

**WICKLOW COUNTY COUNCIL**

**PLANNING & DEVELOPMENT ACTS 2000 (As Amended)  
SECTION 5**

**Director of Services Order No:** 454/2023

**Reference Number:** EX 7/2023

**Name of Applicant:** Kerrin Buck

**Nature of Application:** Section 5 Referral as to whether "The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, Co Wicklow" is or is not exempted development.

**Location of Subject Site:** Ballinatone Lower, Greenan, Co Wicklow

**Report from Solomon Aroboto EP & Fergal Keogh SE**

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, Co Wicklow" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).

**Having regard to:**

- i) The details submitted under Section 5 Declaration on 10/02/23.
- ii) Sections 2(1), 3(1), of the Planning and Development Act 2000 (as amended).
- iii) Article 9(1) of the Planning and Development Regulations 2001 (as amended).
- iv) Class 17 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- v) An Bord Pleanala Referral 92.RL 3343.
- vi) Planning Reference nos PRR 05/3286, PRR 11/4667, PRR 22/800.



**Main Reasons with respect to Section 5 Declaration:**

The erection of temporary living accommodation on the subject site would not come within the exemption provision set out under Part 1 of Schedule 2, Class 17 of the Planning & Development Regulations because,

1. The decision of the Planning Authority under PRR 22/800 for the retention permission of foundations and rising walls constructed on site and permission for completion of dwelling with some alterations to same with site associated works is still within the appeal period, and hence there is no current permission on the site. Therefore the proposed structure would not come within the scope of the description of Class 17.
2. The limitations and conditions attached for Class 17 require the removal of the temporary accommodation and the reinstatement of the lands on the completion of the permitted development. The proposal to retain the structure on the site after the expiration of the relevant period would be contrary to the said limitations and conditions.

**Recommendation**

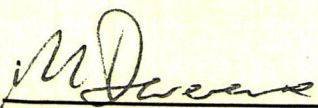
The Planning Authority considers that "The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, Co Wicklow" is development and is not exempted development as recommended in the planning reports.

Signed  Dated 7<sup>th</sup> day of March 2023

ORDER:

That a declaration to issue stating:

That "The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, Co Wicklow" is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed:   
Director of Services  
Planning Development & Environment

Dated 7<sup>th</sup> day of March 2023



# Comhairle Contae Chill Mhantáin Wicklow County Council

**Forbairt Pleanála agus Comhshaol  
Planning Development and Environment**

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

Kerrin Buck

7<sup>th</sup> March 2023

**RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended)**

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

**Exemption Ref No: EX 7/2023**

**Applicant: Kerrin Buck**

**Nature of Application: "The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, Co Wicklow"**

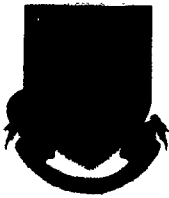
**Location: Ballinatone Lower, Greenan, Co Wicklow**

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 DEVELOPMENT & ENVIRONMENT.**





# **Comhairle Contae Chill Mhantáin Wicklow County Council**

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Sulomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

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

**Applicant: Kerrin Buck**

**Location: Ballinatone Lower, Greenan, Co Wicklow**

**DIRECTOR OF SERVICES ORDER NO 454/2023**

A question has arisen as to whether "The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, Co Wicklow" is or is not exempted development.

**Having regard to:**

- I) The details submitted under Section 5 Declaration on 10/02/23.
- II) Sections 2(1), 3(1), of the Planning and Development Act 2000 (as amended).
- III) Article 9(1) of the Planning and Development Regulations 2001 (as amended).
- IV) Class 17 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- v) An Bord Pleanála Referral 92.RL 3343.
- vi) Planning Reference nos PRR 05/3286, PRR 11/4667, PRR 22/800.

### **Main Reasons with respect to Section 5 Declaration:**

The erection of temporary living accommodation on the subject site would not come within the exemption provision set out under Part 1 of Schedule 2, Class 17 of the Planning and Development Regulations because,

1. The decision of the Planning Authority under PRR 22/800 for the retention permission of foundations and rising walls constructed on site and permission for completion of dwelling with some alterations to same with site associated works is still within the appeal period, and hence there is no current permission on the site. Therefore the proposed structure would not come within the scope of the description of Class 17.
2. The limitations and conditions attached for Class 17 require the removal of the temporary accommodation and the reinstatement of the lands on the completion of the permitted development. The proposal to retain the structure on the site after the expiration of the relevant period would be contrary to the said limitations and conditions.





# Comhairle Contae Chill Mhantáin Wicklow County Council

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The Planning Authority considers that "The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, Co Wicklow" is development and is not exempted development.

Signed:

ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 7<sup>th</sup> March 2023

## **Report for – Section 5 declaration**

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**File Reference:** Ex 07/2023  
**Applicant's Name:** Kerrin Buck  
**Address:** Ballinatone Lower, Greenane, Co, Wicklow.  
**Description:** Temporary living accommodation on construction site  
**Date of site visit** 01/03/23

### **Section 5 Referral**

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

The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenane,, Co. Wicklow is or is not development and is or is not exempted development within the meaning of the Planning and Development Act, 2000 as amended.

### **Planning History**

**22/800** – Permission was granted for retention permission of foundations and rising walls constructed on site (granted under PRR 11/4667 & 05/3286) and Permission for completion of dwelling with some alterations to same with site associated works.

**05/3286** - Permission was granted to Kerrin Buck for a dwelling and septic tank

**11/4667** – 2.5 year extension of duration was granted for PRR 05/3286

### **Section 5 Referral - Ex 75/2022 -**

Whether or not :

Construction of Residential Chalet built in September & October 2022 on lands at Ballinatone Lower Greenan, Co. Wicklow.

The Planning Authority concluded that:

The Construction of Residential Chalet built in September & October 2022 on lands at Ballinatone Lower Greenan, Co. Wicklow is development and is not exempted development

### **Section 5 Referral - Ex 39/2022 -**

A question has arisen as to whether or not

- 1) Existing substantially incomplete works toward building a rural house started under a now lapsed planning permission.
- 2) Whether upon lapsing of permission for rural house the future use of lands for residential.
- 3) New development works carried on an incomplete rural house after the lapsing of 5 years planning permission.
- 4) Erection of and inhabitation of 2 tents on with no planning permission.
- 5) Storage of waste and construction materials on lands.

At Ballinatone Lower, Co Wicklow is or is not exempted development.



The Planning Authority concluded that:

- Existing substantially incomplete works toward building a rural house started under a now lapsed planning permission is development and is permitted development within the meaning of the Planning & Development Acts 2000 (as amended) .
- Whether upon lapsing of permission for rural house the future use of lands for residential is not development within the meaning of the Planning & Development Acts 2000 (as amended).
- New development works carried on an incomplete rural house after the lapsing of 5 years planning permission is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended) .
- Erection of and inhabitation of 2 tents on with no planning permission is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended) .
- Storage of waste and construction materials on lands is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

**An Bord Pleanála Referral 92.RL 3343** - a question has arisen as to whether the placing of mobile home for a temporary period for an employee during construction works at Ballytarsna Castle (Protected Structure), Cashel, County Tipperary is or is not development or is or is not exempted development

An Bord Pleanála has concluded that –

- (a) the development consisting of a temporary mobile home within the curtilage of the protected structure at Ballytarsna Castle, is development and is not exempted development, as set out in Section 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Class 17 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, is not operative as no permission was in place, and
- (c) the placing of a mobile home for employees would also materially contravene condition number 1(b) of planning register reference number 13/328 and accordingly, Article 9(1)(a)(i) of the 2001 Regulations applies as it would contravene a condition attached to a permission:

**UD File: 5592** – Alleged unauthorised development consisting of (a) Site clearance works, (b) Construction of block work / walls and (c) Placement of tents on lands without the benefit of planning permission

#### **Relevant Legislations**

##### ***Planning and Development Act 2000 as amended Section 2(1)***

*“habitable house” means a house which— (a) is used as a dwelling, (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or (c) was provided for use as a dwelling but has not been occupied;*

*“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;*

**“Works”** includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal

**“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,

**Planning and Development Act 2000 as Amended Section 3(1) defined a development as follows: -**

**“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.

**The Planning and Development Regulation 2001 as amended**

**Article 6**

(3) Subject to article 9,..... development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

**Article 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—

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

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

**Planning and Development Regulations 2001 as amended**

**Schedule 2 Part 1, Class 17**

Description of Development	Limitations and Conditions
The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.	Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent, approval or confirmation granted under the Act or any other enactment.



