



**PLANNING & DEVELOPMENT ACT, 2000 (as amended)**

**Application for a Section 5 Declaration  
Development / Exempted Development**

**1. Applicant's address/contact details:**

Applicant	MR. JOHN LEAHY
Address	CLASHDRUMSMITH EMLY CO. TIPPERARY E34 DX59
Telephone No.	[REDACTED]
E-mail	[REDACTED]

**2. Agent's (if any) address:**

Agent	CATHERINE O'BRIEN MRIAI
Address	LONGSTONE HOUSE, LONGSTONE, CULLEN, CO. TIPPERARY E34 XT51
Telephone No.	[REDACTED]
E-mail	[REDACTED]
Please advise where all correspondence in relation to this application is to be sent;	
Applicant [ ]      Agent [ x ]	

**3. Location of Proposed Development:**

Postal Address or Townland or Location (as may best identify the land or structure in question)	CLASHDRUMSMITH EMLY CO. TIPPERARY E34 DX59
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**TIPPERARY CO. COUNCIL  
RECEIVED**  
26 JAN 2024  
PLANNING SECTION  
FILE NO. ....

Tipperary County Council  
RECEIVED  
26 JAN 2024  
CASH OFFICE  
Civic Offices, Clonmel

AN 177 691  
€ 80 CHARGE  
26 01 2024

**4. Development Details:**

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

My client previously applied for planning permission in 1986, (Planning Reference
No.: P310921) .He was granted permission on the 26th of June 1986.
He added <sup>2</sup> additional <del>square</del> <sup>dormer</sup> windows looking out the back over farmland and added a small dining area to his kitchen and he would like to ensure that he is still in full compliance with the Planning and Development regulations. He is not overlooking any neighboring properties as the house is located in a very rural hinterland, approx 2 miles
outside Emly Village.
Proposed floor area of proposed works/uses: 17 sqm Breakfast rm - G.F.L. 2 sqm Dormer window First Floor level

**5. Legal Interest of Applicant in the Land or Structure:**

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <b>Owner</b>	B. Occupier
	C. Other	
Where legal interest is 'Other', please expand further on your interest in the land or structure	<b>Not applicable - full owner</b>	
If you are not the legal owner, please state the name and address of the owner	Name:	Address: <b>Not applicable - full owner</b>

Signature of Applicant(s)



Date: 22/01/2024

**Note: If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.**



**GUIDANCE NOTES**

(1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.

(2) This application should be accompanied by **TWO COPIES** of the following documentation

- OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
- Floor Plans & Elevations at a scale of not less than 1:200
- Site layout plan indicating position of proposed development relative to premises and adjoining properties
- Other details e.g. brochures, photographs if appropriate.

(All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)

(3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

**This application form and relevant fee should be submitted to:**

<b>Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary</b>	<b><u>OR</u></b>	<b>Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary</b>
<b>Enquires:</b>		
<b>Telephone 0818 06 5000</b>		
<b>E-Mail <a href="mailto:planning@tipperarycoco.ie">planning@tipperarycoco.ie</a></b>		

**FOR OFFICE USE ONLY**

**DATE STAMP**

**Fee Recd. €** \_\_\_\_\_

Receipt No \_\_\_\_\_

Date \_\_\_\_\_

Receipted by \_\_\_\_\_



Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary

E91 N512

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
An tAonach,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary

E45 A099

t 0818 06 5000  
e customerservice  
@tipperarycoco.ie

[tipperarycoco.ie](http://tipperarycoco.ie)

Our Ref: S5/24/10

Date: 29<sup>th</sup> January 2024

Civic Offices, Clonmel

**John Leahy**  
**C/o Catherine O Brien MRIAI**  
**Longstone House**  
**Longstone**  
**Cullen**  
**Co. Tipperary**  
**E34 XT51**

**Re: Application for a Section 5 Declaration – A breakfast dining room and an additional dormer window in addition to what was granted back in 1986 under planning permission P3/10921 at Clashdrumsmith, Emly, Co. Tipperary, E34 DX59.**

Dear Sir/Madam

I acknowledge receipt of your application for a Section 5 Declaration received on 26<sup>th</sup> January, 2024, in connection with the above.

I wish to advise that you will be notified of a decision on your application in due course.

