

Comhairle Contae Chorcaí Cork County Council

Tim Bohan,
c/o Kieran O' Connor,
Consulting Engineer/Project Manager,
Clogheen House,
Mourneabbey,
Mallow,
Co. Cork.

Pleanáil agus Forbairt,
Halla an Chontae,
Bóthar Charraig Ruacháin,
Corcaigh T12 R2NC.
Fón: (021) 4276891 • Faics: (021) 4276321
R-phost: planninginfo@corkcoco.ie
Suíomh Gréasáin: www.corkcoco.ie
Planning & Development,
County Hall,
Carrigrohane Road, Cork T12 R2NC.
Tel (021) 4276891 • Fax (021) 4276321
Email: planninginfo@corkcoco.ie
Web: www.corkcoco.ie



4th July 2023

REF: D/249/23
LOCATION: 28 The Elms, Mallow, Co. Cork.

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

Dear Sir,

On the basis of the information submitted by you on 7th June 2023 the Planning Authority, having considered the question whether or not minimal changes to the façade of a domestic dwelling house to cater for the adaption of the house for wheelchair use. The main changes were 1) the replacement of a garage door with a smaller window; 2) constructing a pitched roof over the previous garage flat roof; 3) bringing the front door flush with the front wall at **No. 28 The Elms, Mallow, Co. Cork** is or is not development and is or is not exempted development has declared that it **is development and is exempted development.**

Reason for Decision

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

- Sections 2(1), 3(1), and 4(1)(h) of the Planning and Development Act 2000, as amended,
- Article 6 of the Planning and Development Regulations 2001, as amended, and
- The particulars received by the Planning Authority on 7th June 2023

And Whereas Cork County Council has concluded that –

The minimal changes to the façade of a domestic dwelling house to cater for the adaption of the house for wheelchair use. The main changes were 1) the replacement of a garage door with a smaller window; 2) constructing a pitched roof over the previous garage flat roof; 3) bringing the front door flush with the front wall at **No. 28 The Elms, Mallow, Co. Cork** constitutes **development and is exempted development.**

This exemption does NOT itself empower a person to carry out a development unless that person is legally entitled to do so.

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,



**PIO TREACY, /
ADMINISTRATIVE OFFICER,
PLANNING DEPARTMENT.**

In order to process your query, it may be necessary for Cork County Council to collect Personal information from you. Such information will be processed in line with our privacy statement which is available to view at <https://www.corkcoco.ie/privacy-statement-cork-county-council>



Planning and Development Directorate
Section 5 – Application for Declaration of Exemption Certificate

Ref: D/249/23 – Section 5 Declaration

Name: Tim Bohan

Development: Minimal changes to the façade of a domestic dwelling house to cater for the adaption of the house for wheelchair use. The main changes were 1) the replacement of a garage door with a smaller window; 2) constructing a pitched roof over the previous garage flat roof; 3) bringing the front door flush with the front wall.

Address: 28 The Elms, Mallow, Co. Cork.

Site Location:

No. 28, The Elms is a two storey semi-detached dwelling, located in Lackanalooha, to the north-west of Mallow town centre.



Fig.1: Subject Site Location



Fig. 2: Subject Property

Planning History:

No recent applications pertaining to the site.

Question subject of the Section 5:

On the basis of the information submitted the question to be addressed under this request is as follows:

Whether minimal changes to the façade of a domestic dwelling house to cater for the adaption of the house for wheelchair use including 1) the replacement of a garage door with a smaller window; 2) constructing a pitched roof over the previous garage flat roof; 3) bringing the front door flush with the front wall are exempted development?

Legislative Context:

Planning and Development Act 2000 (as amended)

Section 3(1) of the Act states 'development' means:

"In this Act, except where the context otherwise requires, "development" means— (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or (b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021)"

Section 2 of the Act defines 'works' as:

"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 4 of the Act sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act.

Section 4(1)(h) of the Planning and Development Act 2000 (as amended) provides an exempted development provision for:

“development consisting of the carrying out of works for the maintenance, improvement or other alterations of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.”

Planning and Development Regulations 2001 (as amended)

Article 6 states:- (1) Subject to Article 9, development of a class specified in column 1 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.

