

COMHAIRLE CHONTAE CEATHARLOCHA
CARLOW COUNTY COUNCIL

C A R L O W
C O U N T Y C O U N C I L
COMHAIRLE CHONTAE CEATHARLOCHA



COUNTY BUILDINGS, ATHY ROAD, CARLOW.

Tel: Phone: 059-9170300/ Fax: 059-9170836
Website: www.carlow.ie

Application Form for Section 5 Declaration on Development & Exempted Development

1. Name of applicant: JOHN BROPHY

2. Address of applicant: 

3. Name and address for correspondence: 

Tel. No:  Fax No: _____ E-mail: 

4. Location of Development: Townland: LOWER BORRIS, Co. CARLOW
R95 AOK5

Postal Address: (if different from Townland): _____

5. Name and Address of Agent: _____

6. Outline clearly the description of the development / proposal: _____

WE PROPOSE TO ADD A SMALL NUMBER OF
COUNTER SEATING ALONG AN EXTERIOR WALL (6 APPROX)
AND TABLE SEATING FOR APPROXIMATELY 8 PEOPLE

7. Is this a Protected Structure or within the curtilage of a Protected Structure: NO

8. List any previous applications relating to the site: ① CONVERSION OF STORE INTO APARTMENT
② QUOIN STONE RETENTION
③ SHOP FRONT INSTALLATION

9. Are you aware of aware of any enforcement proceedings relating to this site: NO

10. Please state applicant's interest in this site: OWNER

11. List of plans, drawings etc. submitted with this application: _____

- ① PROPOSED SEATING LAYOUT.
- ② SITE LAYOUT MAP.
- ③ RURAL PLACE MAP.
- ④ SEATING AREA IN RELATION TO SHOP FLOOR (OUTLINED IN RED)

Signed: Joel Brophy
(Signature of Applicant)

Date: 6/1/2023

Note: This application must be accompanied by:

Payment of Fee: This application must be accompanied by the statutory fee of €80

Lodgement: The application should be forwarded to:
Planning Department
Carlow County Council
Athy Road
Carlow



OFFICE USE ONLY	
Date Received: _____	Date Decision Due: _____
Date of Decision: _____	Recommendation: _____

Advice Note:

This is a non-statutory advice note prepared by Carlow County Council for the purposes of advising applicants what information is required for a decision to be made under Section 5 by the Planning Authority.

