

SECTION 5 APPLICATION

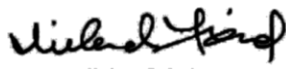
FOR DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

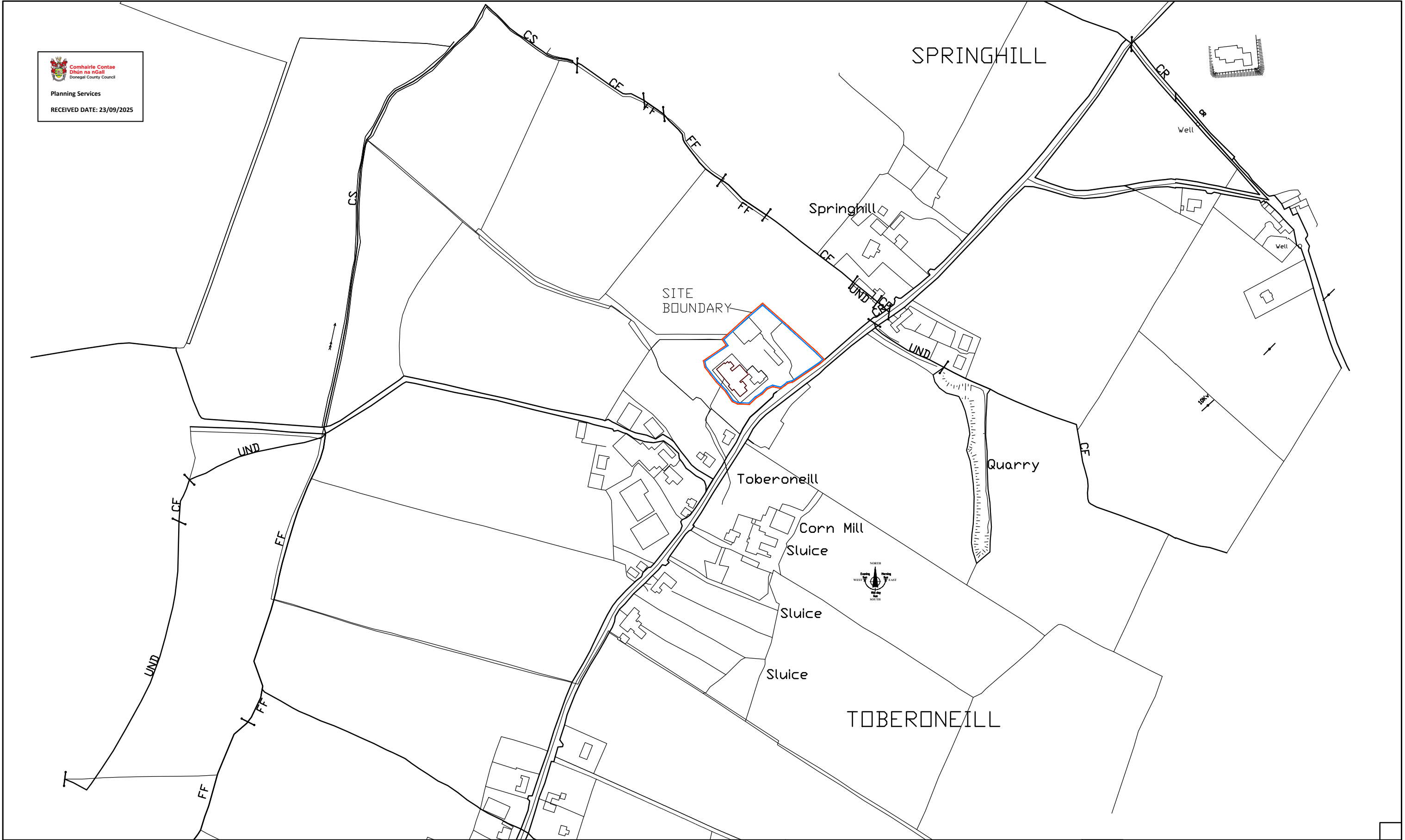
Completed application form & supporting documentation to be returned to the Planning Authority by email to planning@donegalcoco.ie

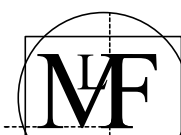
Name of Applicant(s):	Harbri Manufacturing Limited
Agent Name: (if applicable)	Michael Friel
Location of Proposed Development / Works: (Townland or postal address as appropriate and Eircode if available)	Deeleside Accommodation Centre Toberneill, Ballindrait, Lifford, County Donegal, F93 HH67
Description of Proposed Development including details of works (where applicable): (Only works listed below will be assessed under <u>this</u> section 5 application)	
Proposed continuation of a previous permitted Nursing Home now providing accommodation for protected persons as provided for in S.I. No. 582/2015 Planning and Development Regulations 2015 - Class 14(H).	

