Comhairle Contae Chorcaí Cork County Council

Pleanáil agus Forbairt, Halla an Chontae, Bóthar Charraig Ruacháin, Corcaigh T12 R2NC. Fón: (021) 4276891

Fón: (021) 4276891 R-phost: planninginfo@corkcoco.ie Suíomh Gréasáin: www.corkcoco.ie Planning & Development,

County Hall, Carrigrohane Road, Cork T12 R2NC.

> Tel (021) 4276891 Email: planninginfo@corkcoco.ie Web: www.corkcoco.ie



Joanna Fiedorowicz, Villa 47, Carleton Village, Youghal, Co. Cork.

14th May 2024

REF:

D/223/24

LOCATION:

Unit 1, Block B, Foxhole, Youghal, Co. Cork.

RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000 - 2010.

Dear Madam,

On the basis of the information submitted by you on 17th April 2024 the Planning Authority, having considered the question whether or not the placing of four containers at **Unit 1**, **Block B**, **Foxhole**, **Youghal**, **Co. Cork** is development and is or is not exempted development has declared that it is **development and is not exempted development**.

Reason for Decision

We are Cork.

The Planning Authority in considering this referral had particular regard to:

- Sections 2(1) and 3(1) of the Planning and Development Act, 2000;
- Article 6(1) and 9(1)(i) of the Planning and Development Regulations, 2001;
- Class 11, 16 and 17 of Schedule 1, Part 1 of the Planning and Development Regulations, 2001, as amended and
- The particulars received by the Planning Authority on 17th April 2024

And Whereas Cork County Council has concluded that -

The placing of four containers at **Unit 1, Block B, Foxhole, Youghal, Co. Cork** constitutes development which is **not exempted development.**

Please note that under Section 5 Subsection 3(a) where a declaration is issued under this section, any person issued with a declaration under subsection 2(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.



Yours faithfully,

KEVIN O' REGAN,

SENIOR EXECUTIVE OFFICER, PLANNING DEPARTMENT.

PLANNER'S REPORT - Ref. D/223/24

Application Type: Section 5

Description: Whether or not the following is or is not

development and is nor is not exempted

development:

Placing of 4 containers

Location: Unit 1 Block 1, Foxhole, Youghal, Co. Cork.

Applicant: Joanna Fiedorowicz

1.0 REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

Section 5(1) of the Planning and Development Act as amended states:

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

2.0 THE QUESTION BEFORE THE PLANNING AUTHORITY

The question on which is declaration is whether the following is or is not development and is or is not exempted development:

Hello there,		
would like to apply	for to be placed in my own Unit 4 containers to improve my business	
Shipping container	s with no concrete construction	
shipping containers	(they can be removed or moved any time)	
Site for containers ar	e fenced	

Image 1: Extract from Section 5 Form Question 3

3.0 SITE LOCATION AND DESCRIPTION

The subject site is located within on the Northern side of Youghal town within a commercial/ Industrial park known as "Millenium Park". This park is located east of the regional road to Youghal from the N25/Rincrew Bridge. A spine road runs through the centre of the site and divides the development. The more Northerly section (Millenium

Court) was developed first (circa 2001) with the units on the Southern side of the road which contain the subject site being developed circa 2006.

The park contains a mix of uses with retail warehousing being dominant. The applicant has provided an address on unit 1 Block B within the Sectio 5 application form and has provided a site map as shown hereunder.



Image 2: Extract of Site Map Submitted

A photo of the site is included hereunder. It comprises grassed lands o the rear of an industrial unit within a business park.



Image 3: Site Photo 08.05.2024

4.0 RELEVANT PLANNING LEGISLATION AND REGULATION

Planning and Development Act 2000, as amended

Section 2(1) of the Act defines "works" as follows:

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

The Act defines "structure" as meaning: '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 land 'includes any structure ...'

Section 3 (1) of the Act defines "development" as follows:

"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."

Planning and Development Regulations, 2001 (as amended)

Article 6 (1) 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.

<u>Schedule 2, Part 1, Class 16</u> of the Regulations defines the following as exempted development: "the erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

The following conditions and limitations are set out in Column 2 of this Class: "Such structures, works, plant or machinery 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 a permission under the Act.

Schedule 2, Part 1, Class 17 of the Regulations defines the following as exempted development: "the erection, construction or placing on land on, in over or under 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.

The following conditions and limitations are set out in Column 2 of this Class: "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 or approval or confirmation granted under the Act or any other enactment".

5.0 ENVIRONMENTAL SCREENBING

Environmental Impact Assessment

Section 4(4) states that:

(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development

if an environmental impact assessment or an appropriate assessment of the development is required.