In this regard it is noted that there is no exemption listed under Article 6, Schedule 2 of the Planning and Development Regulations 2001 (as amended) for the development subject of this declaration.

The proposal consists of internal and external alterations to the building. Therefore, Section 4 of the Planning and Development Act 2000 (as amended) is relevant to the assessment of this Section 5 Declaration.

Assessment

I note the details and drawings submitted as part of the application.



Fig. 3: Submitted Drawings

The subject of the declaration request relates to alterations to the internal layout of the dwelling. The applicant states that the changes were for the adaption of the house for wheelchair use. Originally, the integral garage was converted to a bedroom and en-suite wet room and that the layout was redesigned as it was no longer suitable for the person's needs. The bedroom became the wet room and the ground floor layout was redesigned to create a large double bedroom, hallway and an open plan kitchen/living area.

The plans submitted with the current application shows changes to the internal layout, including the repositioning and reconfiguration of the kitchen/dining room and bedroom and the enlargement of the en-suite and the provision of a storage area. The drawings also show alterations to the doors and windows at ground floor level on the rear elevation.

- *Development?*

Having regard to the nature of the proposed works, and the broad definition of works set out in Section 2(1) and 3(1) of the Act it is considered that the proposal does constitute 'works' and therefore the proposals do constitute 'development' for planning purposes.

The key question therefore is whether the proposal is or is not exempted development.

- *"Is or is not exempted development?"*

Whether minimal changes to the façade of a domestic dwelling house to cater for the adaption of the house for wheelchair use including 1) the replacement of a garage door with a smaller window; 2) constructing a pitched roof over the previous garage flat roof; 3) bringing the front door flush with the front wall are exempted development.

The internal changes/works would be exempt under section 4(1)(h) as they only affect the interior of the structure.

The associated external changes to the front of the property comprise:

- 1) the replacement of a garage door with a smaller window;
- 2) constructing a pitched roof over the previous garage flat roof;
- 3) bringing the front door flush with the front wall.

In my professional opinion, having regard to the extent of works/changes, the overall appearance of the dwelling and the character of other neighbouring structures/dwellings in the Elms (many with similar alterations carried out) the works could be considered to be works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Environmental Impact Assessment (EIA) and Appropriate Assessment (AA)

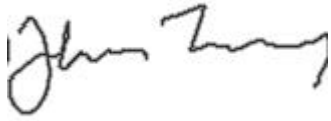
Notwithstanding any exemptions within the regulations, Section 4(4) of the Act states that:

"development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required".

In terms of EIA and Appropriate Assessment, the nature and scale of works are unlikely to have had a significant effect on the environment or on designated sites. On this basis it is considered that the development does not fall within the scope of Section 4(4) of the Act.

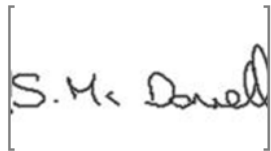
Recommendation

Is development and is exempted development.



J. Tierney
Executive Planner
03/07/2023

I have read and considered the report of the Area Planner and concur with the conclusion that the works can be considered to be exempted development.



S. McDonnell
A/Senior Executive Planner
03/07/2023

KIERAN O'CONNOR BEng(Hons) HND MIEI
Consulting Engineer/Project Manager
Clogheen House, MourneAbbey, Mallow, Co. Cork.

087/8126698

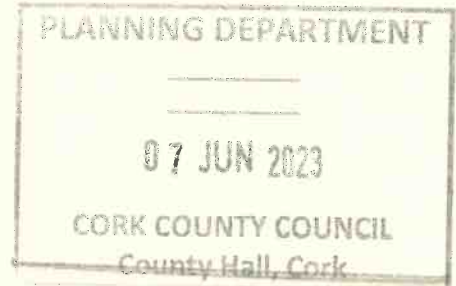
oconnorkieran6@gmail.com

Planning Department,
Cork County Council,
County Hall,
Cork.

Tuesday, 06 June 2023

Ref:

RE: 28 The Elms, Mallow, Co. Cork.



A Chara,

Please find enclosed a Section 5 Declaration of Exemption submission.

The dwelling house was adapted to cater for the needs of the original owners daughter in 2008 and 2016. The residents are all now deceased and the siblings of the last resident are in the process of preparing the property for sale. The applicant is the son of the original owners and a brother to the last resident for whom the adaptations were made, and is an executor for the final residents estate.