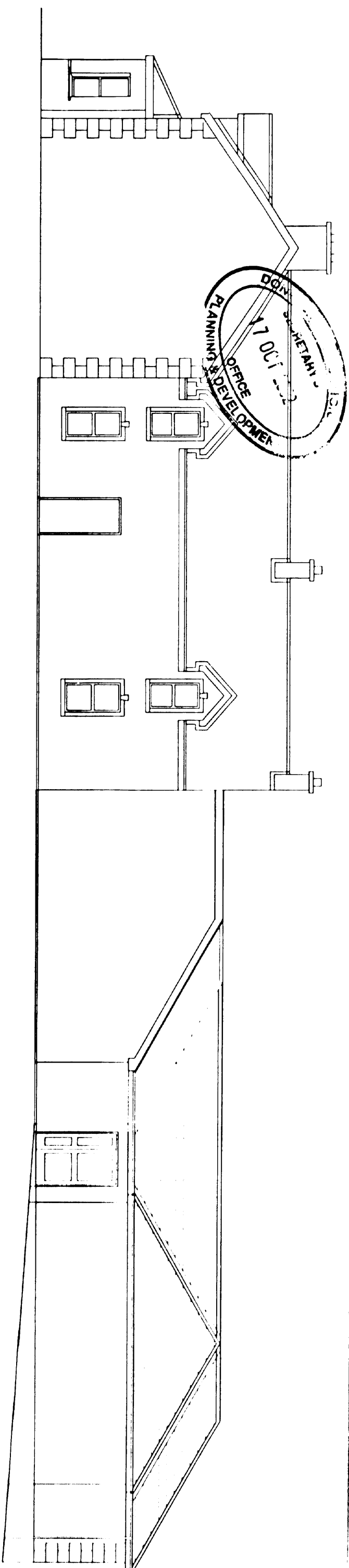


Is the development a Protected Structure or within the curtilage of a Protected Structure?	Yes	No
		X
Has a declaration under Section 57 of the Planning and Development Act 2000 (as amended) been requested or issued in respect of the property.	Yes	No
		X
Applicant(s) Interest in the site:	Owner	
If not the Owner of the site, please provide the name of the Landowner:	N/A	
Please list types of plans, drawings etc. submitted with this application:	Site Location Map Approved Planning Drawings.	
Planning History - list any relevant planning application reference numbers:	96/476	
Are you aware of any enforcement proceedings connected to the site? If so, please supply details:	None	

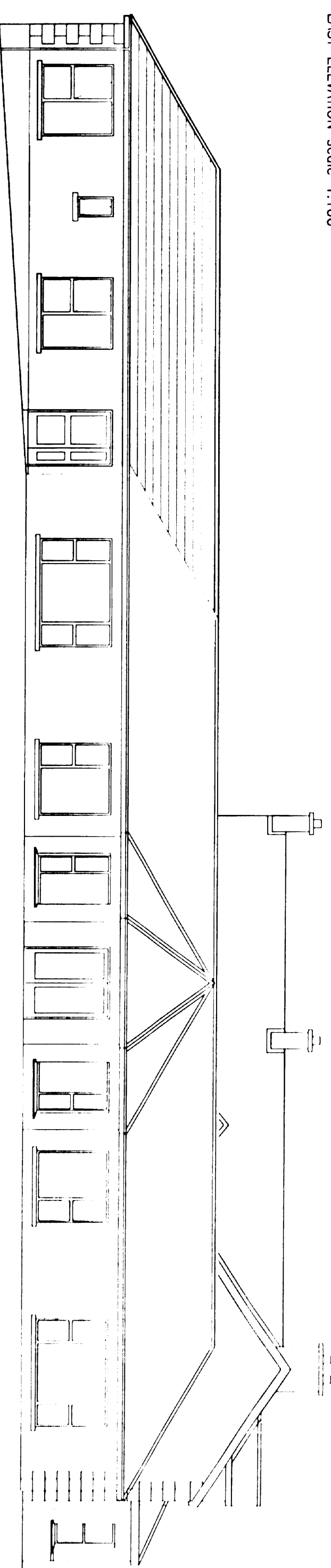
I hereby certify that the information provided is true and accurate	
Signature of Applicant/Agent:	
Date:	19 th September 2025