Yours faithfully

for **Director of Services**



# Planning Pack Map



Tailte  
Éireann

**CENTRE  
COORDINATES:**  
ITM 577879,635195

**PUBLISHED:** 22/01/2024  
**ORDER NO.:** 50378451\_1

**MAP SERIES:** 1:5,000  
1:2,500  
1:2,500  
**MAP SHEETS:** 5174  
5174-A  
5174-B

**COMPILED AND PUBLISHED BY:**  
Tailte Éireann,  
Phoenix Park,  
Dublin 8,  
Ireland.  
D08F6E4

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*C l a i s D h r o m*  
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*C l a s h d r u m s m i t h*  
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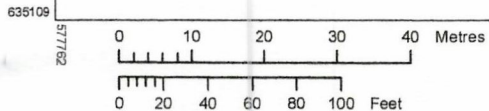
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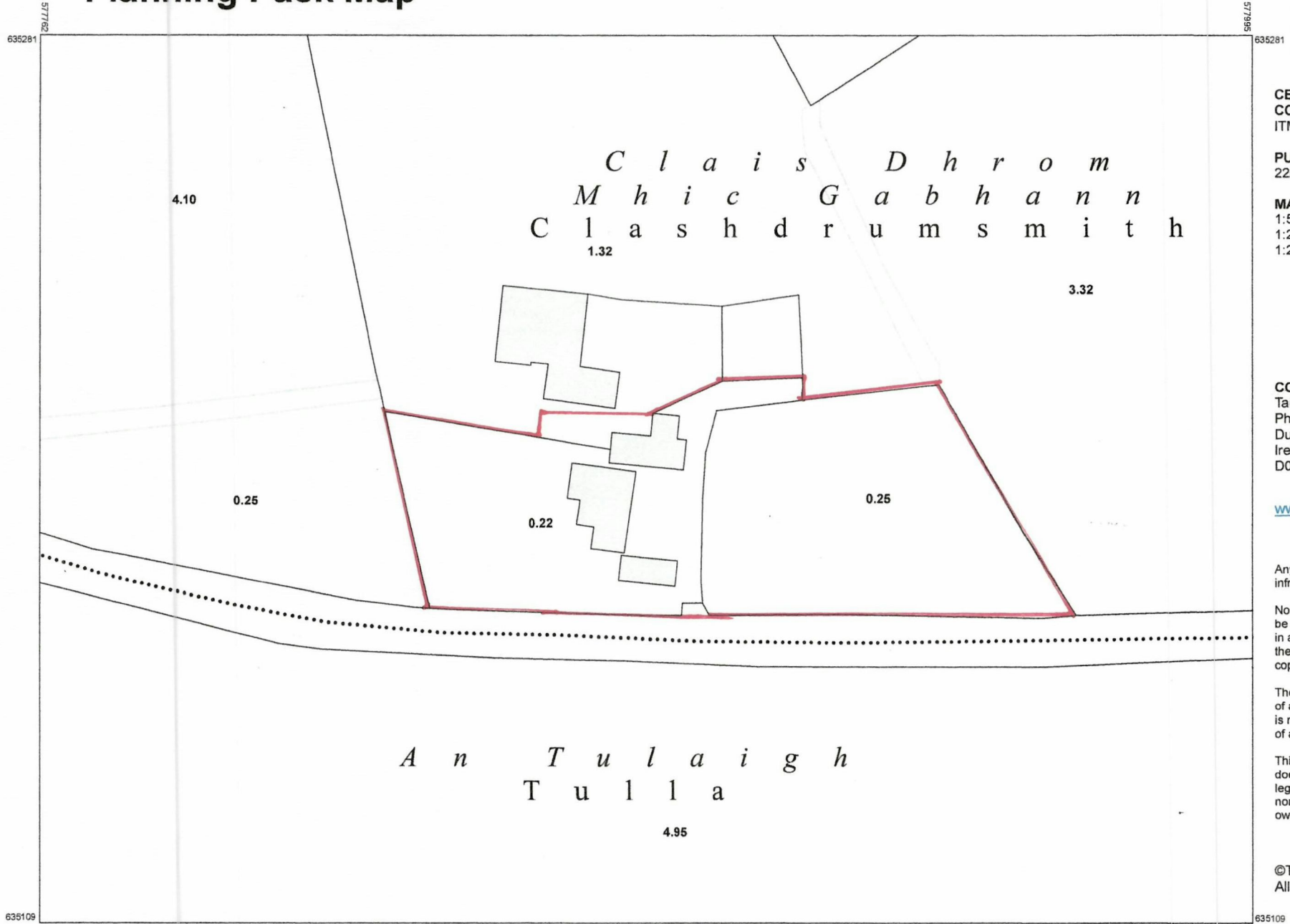
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*T u l l a*  
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**CAPTURE RESOLUTION:**  
The map objects are only accurate to the  
resolution at which they were captured.  
Output scale is not indicative of data capture scale.  
Further information is available at:  
[www.tailte.ie](http://www.tailte.ie); search 'Capture Resolution'