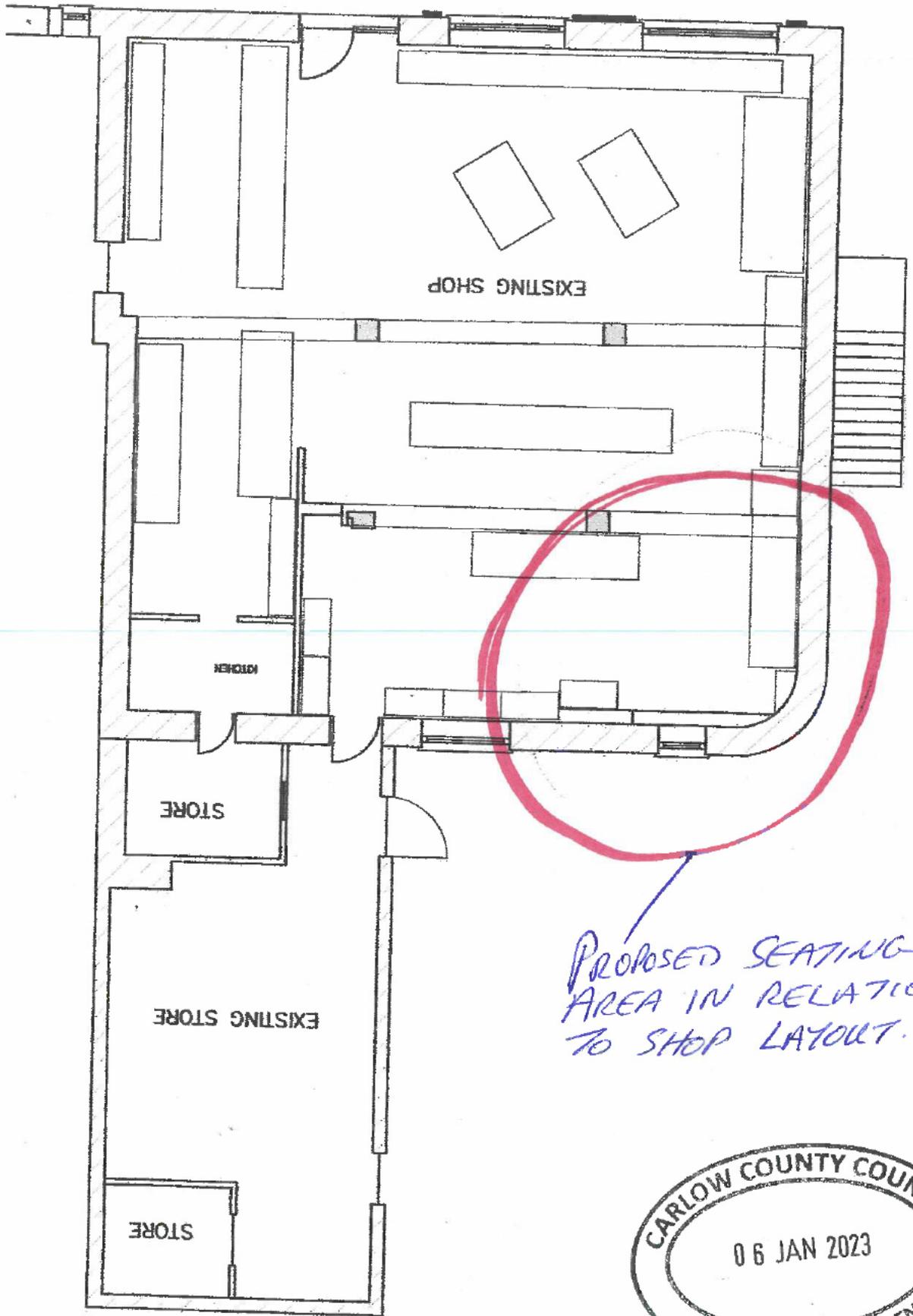
Under Section 5 of the Planning and Development Act 2000 as amended any person may request in writing from the Planning Authority as declaration as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Planning and Development Act 2000 as amended.

The Planning Authority is required to make a decision within 4 weeks of receipt of a Declaration Request under Section 5, along with the prescribed fee, however the Planning Authority can also request Additional Information if it is considered that insufficient information has been submitted.

Therefore, it is advised that the following information should be submitted to enable the Planning Authority to make a qualified decision within the prescribed period:

- A site location map (Scale 1:2500 in rural area and 1:1000 in an urban area), with the site clearly outlined in red.
- Site Layout Map (Scale 1:500) in compliance with Article 23 of the Planning and Development Regs 2001 as amended.
- Drawings (Scale 1:50) Where development involves any construction of a new structure, increase in size of existing structure or alterations to an existing structure, scaled floor plans and elevations. Drawings should differentiate between the original building, all extension and proposed development.





PROPOSED SEATING
AREA IN RELATION
TO SHOP LAYOUT.



DRIVEWAY

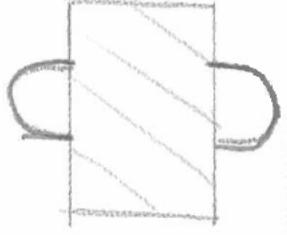
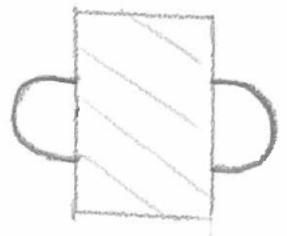
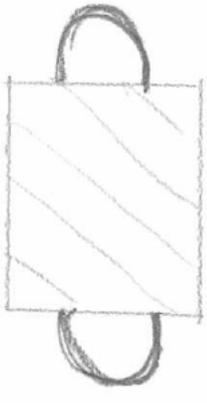
4.5m