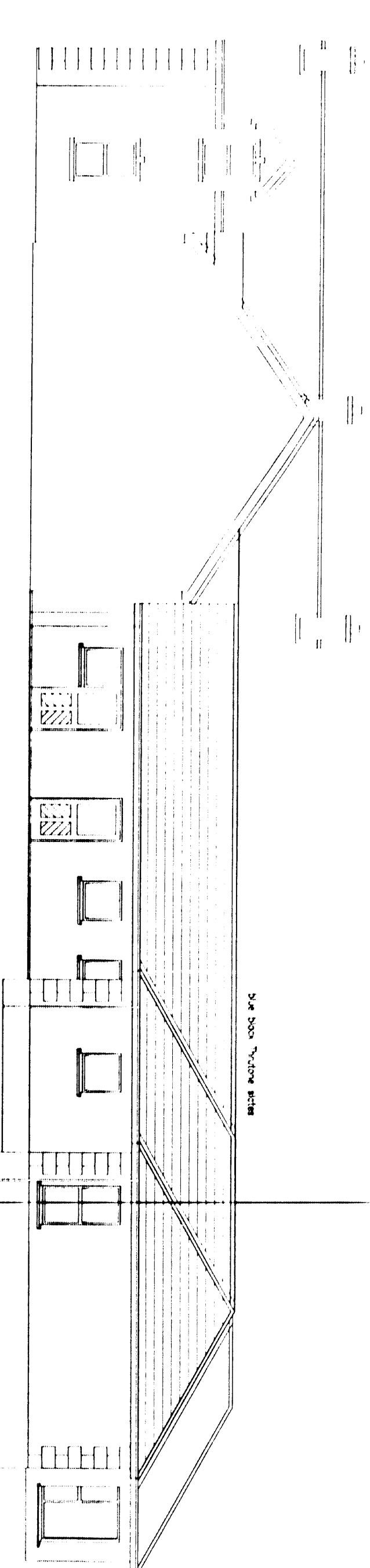
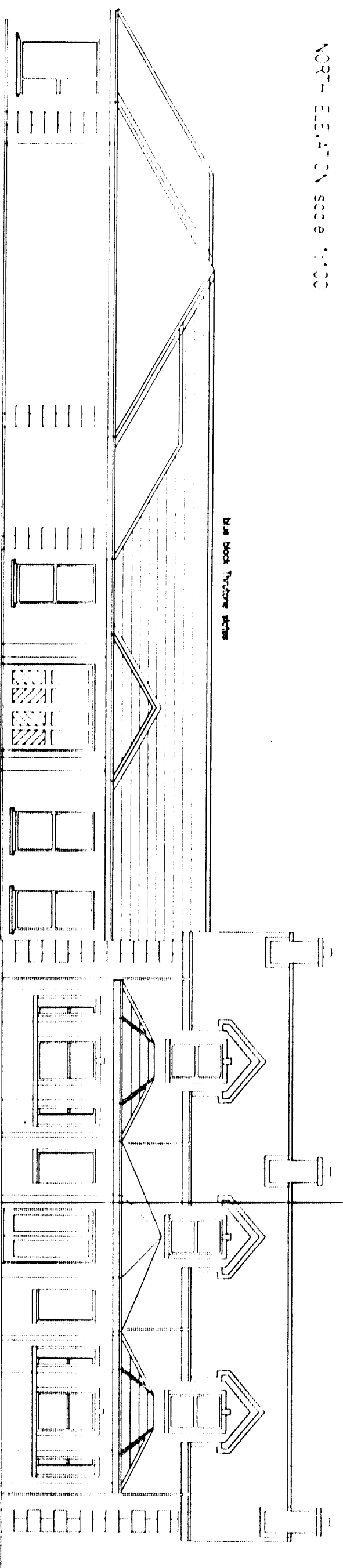
Notes AREA OF SITE: 0.73 HECTARES	Job Title Existing Accommodation Center @ Deeleside House Toberoneill Ballindrait Co Donegal	Drawing Title: SITE LOCATION MAP		 <u>MICHAEL FRIEL</u> Architects & Surveyors <u>Creeslough, Co. Donegal.</u> Tel: 074 91 38814 Fax: 074 9138815 Mob: 087 28 69 658 email: mlfriel@eircom.net REGISTERED ARCHITECT 2025 
	Client: Har - Bri Manufacturing Ltd C/O	Scale 1:2500	Date: August 2025	
		Job Number: 23187	Drg. Number: 01.	