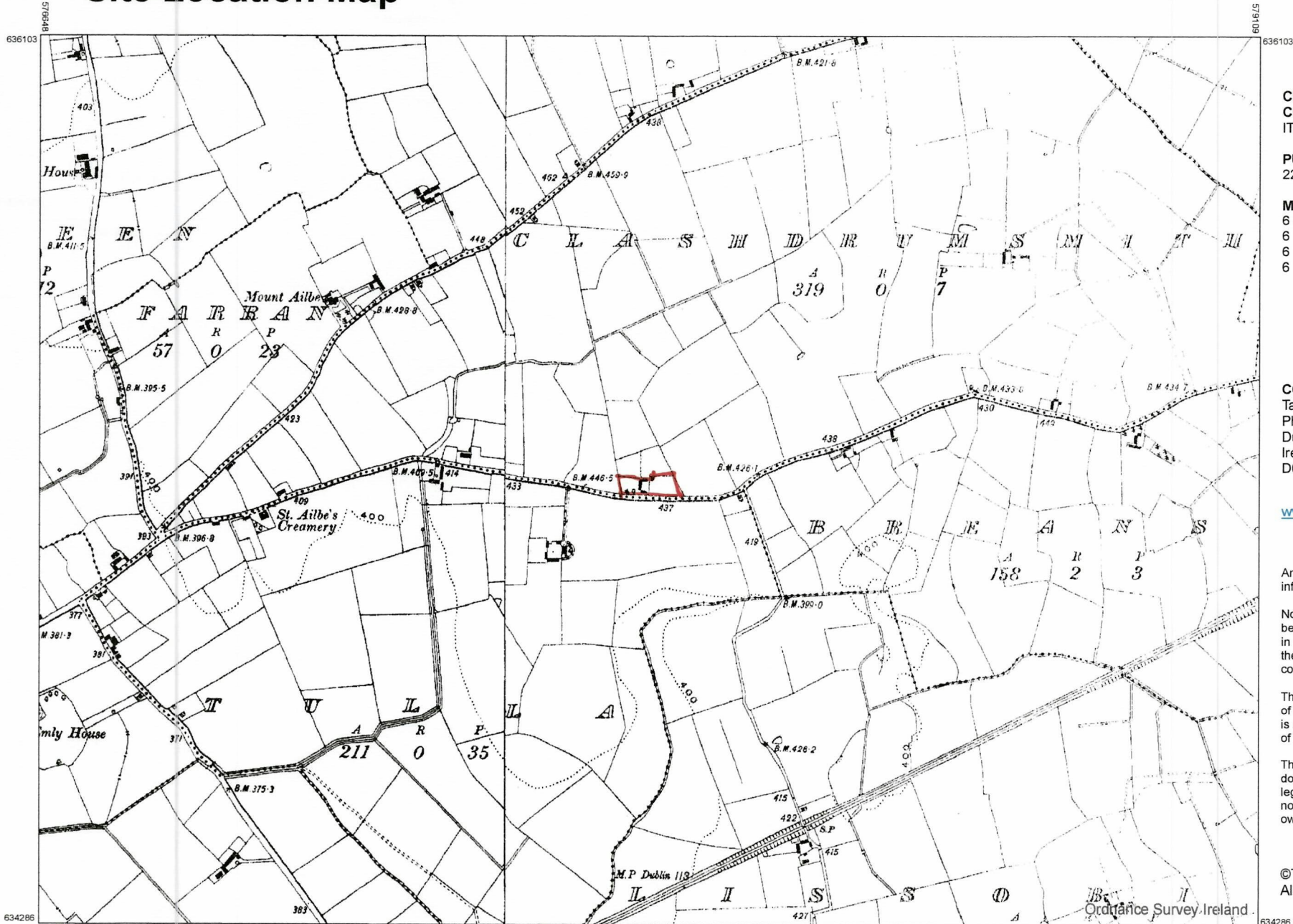
**LEGEND:**  
To view the legend visit  
[www.tailte.ie](http://www.tailte.ie) and search for  
'Large Scale Legend'



# Site Location Map



Tailte Éireann



**CENTRE COORDINATES:**  
ITM 577879,635195

**PUBLISHED:** 22/01/2024  
**ORDER NO.:** 50378451\_1

**MAP SERIES:** 6 Inch Raster  
**MAP SHEETS:** LK033+033A, LK041, TY065, TY066

**COMPILED AND PUBLISHED BY:**  
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Phoenix Park,  
Dublin 8,  
Ireland.  
D08F6E4

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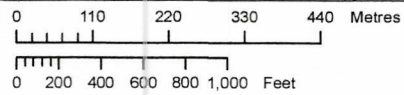
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Ordnance Survey Ireland