WINDOW
1160mm

PROPOSED COUNTER SEATING



BAR STOOL
SEATING
STOOLS



EXISTING STORE ROOM

REAR
YARD

3.8m

WINDOW
780mm

SHOP
FLOOR



POSITION OF
SITE NOTICE

SITE LAYOUT MAP

SCALE 1:200
AREA OF SITE = 0.1 HECTARES



Job Title
PLANNING PERMISSION
FOR JOHN BROPHY
NEW SHOP FRONT
AT MAIN STREET, BORRIS,
CO. CARLOW

Drawing Title
SITE LAYOUT

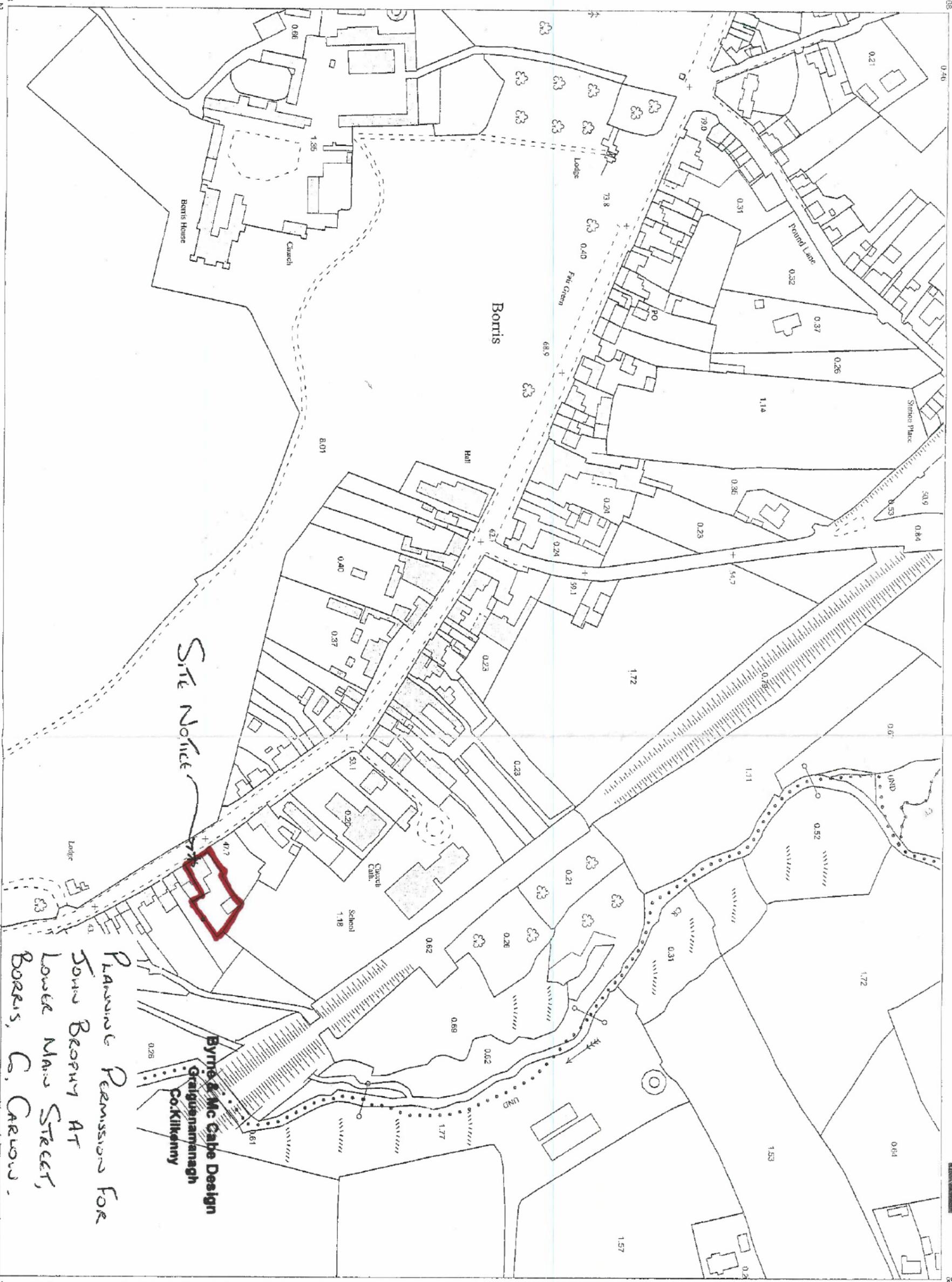
BYRNE & MCCABE DESIGN
Architectural & Engineering Services