## Assessment

The issue is to determine whether, the erection of temporary living accommodation on construction site at Ballinatone Lower, Greenane,, Co. Wicklow is or is not development and is or is not exempted development within the meaning of the Planning and Development Act, 2000 as amended.

The site is located in the townland of Ballinatone lower on a laneway off the Local road. Existing on site is a dwelling under construction above the foundation level, an A frame structure used for habitation.

The following are submitted,

- A site location map
- Site layout plan
- Drawings, including, plans and elevations of the structure
- Map showing site in red and the lands in family ownership outlined in blue.

*This would be coming in limitation of Class 17*

The building is less than 25sqm in floor area and is 4m high. The proposed external finishes are timber and cladding. It is stated that the structure is being used as temporary accommodation for the people who are completing the partly constructed dwelling on site. It is stated that on completion of the house, the use of the building would be changed from temporary accommodation to office/studio.

The applicant argues that the proposed structure comes under Schedule 2 Part 1, Class 17 exemption provision of the Planning and Development Regulations 2001 (as amended).

The first question to be asked is whether the structure and works subject of this section 5 is or is not development.

Having regard to the description of the works carried out on site, it is considered that the erection of temporary living accommodation structure on site comes within the definition of development as stated under Section 3 of the Planning and Development Act 2000 (as amended).

The next question therefore to ask is whether the development is or is not exempted development.

On 14/02/2023 decision issued under PRR 22/800 for the retention permission of foundations and rising walls constructed on site and Permission for completion of dwelling with some alterations to same with site associated works. The final grant is due in 2 weeks if the decision of the Planning Authority is not appealed. The original permission for the existing uncompleted

development on site has expired therefore no permission currently exists on site for any construction works to be undertaken on site.

In light of the above, it is considered that the development would not come within the exemption provision Schedule 2 Part 1, Class 17 of the Planning and Development Regulations 2001 (as amended). Therefore the development on site is not exempted development.

#### **Screening for AA and EIA**

Section 4(4) of the Act states that development shall not be exempted development if an environment impact assessment and appropriate assessment of the development is required.

#### **AA**

Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the absence of any pathway linking the site to any Natura 2000 sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site and therefore a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

#### **EIA**

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

#### **Conclusion**

On basis on the above assessment, it is considered that the erection of temporary living accommodation on construction site at Ballinatone Lower, Greenane,, Co. Wicklow is development but is not exempted development.

#### **Recommendation**

With respect to the query under Section 5 of the Planning and Development Act 2000 (as Amended), as to whether, the erection of temporary living accommodation on construction site at Ballinatone Lower, Greenane,, Co. Wicklow is or is not development and is or is not exempted development within the meaning of the Planning and Development Act, 2000 as amended.

The Planning Authority considers that:

- The erection of temporary living accommodation on construction site at Ballinatone Lower, Greenane,, Co. Wicklow is development but is not exempted development.



**Main Considerations with respect to Section 5 Declaration:**

- i) The details submitted under Section 5 Declaration on 10/02/23
- ii) Sections 2(1), 3(1), of the Planning and Development Act 2000 (as amended)
- iii) Article 9(1) of the Planning and Development Regulations 2001(as amended)
- iv) Class 17 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- v) An Bord Pleanála Referral 92.RL 3343
- vi) Planning Reference nos PRR 05/3286, PRR 11/4667, PRR 22/800

**Main Reasons with respect to Section 5 Declaration:**

The erection of temporary living accommodation on the subject site would not come within the exemption provision set out under Part 1 of Schedule 2, Class 17 of the Planning and Development Regulations because ,

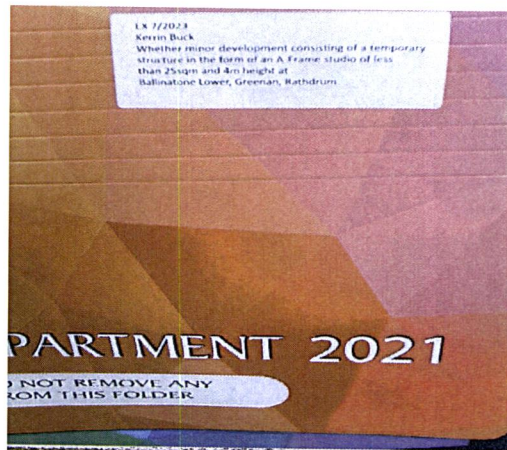
a) ~~There is no current planning permission operative on site at this time.~~

*1. The decision of the Planning Authority under PRR 22/800 for the retention permission of foundations and rising walls constructed on site and Permission for completion of dwelling with some alterations to same with site associated works is still within the appeal period, and hence there is no current permission on the site. Therefore, the proposed structure would not come within the scope of the description of class 17*

  
Solomon Aroboto E/P  
01/03/23

*2. The Limitations and conditions attached to Class 17 require the removal of the temporary accommodation and the reinstatement of the lands ~~on~~ on the completion of the permitted development. The proposal to retain the structure on the site after the expiration of the relevant period would be contrary to the said Limitations and conditions.*

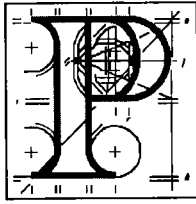
*Agreed & modified  
by 2 SR  
03/03/23*







# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

## Tipperary County

**Planning Authority Reference Number: S5/15/1**

An Bord Pleanála Reference Number: 92.RL.3343

**WHEREAS** a question has arisen as to whether a temporary mobile home at Ballytarsna Castle, Cashel, County Tipperary is or is not development or is or is not exempted development:

**AND WHEREAS** Herbert Williamson care of David Mulcahy of 67 The Old Mill Race, Athgarvan, County Kildare requested a declaration on the said question from Tipperary County Council and the said Council issued a declaration on the 30<sup>th</sup> day of January, 2015 stating that the said matter is development and is not exempted development:

**AND WHEREAS** the said Herbert Williamson referred the declaration for review to An Bord Pleanála on the 16<sup>th</sup> day of February, 2015:

**AND WHEREAS** An Bord Pleanála reconfigured the question as follows –

whether the placing of mobile home for a temporary period for an employee during construction works at Ballytarsna Castle (Protected Structure), Cashel, County Tipperary is or is not development or is or is not exempted development:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) section 57 of the Planning and Development Act 2000, as amended,
- (c) classes 1-8 inclusive and class 17 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) articles 6 and 9 of the Planning and Development Regulations 2001, as amended, and
- (e) the planning history of the site, in particular planning register reference number 13/328:

**AND WHEREAS** An Bord Pleanála has concluded that -

- (a) the development consisting of a temporary mobile home within the curtilage of the protected structure at Ballytarsna Castle, is development and is not exempted development, as set out in Section 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Class 17 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, is not operative as no permission was in place, and
- (c) the placing of a mobile home for employees would also materially contravene condition number 1(b) of planning register reference number 13/328 and accordingly, Article 9(1)(a)(i) of the 2001 Regulations applies as it would contravene a condition attached to a permission:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said installation of a temporary mobile home for an employee during construction works at Ballytarsna Castle (Protected Structure), Cashel, County Tipperary is development and is not exempted development.

## **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

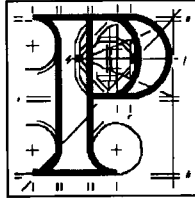
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**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this       day of       2015.**



# **An Bord Pleanála**



## **Inspector's Report**

**Planning Reference:** RL92.RL3343

**Planning Authority:** Tipperary County Council

**Reference:** Whether a temporary mobile home is or is not development or is or is not exempted development.

**Location:** Ballytarsna Castle, Cashel, County Tipperary.

**Referrer:** Herbert Williamson

**Site Inspection:** 15.5.2015

**INSPECTOR:** Robert Ryan

## **1.0 SITE LOCATION AND DESCRIPTION**

The appeal site is located on the western side of a minor county road c.4 kilometres south-west of Horse and Jockey and c.9 kilometres south of Thurles. It is an attractive rural setting. The mobile home is located within the grounds of Ballytarsna Castle which is a medieval keep that is being restored to habitable use and is now occupied.

## **2.0 DEVELOPMENT PLAN**

The Tower House is a Protected Structure Ref. S637 and a National Monument TS 053-006. The Bawn is also a National Monument (Ref. TS 053-006001).

It is not within an Amenity Area or a Natura 2000 site.

