



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Ann Hynes
c/o Brendan Mullins
27 College Grove
Ennis
Co. Clare
V95 X0DW**

28th November 2024

Section 5 referral Reference R24-86 – Ann Hynes

Is the removal of the chimney and the repair of the roof associated with the Londis apartments, The Square, Miltown Malbay, Co. Clare, V95 AX58 development and if so, is it exempted development?

A Chara,

I refer to your application received on 6th November 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie.

Mise, le meas

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

**An Roinn Pleanála
An 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



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

Reference No.: R24-86



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R24-86

Is the removal of the chimney and the repair of the roof associated with the Londis apartments, The Square, Miltown Malbay, Co. Clare, V95 AX58 development and if so, is it exempted development?

AND WHEREAS, Ann Hynes has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 4 and 82 of the Planning and Development Act, 2000, as amended;
- (b) The details received by the Planning Authority.

And whereas Clare County Council has concluded:

- (a) Based on the provisions of Section 4 (1) (h) and Section 82 of the Planning and Development Act 2000 as amended, the removal of the chimneys and the repair of the roof associated with the Londis apartments would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures in the Architectural Conservation area (ACA).

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 removal of the chimney and the repair of the roof associated with the Londis apartments at The Square, Miltown Malbay, Co. Clare **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in blue ink, appearing to read 'Anne O'Gorman', written over a horizontal line.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

28th November 2024

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: 84548

Reference Number: R24-86

Date Referral Received: 6th November 2024

Name of Applicant: Ann Hynes

Location of works in question: Londis Apartments, The Square,
Miltown Malbay, Co. Clare

Section 5 referral Reference R24-86 – Ann Hynes

Is the removal of the chimney and the repair of the roof associated with the Londis apartments, The Square, Miltown Malbay, Co. Clare, V95 AX58 development and if so, is it exempted development?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

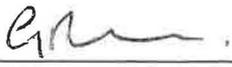
- (a) Sections 2, 3 4 and 82 of the Planning and Development Act, 2000, as amended;
- (b) The details received by the Planning Authority.

AND WHEREAS Clare County Council has concluded:

- (a) Based on the provisions of Section 4 (1) (h) and Section 82 of the Planning and Development Act 2000 as amended, the removal of the chimneys and the repair of the roof associated with the Londis apartments would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures in the Architectural Conservation area (ACA).

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the removal of the chimney and the repair of the roof associated with the Londis apartments at The Square, Miltown Malbay, Co. Clare is **considered development** which is **exempted development**.

Signed: 

GARETH RUANE
SENIOR EXECUTIVE PLANNER 

Date: 28th November 2024

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

FILE REF: 24/ 86
APPLICANT(S): Anne Hynes
REFERENCE: Whether the removal of the chimneys and the repair of the roof associated with the Londis apartments, The Square, Miltown Malbay considered to be development and if so is or is not exempted development.
LOCATION: Miltown Malbay, County Clare
DUE DATE: 03/ 12/ 24

Site Location

The building is located in the ACA in Miltown Malbay on lands zoned mixed use. It is bound on both sides by terraced buildings. The former bank building which is a protected structure is located further north at the junction.

Recent Planning History on site.

15/ 696 Jonathan Wilson. Permission granted to change use of existing shop to public house and all ancillary site works.

Background to Referral

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

The applicant is seeking a Section 5 Declaration as to whether the removal of the chimney and the repair of the roof associated with the Londi apartments is or is not development and is or is not exempted development.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

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

“structure” as any building, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and where the context so admits, includes the land on, in or under which the structure is situated

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.

Section 2 (1) ‘Works’ are defined in Section 2 of the *Planning and Development Act 2000*, as amended as follows:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

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

Exempted Development

S.4.—(1) *The following shall be exempted developments for the purposes of this Act—*
(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

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

Assessment

The agent has advised the following in the documents submitted:

Particulars of the Development

The applicant has submitted the following information:

- Urban place map 1: 1000 showing the site outlined in red.

- Aerial photograph with site outlined in red.
- Close range photos of the chimney in question.
- Photos showing the internal damage to the party wall.
- All detailed written description of the state of repair of the structure, the damaging being caused and the proposed remedial works.

Planning Exemption Assessment

Under Section 4 (1) (h) of the Planning and Development Act 2000 as amended, works for maintenance and repair as well as works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures are generally considered to constitute exempted development. Under Section 82 the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area'.