Upper Main St
Glenmaluragh,
Co. Wick.
Tel: (051) 0723861
Fax: (051) 0723804
Email: byrneandmccabedesign@icloud.ie

PLANNING PERMISSION FOR SHOP FRONT
THOMAS MCCABE ARCHITECTURAL SERVICES
NO. 10, MAIN STREET, BORRIS,
CO. CARLOW

15-063
01

Rural PLACE Map



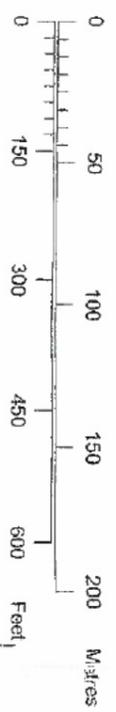
SITE NOTICE

*Planning Permission for
 Town Boreis AT
 Lower Main Street,
 Boreis, Co. Kerry.*

**Byrne & McCabe Design
 Galguanamagh
 Co. Kilkenny**

Scale:- 1:2,500

Scale:- 1:2,500



Plot Ref. No. 1104176_1_1
 Plot Date 27-APR-2006

ITM CENTRE PT. COORDS
 672978,650405

DESCRIPTION

MAP SHEETS

1:2500
 4895-A



Produced by The Map Shop,
 54 Upr John Street, Kilkenny City
 On behalf of Ordnance Survey Ireland,
 Phoenix Park, Dublin 8.