## **3.0 DETAILS OF DECLARATION**

On the 6<sup>th</sup> January, 2015 Herbert and Rebecca Williamson care of David Mulcahy Planning Consultants Limited lodged a Section 5 Referral under the Planning and Development Act 2000, as amended, in relation to retention of a temporary mobile home at Ballytarsna Castle as to whether it involved development or exempted development.

Under Section 5/15/1 the planning authority stated that it had regard to details submitted and to Section Nos. 2, 3 and 4 of the Planning and Development Act 2000, as amended, to Section 57 of the Planning and Development Act 2000, as amended and to Classes 1-8 inclusive and Class 17 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended). It concluded that the proposal does constitute works and development in the form of a temporary mobile home and does not fall under exempted development provisions set out in Section 4 of the Planning and Development Act 2000, as amended. Therefore the temporary mobile home is development and is not exempted development.

## **4.0 PLANNING REPORT**

A submission was received from David Mulcahy, Planning Consultants Limited outlining the background concerning restoration of castle. The

main point of his argument was that under Class 17 of the Planning and Development Regulations 2001 (as amended) temporary on-site accommodation relating to construction of a development under a planning permission constituted exempted development.

A Habitats Directive Assessment Screening Report concluded that Appropriate Assessment is not required as there would be no potential significant effects.

The Planning Report outlines the relevant statutory provisions and states that the mobile home is located within the grounds of the castle which is 1.1 hectares. The Tower House is a Protected Structure and a National Monument (Ref. TS 053-006). Its Bawn is also a National Monument (Ref. TS 053-006001). The tower house has been refurbished and is in use as a dwelling and the mobile home is located within the curtilage of said dwelling.

She provides a planning history viz.

Reg. Ref. 99/247 – Permission granted for restoration and reroofing of tower house, construction of utility area adjacent, access roadway and entrance, provision of septic tank system.

Reg. Ref. 04/1157 – Permission granted to complete works under Ref. 99/247 viz. window installation, repointing externally and rebuilding of both bartizans to tower house and to construct utility building and adjacent wall, protected structure no. S637.

Reg. Ref. 13/328 – Split Decision.

Permission granted for retention of an extension to the existing utility building and an additional adjoining section of the bawn wall, retention of the ancillary use structure located to the west of the tower used as a workshop/garden store and permission to complete the external rendering in lime of the main tower.

Refusal for retention of continued residential use (temporary) of mobile home for staff, retention of a single storey ancillary use building to the south of the tower for storage with enclosing walls and approximately 12 square metres of roof mounted solar panels, the site entrance gates and the road boundary fencing.

She emphasises that the mobile home was already in place prior to Ref. 13/328 being lodged and that Class 17 refers to 'development is

being or, is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment'. She continues that no live permission, consent or approval was extant on site at that stage and therefore could not be considered to be required to accommodate/facilitate construction work on site.

Retention of same was refused and condition 1(b) required that same be removed within 3 months of the grant of planning permission, but it remains in place.

In essence reason no. 1 considered that retention of mobile home at a sensitive location within the curtilage of Ballytarsna Castle would materially and negatively affect the character of this Protected Structure.

In her Assessment she states that placing a mobile home on land constitutes a material change in use of the land and therefore is considered to entail works and is development.

The mobile home lies within the curtilage of a Protected Structure and as it would materially affect the character of this building (as set out in refusal Ref. 13/328) then it would contravene Section 57 of the 2000 Planning Act, as amended.

In relation to Class 17, Part 1, Schedule of the Regulations she points out that mobile home was in place prior to application being submitted to the planning authority, during a time when there were no live permissions on site. The planning authority do not consider that mobile home was restricted to persons employed or otherwise engaged with the carrying out of development pursuant to any permission. Indeed Condition No. 1(b) of Ref. 13/328 required the mobile home to be removed within 3 months of that permission being granted. She concludes that Class 17 does not apply. Furthermore, Class 17 needs to be considered in the context of Part 1 of Schedule 2, Classes 1 to 8 inclusive, which clearly defines exemptions specifically defined as exempted development within the curtilage of a dwellinghouse and within these classes there is no specific provision for the placement of a mobile home to be placed on site of a dwelling in a pre, during and post construction period (see RL2848).

She concludes that a mobile home does involve 'works' and 'development', but the works do not come within the criteria as set out under Class 17 of Part 1, Schedule 2 of the Regulations which relates to 'Exempted Development'.



## **5.0 REFERRER'S SUBMISSION TO BOARD dated 16/1/2015**

David Mulchay, Planning Consultants Limited on behalf of Mr. Herbert Williamson who now owns the castle provides photographs and planning history.

He states that previous decision Ref. 13/328 does not prevent a Referral taking place.

He quotes Class 17 of the Regulations stating that conversion of castle to living accommodation has been on-going since 1998. Such a project requires on-going accommodation on-site for an employee who also provides a security presence.

Refurbishment in respect of 2014 permission is already underway and the castle owners are about to leave due to sale so security is very important. The entrance works should be completed by May, 2015.

They argue that a temporary mobile home would have no material impact on the castle and its removal would be impractical making the project problematic. Indeed the mobile home cannot be seen from the public roadway.

They acknowledge that the mobile home was in situ prior to works commencing, but it is for an employee working on the project and will be removed upon completion of works. RL2848 is not relevant.

While their intention would be to remove the mobile home this summer they suggest that further works are envisaged for reconstruction of bawn wall etc. Should permission issue reinstatement of the mobile home would appear reasonable and in accordance with the lawn.

The wording of the question is suggested to be amended as follows:

'Whether the installation of a temporary mobile home for an employee during construction works only at Ballytarsna Castle is or is not development and is or is not exempted development'.

They wish the Board to confirm that the temporary on-site accommodation is development and is exempted development.

## **6.0 PLANNING AUTHORITY TO BOARD dated 6/3/2015**

They state that they wish the Board to confirm their decision as being appropriate and consistent with the relevant legislation and regulations.

They note amendments suggested by Referrer, but continue that a mobile home constitutes a material change of use of the land as this is works and is development.

The question posed is whether the temporary mobile home during construction works only is or is not development.

The tower and bawn are both protected structures and they refer to refusal under Ref. 13/328. Therefore, the proposal is not exempted development by virtue of Section 57 of the Act.

They repeat that mobile home was on site prior to Ref. 13/328 when no live permission was in place. Therefore, exemption was not available.

Furthermore, Class 17 has to be considered within the context of Part 1 of Schedule 2, Classes 1 to 8 relating to exemptions within the curtilage of a house and within these classes there is no specific provision for a mobile home in pre, during and post construction periods.

They request that the Board uphold their decision.

### **RL22.RL2848**

This Referral revolved around whether a mobile home for habitable use is or is not exempted development at Graffin, Clonmore, County Tipperary.

This is broadly similar to current proposal.

In a decision dated 10/6/2011 the Board concluded that having regard to the long established placement of the mobile home on the site, and in the absence of commencement works for the permitted dwellinghouse, that they were not satisfied that the development comes within Class 17 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

## **Legal Background**

Having regard to all the above information I would accept the view of Referrer that the question should be as follows viz.

‘Whether the installation of a temporary mobile home for an employee during construction works only at Ballytarsna Castle is or is not development and is or is not exempted development’.

Section 2(1) of the Planning and Development Act, 2000 (as amended) provides the following definitions

‘attendant grounds’, in relation to a structure, includes land lying outside the curtilage of the structure.

‘development’ has the meaning assigned to it by Section 3 and ‘develop’ shall be construed accordingly.

‘exempted development’ has the meaning specified in section 4

‘protected structure’ means –

- (a) a structure, or
- (b) a specified part of a structure,

which is included in a record of protected structures etc.

‘structure’ means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of any structure so defined and –

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

(b) in relation to a protected structure or proposed structure, includes –

- (i) the interior of the structure,
- (ii) the land lying within the curtilage of the structure,
- (iii) any other structures lying within that curtilage and their interiors, and

- (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in paragraph (i) and (iii).

‘unauthorised development’ means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

‘unauthorised structure’ means a structure other than –

- (a) a structure which was in existence on 1 October 1964, or
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act F17[or under section 34 or 37G of this Act], being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1964 or section 4 of *this Act*);

‘unauthorised works’ means any works on, in, over or under land commenced on or after 1 October 1964, being development other than

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or *section 4* of this Act), or
- (b) development which is the subject of a permission granted under Part IV of the Act of 1963 F17[or under section 34 or 37G of this Act], being a permission which has not been revoked, and which is carried out in compliance with that permission of any condition to which that permission is subject;

‘use’, in relation to land, does not include the use of the land by the carrying out of any works thereon;

‘works’ includes any act or operation of construction, excavation, demolition, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application.



