted do not identify the length of time the structure was unoccupied, the time period required to convert the structure, does not accord with the Storage requirements of the Sustainable Urban Housing : Design Standards for New Apartments : Guidelines for Planning Authorities :DOE : July 2023, and the effluent treatment system serving the site was never certified or shown to have been installed to accord with PRR 07/382, and upgrades of this system may be required to accord with current EPA Codes of Practice.

The Planning Authority considers that “the change of use of pub/restaurant to 6 no. residential units” at Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14 CX96 is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed: 
ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT

Dated  November 2024



WICKLOW COUNTY COUNCIL
PLANNING & DEVELOPMENT ACTS 2000 (As Amended)

SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1370

Reference Number: EX97/2024

Name of Applicant: Joe McGinley

Nature of Application: Section 5 Declaration request as to whether or not: -
"the change of use of pub/restaurant to 6 no. residential units" is or is not development and is or is not exempted development.

Location of Subject Site: Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14 CX96

Report from Edel Bermingham, SEP

With respect to the query under section 5 of the Planning & Development Act 2000 as to whether "the change of use of pub/restaurant to 6 no. residential units" at Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14 CX96 is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Having regard to:

- a) The details submitted with the Section 5 Declaration
- b) PRR 07/382 and PRR 06/5875
- c) An Bord Pleanála Referral Declaration Reference RL2879, and RL2886
- d) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- e) Article 2, 9, 10 (6), and Schedule 2: Part 4 of the Planning and Development Regulations 2001 (as amended).
- f) Sustainable Urban Housing : Design Standards for New Apartments : Guidelines for Planning Authorities :DOE : July 2023

Main Reason with respect to Section 5 Declaration:

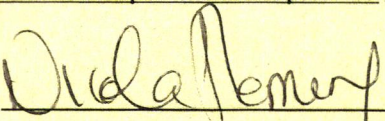
- i. The change of use of the structure to use as 6 residences would be materially different in character, have differing traffic movement, patterns of usage, and amenity requirements to usage as a public house/ restaurant. Therefore the change of use would be a material change of use and hence would be development.
- ii. The structure the subject of this exemption declaration was extended and converted by reference to PRR 07/382 and PRR 06/5875 to a public house and restaurant. From the details within PRR 07/382, the public house was located on the ground floor with the restaurant on the upper floor.
- iii. The use of the structure as a restaurant and use as a public house are considered two separate/ different uses. In this regard Public House is defined under Schedule 2 : Part 4 : Class 12 as a premises which has been licensed for the sale and

consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018. The use as a restaurant is different, in that the primary use is for the consumption of food on the premises. As such the use as a public house and the use as a restaurant are two distinct uses.

- iv. The change of use would not come within the provisions of Article 10 (6) as use as a Restaurant would not come within any of the use Classes identified in Schedule 2: Part 4 of the Planning and Development Regulations 2001(as amended) , and therefore would not accord with Article 10(6) (b) and (c) (ii) as it would not be for a change of use from Class 1, 2, 3, or 6 or 12 of Part 4 of Schedule 2 as restaurant would not come within such use classes.
- v. The change of use would not accord with the limitations set out in Article 10 (6) (c)(iii) , (d)(i),(d)(vi),(d) (xii) as the details submitted do not identify the length of time the structure was unoccupied, the time period required to convert the structure, does not accord with the Storage requirements of the Sustainable Urban Housing : Design Standards for New Apartments : Guidelines for Planning Authorities :DOE : July 2023, and the effluent treatment system serving the site was never certified or shown to have been installed to accord with PRR 07/382, and upgrades of this system may be required to accord with current EPA Codes of Practice.

Recommendation:

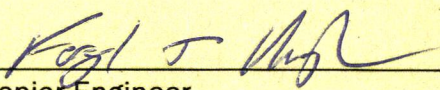
The Planning Authority considers that “the change of use of pub/restaurant to 6 no. residential units” at Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14 CX96 is development and is NOT exempted development as recommended in the report by the SEP.

Signed 

Dated 10th day of November 2024

ORDER:

I HEREBY DECLARE THAT “the change of use of pub/restaurant to 6 no. residential units” at Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14 CX96 is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed: 
Senior Engineer
Planning, Economic & Rural Development

Dated 13th day of November 2024

Section 5 Application : EX 97/2024

Date : 12th November 2024.

Applicant : Joe McGinley

Address : Farriers Inn, Kilcashel, Avoca, Co. Wicklow Y14 CX96

Whether or not :

The change of use of pub/ restaurant to 6 no. residential units.

Planning History

07/382 Permission for alterations to planning application reg. ref. 06/5875 granted on 15/11/2006 to the effect of elevation and floor plan alterations to ground floor and first floor extension with over all floor area alterations from 341sq. meters to 425sq. meters with the provision of additional car parking

3. *A competent professional with indemnity insurance shall certify the installation of the proposed effluent treatment and disposal systems in accordance with EPA Wastewater Treatment Manuals and Drawings submitted on 31/08/07. The certificate together with supporting documentation including photographic evidence shall be submitted for approval*

REASON: In the interests of public health.

4. *Prior to the commencement of development, a contract shall be entered into with the supplier of the effluent treatment plant to ensure its optimum performance over the lifetime of the proposed development and such contract shall be submitted to the Planning Authority for its approval.*

REASON: In the interests of public health.

5. *a) Excess sludge shall be removed from effluent treatment plant regularly by an authorized contractor to maintain optimum performance. A sample of effluent from the effluent treatment plant shall be tested for biochemical oxygen demand and total suspended solids each year to verify the performance of the treatment plant.*

b) The developer shall keep records of maintenance, excess sludge removal, and performance of the effluent treatment plant on file. The Planning Authority may inspect such records on file upon request.

REASON: In the interests of public health.

06/5875 Permission sought for demolition of rear Sanitary annexes and construction of a two-storey extension & change of use from public house to public house and restaurant approved subject to conditions. Condition requires that -

An Bord Pleanála Declarations

RL2879 An Bord Pleanála has concluded that the use of the premises as a guest house and restaurant with a publican's on-licence in lieu of the use of the premises as a guest house and restaurant with a special restaurant licence at number 15 Upper Stephen Street, Dublin constitutes a material change of use and is, therefore, development and is not exempted development as

- (a) an additional use, that being a public house, is introduced for part of the premises arising from a publican's on-licence in lieu of a special restaurant licence, which is not an incidental use to the main use as a guest house and restaurant,
- (b) the public house use is a change of use and is materially different from the established guest house and restaurant uses by reason of changes to trading patterns, likely impacts on neighbouring residential amenity, and social behaviour, thus constituting development within the meaning of the Planning and Development Act 2000, as amended, and
- (c) there is no provision for exemption for change of use from guest house or restaurant to public house under the exempted development provisions of the Planning and Development Regulations, 2001, as amended:

RL.2886

An Bord Pleanála has concluded that the use of the premises as a guest house and restaurant with a publican's on-licence in lieu of the use of the premises as a guest house and restaurant with a special restaurant licence at number 15 Upper Stephen Street, Dublin constitutes a material change of use and is, therefore, development and is not exempted development as