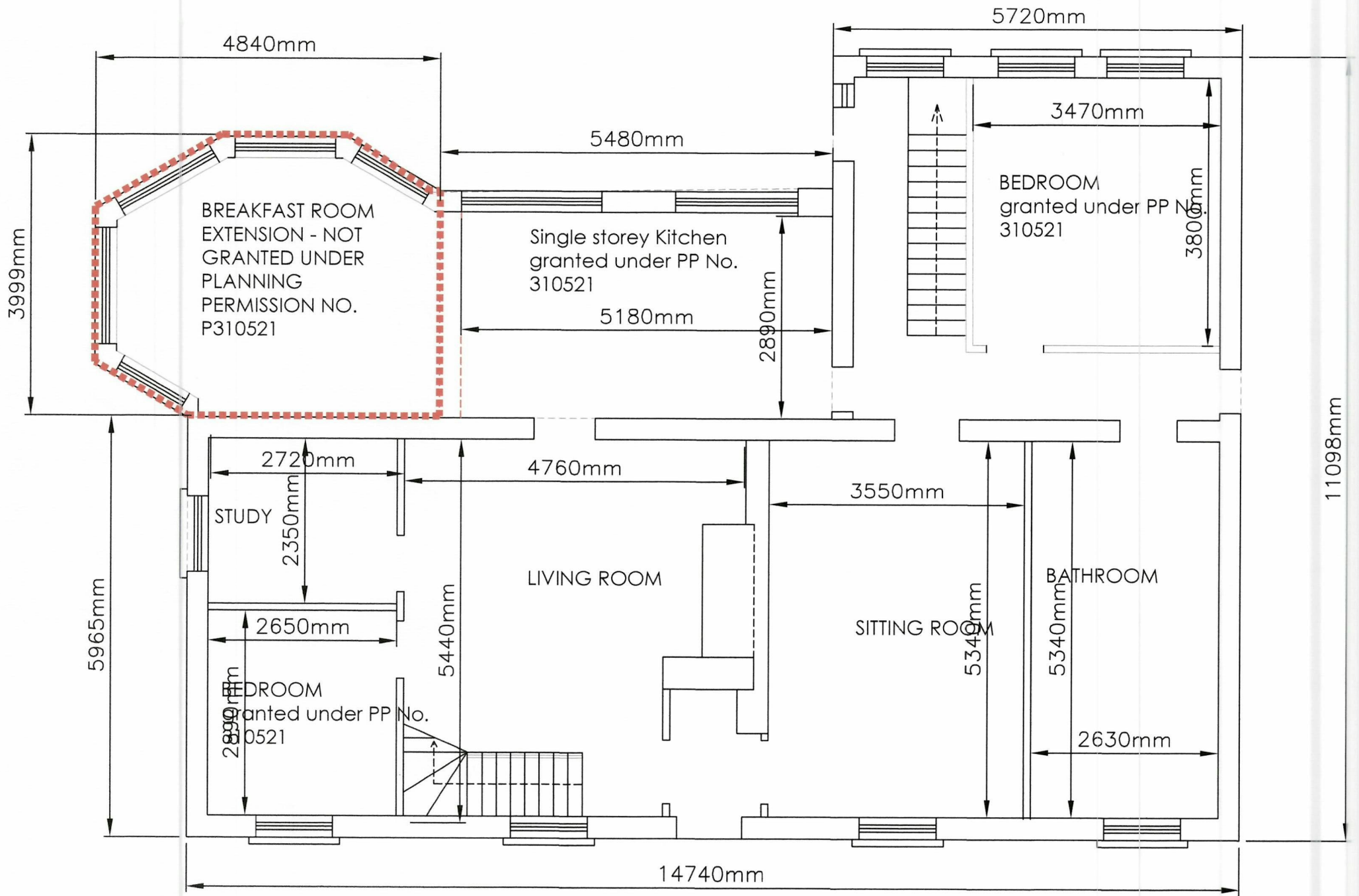


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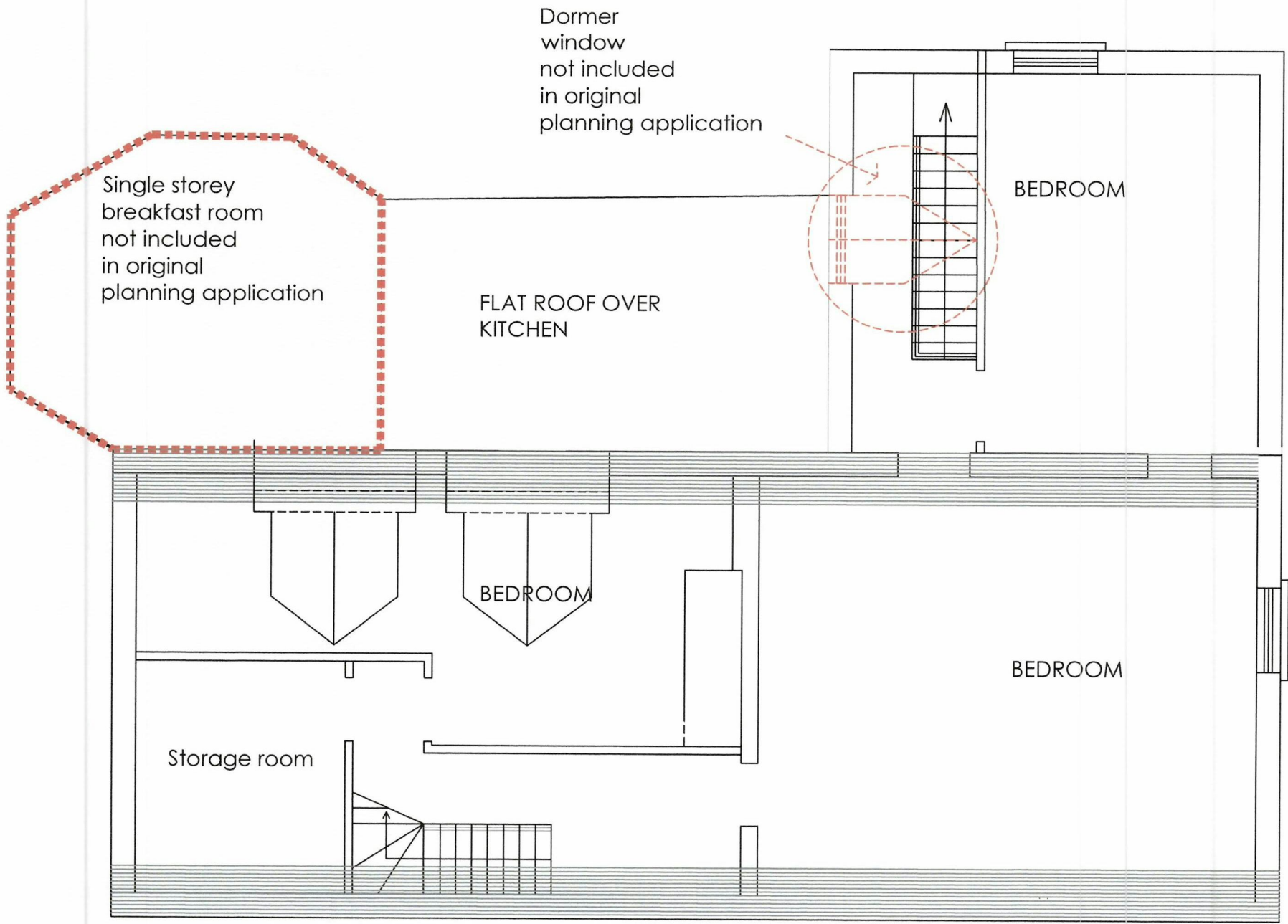
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To view the legend visit [www.tailte.ie](http://www.tailte.ie) and search for 'Large Scale Legend'