## Development

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.
- (2) For the purposes of *subsection (1)* and without prejudice to the generality of that subsection –
- (a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or
  - (b) where land becomes used for any of the following purposes –
    - (i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,
    - (ii) the storage of caravans or tents, or
    - (iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,
- the use of the land shall be taken as having materially changed.
- (3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

## Exempted development

4. (1) The following shall be exempted developments for the purposes of this Act –

- (j) development consisting of the use of any structure or other land within the curtilage of a house for any purposes incidental to the enjoyment of the house as such.

Subsection (2) relates to regulations for any class of development to be exempted development for the purposes of this Act.

Section 57 states that the carrying out of works to a protected structure shall be exempted development only if those works would not materially affect the character of

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social to technical interest.

## **Planning and Development Regulations 2001 (as amended)**

Classes 1-8 of Part 1, Schedule 2 relate to exempted development concerning exempted development – general within the curtilage of a house.

Class 17 comes under the heading 'temporary structures and uses' and reads as follows:

### **Description of Development**

#### **Class 17**

The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.

## **Conditions and Limitations**

Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent, approval or confirmation granted under the Act or any other enactment.

### **7.0 ASSESSMENT**

The definition of 'development' as quoted above involves 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 3(2)(b)(i) refers to the placing or keeping of any vans, tents or other objects, whether or not moveable etc, for the purpose of camping, caravanning or habitation.

Clearly a mobile home changes the use of the land materially and is development.

Classes 1-8 of Part 1, Schedule 2 of the Planning and Development Regulations involve exempted development within the curtilage of a house. The only relevant class is 8 which refers to storage of a caravan provided it is not stored for more than 9 months in any year or occupied as a dwelling while so kept or stored.

As the mobile home is occupied and has been in place for several years Class 8 is not applicable.

Class 17 (quoted above) does provide for temporary on-site accommodation for persons employed on the development pursuant to any permission, consent, approval or confirmation granted under the Act provided it is removed at the expiration of the period and the land reinstated.

The planning authority have stated that previous permissions viz. Ref. 99/247 and 04/1157 had both involved permission to restore and re-roof the tower, but had both expired (in the case of 04/1157 the date is 31/12/2010) at the time of a further application Ref. 13/328.

Ref. 13/328 granted retention for extension of utility building and adjoining section of the bawn wall and a workshop/garden store to the west of the tower. Permission was also granted to complete external lime rendering of the main tower.

However, various refusals also occurred including continued residential use (temporary) of a mobile home for site staff.

At the time of this decision there was no outstanding permission in place and therefore Class 17 does not apply.

Condition No. 1(b) of Ref. 13/328 states that this grant of planning permission does not include for the retention of the mobile home etc. which shall be removed within 3 months of the planning authority's decision.

Article 6(1) of the Planning and Development Regulations states that subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2, shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1.

Article 9 of the Planning and Development Regulations imposes various restrictions on development of which 9(1)(a) states 'if the carrying out of such development would

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

Condition No. 1(b) is quite explicit and in my view it precludes Class 17 from being operative.

There is no doubt that substantial works have been carried out on the castle. At the date of inspection it was occupied and all external rendering appeared to have been completed.

The Referral primarily revolves around Ref. 13/328. The submission received by the Board states that these works should be completed by May 2015, but further works are envisaged. At present there appears to be no permission and therefore this aspect cannot be addressed by the Referral.



As regards Section 57 – works affecting character of protected structures.

Having inspected the site I am quite satisfied that the mobile home is located within the curtilage of the castle, which is a protected structure.

The mobile home from the evidence in place would appear to have been on the site for a considerable time period and was certainly there before Ref. 13/328.

It is not unreasonable to suggest that a temporary structure such as this would over a prolonged period have a serious negative impact which would materially affect the character of the structure.

## **8.0 CONCLUSION AND RECOMMENDATION**

I would sustain the view of the planning authority that this mobile home represents a material change of use of the land and is development and is not exempted development.

### **Recommendation**

**WHEREAS** a question has arisen as to whether the installation of a temporary mobile home for an employee during construction works at Ballytarsna Castle (Protected Structure), Cashel, County Tipperary is or is not development or is or is not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála by David Mulcahy Planning Consultants Limited on behalf of Mr. Herbert Williamson in accordance with the provisions of Section 5 of the Planning and Development Act, 2000 (as amended).

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000, as amended
- (b) section 57 of the Planning and Development Act 2000, as amended

- (c) classes 1-8 inclusive and class 17 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)
- (d) the exempted development provisions of Planning and Development Regulations 2001, as amended including articles 6 and 9
- (e) the planning history of the site, in particular Reg. Ref. 13/328.

**AND WHEREAS** An Bord Pleanála has concluded that –

- (a) the development consisting of a temporary mobile home within the curtilage of the protected structure, Ballytarsna Castle, is development and is not exempted development, as set out in Section 3(1) of the Planning and Development Act, 2000 (as amended),
- (b) that Class 17 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, is not operative as no permission was in place, and
- (c) the placing of a mobile home for employees would also materially contravene condition no. 1(b) of Ref. 13/328 and therefore Article 9(1)(a)(i) as it would contravene a condition attached to a permission.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)9a) of the Planning and Development Act, 2000 hereby decides that the temporary placing of a mobile home for employees during construction works at Ballytarsna Castle, Cashel, County Tipperary is not exempted development.

---

**Robert Ryan,**  
**Senior Planning Inspector.**

**24<sup>th</sup> June, 2015.**

**sg**

# **MEMORANDUM**

## **WICKLOW COUNTY COUNCIL**

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**TO: Solomon Aroboto**  
**Executive Planner**

**FROM: Crystal White**  
**Assistant Staff Officer**

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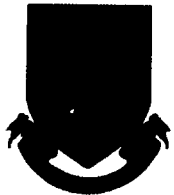
**RE:- EX 7/2023 - Declaration in accordance with Section 5 of the  
Planning & Development Acts 2000 (as amended)  
Whether minor development consisting of a temporary structure in the  
form of an A-Frame studio of less than 25sqm and 4m height at  
Ballinatone Lower, Greenan, Rathdrum**

I enclose herewith for your attention application for Section 5 Declaration  
received 10<sup>th</sup> of February 2023.

The due date on this declaration is the 9<sup>th</sup> of March 2023.



**Senior Staff Officer**  
**Planning Development & Environment**



**Comhairle Contae Chill Mhantáin**  
**Wicklow County Council**

**Forbairt Pleanála agus Comhshaol**  
**Planning Development and Environment**

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Cill Mhantáin / Wicklow  
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Faics / Fax: (0404) 69462  
Rphost / Email: [plandev@wicklowcoco.ie](mailto:plandev@wicklowcoco.ie)  
Suíomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

20/02/2023

**Kerrin Buck**

**RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). Ex 7/2023**

**Whether minor development consisting of a temporary structure in the form of an A-Frame studio of less than 25sqm and 4m height at Ballinatone Lower, Greenan, Rathdrum**

A Chara

I wish to acknowledge receipt on the 10<sup>th</sup> of February 2023 details supplied by you in respect of the above section 5 application. A decision is due in respect of this application by 09/03/2023.

Mise, le meas

**SENIOR EXECUTIVE OFFICER**  
**PLANNING DEVELOPMENT AND ENVIRONMENT**



Wicklow County Council  
County Buildings  
W      W  
0404-20100

10/02/2023 15 12 58

Receipt No L1/0/308635  
\*\*\*\*\* REPRINT \*\*\*\*\*

KERRIN BUCK  
BALLINATONE LOWER  
GREENAN  
RATHDRUM  
CO WICKLOW

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

Total	80 00 EUR
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Tendered	
Credit Card	80 00

Change	0 00
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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) Name of applicant: Kerrin Buck

Address of applicant: \_\_\_\_\_

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

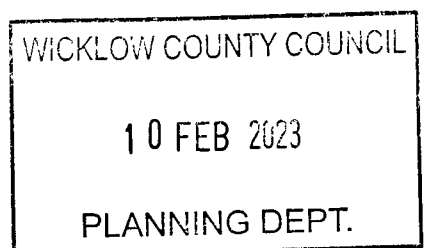
**2. Agents Details (Where Applicable)**

(b) Name of Agent (where applicable) N/A

Address of Agent : N/A

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

**3. Declaration Details**





i. Location of Development subject of Declaration SAA  
\_\_\_\_\_  
\_\_\_\_\_

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: The query is to confirm that a minor development consisting of a temporary structure in the form of an A-Frame studio of less than 25sqm and 4m height is exempted development. The studio is built within the curtilage of an existing partially constructed house, which is being restored, and completed subject an extant planning permission (Ref 22/800). The modest A-Frame studio (please see enclosed drawings) has been put in place to temporarily accommodate people who are engaged in restoration of the existing permitted works (WCC 1182/2022), and their completion. Once the house, subject to planning permission 22/800, is complete the A-frame studio will cease to be used for habitation and will become a studio/office. We assume the temporary structure is exempted development under Planning and Development Regulations 2001, Part 1, Article 6 - Class 17 and will become exempt under Class 3 when it becomes an office/studio.