Having regard to the contents of Article 103 of Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of the nature, scale and location would not be likely to have a significant effect on the environment. Accordingly, an EIA is not required.

Appropriate Assessment

Section 177U (9) states that:

"In deciding upon a declaration for the purposes of Section 5 of this Act a planning authority or the Board, as the case maybe, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section."

Having regard to the location of the development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the development would not affect the integrity of these European sites. Accordingly, it is considered that Appropriate Assessment is not required.

6.0 PLANNING HISTORY

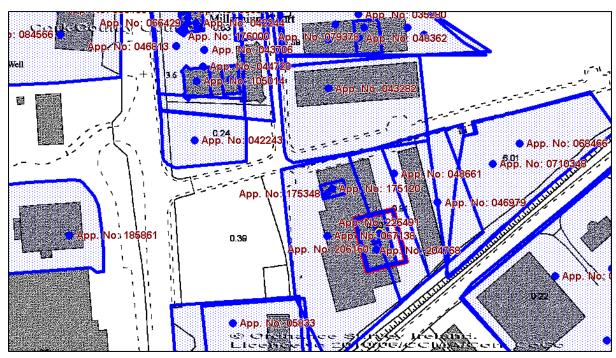


Image 4: Planning History

Governing Permissions for Millenium Business Park:

PI Ref 04/8661 – permission granted to Crofthorn Developments Ltd. For the construction of 14 no. light industrial/commercial/warehousing units in total in 2 no. blocks, with ancillary retail use and office accommodation, with service utilities, boundary fences, landscaping, planting, paving, parking and associated site development works.

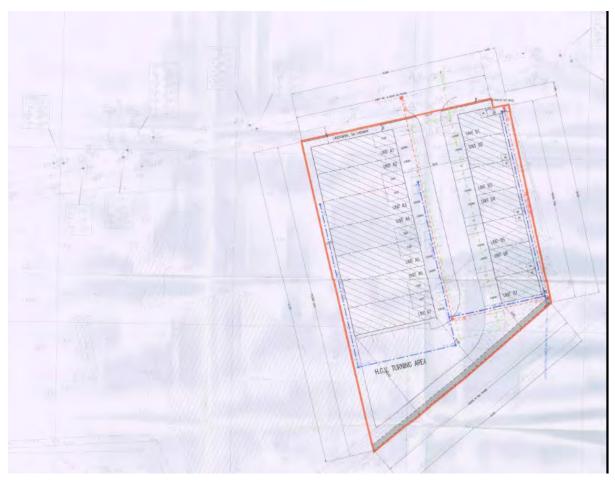


Image 5: Site Layout 04/8661

PI Ref No. 00/6000 – permission granted to Crofthorn Developments Ltd. for construction of 9 no. advance units for light industrial, commercial, warehouse including ancillary retail use, parking, roads, landscaping and ancillary works (on part of site which contains subject site).

Recent within the wider Millenium Business Park Development

PI Ref No. 15/4244- Permission granted to Eoin Whyte for use of Unit No.2 as general office space on the ground and first floor with ancillary storage on the ground floor.

PI Ref No. 17/05348 - Permission granted to Nasir Rafique for the change of use from Retail Warehousing to Medical Practice & Out-of-Hours Medical Centre and permission for changes to front elevation.

PI Ref No. 20/6160: Permission granted to inland Fisheries Ireland for alterations to existing light industrial units to accommodate Inland Fisheries Ireland Youghal base. The works will involve change of use to existing light industrial/warehouse units to boat storage and maintenance facility and also contain new two-storey internal building to accommodate offices, canteen, storage areas, mezzanine storage, toilets, laundry room and washing facilities. Alterations will include the demolition of existing internal toilet, the construction of a separating wall between units no. A5-A8 and adjoining unit, alterations to front elevation, erection of signage complete with all ancillary works and associated site works.

PI Ref No. 22/06491 – Permission granted to Inland Fisheries Ireland to construct a new single storey internal building to accommodate offices, canteen, storage areas, toilets,

laundry room and washing facilities, also undertake alterations to front elevation (to accommodate the removal of one number roller shutter door and installation of new pedestrian door) and erection of signage. Complete with all ancillary works and associated site works at our boat storage and maintenance facility.

7.0 PLANNING ASSESSMENT

Is or is not development?

The first issue for consideration is whether or not the matter at hand is 'development' which is defined in Section 3(1) and 'works' is defined in Section 2(1) of the Act. It is considered the erection of 4 containers and a fence over land would constitute development within this definition. Therefore, this referral falls within the definition of 'development'.

Conclusion: is development.