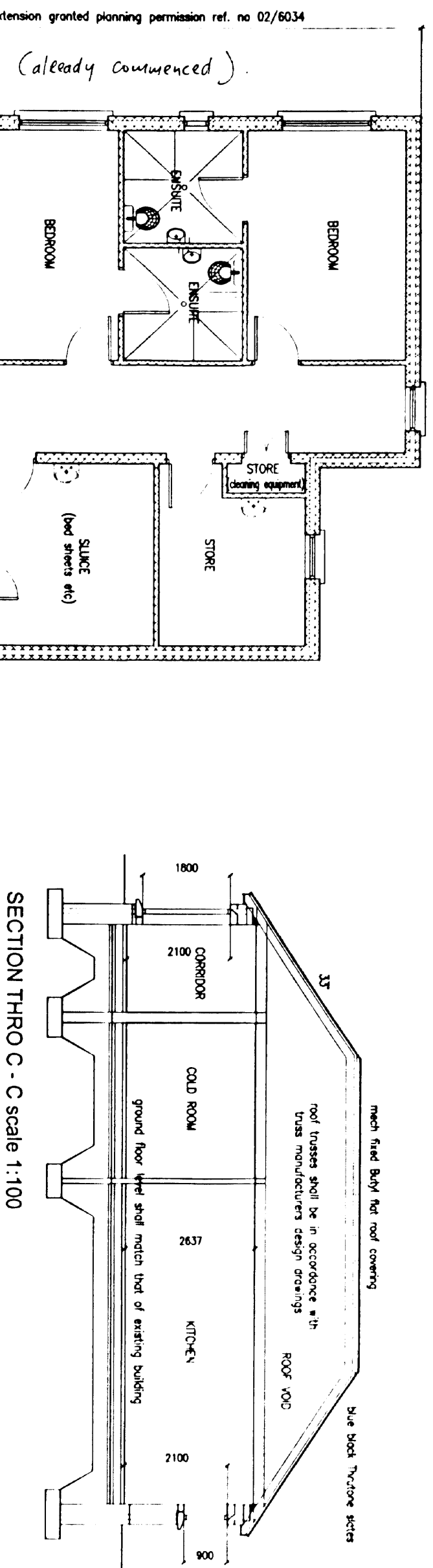
EAST ELEVATION scale 1:100



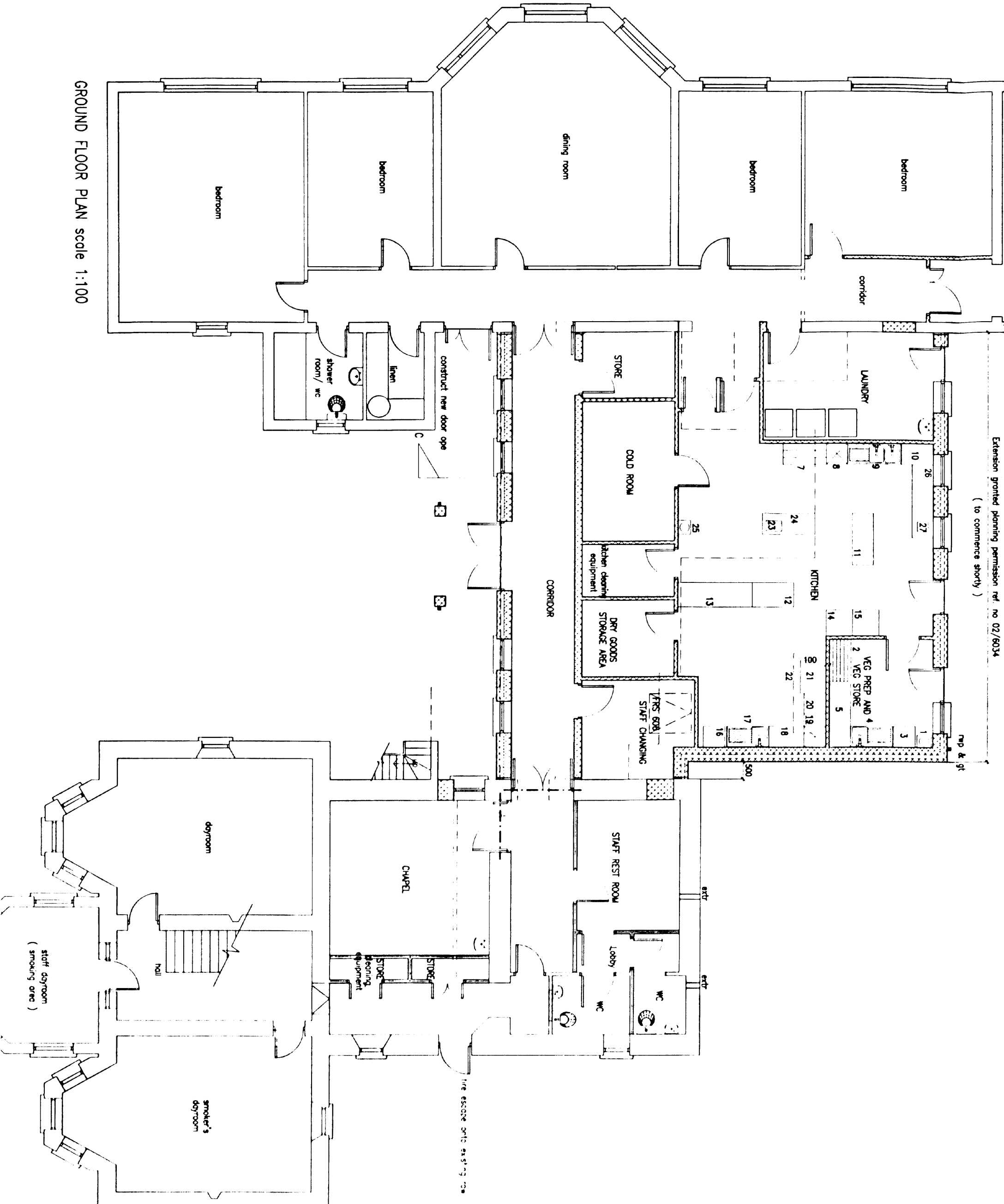
WEST ELEVATION scale 1:100

[illegible]