- (a) the change of use from public house to restaurant use constitutes a material change of use and constitutes development within the meaning of section 3(1) of the 2000 Act,
- (b) the change of use from public house to use as a restaurant is not exempted development under section 4(1) of the 2000 Act, as amended,
- (c) the change of use from public house to use as a restaurant is not exempted development under Class 14 of Part 1 of Schedule 2 of the 2001 Regulations and therefore, is not exempted development under article 6(1) of the 2001 Regulations or section 4(2) of the 2000 Act,
- (d) public house use and restaurant use do not fall within the same Class, as specified under Part 4 of Schedule 2 of the 2001 Regulations and therefore,
- (e) the change of use from public house to restaurant use is not exempted development under article 10(1) of the 2001 Regulations or section 4(2) of the 2000 Act, and
- (f) the change of use from public house use to use as a restaurant would contravene condition number 3 of permission PL 09.234570 and therefore, the proposed development would not be exempted development by virtue of article 9(1) of the 2001 Regulations:

Sustainable Urban Housing : Design Standards for New Apartments : Guidelines for Planning Authorities :DOE : July 2023

Required Minimum Floor Areas and Standards

Minimum overall apartment floor areas

Studio	37 sq m (n/a)*
One bedroom	45 sq m (38 sq m)*
Two bedrooms (3 person)**	63 sq m (n/a)*
Two bedrooms (4 person)	73 sq m (55 sq m)*
Three bedrooms	90 sq m (70 sq m)*

* Figures in brackets refer to 1995 guidelines

**Permissible in limited circumstances

Minimum aggregate floor areas for living/dining/kitchen rooms, and minimum widths for the main living/dining rooms

Apartment type ***	Width of living/dining room	Aggregate floor area of living / dining / kitchen area*
Studio	4m**	30 sq m**
One bedroom	3.3 m	23 sq m
Two bedrooms (3 person)	3.6m	28 sq m
Two bedrooms (4 person)	3.6 m	30 sq m
Three bedrooms	3.8 m	34 sq m

* Note: An enclosed (separate) kitchen should have a minimum floor area of 6.5 sq metres

**Note: Combined living/dining/bed space, also includes circulation

*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas.

Minimum bedroom floor areas/widths***

Type	Minimum width	Minimum floor area
Studio	4m**	30 sq m**
Single bedroom	2.1 m	7.1 sq m
Double bedroom	2.8 m	11.4 sq m
Twin bedroom	2.8 m	13 sq m

* Note: Minimum floor areas exclude built-in storage presses that are contributing to storage space requirements

**Note: Combined living/dining/bed space

Minimum aggregate bedroom floor areas

One bedroom	11.4 sq m
Two bedrooms (3 person)	13 + 7.1 sq m = 20.1 sq m
Two bedrooms (4 person)	11.4 + 13 sq m = 24.4 sq m
Three bedrooms	11.4 + 13 + 7.1 sq m = 31.5 sq m

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Minimum storage space requirements

Studio	3 sq m
One bedroom	3 sq m
Two bedrooms (3 person)	5 sq m
Two bedrooms (4 person)	6 sq m
Three or more bedrooms	9 sq m

Minimum floor areas for private amenity space

Studio	4 sq m
One bedroom	5 sq m
Two bedrooms (3 person)	6 sq m
Two bedrooms (4 person)	7 sq m
Three bedrooms	9 sq m

Minimum floor areas for communal amenity space

Studio	4 sq m
One bedrooms	5 sq m
Two bedrooms (3 person)	6 sq m
Two bedrooms (4 person)	7 sq m
Three bedrooms	9 sq m

Relevant Legislation :

Planning and Development Act 2000 (as amended)

Section 2 : (1) In this Act, except where the context otherwise requires—

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate,

“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 :

3.—(1) In this Act, “development” means, except where the context otherwise requires,

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or

Section 4(2) provides that the Minister may by regulations provide any class of development to be exempted development. The Regulations which are applicable in this case are the Planning and Development Regulations 2001 (as amended).

Section 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;

(3); A reference in this Act to exempted development shall be construed as a reference to development which is—

(a) any of the developments specified in *subsection (1)*, or

(b) development which, having regard to any regulations under *subsection (2)*, is exempted development for the purposes of this Act.

Planning and Development Regulations 2001(as amended)

Article 5 Interpretation

'shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

- (a) for the retail sale of goods,
 - (b) as a post office,
 - (c) for the sale of tickets or as a travel agency,
 - (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,
 - (e) for hairdressing,
 - (f) for the display of goods for sale,
 - (g) for the hiring out of domestic or personal goods or articles,
 - (h) as a launderette or dry cleaners,
 - (i) for the reception of goods to be washed, cleaned or repaired,
- but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

Article 10(6) – inserted *by the* Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018) -

(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 8 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 or 12 of Part 4 to Schedule 2

< See Full Article for Restrictions >

Schedule 2 : Part 4

CLASS 1-Use as a shop

CLASS 2 -Use for the provision of— (a) financial services, (b) professional services (other than health or medical services), (c) any other services (including use as a betting office), where the services are provided principally to visiting members of the public.

CLASS 3 Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

CLASS 6-Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

CLASS 12-Use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018.

Assessment :

The querist seeks confirmation that the conversion of Farriers Inn which operated as a pub/ restaurant to 6 residential units, is development and is exempted development.

The change of use from public house/ restaurant to use as residences would be materially different in character, have differing traffic movement, patterns of usage, and amenity requirements to usage as a public house/ restaurant. It is therefore considered that the change of use would be material, and therefore development having regard to the definition set out in Section 3(1)(a) of the Planning and Development Act 2000(as amended).

The next question is therefore would the conversion come within the provisions set out under Article 10 (6), and the following sets out compliance with respect to each element of Article 10 (6):

(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 or 12 of Part 4 to Schedule 2

The structure the subject of this exemption declaration was extended and converted by reference to PRR 07/382 and PRR 06/5875 to a public house and restaurant. From the details within PRR 07/382,the public house was located on the ground floor with the restaurant on the upper floor. As evident from Streetview c. 2009, the development was clearly identifiable as a separate Restaurant usage. //

2009 Streetview





The use of the structure as a restaurant and use as a public house are considered two separate uses. //
 Public house is defined under Schedule 2 : Part 4 : Class 12 as a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018. The use as a restaurant is different type of use as a public house in that it's primary use is for the consumption of food on the premises. This distinction is further supported in the Regulations which separate such uses out in the definition of shop. As such the use as a public house and the use as a restaurant are two distinct uses.

Therefore the conversion of the restaurant element to residential use would not come within the use type set out under Class 12, and therefore would not come within the provisions of Article 10(6).

(c) (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

Yes - structure was completed prior to the 8th February 2018

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

No, only the ground floor has been used as Class 12, upper floor is a separate restaurant use.

(c)(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).

Unknown –no information submitted in respect of same.

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

The relevant period is the 18th February 2018 until 31 December 2025 - no indication when works will be completed.