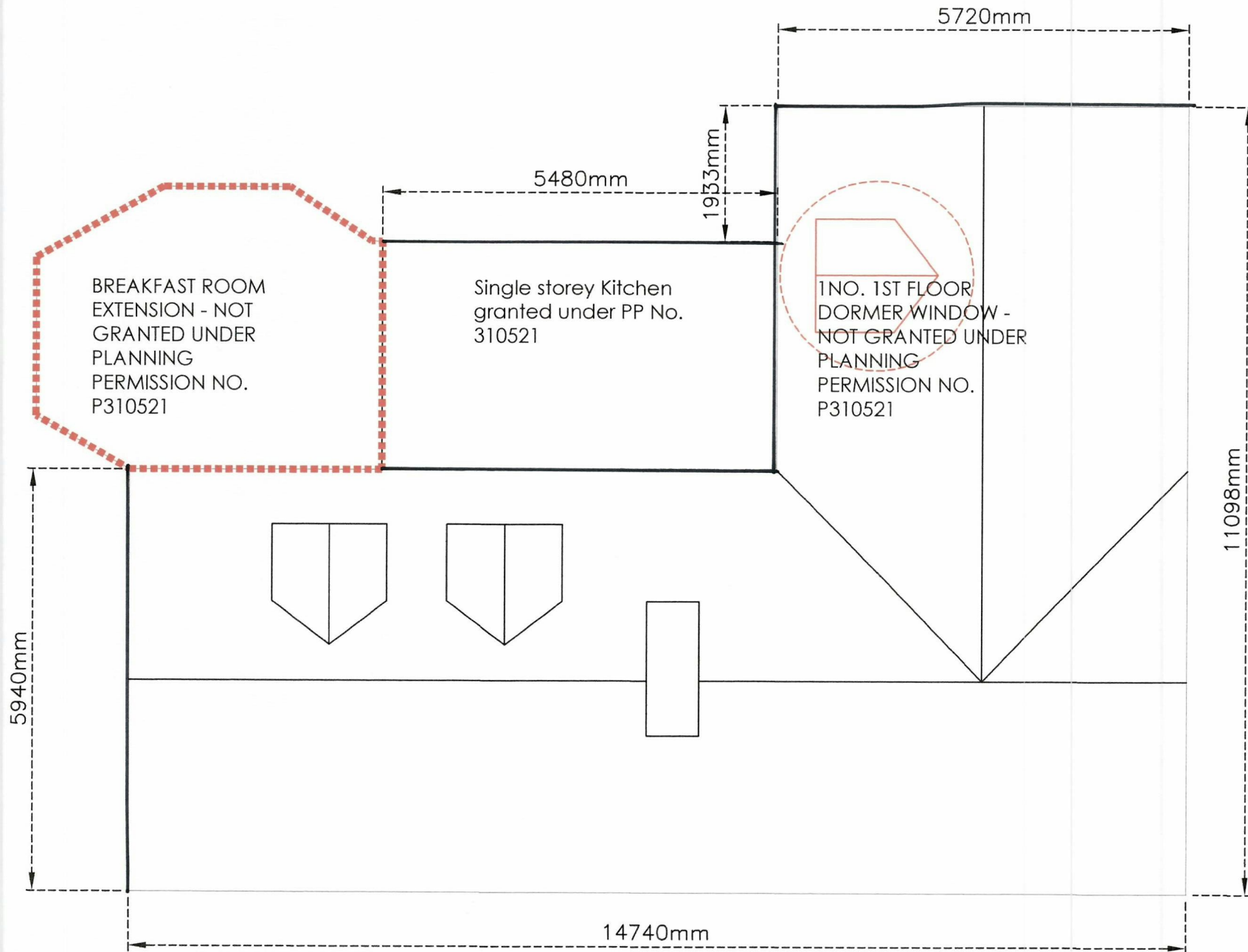


Ground floor plan -  
EXISTING





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FIRST FLOOR PLAN -  
EXISTING