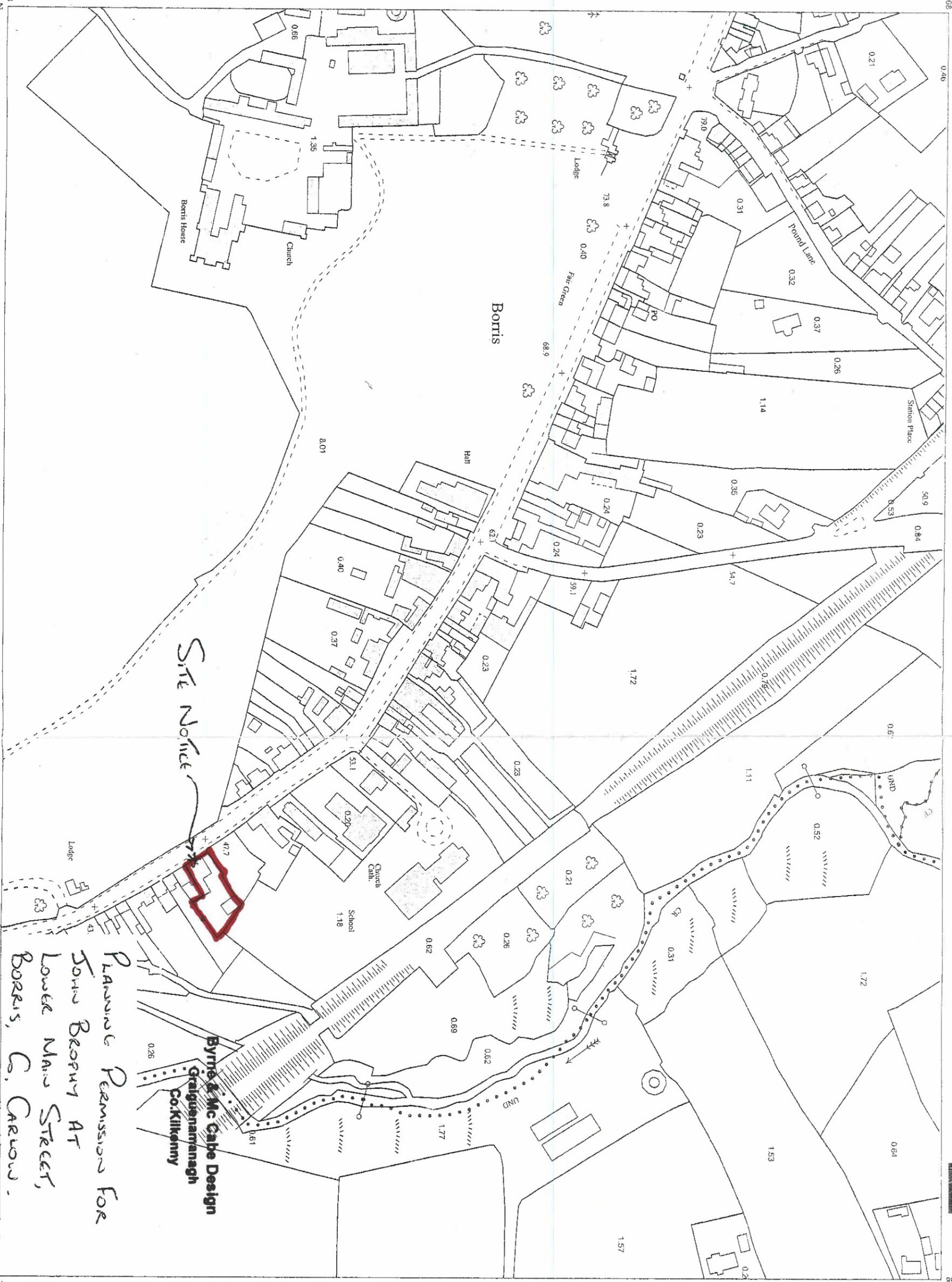
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Rural PLACE Map



SITE NOTICE

Planned Permission for
 Town Boundary AT
 Lower Main Street,
 Borris, Co. Carlow.

Byrne & McCabe Design
 Graigueanagh
 Co. Kilkenny

ITM CENTRE PT. COORDS
 672978, 650405

DESCRIPTION

MAP SHEETS

1:2500
 4895-A

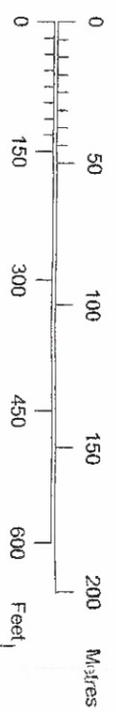


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Scale:- 1:2,500
 Scála:- 1:2,500

Plot Ref. No. 1104176_1_1
 Plot Date 27-APR-2006



**Declaration on Development & Exempted Development
Section 5 of the
Planning and Development Act 2000 (as amended)**

SEC5/23/02

WHEREAS questions have arisen as to whether the use of part of the existing retail area as a seating area for the purpose of consuming food on the premises is or is not development and is or is not exempted development, at Lower Main Street, Borris, Co. Carlow, R95 AOK5;

AS INDICATED on the plans and particulars received by the Planning Authority on 06/01/2023;

AND WHEREAS John Brophy, Lower Main Street, Borris, Co. Carlow requested a declaration on the said question from Carlow County Council;

AND WHEREAS Carlow County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- a. The information included in the submitted plans and particulars;
- b. The relevant planning history relating to the site;
- c. Section 2(1) of the Planning and Development Act, 2000 as amended,
- d. Section 3(1) of the Planning and Development Act, 2000 as amended,
- e. Section 4(1)(h) of the Planning and Development Act, 2000 as amended,
- f. Section 4(2)(a)(1) of the Planning and Development Act, 2000 as amended,
- g. Article 5(1), Article 6(1), Article 9(1) and Article 10(1) of the Planning and Development Regulations, 2001, as amended.
- h. Class 14 of Part 1 and Class 1 of Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- i. The existing use of the premises as retail.
- j. The scale, nature and layout of the proposed café.