(d) (ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with subparagraph (vii), shall – (I) primarily affect 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.

The works will primarily ~~affect~~ the interior of the structure, and ~~not~~ details of works to exterior identified..

(d) (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.

N/A

(d)(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.

N/A

(d)(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.

6 residential units to be provided.

(d)(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.

Storage areas identified for Unit 1, 2, and 5 are below the Minimum Storage Area requirements set out in Appendix 1 of the Apartment Guidelines.

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

Yes.

(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.

The development will not contravene a condition.

(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.

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 Evident - Permission was granted for the development subject to the installation of a wastewater treatment plant and soil polishing filter . No details were submitted to show that such works were undertaken, and it is not evident that further works aren't required to upgrade or ensure that this system would accord with EPA Codes of Practice.

Conclusion :

As identified in the above assessment the change of use from review it would appear that the change of use would not come within the provisions of Article 10(6).

Recommendation :

With respect to the query under Section 5 of the Planning and Development Act 2000(as amended), as to whether

the change of use of pub/ restaurant to 6 no. residential units at Farriers Inn, Kilcashel, Avoca, Co. Wicklow Y14 CX96

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

The Planning Authority considers that the change of use of pub/ restaurant to 6 no. residential unit is Development and is **Not Exempted Development**

Main Considerations with respect to Section 5 Declaration :

- a) The details submitted with the Section 5 Declaration
- b) PRR 07/382 and PRR 06/5875
- c) An Bord Pleanala Referral Declaration Reference RL2879, and RL2886
- d) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- e) Article 2, 9, 10 (6), and Schedule 2 : Part 4 of the Planning and Development Regulations 2001 (as amended).
- f). Sustainable Urban Housing : Design Standards for New Apartments : Guidelines for Planning Authorities :DOE : July 2023

Main Reasons with respect to Section 5 Declaration :

- i. The change of use of the structure to use as 6 residences would be materially different in character, have differing traffic movement, patterns of usage, and amenity requirements to usage as a public house/ restaurant. *Therefore, the change of use would be a material change of use and hence would be development.*
- ii. The structure the subject of this exemption declaration was extended and converted by reference to PRR 07/382 and PRR 06/5875 to a public house and restaurant. From the details within PRR 07/382, the public house was located on the ground floor with the restaurant on the upper floor.
- iii. The use of the structure as a restaurant and use as a public house are considered two separate/ different uses. In this regard Public House is defined under Schedule 2 : Part 4 : Class 12 as a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018. The use as a restaurant is different, in that the primary use is for the consumption of food on the premises. As such the use as a public house and the use as a restaurant are two distinct uses.
- iv. The change of use would not come within the provisions of Article 10 (6) as use as a Restaurant would not come within any of the use Classes identified in Schedule 2: Part 4 of the Planning and Development Regulations 2001(as amended) , and therefore would not

accord with Article 10(6) (b) and (c) (ii) as it would not be for a change of use from Class 1, 2, 3, or 6 or 12 of Part 4 of Schedule 2 as restaurant would not come within such use classes.

- v. The change of use would not accord with the limitations set out in Article 10 (6) (c)(iii) , (d)(i),(d)(vi),(d) (xii) as the details submitted do not identify the length of time the structure was unoccupied, the time period required to convert the structure, does not accord with the Storage requirements of the Sustainable Urban Housing : Design Standards for New Apartments : Guidelines for Planning Authorities :DOE : July 2023, and the effluent treatment system serving the site was never certified or shown to have been installed to accord with PRR 07/382, and upgrades of this system may be required to accord with current EPA Codes of Practice.

361 Cunningham St

12/11/2024

*Issue declaration is recommended as modified
Mogil to Mogil
12/11/24*



**Comhairle Contae Chill Mhantáin
Wicklow County Council**

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development**

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

MEMORANDUM

WICKLOW COUNTY COUNCIL

**TO: Edel Bermingham
Senior Executive Planner**

**FROM: Nicola Fleming
Staff Officer**

**RE:- Application for Certificate of Exemption under Section 5 of the
Planning and Development Acts 2000 (as amended).
EX97/2024**

I enclose herewith application for Section 5 Declaration received completed on 25/10/2024

The due date on this declaration is 21st November 2024.



**Staff Officer
Planning, Economic & Rural Development**





COMHAIRLE CONTAE CHILL Mhantáin Wicklow County Council

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development**

Áras An Chontae / County Buildings
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Guthán / Tel (0404) 20148
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Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website www.wicklow.ie

29th October 2024

**Wherity Chartered Surveyors Ltd
Unit 4, Block 4
City North Business Campus
Stamullen
Co. Meath
K32 KC65**

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX97/2024 – Joe McGinley

A Chara

I wish to acknowledge receipt on 25/10/2024 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 21/11/2024.

Mise, le meas

**Nicola Fleming
Staff Officer
Planning, Economic & Rural Development**





Wherity Chartered Surveyors Ltd.
Unit 4, Block 4,
City North Business Campus,
Stamullen,
Co. Meath.
K32 KC65
Tel: 01 841 30 45
Mob: 0871216081
Email: info@wherity.ie
Web: www.wherity.ie
26th September 2024

Our File Ref: 24028
The Planning Department,
Wicklow County Council,
County Buildings,
Wicklow,
Co. Wicklow

~~10/23/24~~
A67FW96

Joe McGinley, Farriers Inn Kilcashel, Avoca, Co. Wicklow Y14CX96, section 5 & Article 10(6) applications for Change of use from pub/restaurant to 6 No. residential units.

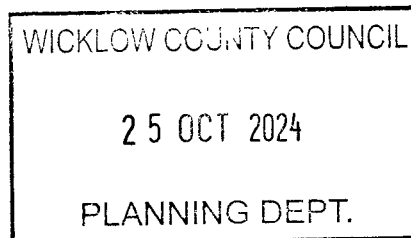
Dear Sir / Madam,

On behalf of the above applicant please find enclosed planning application and associated documents for Section 5 & Article 10(6) applications .

Should you have any queries in relation to the matter please do not hesitate to contact us.