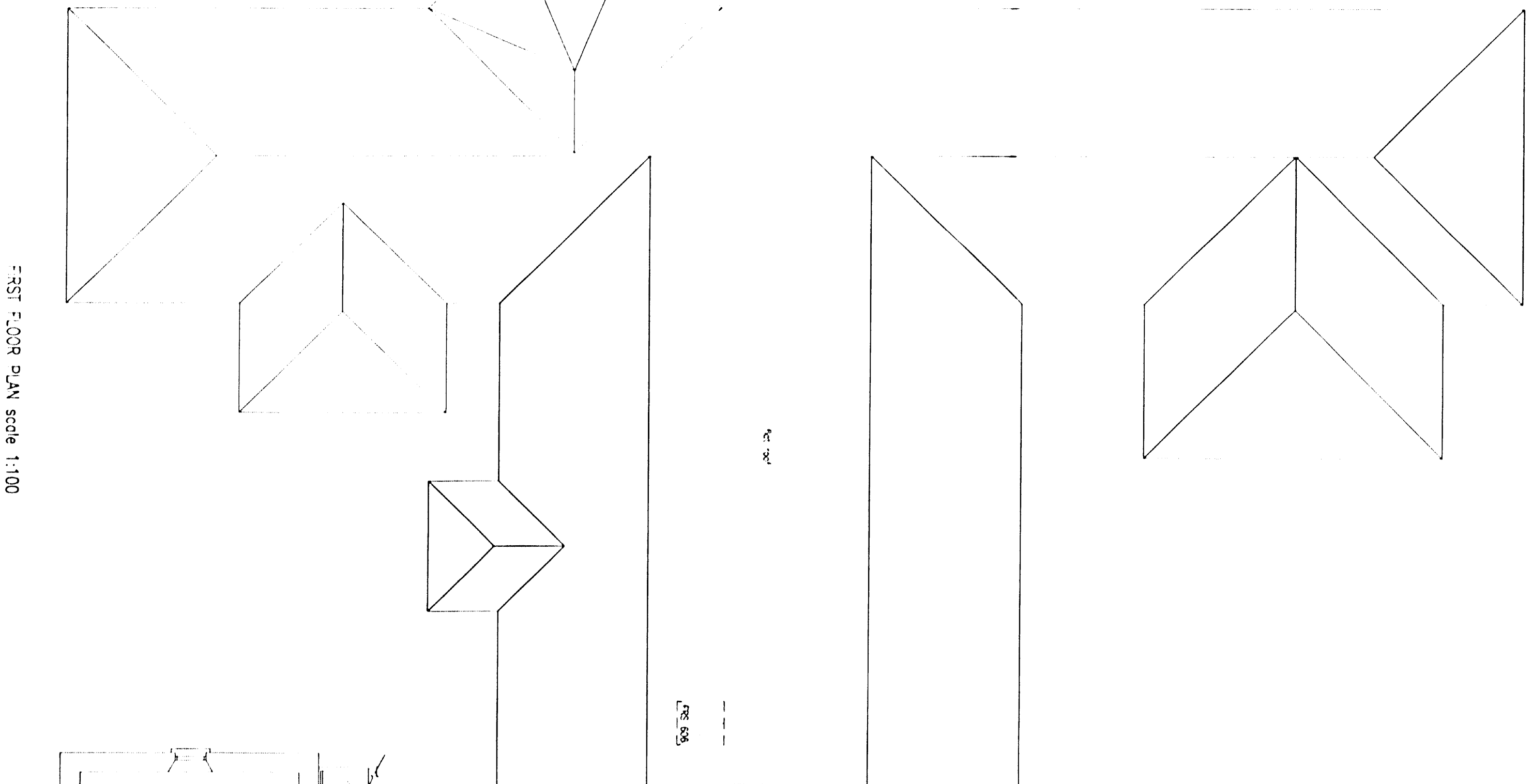
SO-TH-EE-AY ('going country road ') (scale 1:100)