AND WHEREAS Carlow County Council has concluded that;

- (a) The addition of seating and tables for the purpose of consuming food on the premises constitutes a material change of use of part of the existing shop and is therefore 'development' within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 (as amended);
- (b) The use of the subject premises as a café does not constitute use as a "shop" as defined in Article 5(1) of the Planning and Development Regulations 2001, as amended, because the consumption of sandwiches or other food on the premises is expressly excluded from the definition of 'shop' under Article 5(1) of the said Regulations, as amended,

NOW THEREFORE Carlow County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the addition of seating and tables in part of the existing shop, **is development and is not exempted development.**

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

Signed: Nicola Candler

Date: 23/01/2023

CARLOW COUNTY COUNCIL PLANNING DEPARTMENT	
Section 5 Declaration	
Reference No. SEC5/23/02	
Name of Applicant:	John Brophy
Site Address:	Lower Main Street, Borris, R95 AOK5, Carlow.
Referral:	Whether or not the addition of seating and tables in the existing shop is development or is exempted development.

1)Site Location

The site in question is located on Borris Main Street towards the southern end of the town. The site comprises of an existing shop and newsagents that fronts directly onto the footpath. The site is located within an Architectural Conservation Area (ACA) as identified in the Borris Plan in the Carlow County Development Plan 2022-2028.

2)Relevant Planning History

Pl. Ref; 18-213: Permission GRANTED for the change of use of existing storage area to the rear of existing shop to a one bed apartment and all associated site works.

PL15/162 - Permission GRANTED for the retention of quoin stones and railings to windows and permission for a new shop front and all associated site works.

CW03743 – Permission GRANTED for a single storey extension.

3)Relevant Legislative/Regulatory Provisions

Planning and Development Act 2000 (as amended) – (hereafter the Act)

- Section 2(1)

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

- Section 3(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—

(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,

the use of the land shall be taken as having materially changed.

-Section 4(2)

the 'Minister' may by Regulation provide for any class of development to be exempted development for the purposes of the Act.

-Section 4(4)

'Notwithstanding..... 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) – (hereafter the Regulations)

- Article 5 gives the following definition of 'shop'

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

(a) For the retail sale of goods,

(b) As a post office,

(c) For the sale of tickets or as a travel agency,

(d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use,

(e) for hairdressing,

(f) for the display of goods for sale,

(g) for the hiring out of domestic or personal goods or articles,

(h) as a launderette or dry cleaners,

(i) for the reception of goods to be washed, cleaned or repaired,

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food for consumption off the premises, except under

paragraph (d) above, or any use to which class 2 or 3 of Part 4 of Schedule 2 applies.

-Article 6(1)

provides 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 mention of that class in the said column 1.

-Article 9(1)

provides that 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 –

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

-Article 10 (1)

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

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

Part 2 of the Regulations deals with exempted development.

Class 14 - development consisting of the following changes of use would be exempted development –

- (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,
- (b) from use as a public house to use as a shop,
- (c) from use for the direction of funerals, as a funeral home, as an amusement arcade or as a restaurant, to use as a shop,
- (d) from use to which class 2 of Part 4 of this Schedule applies to use as a shop.

Part 4 of Schedule 2: Exempted Development - Classes of Use:

Class 1: Use as a shop.

4)Environmental Impact Assessment

Having regard to the nature, size and location of the development as detailed in the plans and particulars received, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination would not be required.