Yours faithfully,

Pat Murphy
Surveyor
B.Sc (Hons) Build. Surv. Dip P.M.
Wherity Chartered Surveyors





Wherity Chartered Surveyors Ltd.
 Unit 4, Block 4,
 City North Business Campus,
 Stamullen,
 Co. Meath
 K32 KC65
 Tel. 01 841 30 45
 Mob: 0871216081
 Email: info@wherity.ie
 Web: www.wherity.ie

Project:	Joe Mc Ginley				
Location:	Farriers Inn Kilcashel, Avoca, Co. Wicklow Y14CX96.				
Project:	Section 5				
Drawings Issued To:	Wicklow County Council			Date:	23-10-2024
Dwg / Doc. No.	Size	Description		No. Copies	Scale
24028-PP-010	A1	Site Location Map & Layout Plan		2	As Shown
24028-PP-020	A1	Elevations		2	As Shown
24028-PP-030	A1	Existing & Proposed Floor Plans		2	As Shown
Application Fee €80.00		Date: 23-10-2024		1	
Section 5 Application form	A4	Date: 22-10-2024		1	
Tailte Éireann Receipt/copyright receipt	A4	50429614		1	

Wicklow County Council
County Buildings
Wicklow
0404-20100

29/10/2024 10 01 40

Receipt No L1/0/336407

WHERITY CHARTERED SURVEYORS

EXEMPTION CERTIFICATES	80 00
GOODS	80 00
VAT Exempt/Non-vatable	

Total 80 00 EUR

Tendered
Cheque 80 00
24028 JOE MCGINLEY

Change 0 00

Issued By Cindy Driver
From Customer Service Hub
Vat reg No 0015233H



Wicklow County Council
County Buildings
Wicklow
Co Wicklow
Telephone 0404 20148
Fax 0404 69462

Office Use Only

Date Received _____

Fee Received _____

**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

(a) Joe Mc Ginley _____

Address of applicant: _____

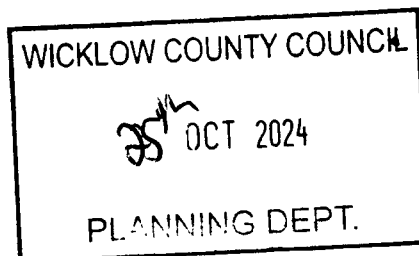
TUDOR HALL, THE HILL, MONKSTOWN, BLACKROCK, CO. DUBLIN,
A94 A7N5 _____

Note Phone number and email to be filled in on separate page.

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) Shane Wherity _____

Address of Agent : Wherity Chartered Surveyors Ltd. Unit 4, Block 4, City North
Business Campus, Stamullen, Co. Meath ~~K~~32 KC65 _____



Note Phone number and email to be filled in on separate page.

3. Declaration Details

i. Location of Development subject of Declaration: Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14 CX96 _____

ii. Are you the owner and/or occupier of these lands at the location under i. above ?
Yes/ No. Yes

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier _____

iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, an payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration

Change of use from pub/restaurant to 6 No residential units _____

Additional details may be submitted by way of separate submission.

v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration

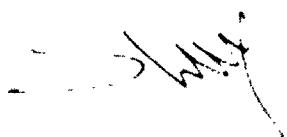
ARTICLE 10(6) CHANGE OF USE EXEMPTION
APPLICATION SUBMITTED WITH THIS
SECTION 5 APPLICATION

Additional details may be submitted by way of separate submission.

vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure) ? No _____

vii. List of Plans, Drawings submitted with this Declaration Application _____
24028-PP-010 Site Location Map & Layout Plan _____
24028-PP-020 Elevations _____
24028-PP-030 Existing & Proposed Floor Plans _____

viii. Fee of € 80 Attached ? YES CHEQUE ENCLOSED


Signed : _____ Dated : 22-10-2024

Additional Notes :

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below :

A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- Site Location Map
- Floor area of structure in question - whether proposed or existing.
- Floor area of all relevant structures e.g. previous extensions.
- Floor plans and elevations of relevant structures.
- Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.

C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.



Tailte
Éireann

Invoice / Receipt

Tailte Éireann
Surveying
Phoenix Park, Dublin 8
D08 F6E4
VAT No. IE 4102063GH
custserv@tailte.ie
+353-1-802-5300

Invoice #: 50429614
Invoice Date: 22 Oct 2024, 10:20:53
Order Date: 22 Oct 2024, 10:17:43

Sold to:
WHERITY CHARTERED SURVEYORS WHERITY
CHARTERED SURVEYORS
Unit 4 Block 4 City North Business Campus
Stamullen, Meath, K32 KC65
Ireland
T: 018413045

Payment Method

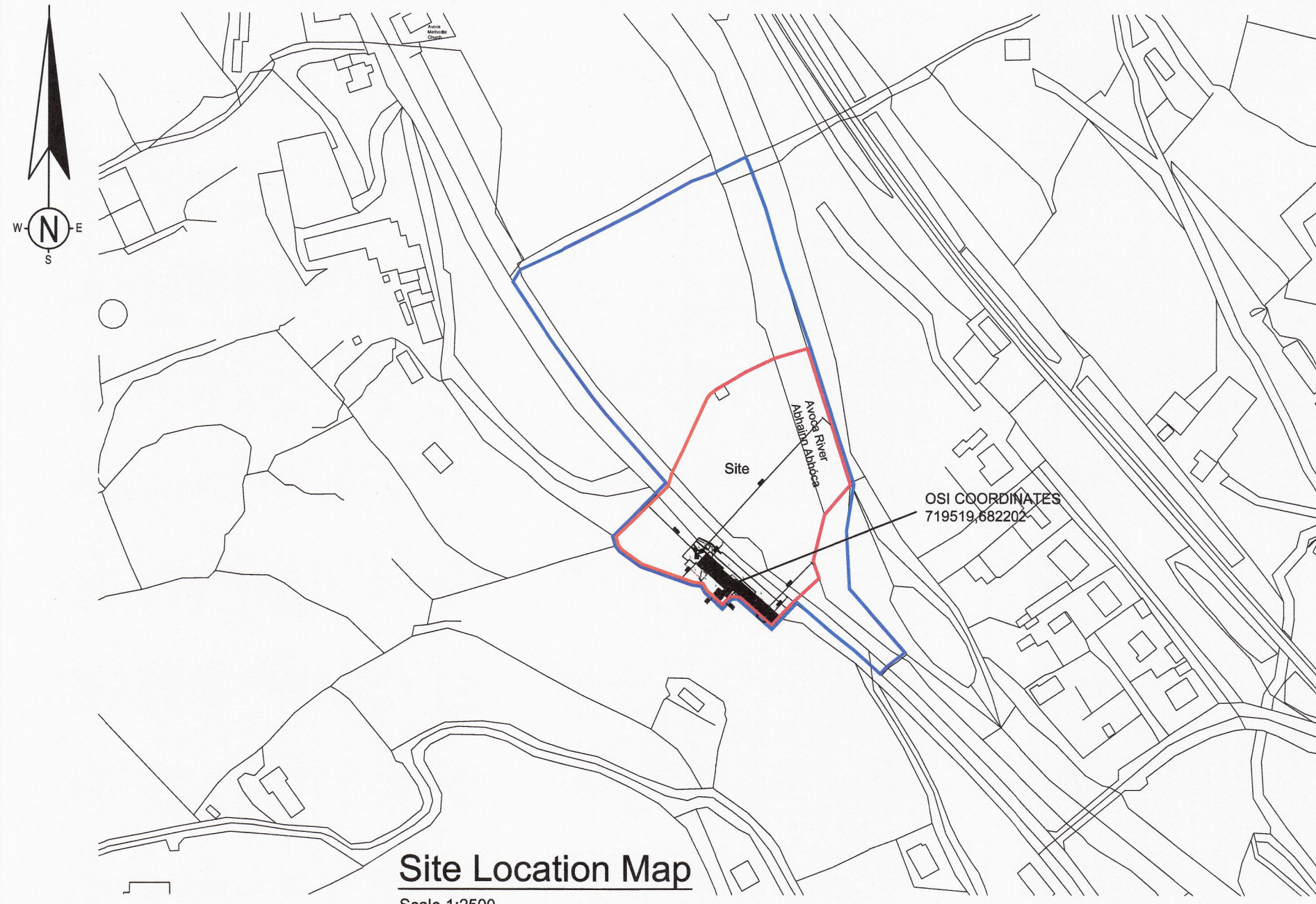
Pay by Card Terminal

Product	SKU	Price	Qty	VAT %	Tax	Subtotal
Planning Pack 719501,682266, A4, 1:2,500, Landscape, AutoCAD DWG , ITM	471018	€85.00	1	23.0 %	€19.55	€104.55