In 2008, I prepared a submission to Mallow Town Council for the emergency adaptations for the daughter of the then owners but the paperwork for this has been lost.

The changes made to the dwelling house were to provide a downstairs bedroom and en-suite bathroom as the person involved was confined to a wheelchair. The changes made to the facade and internal layout were minimal and are highlighted with Blue on the enclosed drawings. No other changes or extensions were made other than those shown on the enclosed drawings.

1. 4 copies of the Application forms
2. 1 copy of contact details
3. 4 copies of the site layout.
4. 4 copies of scaled drawings showing changes to the facade
5. 4 copies of scaled OS maps

Signed:

Kieran O'Connor BEng(Hons) HND MIEI



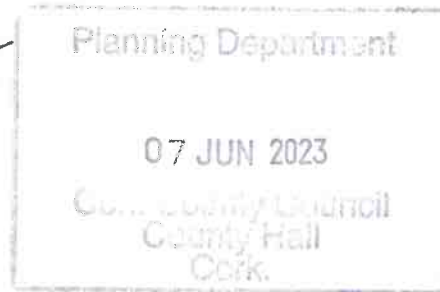
CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST

- 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:**

(Please tick ✓)

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
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FOR OFFICE USE ONLY

Receipt No.	PL90041207
Cash/Cheque/ Credit Card	Card
Date	07/6/2023
Declaration Ref. No.	D/249/23

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.

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

TIM BOHAN

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION OF EXEMPTION IS SOUGHT:

28 THE ELMS, MALLOW, CO. CORK.

3. QUESTION/DECLARATION DETAILS:

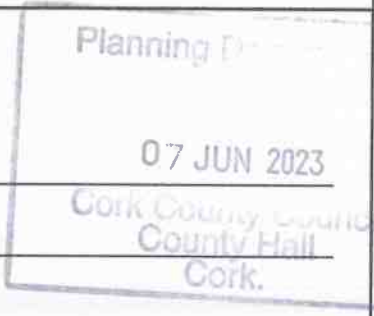
Please state the specific question for which a Declaration of Exemption is sought
Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

EXEMPTION IS BEING SOUGHT FOR MINIMAL CHANGES TO THE FACADE OF A DOMESTIC DWELLING HOUSE TO CATER FOR THE ADAPTION OF THE HOUSE FOR WHEELCHAIR USE. THE MAIN CHANGES WERE ① THE REPLACEMENT OF A GARAGE DOOR WITH A SMALLER WINDOW. ② CONSTRUCTING A PITCHED ROOF OVER THE PREVIOUS GARAGE FLAT ROOF, ③ BRINGING THE FRONT DOOR FLUSH WITH THE FRONT WALL

Planning Department
07 JUN 2023
Cork County Council
County Hall
Cork.

4. APPLICATION DETAILS:

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square metres (m²)

(a) Floor area of existing/proposed structure(s):	N/A
(b) If a domestic extension is proposed, have any previous extensions/structures been erected at this location after 1 st October, 1964 (including those for which planning permission has been obtained):	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide floor areas (m ²) and previous planning reference(s) where applicable:
(c) If a change of use of land and/or building(s) is proposed, please state the following: Existing/previous use _____ _____ _____ Proposed use _____ _____	N/A 
(d) Are you aware of any enforcement proceedings connected to this site?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please state relevant reference number(s):

5. LEGAL INTEREST OF APPLICANT IN THE LAND/STRUCTURE:

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner <input type="checkbox"/>	B. Other <input checked="" type="checkbox"/>
Where legal interest is "Other", please state your interest in the land/structure:	JOINT OWNER WITH TWO SIBLINGS.	
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 / ARCHITECTURAL CONSERVATION AREA:

Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected Structure: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority: Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please state relevant reference No. _____
Is this site located within an Architectural Conservation Area (ACA), as designated in the County Development Plan? Yes <input type="checkbox"/> No <input type="checkbox"/>

7. APPROPRIATE ASSESSMENT:

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 for my personal information to be processed for the purpose stated above