ROOF PLAN - EXISTING

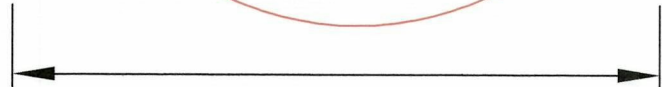
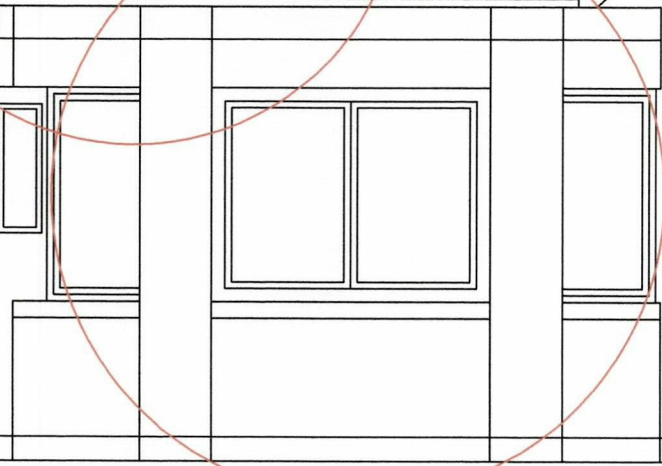
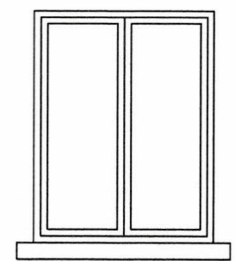
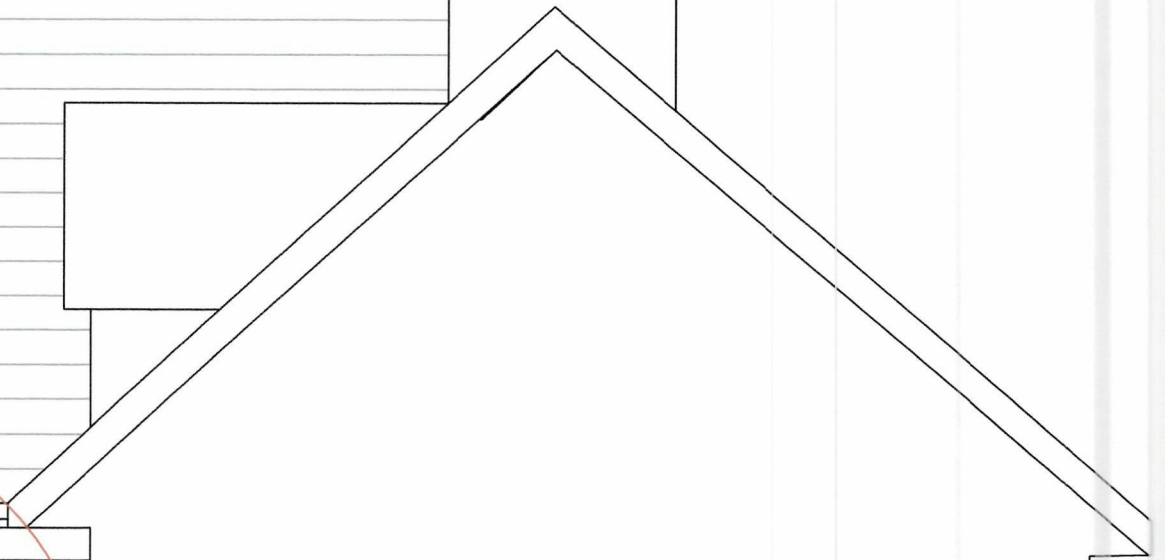
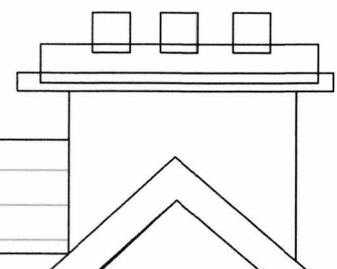
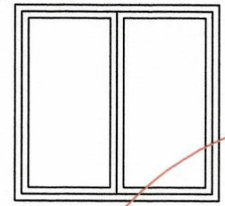
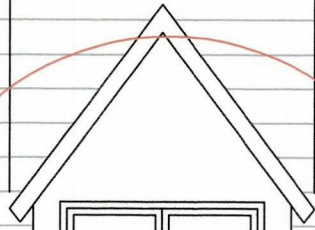


5910mm

--- EAST ELEVATION- EXISTING (All as per previous grant of permission in 1986)

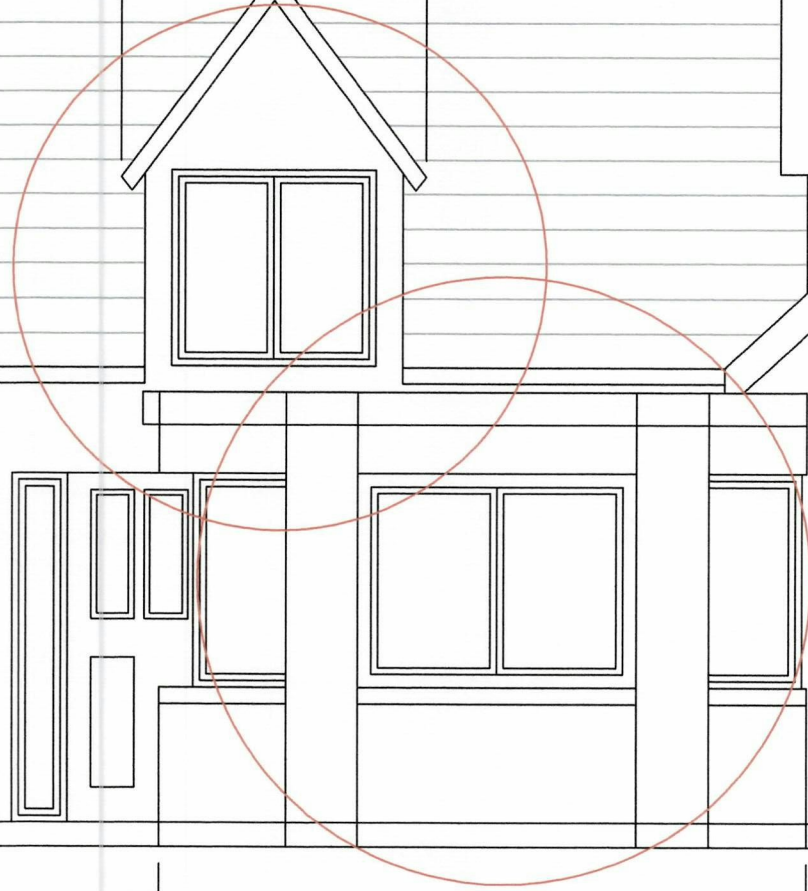


DORMER WINDOW



3890 — BREAKFAST ROOM

SOUTH ELEVATION-  
EXISTING







NORTH ELEVATION- EXISTING - NO  
DEVIATIONS FROM PLANNING GRANT



TIPPERARY COUNTY COUNCIL

**Application for Declaration under Section 5**

Planning & Development Act 2000, as amended  
Planning & Development Regulations 2001, as amended

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**Planning Reference:** S5/24/10

**Applicant:** John Leahy

**Development Address:** Clashdrumsmith, Emly, Co. Tipperary E34 DX59

**Proposed Development:** A breakfast dining room and an additional dormer window in addition to what was granted back in 1986 under planning permission P3/10521.