Subtotal: €85.00

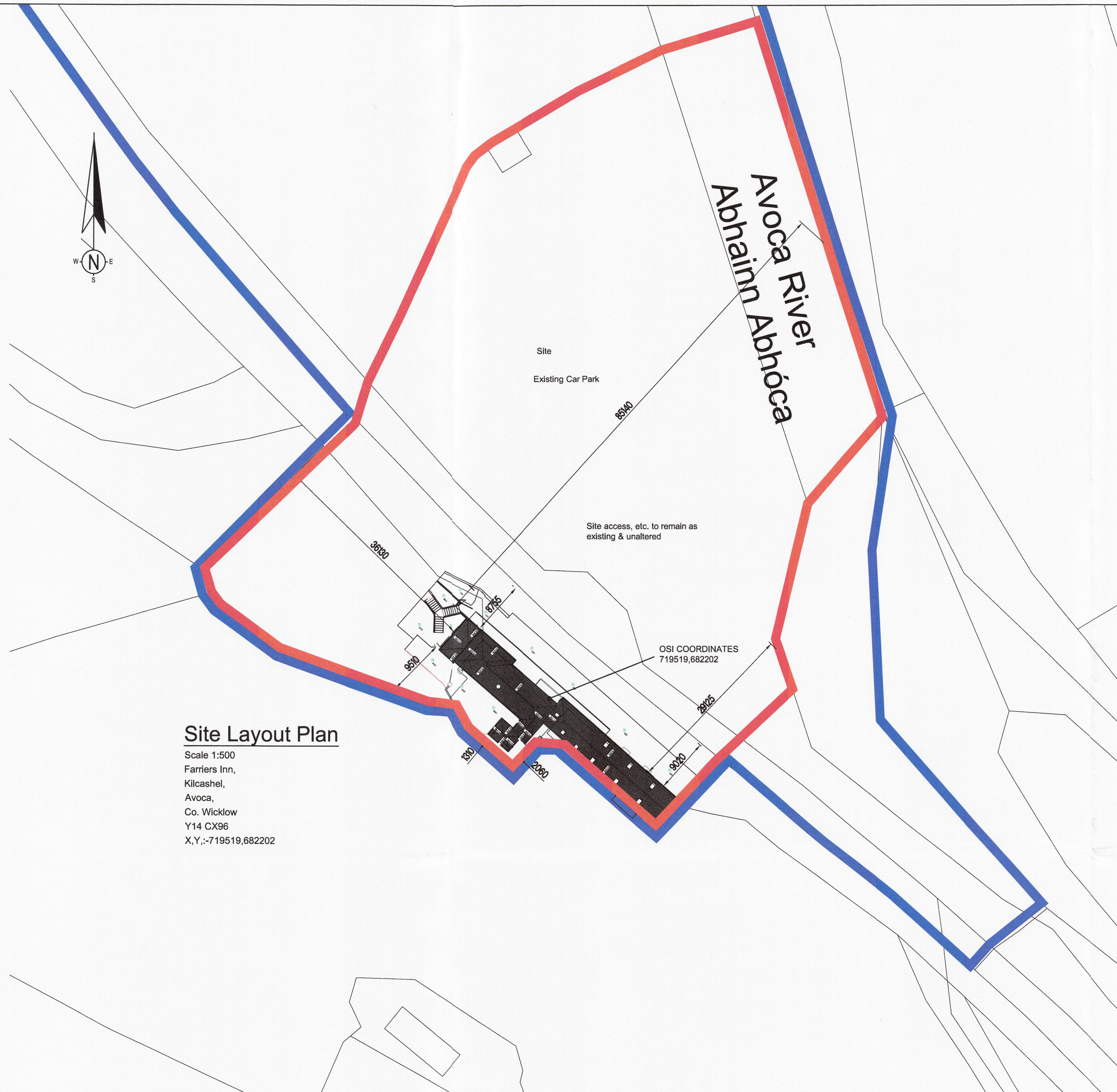
Tax: €19.55

Grand Total: €104.55



Site Location Map

Scale 1:2500
 Farriers Inn,
 Kilcashel,
 Avoca,
 Co. Wicklow
 Y14 CX96
 X,Y,-719519,682202



Site Layout Plan

Scale 1:500
 Farriers Inn,
 Kilcashel,
 Avoca,
 Co. Wicklow
 Y14 CX96
 X,Y,-719519,682202

- NOTES**
- All dimensions to be checked on site.
 - No Dimensions to be scaled from the drawing.
 - All Discrepancies to be notified to the Surveyor / Architect.
 - All work to be carried out in accordance with the Current Building Regulations and Relevant Codes of Practice.
 - This drawing to be read in conjunction with specification and consultants drawings.
 - Boundaries shown are for planning purposes only and not to be used as evidence of title.

Dimensions refer to:
 (a) minimum aggregate openable leaf width of doors;
 (b) width of corridor measured between finished surface of walls or other-faced obstructions (such as protruding columns) at shoulder level, subject to handrails not intruding more than 100mm or skirtings not intruding more than 30mm into the measured width;
 (c) clear width of stairway measured between walls or balustrades subject to handrails intruding not more than 100mm or stringers not intruding more than 30mm into the clear width.

Escape doors and windows
 Escape doors and escape windows having an unobstructed opening not less than 850mm high and 500mm wide which should be secured with fastenings which are readily operable from the inside. The bottom of the window opening to be not more than 1100mm and not less than 800mm above the floor of the room within which it is situated. The ground beneath the window is to be clear of any obstructions such as railings or horizontally hung windows and is to comprise a surface suitable for pitching portable ladders from.

This drawing is to read in conjunction with Wherity Chartered Surveyors Compliance Report and / M&E Consultant Specifications.

It is noted that this drawing does not indicate the fire protection of service ducts. For the options in relation to same refer to Compliance Report / M&E Consultant Specifications.

Safety Glazing
 Any glazing in a critical location must be laminated or toughened to B.S. 6206 Clause 5.3. A critical location is any glazed area within 800mm from finished floor level in a wall or partition or 1500mm in a door or side panel.