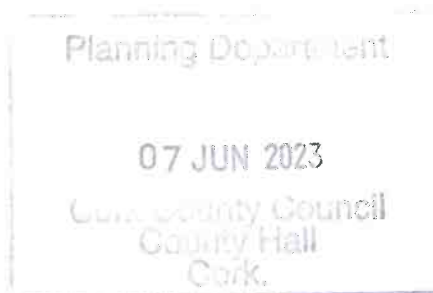
Signed (By Applicant Only)	<i>J. Bohan</i>
Date	06-06-2023

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	<i>J. Bohan</i>
Date	06-06-2023

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:

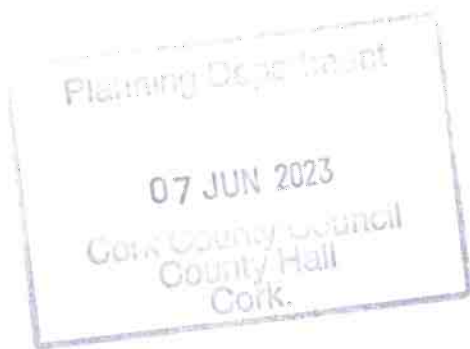
The application must be accompanied by the required fee of €80
The application must be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.
Sufficient information should be submitted 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 Planning and Development Acts 2000, as amended and the Regulations made thereunder:

Signed (Applicant or Agent as appropriate)	
Date	06-06-2023

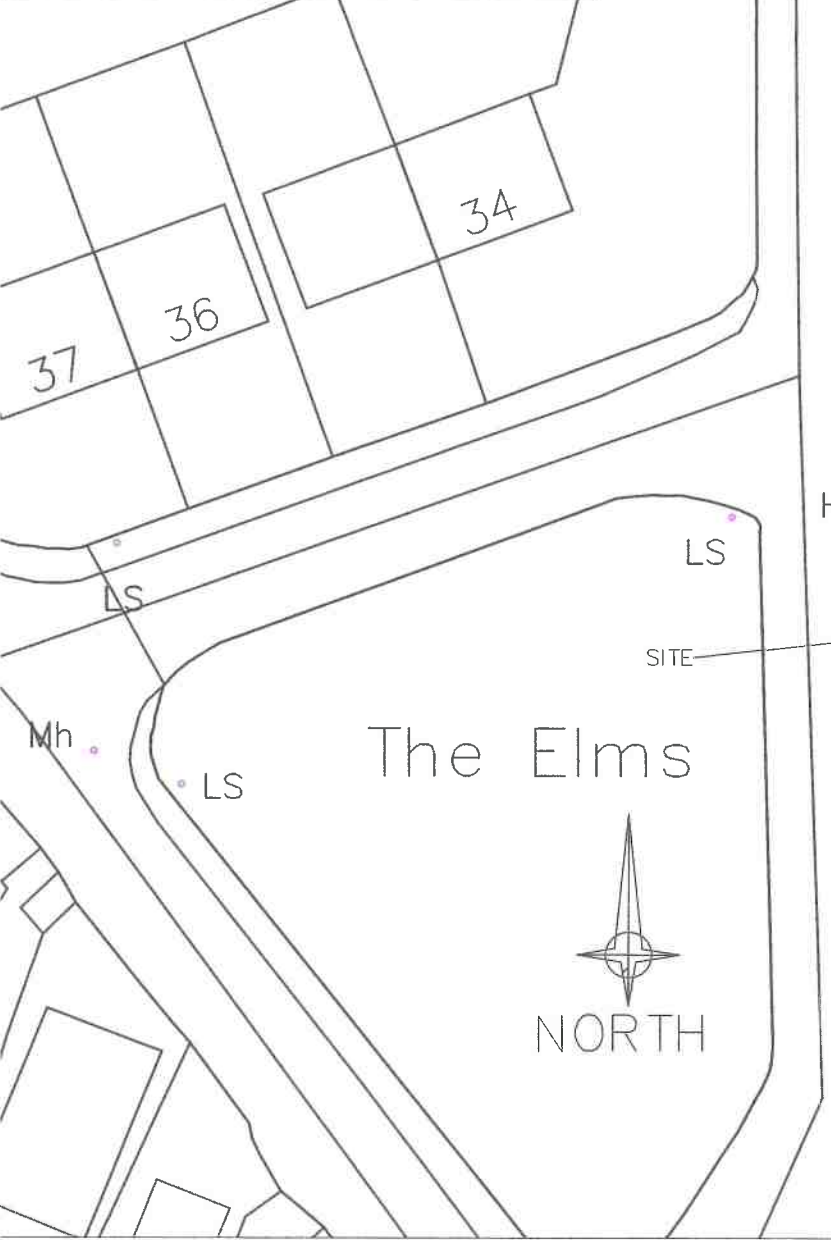


Kieran O'Connor, BEng(Hons) HND MIEI,
 Clogheen House, Mallow, Co. Cork.
 Tel: 087/8126698

Client:
 Tim Bohan
 Mallow, Co. Cork.