*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. Currently, we believe the A-Frame studio/office is exempted development under Planning and Development Regulations 2001, Part 1, Article 6 - Class 17 and will become

exempt under Class 3 when it becomes an office/studio.

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 Photos x 3, Sketch Design of A-Frame Studio, Site Location Map, Site Layout Map, Design sketch, Structural design.
1. SITE LOCATION MAP
2. SITE LAYOUT MAP
3. SITE LAYOUT PLAN
4. DESIGN DRAWINGS FOR A-FRAME STUDIO
5. DESIGN CONCEPT
6. PHOTO SHOWING LEVEL OF A-FRAME
7. PHOTO SHOWING STRUCTURE OF CONSTRUCTION
8. BUILDING AT NIGHT
9. STRUCTURAL DESIGN
- viii. Fee of € 80 Attached ? Yes

Signed :



Dated :

10/02/2023

### **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.

1

# Site Location Map

CENTRE  
COORDINATES:  
ITM 715402.686415

PUBLISHED: 24/06/2022  
ORDER NO.: 50276337\_1

MAP SERIES: 6 Inch Raster  
MAP SHEETS: VVW029  
6 Inch Raster VVW030  
6 Inch Raster VVW034  
6 Inch Raster VVW035

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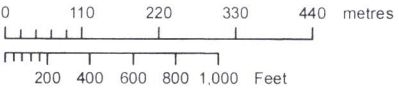
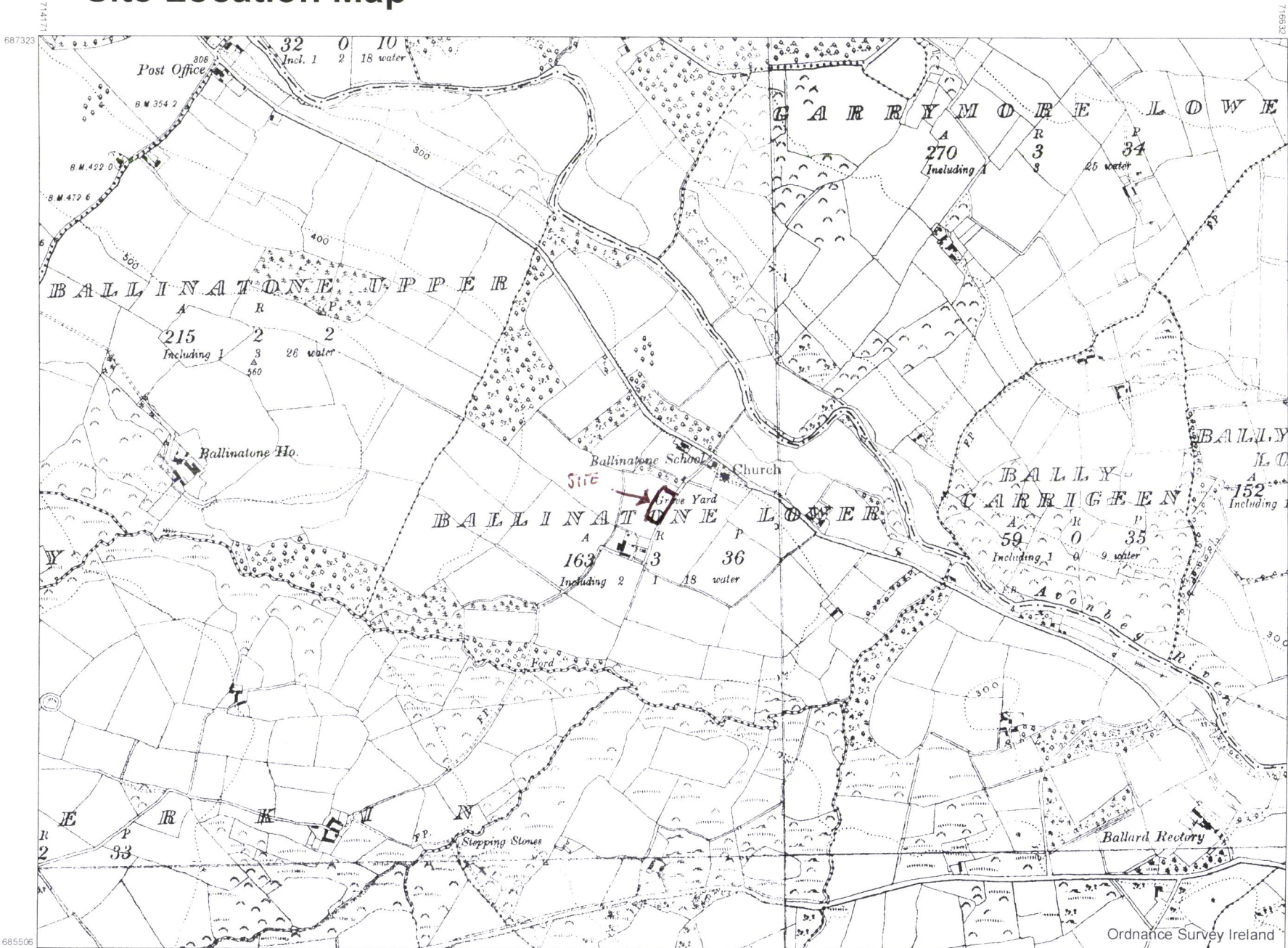
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# Planning Pack Map