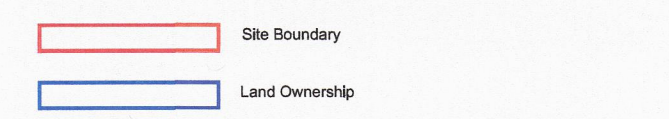
Emergency Escape Lighting to be in accordance with I.S. 3217 - 2013
 String of essential emergency escape lighting luminaires;
 An emergency escape lighting luminaire shall be sited at points where it is necessary to emphasise the position of potential hazards:

- near each intersection of corridors,
- at each exit door and emergency exit door,
- near each change to direction (other than on a staircase),
- near each staircase so that each flight of stairs receives direct light
- near any other change of floor level
- outside each final exit and close to it,
- near each fire alarm call point
- near fire fighting equipment
- at exit and safety signs required by the enforcing authority,
- near each first aid post
- in each refuge area as defined in Part M of the Building Regulations. (To calculate as "near", measure 2m horizontally)

All Fire Detection and Alarm systems to be in accordance with I.S. 3216

Siting of smoke and heat detectors generally:
 a) at a ratio of 1 per 100m² of floor area in each room.
 b) at top of staircase
 c) no more than 10.5m apart on landings
 d) in service ducts where a person can climb into them for servicing
 e) common spaces in w/c's
 f) in w/c's that open onto escape routes
 -this list is not exhaustive and is superseded by I.S. 3218

Any landing valves on dry rising main to conform BS5306: Part 1: 1988.
 Any Inlet valves to dry rising main conforming with BS5306: Part 1: 1988.
 Any Fire Hydrants to conform with BS759: 1984 Specification for Underground Fire Hydrants and Surface Box Frames and Covers.
 Any Firefighting lifts to conform with relevant recommendations of BS5306: Part 5: 1991.



Planning

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WCS
WHERITY CHARTERED SURVEYORS

Wherity Chartered Surveyors
 Unit 4, Block 4, CityNorth Business Campus,
 Stomullen, Co. Meath
 Eircode K32R75
 Tel: 01-841 30 45
 Mob: 087-121 6081
 Email: wherity@gmail.com
 Web: www.wherity.ie

<small>Client:</small> Joe Mc Ginley.	<small>Project:</small> Farriers Inn (Avoca).
<small>Address:</small> Farriers Inn, Kilcashel, Avoca, Co. Wicklow, Y14CX96.	<small>Drawn:</small> P.Murphy <small>Checked:</small> D.Lambe
<small>Rev:</small> -	<small>Date:</small> 30-07-2024 <small>Approved:</small> S.Wherity
<small>Project No.:</small> 24028	<small>Scale:</small> As Shown @A1
<small>Drawing No.:</small> PP-00000	<small>SCALES:</small> As Shown @A1

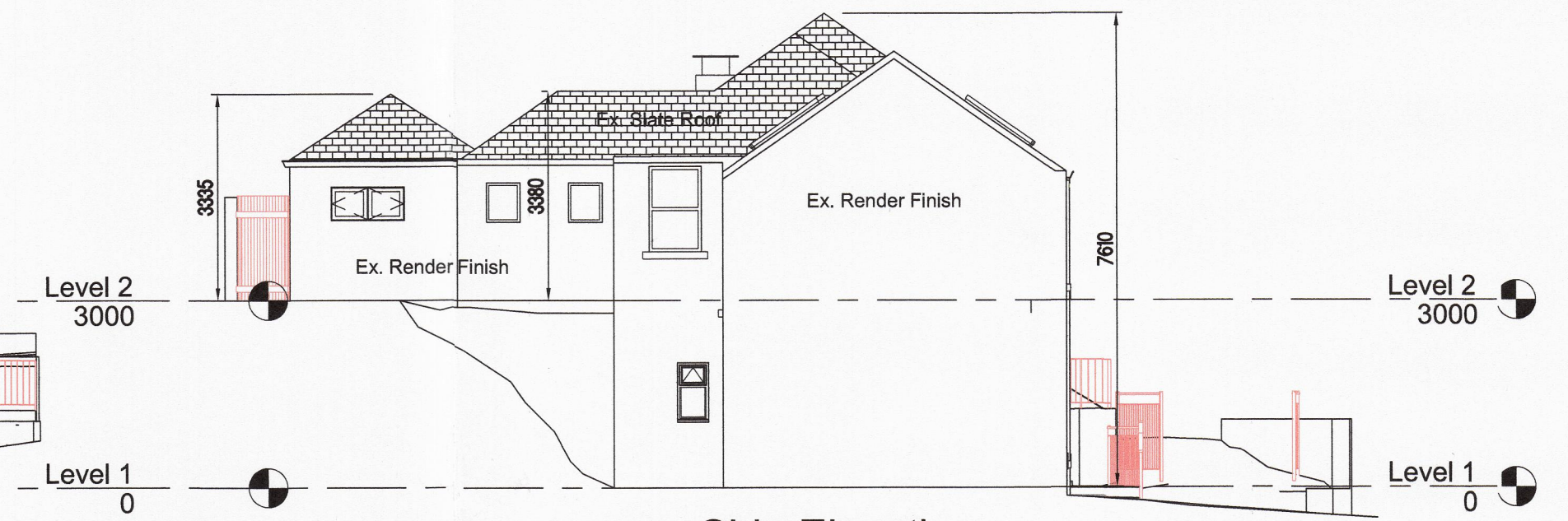
Site Location Map & Site Layout Plan,

NOTES

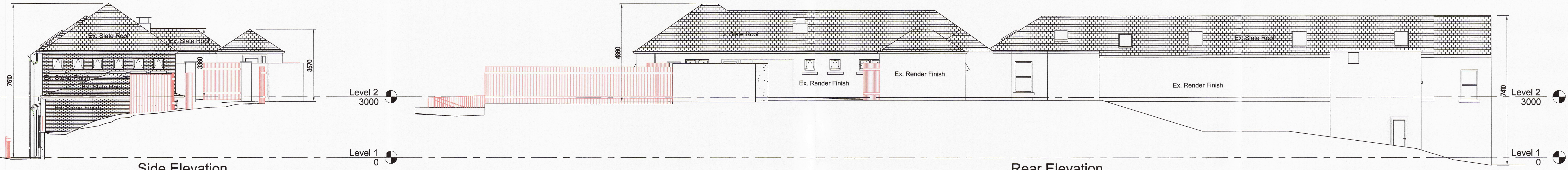
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Front Elevation
Scale 1:100