Is or is not exempted development?

The second aspect to consider in this referral is whether or not the development is or is not exempted development. I note that Class 16 and 17 of the Regulations provide for the use of temporary structures where they are needed temporarily in connection with a development during the period in which it is being carried out, either pursuant to a permission under the Act or as exempted development. Neither of these exemptions apply in this circumstance as the applicant states that the purpose of the 4 containers is to improve their business. Additionally, as outlined in Section 6.0 there is no extant permission associated with this premises which would require the provision of temporary structures by way of exemption.

As such, based on the foregoing, I consider that the placing of 4 containers on the site is development, which is not exempted development, as there is no exemption available for this type of development.

Secondly, I note that the third sub point/description of the development set out in Question 3 of the Section 5 form states that the containers 'are fenced'. At the time of inspection, no fence was visible within this part of the business park. The Section 5 drawings have not provided a detail of the fence proposed. It is not clear whether this is a question provided for within the Section 5 or a general statement.

Class 11 of the Regulations provides for "the construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of (a) any fence (not being a hoarding or sheet metal fence), or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete." The limitations set out therein state that the height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres. As there is no current fence on site this limitation would be 1.2m.

As the information regarding the height of the fence is not available at this time to the Planning Authority at this time, it is not possible to fully determine this question. I have reviewed PI Ref 04/8661 and note that there are no conditions restricting the erection of fencing, just condition 21 requiring the site to be landscaped in accordance with the landscaping plan. A such Article 9(1)(i) does not provide any additional limitations on fencing. Additionally, it should be noted as per Image 5 that the proposed siting of the containers falls outside the redline of 04/8661 and therefore 9(1)(i) cannot apply.

The option to seek further information is available in respect to the height of a fence. However, it would seem that the fundamental question of this section 5 relates to the 4 containers which are not exempted development. I note that three sub points/descriptions of the development are provided thereafter within the Section 5 form. I would consider the point regarding the fence to read as a statement rather than a question, although this

view is complicated by the absence of a fence at the time of my inspection. Notwithstanding this, I consider it best to issue a determination on the fundamental question asked at this time rather than to seek further information.

Conclusion: is not exempted development.

9.0 RECOMMENDATION

In considering this referral, regard has been had to: -

- a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000;
- b) Article 6(1) and 9(1)(i) of the Planning and Development Regulations, 2001; and
- c) Class 11, 16 and 17 of Schedule 1, Part 1 of the Planning and Development Regulations, 2001, as amended

The placing of 4 containers at Unit 1 Block 1, Foxhole, Youghal, Co. Cork is development and is not exempted development.

Siún McCarthy Executive Planner

= dl Carthu

13.05.2024



CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST	(Please tick $\sqrt{\ }$)
4 No. Copies of Application Form:	
1 No. Copy of Contact Details:	
4 No. Copies 6" O.S. Maps:	
4 No. Copies 25" O.S. Maps:	
4 No. Copies of Site Layout Plan:	
4 No. Copies Scaled Drawings of Development:	
€80 Application Fee:	

FOR OFFICE USE ONLY

Receipt No.		
Cash/Cheque/ Credit Card	EFT	
Date	17/4/24	
Declaration Ref. No.	0/223/24	DATE STAMP HERE

You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want 3rd parties to view.

In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required:

- A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit
- Correspondence from Teagasc (detailing how the land reclamation would benefit the land in question for agricultural purposes)
- Details of existing and proposed levels
- Details of fill material and duration of fill.

DATA PROTECTION

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are made available for public inspection.

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at http://www.corkcoco.ie/Privacy-Policy or hardcopy from our offices at County Hall, Carrigrohane Road, Cork, Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to dpo@corkcoco.ie or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A – CONTACT DETAILS)

1.

4	APPI	ICATI	ION DI	ETAILS	٦.

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square metres (m^2)