Having regard to the information received to date it is considered that the works will not be inconsistent with the character of the structure or neighbouring structures in the ACA and as such complies with the provisions of Section 4 (1) (h) and section 82 of the Planning and Development Act 2000 as amended. In this regard it should be noted that the buildings affected are not protected structures and although they are located in the Architectural Conservation area, it is not considered that the removal of this chimney stack and associated repair to the roof would render the appearance of the structure inconsistent with the character of the structure or of neighbouring structures or materially affect the character of the A.C.A. The removal of one chimney with associated roof repairs is not considered detrimental to the character of the structure or nearby structures.

Unlike the Main St further north where there is an obvious pattern and rhythm to the placing of chimney stacks in roofscape of the premises, there is no such symmetry in their appearance at this section of the street having regard to the modern building adjacent which acts to break the symmetry at this location in the ACA.

- noted - etc.

Recommendation

WHEREAS a question has arisen as to whether the removal of the chimneys and the repair of the roof associated with the Londis apartments, The Square, Miltown Malbay is or is not development and is or is not exempted development.

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

- (a) Sections 2, 3, 4 and 82 of the Planning and Development Act, 2000, as amended;
- (b) the details received by the Planning Authority.

AND WHEREAS Clare County Council has concluded that –

Based on the provisions of Section 4 (1) (h) and Section 82 of the Planning and Development Act 2000 as amended, the removal of the chimneys and the repair of the roof associated with the Londis apartments would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures in the ~~ACA~~ *Architectural Conservation Area (ACA)*.

NOW THEREFORE Clare County Council, in exercise of the powers conferred on it by Section 5(2) (a) of the 2000 Act, hereby decides:

The removal of the chimney and the repair of the roof associated with the Londis apartments, The Square, Miltown Malbay is considered to be exempted development .

Ellen Carey

Ellen Carey
Executive Planner

Date: 27/11/24

Garreth Ruane

Garreth Ruane
Senior Executive Planner

27/11/24

Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	R24/ 86
(b) Brief description of the project or plan:	Chimney removal and roof repair
(c) Brief description of site characteristics:	Terraced buildings
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	None

STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.				
European Site (code)	List of Qualifying Interest/Special Conservation Interest ¹	Distance from proposed development ² (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
Mid Clare Coast SPA	Cormorant (Phalacrocorax carbo) [A017] Barnacle Goose (Branta leucopsis) [A045] Ringed Plover (Charadrius hiaticula) [A137] Sanderling (Calidris alba) [A144] Purple Sandpiper (Calidris maritima) [A148] Dunlin (Calidris alpina) [A149]	2.4km	None	No

	Turnstone (Arenaria interpres) [A169] Wetland and Waterbirds [A999]			
Carrowmore Point to Spanish point and the Islands SAC	Coastal lagoons [1150] Reefs [1170] Perennial vegetation of stony banks [1220] Petrifying springs with tufa formation (Cratoneurion) [7220]	2.4km	None	NO

¹ Short paraphrasing and/or cross reference to NPWS is acceptable – it is not necessary to reproduce the full text on the QI/SCI.

² If the site or part thereof is within the European site or adjacent to the European site, state here.

STEP 3. Assessment of Likely Significant Effects

(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:

Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
Construction phase e.g. <ul style="list-style-type: none"> ● Vegetation clearance ● Demolition ● Surface water runoff from soil excavation/infill/landscaping (including 	None

borrow pits) <ul style="list-style-type: none"> • Dust, noise, vibration • Lighting disturbance • Impact on groundwater/dewatering • Storage of excavated/construction materials • Access to site • Pests 	
Operational phase e.g. <ul style="list-style-type: none"> • Direct emission to air and water • Surface water runoff containing contaminant or sediment • Lighting disturbance • Noise/vibration • Changes to water/groundwater due to drainage or abstraction • Presence of people, vehicles and activities • Physical presence of structures (e.g. collision risks) • Potential for accidents or incidents 	None
In-combination/Other	None

(b) Describe any likely changes to the European site:

Examples of the type of changes to give consideration to include: <ul style="list-style-type: none"> • Reduction or fragmentation of habitat area • Disturbance to QI species • Habitat or species fragmentation • Reduction or fragmentation in species density • Changes in key indicators of conservation status value (water or air quality etc.) • Changes to areas of sensitivity or threats 	None
--	------

to QI

- Interference with the key relationships that define the structure or ecological function of the site

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

Yes No

Step 4. Screening Determination Statement

The assessment of significance of effects:

Describe how the proposed development (alone or in-combination) is/is **not likely** to have significant effects on European site(s) in view of its conservation objectives.