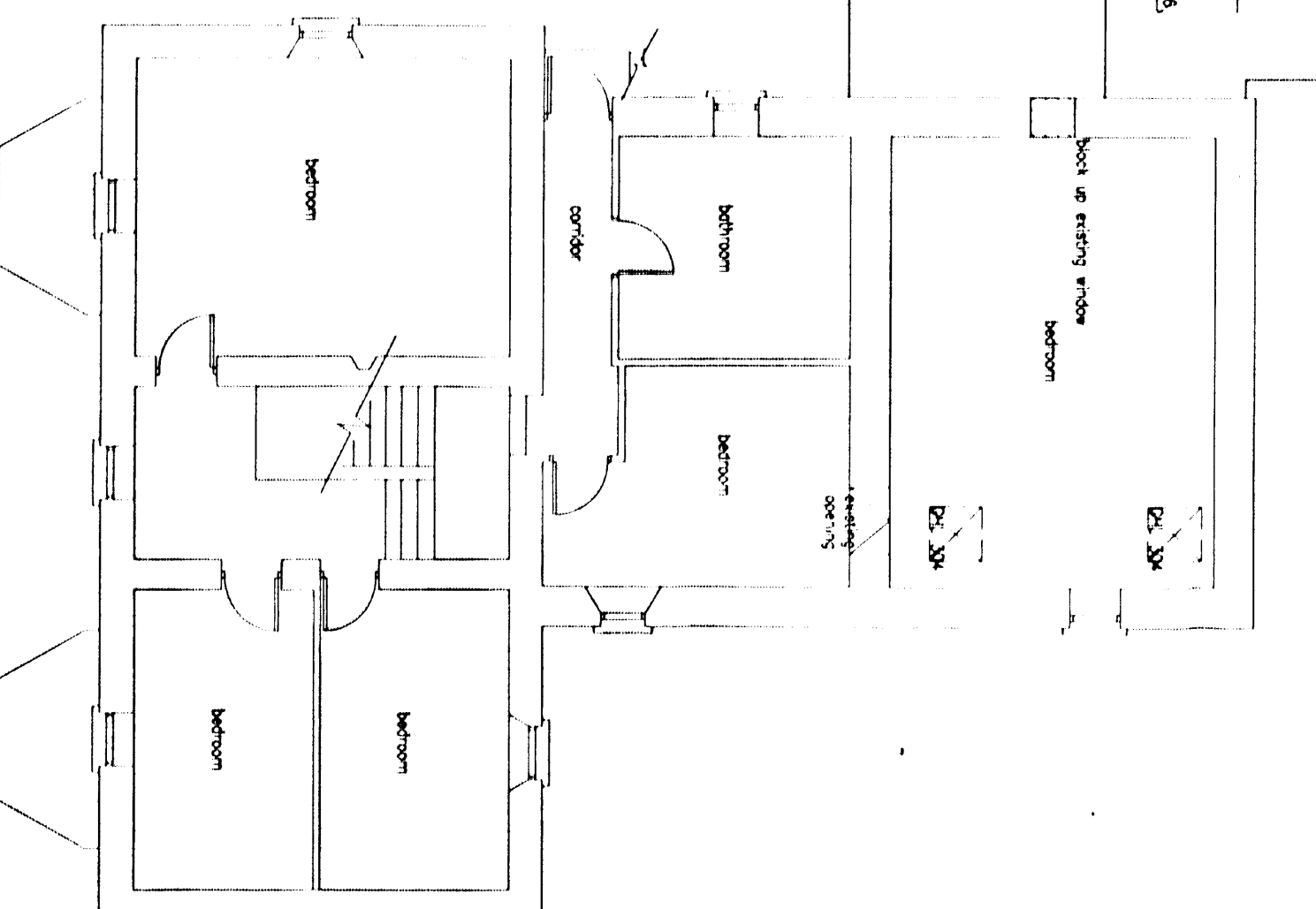
SECTION THRO C - C scale 1:100



GROUND FLOOR PLAN scale 1:100



FIRST FLOOR PLAN scale 1:100



THE DRAWING INDICATES EXISTING PREMISES
ALONG WITH PROPOSED WORKS THAT HAS
BEEN ALREADY GRANTED PLANNING
PERMISSION REF NO. 02/6034

J/9/02	UNO&A				
DATE	RS-SSS				
PROPOSED CONSTRUCTION OF A SINGLE STOREY NURSING HOME EXTENSION FOR 36 BEDS, PROVISION OF NEW ENTRANCE, EXTENDED CARPARKING AND THE INSTALLATION OF AN APPROVED Foul SEWERAGE PACKAGED TREATMENT SYSTEM OF LOGGON VALEY NURSING HOME, TOBER O'NEILL, BALLYMORRIT, UFFORD FOR MRs. VOIET AYTON					
Drawing Title	Drawn				
(for existing plant/electrics etc) subject to act as a contractor (except)	AD				
Scale	Date				
1/100	AUGUST 2002				
Job Number	Drawing Number				
B - 02 - 396	No. 100				
Network Address					
DELL 400.D:\My Drawings\2002\JOC\02\MyCompans.dwg					
Ballymore Co Donegal Tel 07423104 & 31060 Fax 07423021					
PATRICK CARR ARCHITECTS					



**Comhairle Contae
Dhún na nGall**
Donegal County Council

Áras an Chontae,
Leifear,
Contae Dhún na nGall, F93 Y622

County House,
Lifford,
County Donegal, F93 Y622

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W: www.donegalcoco.ie
W: www.ccdhunnangall.ie

Planning Services
E: planning@donegalcoco.ie

Our Ref.: S525/76

by email to:

office@mfrielarchitects.ie

24/09/2025

Harbri Manufacturing Limited
C/o Michael Friel
Creelough,
Letterkenny,
Co. Donegal

**Re: Section 5 - Application for proposed development at Deeside Accommodation
Centre, Toberneill, Ballindrait**

A Chara,

I wish to acknowledge receipt of your application received on 24 September 2025 in relation to the above.

Mise, le meas,

Donegal County Council
Planning Services



Note: an identical S5 was carried out on this premises under Ref: 25/23, no material change.

Donegal County Council

SECTION 5 REFERRAL REPORT – Ref. No: S5 25/76

1.0 BACKGROUND

1.1 Location:

The subject site is located @ Deeleside, Toberoneill, Lifford, Co Donegal F93HH67.

1.2 Site Description:

The site is located within rural countryside outside of the settlement of Ballindrait. lands are classed as being of a High Scenic Amenity value and falls within a 'Structurally Weak Rural Area' under the current County Donegal Development Plan, 2024-30.

Existing brownfield site with former nursing home comprising of a two-storey dwelling, with two storey rear projection and single storey extensions adjacent to disused agricultural sheds presently located thereon.

The site is not located within any designated Natura 2000 sites.

The existing building is not on the Council's Record of Protected Structures nor is it included on the National Inventory of Architectural Heritage.

1.3 Planning History

93/30:Retention permission Granted for - RETENTION OF EXISTING LAUNDRY & BEDROOM BLOCK. ERECTION OF NEW BUILDING TO INCLUDE MORTUARY, ORATORY & BEDROOM

96/746 Permission Granted for EXTENSION TO NURSING HOME

99/2819: Permission REFUSED for EXTENSION OF LAGAN VALLEY NURSING HOME TO CREATE 23 NO. ADDITIONAL BEDROOMS, DINING ROOM & LOUNGE AREAS & EXTENSION OF EXISTING KITCHEN & LAUNDRY ROOM & PROPOSED NEW MORGUE & PURAFLO SYSTEM due to inadequate space for public health.

006508 Permission Granted for : RECONSTRUCTIONS AND TWO STORIED EXTENSION PLUS UPGRADING OF CAR PARKING AND APPROVED EFFLUENT TREATMENT SYSTEM TO LAGAN VALLEY NURSING HOME

02/6590: Permission Withdrawn for CONSTRUCTION OF A SINGLE STOREY NURISNG HOME EXTENSION FOR 36 BEDS, PROVISION OF A NEW ENTRANCE

AND EXTENDED CAR PARKING AND THE INSTALLATION OF AN APPROVED FOUL SEWERAGE PACKAGE TREATMENT SYSTEM

02/6034: Permission Granted for Alterations to Plan to provide a single storey extension and omission of proposed first floor extension previously granted under planning reg: 00/6508.

S5 25/23 : Identical S5 carried out on the site on behalf of the applicant, Transboil Ltd, by their agent, Joe Beggan. For the following:

Whether the change of use to an emergency provision centre for IPAS accommodation constitutes exempted development or does not constitute exempt development?