5)Appropriate Assessment

The River Barrow and River Nore SAC is c. 100m to the south of the referral site. The SAC is designated for a range of riverine species and habitats for which suitable water quality is required. However, the subject development is minor in nature, does not involve any external works and relates only to a change of use. The development has been assessed having regard to the requirements of the EU Habitats Directive. Given the proximity of the nearest European Site and the nature and extent of the referral in question and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available which is deemed adequate to inform a screening determination, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, Appropriate Assessment is not required.

6)Flood Risk

On the basis of CFRAM mapping the site is not located within a potential flood risk area.

7)Built Heritage

Archaeology

No recorded features on or in the vicinity of the site.

Architectural Heritage (RPS, NIAH & ACA)

The application site is within the Borris ACA however no alterations are proposed to the building externally and there will be no impact to the Architectural Conservation Area resulting from the proposal.

8)Assessment

The application form is accompanied by Site Location Map, Site Layout Map and a sketch of the proposed floor plan. A plan of the existing shop has also been submitted however from inspection this plan is not an accurate reflection of the existing situation.

The referral is seeking a declaration as to whether the use of part of the existing retail area as a seating area for the purpose of consuming food on the premises is or is not development and is or is not exempted development. Although not expressly stated the use of the seating/table area is essentially as a café. Food will be prepared on site from the existing deli.

The first matter to note is that it is evident from the details and particulars submitted with the referral that the proposal does not include any 'works'

having regard to the definition of same within Section 2 of the Act. There is no *'construction, excavation, demolition, extension, alteration, repair or renewal'* proposed in the details submitted with the referral. However, the proposal is considered development for planning purposes pursuant to the definition *'development'* in Section 3 of the Act.

Accordingly, the question then arises as to whether the use of part of the shop floor for as café seating can be considered to constitute a 'shop' under the relevant legislative provisions and therefore is or is not development.

It was evident from site inspection on the 17/01/2023 and from a review of the planning history that the established use of the premises in question is as a 'shop' retailing a variety of foodstuffs such as confectionary, milk, bread and other items such as newspapers and magazines. It was also noted that there is an existing deli counter which provides for the sale of hot and cold food and beverages for consumption off the premises. The area of the shop proposed for seating is a small section (c.17m. sq) situated off the main retail space and currently in use to store goods. There is no existing doorway between the storage space and main shop floor but rather it is an alcove off the main floor.

The applicant is proposing to provide counter seating and table seating within this 'alcove' so that customers can consume food and drinks on the premises. Subsequently the use of this area no longer falls within the scope of a 'shop' having regard to the description of a shop in Article 5 of the Regulations which expressly includes for the sale of sandwiches or other food for consumption off the premises thereby excluding the consumption of sandwiches or other food on the premises.

Accordingly, it is the opinion of the Planning Authority that the proposal would constitute a change of use from retail to café. The development in question is 'material' and thus constitutes development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended.

The change of use of part of the property used for retail purposes to a café constitutes a change of use which is considered to be a material change of use within the meaning of Section 3 of the Planning and Development Act, 2000, as amended, and is, therefore, development, and subsequently there are no provisions in the Planning and Development Act, 2000, as amended or the Planning and Development Regulations, 2001, as amended, by which such development would be classified as exempted development.

9)Recommendation

Given that it has been determined that a change of use from retail to café use constitutes 'development' which is not 'exempted development', the Planning Authority are of the opinion that, in this instance, restrictions on exempted development are not of relevance.

Subsequently it can be concluded, given the foregoing, having regard to the relevant provisions of the Planning and Development Act, 2000 and the Planning and Development Regulations, 2001, as amended, that the use of

part of the premises for café seating at Lower Main Street, Borris, R95 AOK5, Carlow, is development and is not exempted development.