**CENTRE COORDINATES:**  
ITM 715402.686415

**PUBLISHED:** 24/06/2022  
**ORDER NO.:** 50276337\_1

**MAP SERIES:** 1:5,000  
**MAP SHEETS:** 4193

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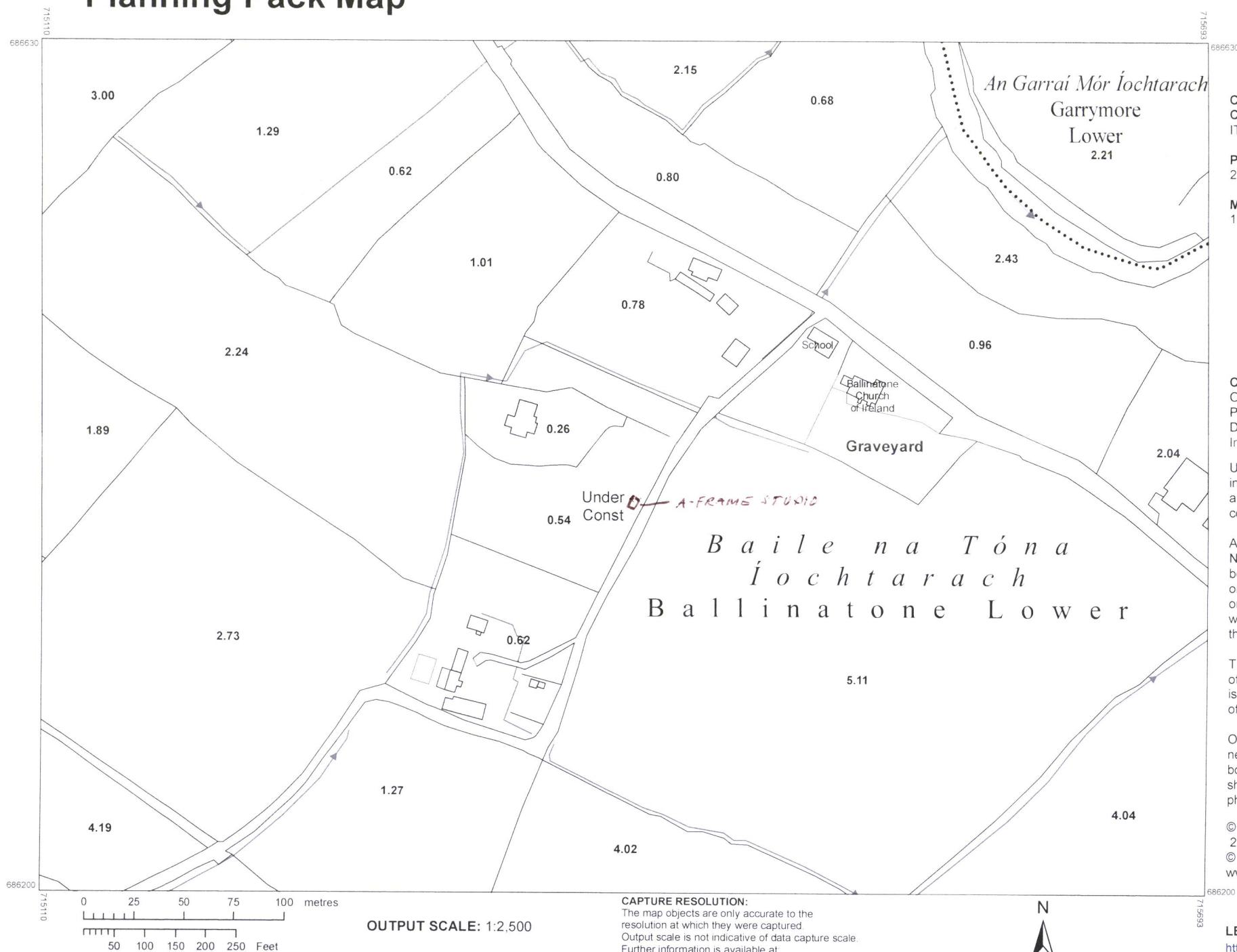
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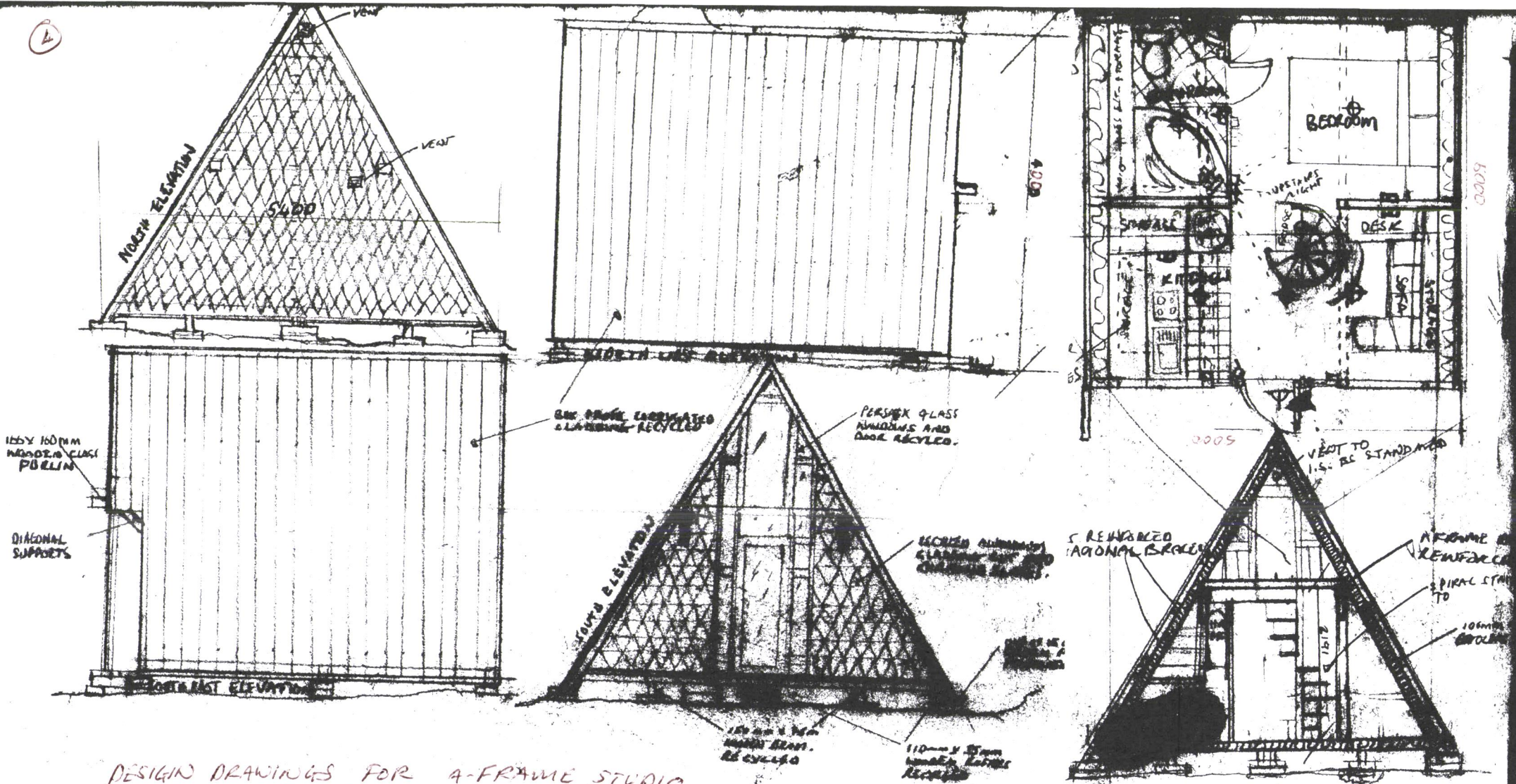
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DESIGN DRAWINGS FOR A-FRAME STUDIO  
 BALLINATOWEPOWER, GREENAN, RATHBORUM, CO. WICKLOW  
 FLOOR AREA 25 SQM