2.0. THE QUESTION

The agent, M Friel, on behalf of the applicant, Harbri Manufacturing Ltd., have made a submission to Donegal County Council seeking a Declaration of Exemption as to whether or not the following is exempt from planning permission:

Proposed continuation of a previous permitted Nursing Home now providing accommodation for protected persons as provided for in S.I. No. 582/2015 Planning and Development Regulations 2015 - Class 14(H).

3.0 EVALUATION

3.1 Planning and Development Act, 2000 (as amended)

Section 2(1)

In this Act, except where the context otherwise requires –

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

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

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...

Section 3(1)

"Development" in this Act 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.

Section 177U(9)

"In deciding upon a declaration for the purposes of Section 5 of this Act a Planning Authority or the Board, as the case may be, shall where appropriate,

conduct screening for appropriate assessment in accordance with the provisions of this section”.

3.2 Planning and Development Regulations, 2001 (as amended)

Article 6(1)

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

Article 9

Restrictions on Exemption include inter alia:- .

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—
- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
 - (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,
 - (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological 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, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Class 14(H) of Schedule 2, Part 1:

- Permits a change of use (h) *“from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or*

other premises or residential institution providing overnight accommodation, or part thereof... to use as accommodation for protected persons."

- Protected persons are defined under the International Protection Act 2015.
- Conditions of exemption include:
 - Compliance with the definition and purpose of "protected persons."
 - No contravention of planning conditions or zoning regulations.

Schedule 2 Part 1 Exempted Development – General Temporary Structures and Uses Class 20F:

CLASS 20F Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.	1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection. 2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001². 3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028. 4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class.
	5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development. 6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.

	7. 'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015). 8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.
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3.0 ASSESSMENT

3.1 Consideration of Proposed Development

1. Existing Use:

The property currently consists of an existing unused building comprising of two storey and single storey buildings 2 storey buildings previously used as a nursing home. No details accompany the application regarding existing building or proposed works (if any).

2. Proposed Use:

A change of use (note: the use for the present building has been stated as the continuation of a previous permitted Nursing home now providing accommodation for protected persons) is proposed to accommodate protected persons seeking International Protection.

Protected persons are defined in Section 2(1) of the International Protection Act 2015.

3. Analysis of Development:

- (i) The current permitted use of the building on site is residential nursing home but its use was previous determined by the council under S25/23 to have long been abandoned (refer to google maps dating from 2009-21 whereby no occupancy is evident, this remains the case at present) . Based on precedent cases (e.g., ABP-306083-19 and 21.RL.3395), restoring a building to a new use after a significant period would constitute a material change of use, which requires planning permission. As the use as a nursing home has been abandoned, the building cannot benefit from exempted developments for dwellings. The resumption of a habitable use of the subject building would now constitute a change of use that is material.

No information has been submitted with regard to a floor plan illustrating the number of rooms and occupancy numbers proposed in each room to be used for accommodation purposes.

This information will likely have an impact on water, wastewater, refuse storage and public infrastructure in this rural area. No information has been submitted with regard to the existing capacity and ability of the Wastewater treatment facilities that serves the existing building and whether capacity exists for any additional loading. It is noted that the typical accommodation for such IPAS centres would have a higher room density to that of a nursing home.

The Planning and Development Act 2000 (as amended) does not explicitly define material change of use. In *Dublin Corporation v Moore* [1984] ILRM 339, the Supreme Court ruled that a change in the socioeconomic profile of residents does not constitute a material change of use. However, the scale and nature of the accommodation must also be considered when assessing material change of use

- (ii) The Planning Authority is satisfied that the change of use to an emergency provision centre for IPAS accommodation would constitute 'development' as defined in Sections 2 & 3 of the Act.
- (iii) The Planning Authority do not consider Class 14 (h) and (i) of the Planning and Development Regulations is applicable in this instance as a nursing home is not a use under Class 14 (h) or (i) of the Planning & Development Regulations, 20012 (as amended).(Regard given to ABP-318455-23 decision whereby the Inspector determined that a nursing home is not a use under Class 14 (h) or (i)).The scale of the nursing home was originally designed for single-occupancy /double bedroom use. The proposed use would involve a more intensified residential use that is materially different from its prior residential use. The change in function raises new planning considerations regarding occupancy, density, and potential amenity impacts. I note a previous refusal on the site based on insufficient wastewater treatment facilities on this unserved site.
- (iv) Furthermore, no evidence that the temporary use is either by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth would need to be submitted in order to be considered within the scope of Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended). No information has therefore been submitted to determine whether the development can be considered exempted development. The development does not therefore accord with the conditions and limitations with respect to this Class 20F exemption of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

3.2 Appropriate Assessment

- As the development constitutes a change of use without physical works, there is no requirement for an Appropriate Assessment under Section 177U(9) of the Planning and Development Act 2000 (as amended).

3.3 Environmental Impact Assessment (EIA)

- No significant environmental impacts arise from this proposed change of use, and the development is not within a class of projects requiring EIA under Schedule 5, Parts 1 and 2 of the Planning and Development Regulations 2001 (as amended).
-

4.0 CONCLUSION

It is considered that:

The proposed use constitutes development under Section 3(1) of the Planning and Development Act 2000, as it represents a material change of use. The of a former nursing home which has now been abandoned to accommodate an emergency provision centre for IPAS accommodation introduces an intensified residential function that differs from its existing use. The proposed use does not qualify as exempted development, as it does not align with the intended use under Class 14(h) of the Planning and Development Regulations 2001 (as amended) or Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

5.0 RECOMMENDATION

It is hereby recommended that a declaration be made that the subject matter of the request as above –

IS Development

&

IS NOT Exempted Development within the meaning of the above act.