Side Elevation
Scale 1:100



Side Elevation
Scale 1:100

Rear Elevation
Scale 1:100

Planning

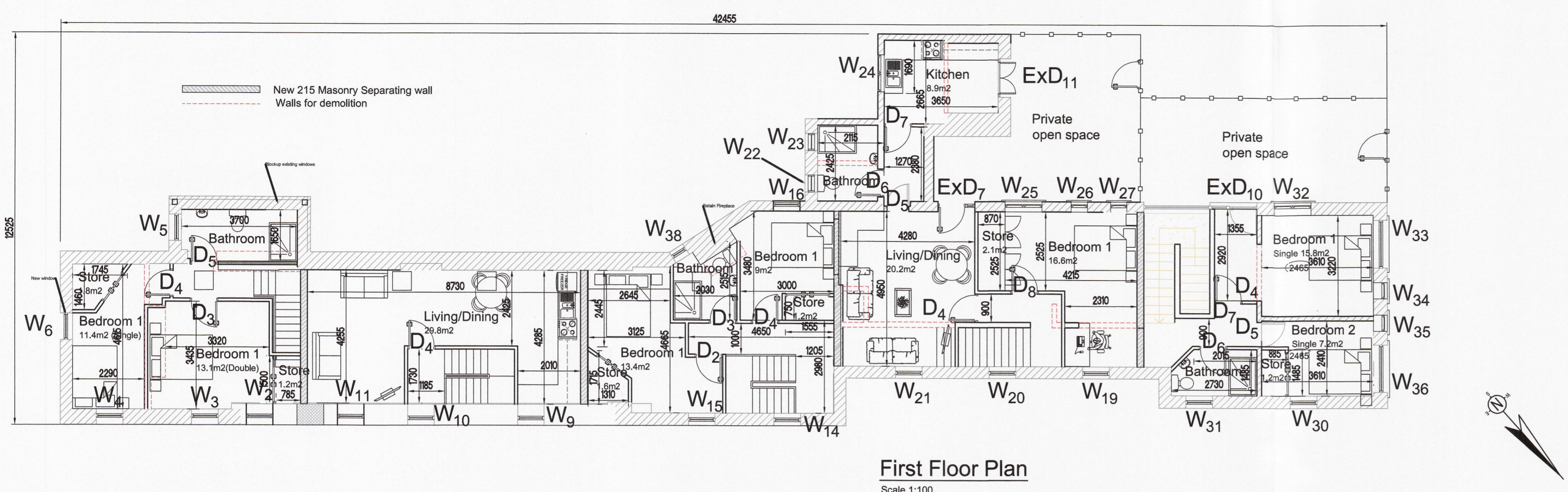
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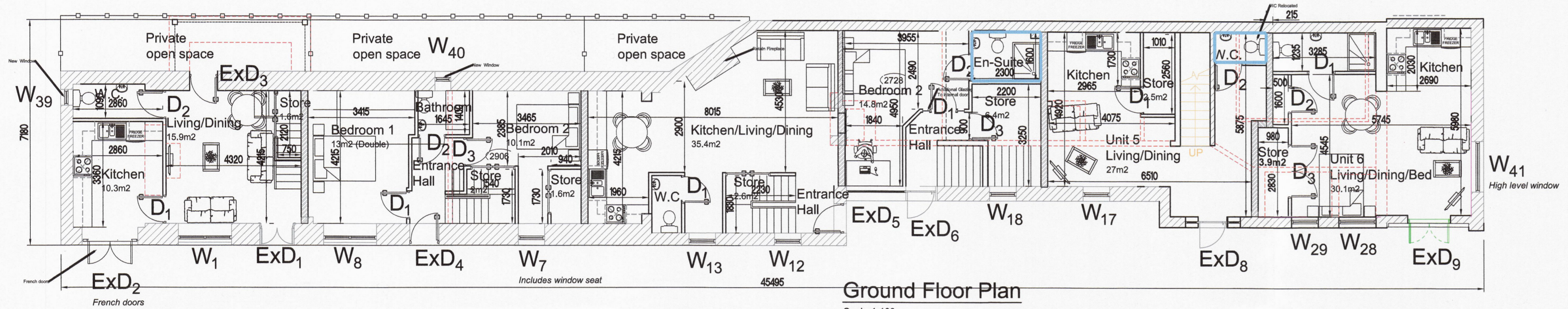
Wherty Chartered Surveyors
Unit 4, Block 4, CityNorth Business Campus,
Stamullen, Co. Meath.
Eirecode: K32K770
Tel: 01-841 30 45
Mob: 087-121 6081
Email: wherty@gmail.com
Web: www.wherty.ie

Client:	Joe Mc Ginley.	Project:	Farriers Inn (Avoca).
Address:	Farriers Inn Kilcasshel, AVOCS, Co. Wicklow, Y14CX96.	Drawn:	P.Murphy
Check:		Checked:	D.Lambe
Rev:	-	Date:	30-07-2024
Approved:		Approved:	S.Wherty
Project No:	24028	Drawing No:	PP-020
Scale:	As Shown @A1	Scale:	As Shown @A1
Title:	Elevations	Scale:	As Shown @A1

- NOTES**
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First Floor Plan
Scale 1:100