The proposed development relates to repair of an existing structure outside the SPA and SAC. No direct or indirect effects are envisaged on the qualifying interests of the European sites.

Conclusion: The proposed development is not likely to have significant effects on European site(s) in view of its conservation objectives.

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS

	<input type="checkbox"/> Refuse planning permission
(iii) Significant effects are likely.	<input type="checkbox"/> <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
Signature and Date of Recommending Officer:	27/ 11/24  Name: Ellen Carey E.P.
Signature and Date of the Decision Maker:	



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Ann Hynes
c/o **Brendan Mullins**
27 College Grove
Ennis
Co. Clare
V95 X0DW

06/11/2024

Section 5 referral Reference R24-86 – Ann Hynes

Is the removal of the chimney and the repair of the roof associated with the Londis apartments, The Square, Miltown Malbay, Co. Clare, V95 AX58 development and if so, is it exempted development?

A Chara,

I refer to your application received on 6th November 2024 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 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



AN CHLAIR

Clare County Council
Aras Contae an Chlair
New Road
Ennis
Co Clare



06/11/2024 11:29:45

Receipt No. L1CASH/0/371542
***** REPRINT *****

ANN HYNES
C/O BRENDAN MULLINS
27 COLLEGE GROVE
ENNIS, CO. CLARE
R24-86

COMHAIRLE

SECTION 5 REFERENCES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

CONTAE

Total : 80.00 EUR

AN CHLÁIR

Tendered :
CREDIT CARDS 80.00

Change : 0.00



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P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie

R24-86

**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	Ann Hynes <hr/> Mullagh Road, <hr/> Miltown Malbay, <hr/> Co Clare, <hr/> V95 X0Y1
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	Brendan Mullins <hr/> 27 College Grove, <hr/> Ennis, <hr/> Co Clare, <hr/> V95 X0DW

All correspondence →

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 removal of the chimney and the repair of the roof associated with the Londis

Apartments, The Square, Miltown Malbay, Co Clare, V95 AX58 development and if so,

is it exempted development?

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

My Client, Ann Hynes, is the owner of the building in which a section of the Londis Supermarket and the Londis Apartments are housed at the Square, Miltown Malbay, Co Clare, V95 AX58. This is an old building that has been partially upgraded over the last 20 years

In these upgrades, the fireplaces within the building were removed, the chimneys made inaccessible and the chimneys put totally out of use for fire safety reasons. This has made the external chimney to the property completely defunct and no longer necessary. The chimney was completely blocked up and the chimney pots covered with lead as part of previous works.

However, the exposed chimney structure is in very poor condition and is a continuous point of water leakage into the Londis building and the adjacent property, Friel's Pub (Lynch's) causing significant damage to both buildings. There is continual dampness and mould within both buildings.

A recent inspection of the buildings has revealed that the structure of the party wall between the buildings is now being undermined due to the water ingress from the external chimney and the chimney is beginning to lean to one side. The mortar in the wall is being washed out, the stones within the wall are beginning to loosen and the wall is showing signs of bulging. This is leading to further cracking of the exposed chimney structure and the increase in water leakage, thereby compounding the problem.

Action has to be taken as a matter of urgency to remedy the situation before serious and irreversible damage is done to these buildings. The recommendation from a roofing specialist is to remove the chimney completely as it no longer serves a purpose as all of the associated fireplaces put permanently out of use. The roof of the Londis building would then be sympathetically extended over the space that the current chimney occupies to make both buildings water tight once more. The internal party wall can then be reinforced to prevent further deterioration. This would be a permanent and robust resolution for the current water ingress and the destabilisation of the party wall.

Works that are currently being carried out on an adjacent structure (the former Bank building) are offering safe access to the chimney that would be needed to carry out the removal of the exposed section of the structure if acceptable to the Authority. The owner of Friel's Pub (Lynch's), Jonathan Wilson, is in agreement with this solution as it permanently addresses the source of the water leakage that is damaging his building without affecting the overall structure, function or look of his property.