HEIGHT 4M

SOLAR + WIND POWERED  
 BUILT FROM RECYCLED MATERIALS

NO SCALE

BY KERRIN DUCK OF  
 ARCH CONSULTANCY



3

INSULATED  
INTERNAL  
SHELL

DESIGN CONCEPT

ENSUITE

STEAM LAP ROOF  
CLADDING

ENTRANCE  
DECK  
SHELTER

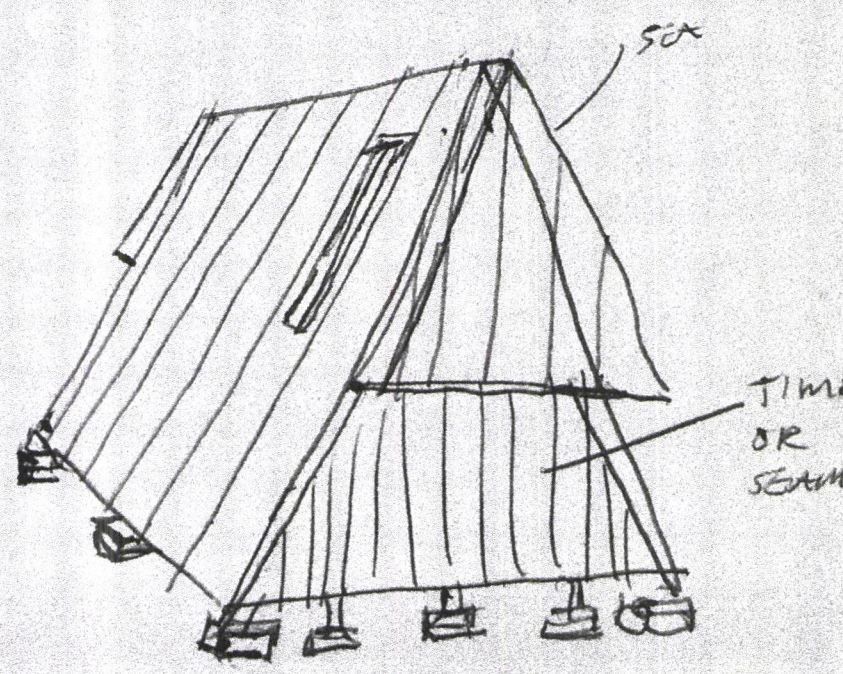
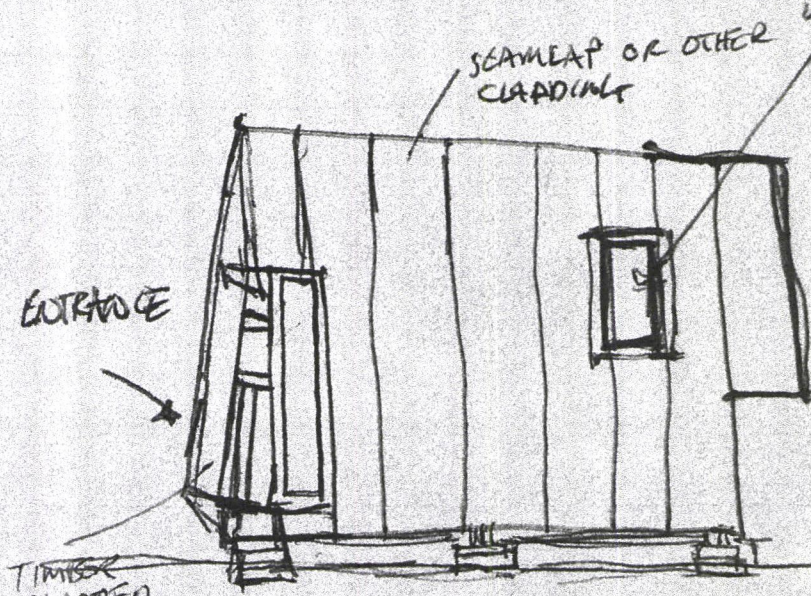
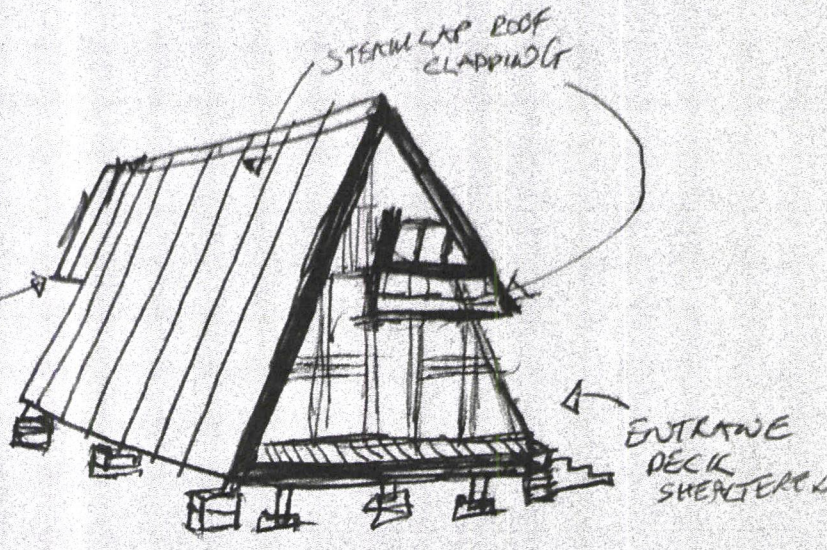
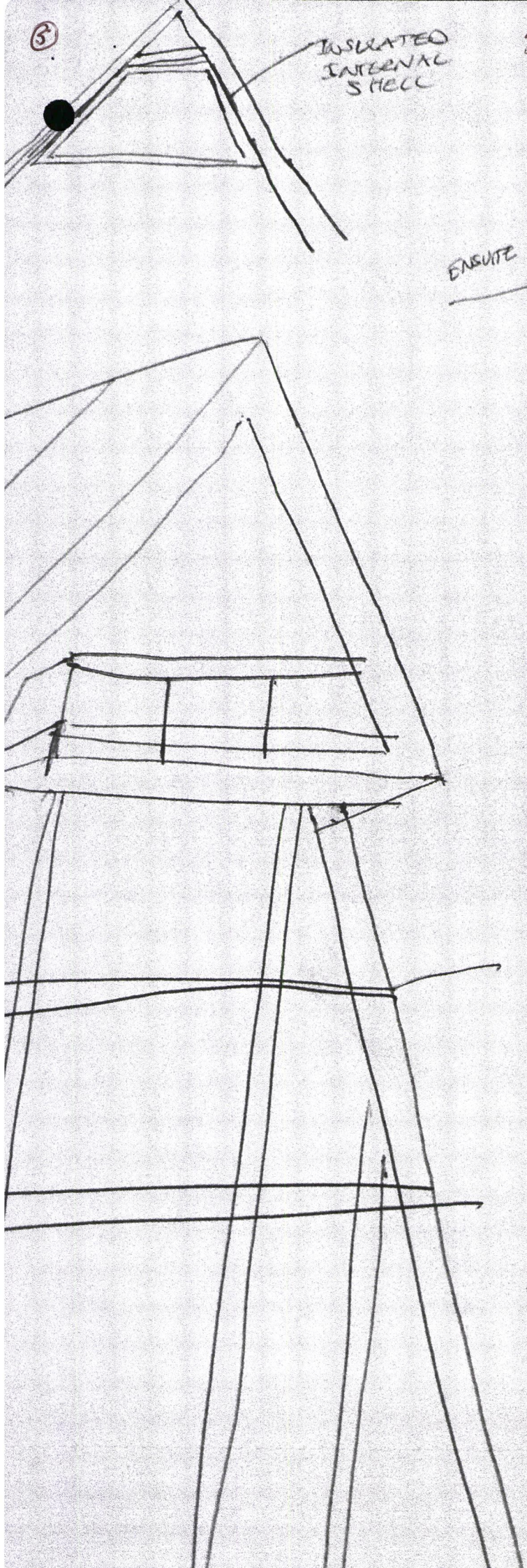
SEAM LAP OR OTHER  
CLADDING

ENTRANCE

TIMBER  
CLAPPED  
FAVE

SEA

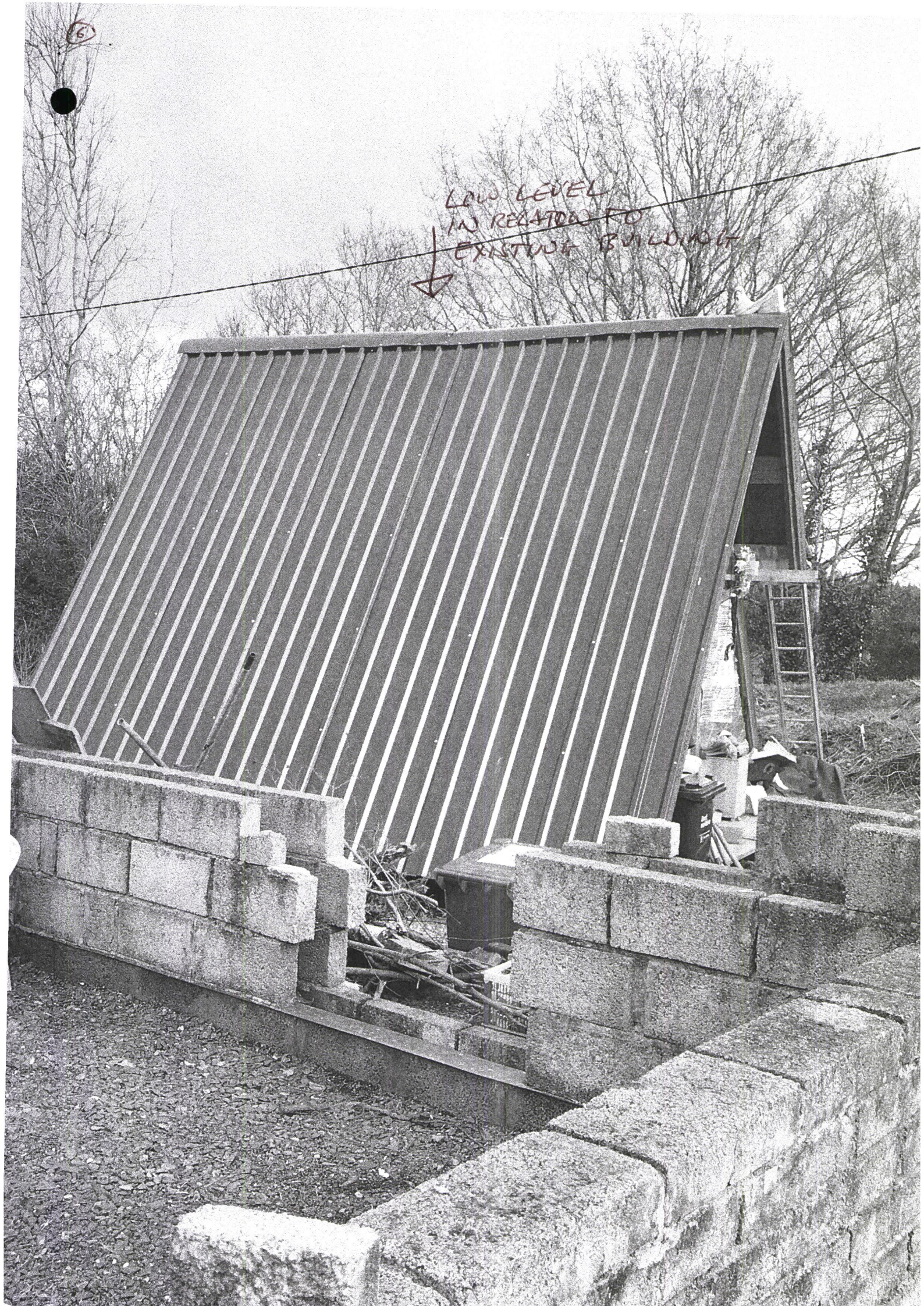
TIMBER  
OR  
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6