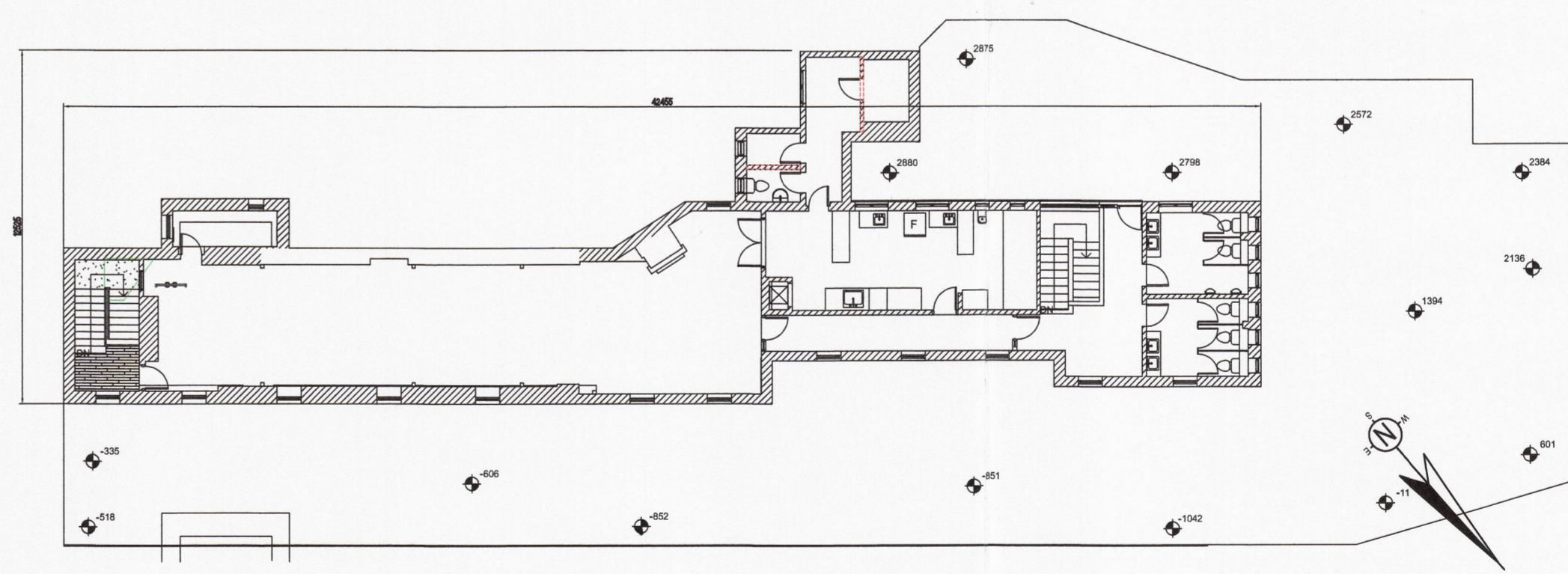


Ground Floor Plan
Scale 1:100

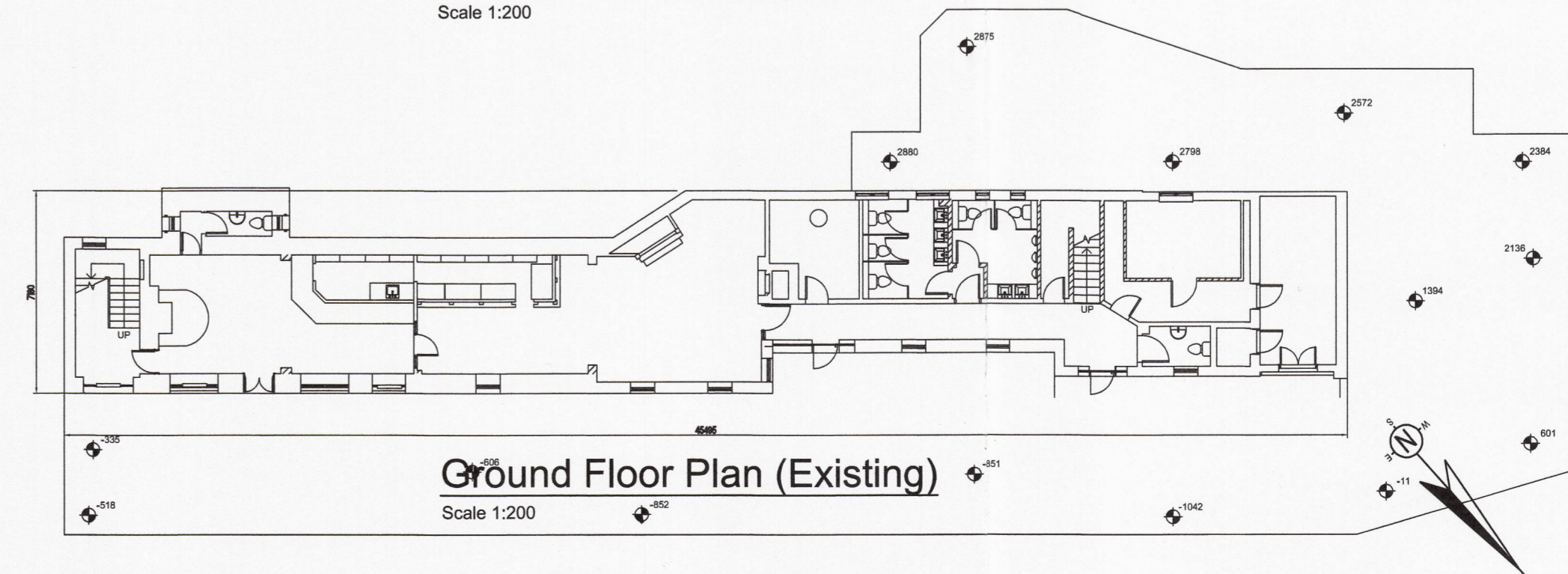
Unit 1. F.F.L. 39.5m2 G.F.L. 32.1m2 Total: 71.6m2	Unit 2. F.F.L. 36.4m2 G.F.L. 36.1m2 Total: 72.5m2	Unit 3. F.F.L. 43.0m2 G.F.L. 43.2m2 Total: 86.2m2	Unit 4. F.F.L. 65.4m2 G.F.L. 31.3m2 Total: 96.7m2	Unit 5. F.F.L. 42.5m2 G.F.L. 36.3m2 Total: 78.8m2	Unit 6. G.F.L. 39.4m2 Total: 39.4m2
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Assesment of Quality Housing for sustainable communities

Unit	Minimum Requirements Areas m2 & (Dimensions m)	Areas Provided m2 & (Dimensions m)	Min bedroom areas required Double	Bedroom areas provided Double
Unit 1 2 Story 2 bed				
Gross Floor Area	70m2	71.8m2		
Living Area	13m2 (3.6m)	15.9m2 (4.215m)		
Aggregate Living Area	28m2	28.2m2		
Aggregate Bedroom Area	20m2	23.3m2	13m2 (2.8m)	13.1m2 (3.32m)
Storage Area	3m2	4.6m2		
Unit 2 2 Story 2 bed				
Gross Floor Area	70m2	72.5m2		
Living Area	13m2 (3.6m)	28.8m2 (4.225m)		
Aggregate Living Area	28m2	28.8m2		
Aggregate Bedroom Area	20m2	33.1m2	13m2 (2.8m)	13m2 (3.050m)
Storage Area	3m2	6.6m2		
Unit 3 2 Story 2 bed				
Gross Floor Area	70m2	72.5m2		
Living Area	13m2 (3.6m)	35.4m2 (4.2m)		
Aggregate Living Area	28m2	35.4m2		
Aggregate Bedroom Area	20m2	22.4m2	13m2 (2.8m)	13.4m2 (3.125m)
Storage Area	3m2	5.4m2		
Unit 4 2 Story 2 bed				
Gross Floor Area	70m2	72.5m2		
Living Area	13m2 (3.6m)	20.2m2 (4.3m)		
Aggregate Living Area	28m2	29.1m2		
Aggregate Bedroom Area	20m2	31.4m2	13m2 (2.8m)	16.6m2 (4.3m)
Storage Area	3m2	6.5m2		
Unit 5 2 Story 2 bed				
Gross Floor Area	70m2	72.5m2		
Living Area	13m2 (3.6m)	27m2 (4.1m)		
Aggregate Living Area	28m2	27m2		
Aggregate Bedroom Area	20m2	15.8m2	13m2 (2.8m)(Single)	15.8m2 (3.22m)
Storage Area	3m2	3.7m2		
Unit 6 1 Story 1 bed				
Gross Floor Area	44m2	39.4m2		
Living Area	11m2 (3.3m)	30.1m2 (4.5m)		
Aggregate Living Area	23m2	30.1m2		
Aggregate Bedroom Area	11m2	30.1m2	11m2 (3.3m)	30.1m2 (4.5m)
Storage Area	2m2	3.9m2		



First Floor Plan (Existing)
Scale 1:200



Ground Floor Plan (Existing)
Scale 1:200

Planning

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Tel: 01-841 30 45
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Email: wherty@meath.com
Web: www.wherty.ie

Client: Joe Mc Ginley.	Project: Fariers Inn (Avoca).
Address: Fariers Inn, Kilsheel, Avoca, Co. Wicklow, Y14CX96.	Drawn: P.Murphy
	Checked: D.Lambe
Rev: -	Date: 30-07-2024
Project No: 24028	Drawing No: PP-030
	Scale: As Shown @A1
TITLE: Proposed & Existing Floor Plans	
SCALES: As Shown @A1	