The proposal to:

(i) whether the proposed continuation of a pervious Nursing Home now providing accommodation for protected persons as provided for in S.I. No. 582/2015 Planning & Development Regulations 2015-class14(h), is or is not development?

The Planning Authority, in considering this referral, had regard particularly to:

- Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).
- Articles 6(3), 9(1), and Class 14(h) of Part 1 of Schedule 2 and Class 20F of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).
- Above referenced Section 5 declarations by An Bord Pleanála.

And concluded that:

- The proposal IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT, as the development does not fall within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) and Class 20F of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).



Executive Planner
16/10/2024



Frank Sweeney
Senior Executive Planner
Community Development & Planning Services
16/10/2025

Chief Executive's Order No: 2025PH3020

Planning and Development Acts 2000 (as amended)

SECTION 5:-

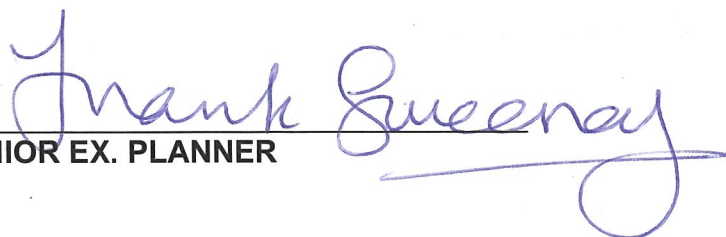
Request received 23rd September 2025 from Harbi Manufacturing Limited C/O Michael Friel, Creeslough, Letterkenny, Co. Donegal, F92 TF60 in relation to the continuation of a previously permitted Nursing Home now providing accommodation for protected persons as provided for in S.I. No. 582/2015 Planning and Development Regulations 2015 - Class 14(H). at Deeleside Accommodation Centre, Toberneill, Lifford, Co. Donegal, F93 HH67.

SUBMITTED:-

Written request received 23rd September 2025 as above and report dated 16th October 2025 from the Executive Planner (Ref. No: S5 25/76 refers).

ORDER:-

Having considered the said request, the report of the Executive Planner, and the record forwarded to the Council by An Coimisiún Pleanála in compliance with Sub-Section 6(c) of the said Section I have concluded that a declaration on the questions in the said request should be made in the terms of that in the Schedule to this Order, the main reasons and considerations therefore being detailed therein. I therefore Order that the declaration issue to the said requester and the owners/occupiers of the land concerned and, further, that it be entered in the Council's Planning Register in compliance with Sub-Section (5) of the said Section.


SENIOR EX. PLANNER

DATED THIS 17th DAY OF OCTOBER 2025

Chief Executive's Order No: 2025PH3020

Ref.No: S5 25/76

SCHEDULE

IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE

IS Development

IS Not Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The Planning Authority in considering this referral, had regard particularly to:

- Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).
- Articles 6(3), 9(1), and Class 14(h) of Part 1 of Schedule 2 and Class 20F of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act, 2000 (as amended) and **IS NOT EXEMPTED DEVELOPMENT** as the development does not fall within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) and Class 20F of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

JS 17/10



**Comhairle Contae
Dhún na nGall**
Donegal County Council

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Planning Services
E: planning@donegalcoco.ie

Ref. No: S525/76

17th October 2025

Harbi Manufacturing Limited
C/O Michael Friel
Creelough
Letterkenny
Co. Donegal
F92 TF60

Re: Continuation of a previously permitted Nursing Home now providing accommodation for protected persons as provided for in S.I. No. 582/2015 Planning and Development Regulations 2015 - Class 14(H). at Deeside Accommodation Centre, Toberneill, Lifford, Co. Donegal, F93 HH67.

A Chara,

I refer to your request received on 23rd September 2025 under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Coimisiún Pleanála of such fee as may be prescribed, refer a Declaration for review by the Coimisiún within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,

**For Senior Ex. Planner
Planning Services**
/RMcC

Planning and Development Acts, 2000 (as amended)
(Declaration and Referral on Development and Exempted Development)

DECLARATION

Chief Executive's Order No: 2025PH3020

Reference No: S525/76

Name of Requester: Harbi Manufacturing Limited
C/O Michael Friel
Creeslough
Letterkenny
Co. Donegal
F92 TF60

Summarised Description of development the subject matter of request:

Continuation of a previously permitted Nursing Home now providing accommodation for protected persons as provided for in S.I. No. 582/2015 Planning and Development Regulations 2015 - Class 14(H).

Location: Deeleside Accommodation Centre, Toberneill, Lifford, Co. Donegal, F93 HH67

IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE

IS Development

IS Not Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The Planning Authority in considering this referral, had regard particularly to:

- Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).
- Articles 6(3), 9(1), and Class 14(h) of Part 1 of Schedule 2 and Class 20F of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act, 2000 (as amended) and **IS NOT EXEMPTED DEVELOPMENT** as the development does not fall within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) and Class 20F of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).



For Senior Ex. Planner
Planning Services

Dated this 17th day of October 2025