(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 at a scale of 1:1000

Graphical Location Plan (NTS)

Photographs of subject chimney and internal damage to party wall

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Londis Apartments, _____ The Square, _____ Miltown Malbay, _____ Co Clare, _____ V95 AX58
(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):	Ann Hynes is the owner of the property _____ _____
(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>	Owner _____ _____ _____
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	No
(h) Date on which 'works' in question were completed/are likely to take place:	As soon as possible and before 30.11.2024

SIGNED: Frederic Mullins

DATE: 06-11-2024

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

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

FOR OFFICE USE ONLY

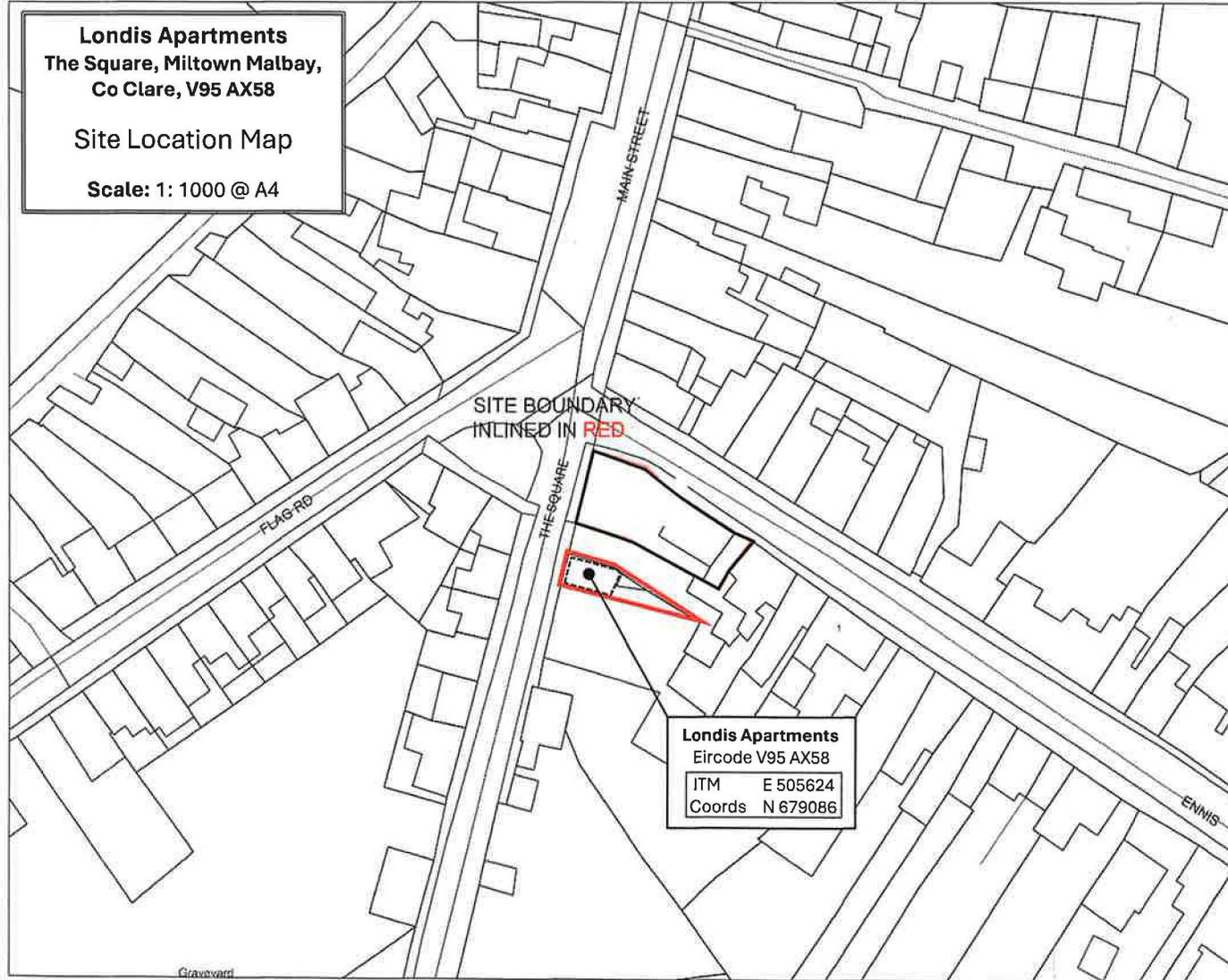
Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:	.....	