---

1. **GENERAL**

On the 26<sup>th</sup> January 2024 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended, by John Leahy C/o Catherine O'Brien (Red Church Architects) in respect of the following development;

***A breakfast dining room and an additional dormer window in addition to what was granted back in 1986 under planning permission P3/10521.***

I note that the extension was constructed between 2009-2011 as per Google Street view imagery, however the dormer window was present in the 2009 imagery. I am satisfied that such alterations occurred after the Planning and Development Act 2000, as amended, and Planning and Development Regulations 2001, as amended, came into effect.





## 2. **STATUTORY PROVISIONS**

The following statutory provisions are relevant to this case;

### **PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED**

Section 3 (1) of the Planning and Development Act 2000, as amended, states as follows:-

*“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

Section 2(1) of the Planning and Development Act, 2000, as amended, defines “works” as:-

*“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 4(1) of the Planning and Development Act, 2000, as amended states:

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.*

4.- (2) (a) of the Planning and Development Act 2000, as amended, states as follows:-

*(2)(a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—*

*(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or*

*(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members*



of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

Section 4 (4) of the Planning and Development Act 2000, as amended, states as follows:-

4 (4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

**PLANNING AND DEVELOPMENT REGULATIONS 2001, AS AMENDED**

Article 6 of the Planning and Development Regulations 2001, as amended states:

Exempted Development.

6. (1) 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.

Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended states:

Description of Development	Conditions and Limitations
<p>The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</p>	<p>1.</p> <p>(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</p> <p>2.</p> <p>(a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous</p>



	<p><i>extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</i></p>
	<p>3. <i>Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</i></p> <p>4.</p> <p>(a) <i>Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</i></p> <p>(b) <i>Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</i></p> <p>(c) <i>The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</i></p> <p>5. <i>The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</i></p> <p>6.</p> <p>(a) <i>Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p>(b) <i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p>(c) <i>Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</i></p> <p>7. <i>The roof of any extension shall not be used as a balcony or roof garden.</i></p>

Article 9 of the Planning and Development Regulations 2001, as amended sets out restrictions on exemptions and states:

9. (1) *Development to which article 6 relates shall not be exempted development for the purposes of the Act—*

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

*(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.

- (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.

### 3. **ASSESSMENT**

#### a. **Site Location**

The site comprises of an existing residential property at Clashdrumsmith, Emly, Co. Tipperary.

#### b. **Relevant Planning History**

**P3/10521** Permission GRANTED to John Leahy for erection of extension (1986).

**P3/597** Permission GRANTED to John Leahy for an extension (1968).

#### c. **Assessment**

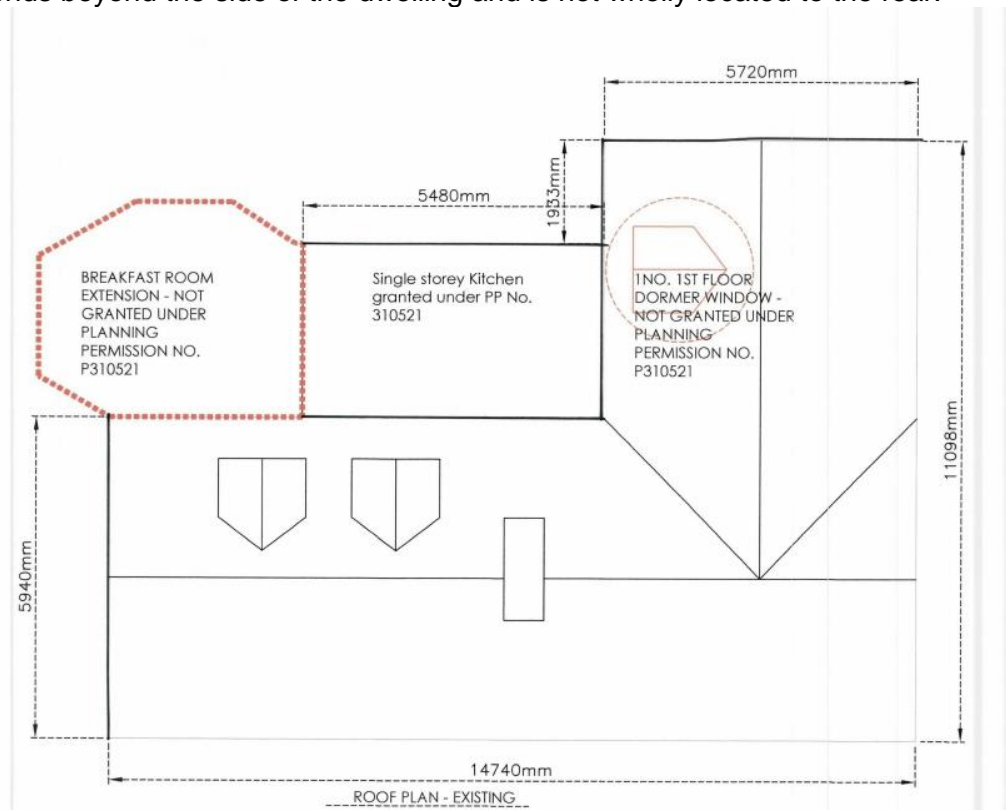
The question posed under the Section 5 Declaration application rephrased as is whether a breakfast dining room extension and an additional dormer window is development and is exempted development.

##### i) "Is or is not Development"

It is considered that the above listed proposal constitutes 'works' and therefore constitutes 'development' as understood by the Planning and Development Act, 2000, as amended.