(a) Eleganous of aristing/managed structure(s).	
(a) Floor area of existing/proposed structure(s):	21 m 2 x 7.7 m 2 Total area 158 m2
(b) If a domestic extension is proposed, have	Yes No V
any previous extensions/structures been	
erected at this location after 1 st October,	If yes, please provide floor areas (m ²) and
1964 (including those for which planning	previous planning reference(s) where applicable
permission has been obtained):	
(c) If a change of use of land and/or building(s)	THE RESIDENCE OF A STREET OF A STREET
is proposed, please state the following:	
Existing/previous use	Proposed use
(d) Are you aware of any enforcement	Yes No V
proceedings connected to this site?	If yes, please state relevant reference number(s):
	if yes, please state relevant reference number(s).
5. LEGAL INTEREST OF APPLICANT IN T	THE LAND/STRUCTURE:
Please tick appropriate box to show applicant's	THE LAND/STRUCTURE: A. Owner B. Other
Please tick appropriate box to show applicant's legal interest in the land or structure:	
Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state	
Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state your interest in the land/structure:	
Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state your interest in the land/structure: If you are not the legal owner, please state the	
Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state your interest in the land/structure: If you are not the legal owner, please state the name of the owner/s (address to be supplied at	
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Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state your interest in the land/structure: If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):	
Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state your interest in the land/structure: If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):	A. Owner B. Other R. RCHITECTURAL CONSERVATION AREA:
Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state your interest in the land/structure: If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details): 6. PROTECTED STRUCTURE DETAILS / A	A. Owner B. Other R. RCHITECTURAL CONSERVATION AREA:
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Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state your interest in the land/structure: If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details): 6. PROTECTED STRUCTURE DETAILS / A Is this a Protected Structure/Proposed Protected Structure: Yes No If yes, has a Declaration under Section 57 of the Pla or issued for the property by the Planning Authority If yes, please state relevant reference No.	A. Owner B. Other CRCHITECTURAL CONSERVATION AREA Cucture or within the curtilage of a Protected Consumption of the curtilage of the curtilage of a Protected Consumption of the curtilage of the
Please tick appropriate box to show applicant's legal interest in the land or structure: Where legal interest is "Other", please state your interest in the land/structure: If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details): 6. PROTECTED STRUCTURE DETAILS / A Is this a Protected Structure/Proposed Protected Structure: Yes No If yes, has a Declaration under Section 57 of the Pla or issued for the property by the Planning Authority If yes, please state relevant reference No. Is this site located within an Architectural Conserva	A. Owner B. Other CRCHITECTURAL CONSERVATION AREA: Cucture or within the curtilage of a Protected Consuming & Development Act 2000 been requested Consuming & Development Act 2000

Would the proposed development require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site (SAC, SPA etc)? Yes No

8. DATA PROTECTION DECLARATION:

In order for the Planning Authority to process the personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at http://www.corkcoco.ie/privacy-statement-cork-county-council or in hardcopy from any Council office; and to having your information processed for the following purposes:

Processing of your Declaration of Exemption application by the Planning Authority

~	I give permission	or my personal information to be processed for the purpose stated abov	ve
Sig	ned	0. = 1	W E

(By Applicant Only) Date	Joanna Fiedorowicz	
NEW TOTAL CO. C. C.	21-Mar-2024	

GDPR Special Categories of data / Sensitive Personal data - Explicit Consent

Where Special Categories of personal data / sensitive personal data are provided as part of / in support of a declaration application, **explicit consent** to the processing of the special categories of data must be given by the person to whom the data refers, namely the Data Subject.

Special Categories of data / Sensitive Personal data include:

- Race
- Ethnic origin
- Political opinions
- Religion
- Philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning a natural person's sex life
- Sexual orientation

In order for the Planning Authority to process the sensitive personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at https://www.corkcoco.ie/privacy-statement-cork-county-council or in hardcopy from any Council office; and to having your information processed for the following purposes:

Sensitive personal data being submitted in support of Declaration of Exemption Application

I give permission for my sensitive personal data submitted to the Planning Authority to be processed for the purpose stated above.

Signed	Joanna Fiedorowicz	
Date	21-Mar-2024	

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: planninginfo@corkcoco.ie or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: westcorkplanninginfo@corkcoco.ie However if consent to the use of personal data is withdrawn during the declaration of exemption decision-making process this information cannot be considered as part of the decision making process. Once a decision has been made, an applicant is not entitled to withdraw consent, as the right of erasure does not apply to a situation where processing is required for compliance with a legal obligation or for the performance of a task carried out in the public interest.

Please note that all information / supporting documentation submitted will be available publicly to view at the Planning Authority offices.

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application must be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork Road, Skibbereen, Co. Cork, P81 AT28.

- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question
 which has arisen and on which the Declaration of Exemption is sought.
- Any person issued with a Declaration of Exemption may on payment to An Bord Pleanála refer a Declaration of
 Exemption for review by the Board within 4 weeks of the date of the issuing of the Declaration of Exemption
 decision.
- In the event that no Declaration of Exemption is issued by the Planning Authority, any person who made a request
 may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within
 4 weeks of the date that a Declaration of Exemption was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations, 2001, as amended.

9. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the <u>Planning and Development Acts 2000</u>, as amended and the Regulations made thereunder:

Date	21-Mar-2024
Signed (Applicant or Agent as appropriate)	Joanna Fisdorowicz