LOW LEVEL  
IN RELATION TO  
EXISTING BUILDING

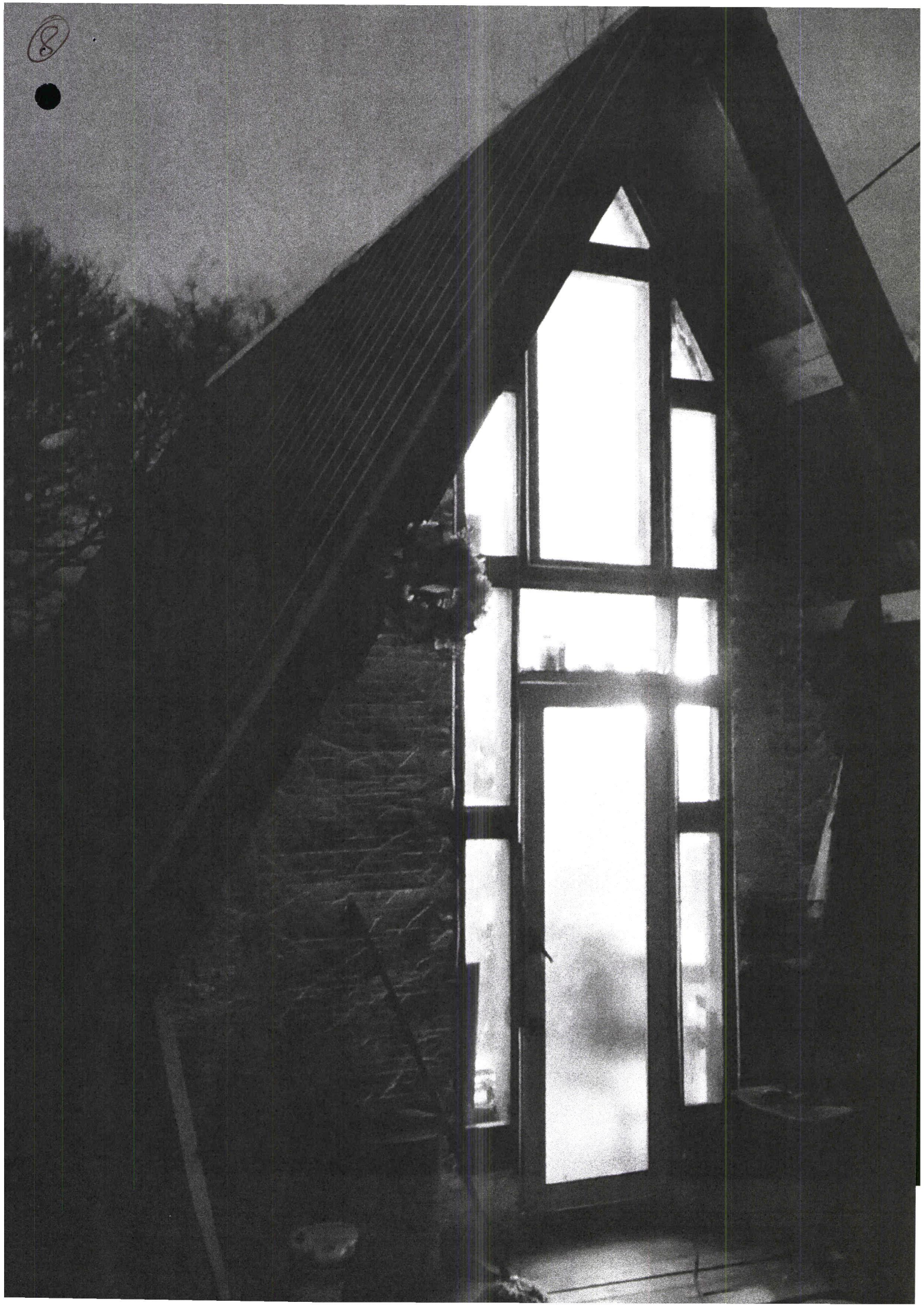






CONSTRUCTED IN ACCORDANCE WITH BUILDING REQ<sup>S</sup> ETC

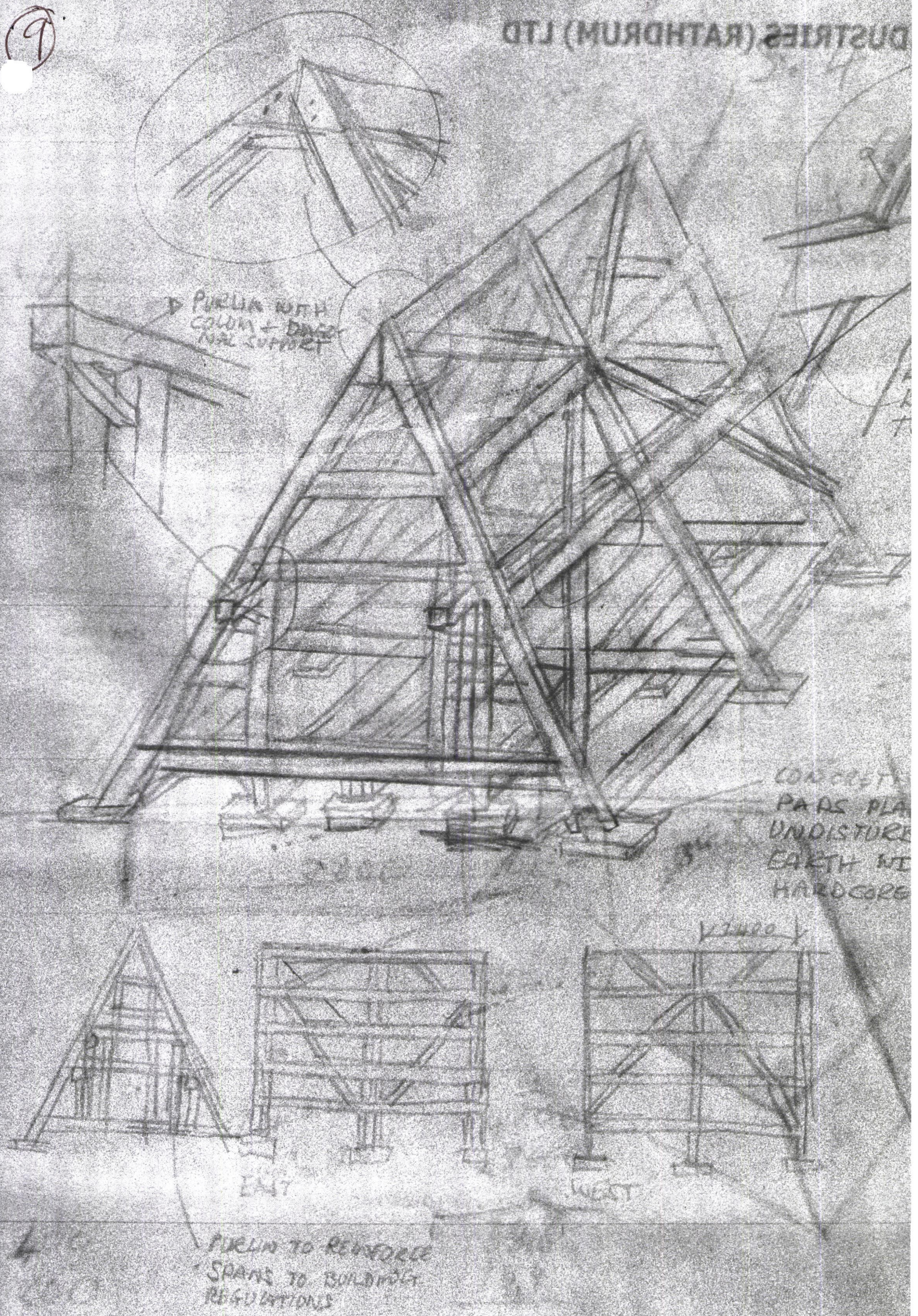






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