##### ii) "Is or is not Exempted Development"

The floor area of the single storey extension is 17sq.m. The extension does not meet the parameters of Class 1 of Part 1 of Schedule 2 of the above cited Regulations as the extension extends beyond the side of the dwelling and is not wholly located to the rear.



The dormer window would meet the criteria of Section 4(1)h, however, is limited by Section 9(1)(a)(viii) due to the extension.

##### iii) Restrictions under Article 9

I note no other restrictions under Article 9 that would apply aside from Article 9(1)(s)(viii) as referred to above.

iv) Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

**AA**

The proposal has been assessed having regard to the requirements of the EU Habitats Directive. The proposal has been screened as to the requirements for AA and the screening assessment considers that the proposal does not impact on any Natura 2000 site. See also Appropriate Assessment (AA) screening report attached.

**EIA**

The proposed development has been subject to a preliminary examination to determine the requirement for EIA. EIA is not required in respect of the development. See also for Environmental Impact Assessment (EIA) preliminary examination screening report attached.

**4. RECOMMENDATION**

**WHEREAS** a question has arisen as to whether a breakfast dining room extension and an additional dormer window constitutes “development” and “exempted development”

**AND WHERE AS** Tipperary County Council in considering this referral had regard particularly to -

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended.
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended
- (d) The application and details submitted by the applicant.

**AND WHEREAS** Tipperary County Council has concluded that breakfast dining room extension and an additional dormer window constitutes “development” within the meaning of the Planning and Development Act 2000, as amended and is NOT “exempted development”. The development does not satisfy the planning exemption under Class 1, Schedule 2, the Planning and Development Regulations, 2001, as amended, as same is not wholly located to the rear of the dwelling and extends to the side. Whilst the dormer window would fall under Section 4(1)h, same is restricted by Article 9(1)(a)(viii) due to the unauthorised extension.

The development has been screened as to the requirement for Appropriate Assessment and Environmental Impact Assessment and it has been determined that same are not required.

**District Planner:**



**Date:** 20/02/2024

**Senior Executive Planner:**



**Date:** 21.02.2024



Original

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/24/10**      **Delegated Employee's Order No:** \_\_\_\_\_

**SUBJECT: Section 5 Declaration**

I, Sharon Kennedy, Director of Services, Tipperary County Council, by virtue of the powers delegated to me in accordance with the provisions of Section 154 of the Local Government Act 2001, as amended by Schedule 1, Part 1 of the Local Government Reform Act 2014 under Chief Executive's Order No. 36275 dated 4<sup>th</sup> December, 2023, hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 from John Leahy, C/o Catherine O'Brien MRIAI, Longstone House, Longstone, Cullen, Co. Tipperary, E34 XT51, re: A breakfast dining room and an additional dormer window in addition to what was granted back in 1986 under planning permission P3/10521 at Clashdrumsmith, Emly, Co. Tipperary, E34 DX59 is development and is exempted development.

**AND WHEREAS** Tipperary County Council, in considering this referral, had regard particularly to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended.
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended
- (d) The application and details submitted by the applicant.

**AND WHEREAS** Tipperary County Council has concluded that breakfast dining room extension and an additional dormer window **constitutes "development"** within the meaning of the Planning and Development Act 2000, as amended **and is NOT "exempted development"**. The development does not satisfy the planning exemption under Class 1, Schedule 2, the Planning and Development Regulations, 2001, as amended, as same is not wholly located to the rear of the dwelling and extends to the side. Whilst the dormer window would fall under Section 4(1)h, same is restricted by Article 9(1)(a)(viii) due to the unauthorised extension.

**Signed:**



**Sharon Kennedy**  
**Director of Services**  
**Planning and Development (including Town Centre First and Just Transition), Emergency Services and Emergency Planning and Tipperary/Cahir/Cashel Municipal District**

**Date: 21/02/2024**



Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
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Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary

E91 N512

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Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary

E45 A099

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@tipperarycoco.ie

[tipperarycoco.ie](http://tipperarycoco.ie)

Date: 21 February 2024

Our Ref: S5/24/10

Civic Offices, Nenagh

**John Leahy,  
C/o Catherine O Brien MRIAI,  
Longstone House,  
Longstone,  
Cullen,  
Co. Tipperary, E34 XT51.**

**Re: Declaration under Section 5 of the Planning and Development Act 2000**

Dear Sir/Madam,

I refer to your application for a Section 5 Declaration received on 26<sup>th</sup> January, 2024, in relation to the following proposed works:

**A breakfast dining room and an additional dormer window in addition to what was granted back in 1986 under planning permission P3/10521 at Clashdrumsmith, Emly, Co. Tipperary, E34 DX59.**

**WHEREAS** a question has arisen as to whether the proposed development is or is not exempted development:

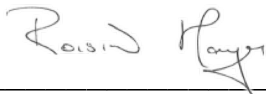
**AND WHEREAS** Tipperary County Council, in considering this referral, had regard particularly to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended.
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended
- (d) The application and details submitted by the applicant.

**AND WHEREAS** Tipperary County Council has concluded that breakfast dining room extension and an additional dormer window **constitutes "development"** within the meaning of the Planning and Development Act 2000, as amended **and is NOT "exempted development"**. The development does not satisfy the planning exemption under Class 1, Schedule 2, the Planning and Development Regulations, 2001, as amended, as same is not wholly located to the rear of the dwelling and extends to the side. Whilst the dormer window would fall under Section 4(1)h, same is restricted by Article 9(1)(a)(viii) due to the unauthorised extension.

**NOTE:** Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours sincerely



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for **Director of Services**