Signed: Lisa Behan

A.P.
S.P.
19/1/23

**Declaration on Development & Exempted Development
Section 5 of the
Planning and Development Act 2000 (as amended)**

WHEREAS questions have arisen as to whether the use of part of the existing retail area as a seating area for the purpose of consuming food on the premises is or is not development and is or is not exempted development, at Lower Main Street, Borris, R95 AOK5, Co. Carlow;

AS INDICATED on the plans and particulars received by the Planning Authority on 06/01/2023;

AND WHEREAS John Brophy, [REDACTED] requested a declaration on the said question from Carlow County Council;

AND WHEREAS Carlow County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- a. The information included in the submitted plans and particulars;
- b. The relevant planning history relating to the site;
- c. Section 2(1) of the Planning and Development Act, 2000 as amended,
- d. Section 3(1) of the Planning and Development Act, 2000 as amended,
- e. Section 4(1)(h) of the Planning and Development Act, 2000 as amended,
- f. Section 4(2)(a)(1) of the Planning and Development Act, 2000 as amended,
- g. Article 5(1), Article 6(1), Article 9(1) and Article 10(1) of the Planning and Development Regulations, 2001, as amended.
- h. Class 14 of Part 1 and Class 1 of Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- i. The existing use of the premises as retail

- j. The scale, nature and layout of the proposed café

AND WHEREAS Carlow County Council has concluded that;

- (a) The addition of seating and tables for the purpose of consuming food on the premises constitutes a material change of use of part of the existing shop and is therefore 'development' within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 (as amended);
- (b) The use of the subject premises as a café does not constitute use as a "shop" as defined in Article 5(1) of the Planning and Development Regulations 2001, as amended, because the consumption of sandwiches or other food on the premises is expressly excluded from the definition of 'shop' under Article 5(1) of the said Regulations, as amended,

NOW THEREFORE Carlow County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the addition of seating and tables in part of the existing shop, **is development and is not exempted development.**

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

Signed: 

APPENDIX 1

APPROPRIATE ASSESSMENT SCREENING REPORT

DESCRIPTION OF PROJECT AND LOCAL SITE

Reg. ref. SEC5-23-02– questions have arisen as to whether the use of part of the existing retail area as a seating area for the purpose of consuming food on the premises is or is not development and is or is not exempted development.

Site Location:

Main Street, Borris, R95 AOK5, Co. Carlow

Total Site Area: N/a

Floor area of proposed development:

c. 17m. sq

Identification of nearby Natura 2000 site(s):

At its closest point, the River Barrow and River Nore cSAC (Site Code 002162) is c.100m south of the site. The subject development is minor in nature, does not involve any external works and relates only to a change of use. The development has been assessed having regard to the requirements of the EU Habitats Directive. Given the proximity of the nearest European Site and the nature and extent of the referral in question and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available which is deemed adequate to inform a screening determination, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, Appropriate Assessment is not required.

Is the application accompanied by an EIS?

No.

B. IDENTIFICATION OF THE RELEVANT NATURA 2000 SITE(S)

The reasons for the designation of the Natura 2000 site:

(A site synopsis can be obtained from www.npws.ie)

The conservation objectives/qualifying interests of the site and the factors that contributes to the conservation value of the site:

(A site synopsis can be obtained from)

C. NPWS ADVICE

Advice received from NPWS over phone:

None

Summary of advice received from NPWS in written form:

None

D. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

(Purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).

If answer yes to any of the questions, below then the effect is significant.

Would there be any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance)

No.

Would there be a reduction in habitat area on a Natura 2000 site?

No.

Would there be direct/indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site?

No.

Would there be serious/ongoing disturbance to species/habitats for which the Natura 2000 site is selected (e.g. because of increased noise, illumination and human activity)?

No.

Would there be direct/indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site?

No.

Would the project interfere with mitigation measures put in place for other plans/projects. (Look at in-combination effects with completed, approved but not completed, and proposed plans/projects. Look at projects/plans within and adjacent to Natura 2000 sites and identify them).

No.

E. SCREENING CONCLUSION

The development has been assessed having regard to the requirements of the EU Habitats Directive. Given the proximity of the nearest European Site and the nature and extent of the referral in question and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available which is deemed adequate to inform a screening determination, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, Appropriate Assessment is not required.

Signed: 