Urban PLACE Map

Londis Apartments
The Square, Miltown Malbay,
Co Clare, V95 AX58

Site Location Map

Scale: 1: 1000 @ A4



Londis Apartments
Eircode V95 AX58
ITM E 505624
Coords N 679086

SCALE 1:1,000 at A4



Plot Date 16-02-2024

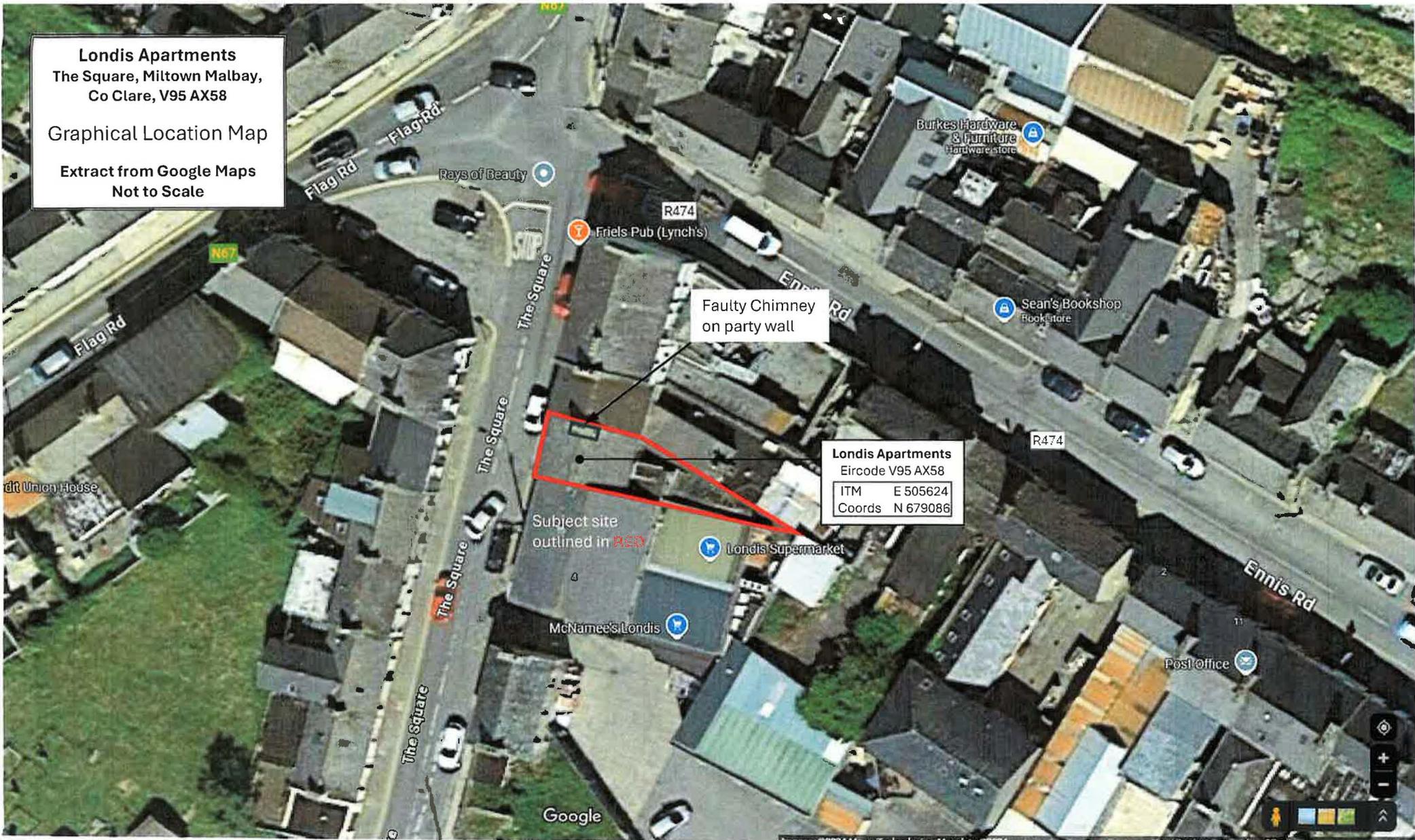
*chodert
this is
a pole tower
structure.*

*115/696
07/2946.*

Londis Apartments
The Square, Miltown Malbay,
Co Clare, V95 AX58

Graphical Location Map

Extract from Google Maps
Not to Scale



Faulty Chimney
on party wall

Londis Apartments
Eircode V95 AX58
ITM E 505624
Coords N 679086

Subject site
outlined in RED

Photographs of Chimney of Londis Apartments



Cracking and poor repairs evident on all surfaces of chimney cap and sides

Photographs of damage to party wall between Londis Apartments and adjacent Friel's Pub (Lynch's) due to water leakage through chimney



Damage to party wall from water ingress through chimney. Damage includes mortar washout, stone displacement and bulging to wall undermining the stability of the chimney structure