Project: Exemption Title: Site Layout

Scale: 1:500 Date: May 2023 Drawing No: 05-23-TB-2

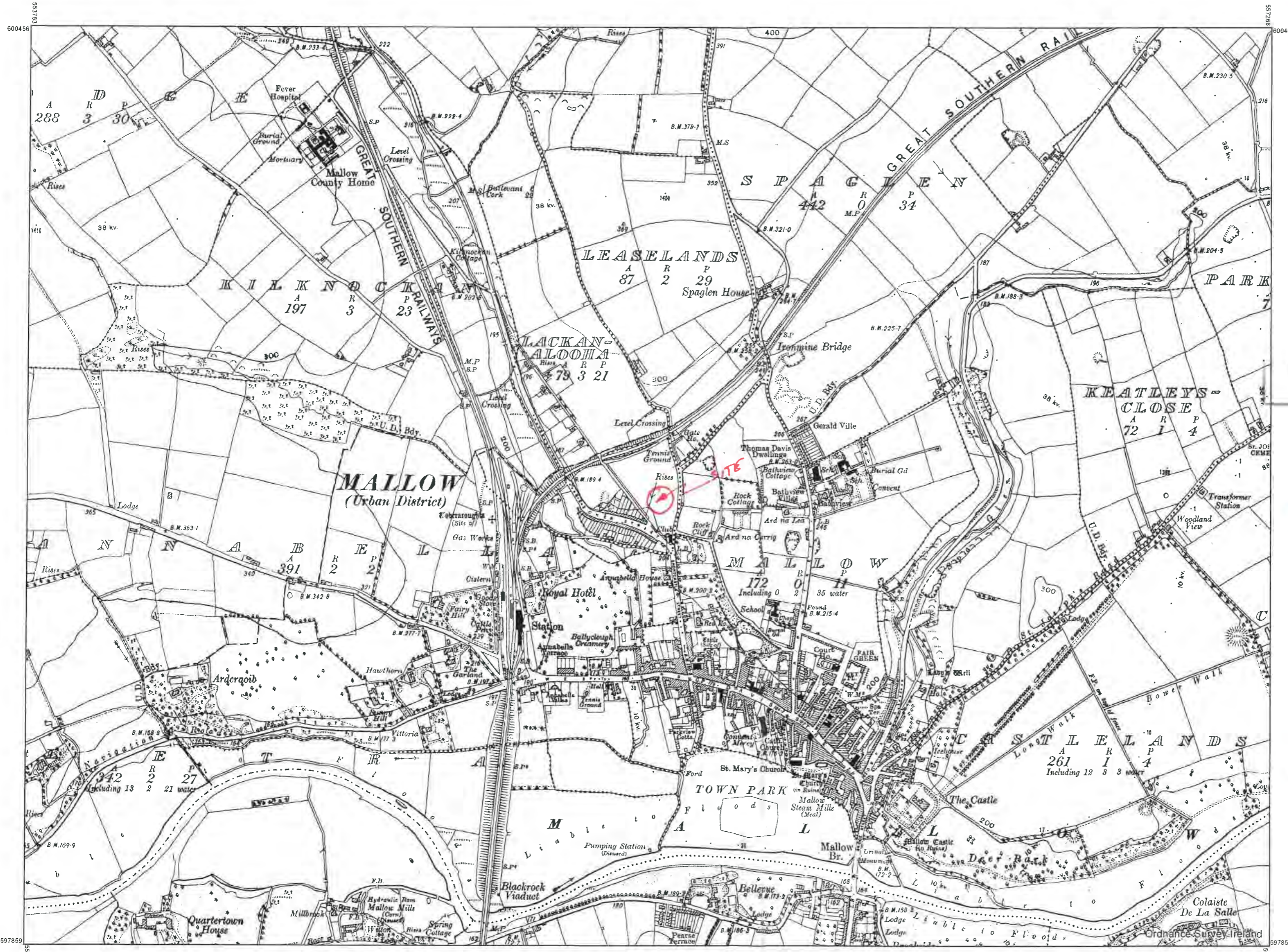


07 JUN 2023
 Planning Department
 Cork County Council
 County Hall
 Cork.

Site Location Map



Tailte Éireann



CENTRE COORDINATES:
ITM 555516,599158

PUBLISHED: 25/05/2023
ORDER NO.: 50336881_2

MAP SERIES: 6 Inch Raster
MAP SHEETS: CK033

07 JUN 2023
County Council
County Hall
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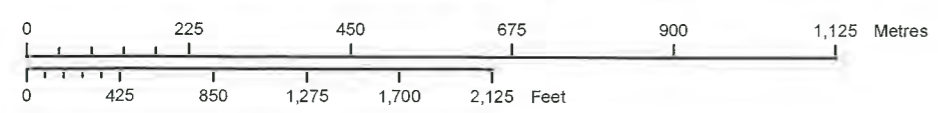
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Planning Pack Map



Tailte Éireann



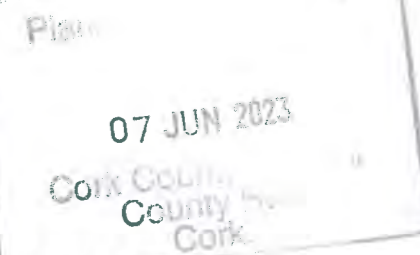
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ITM 555516,599158

PUBLISHED:
25/05/2023

ORDER NO.:
50336881_2

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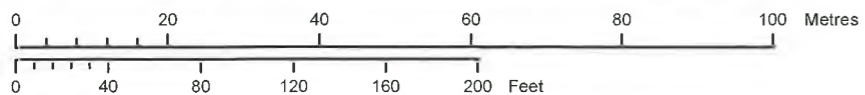
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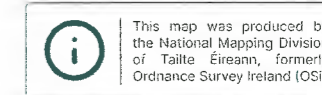
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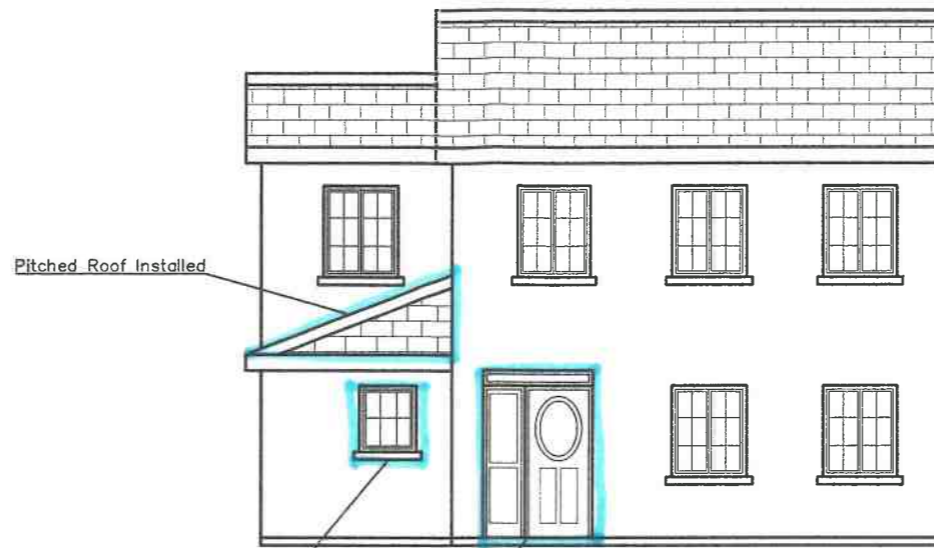
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LEGEND:
To view the legend visit www.osi.ie and search for 'Large Scale Legend'.





Original Facade

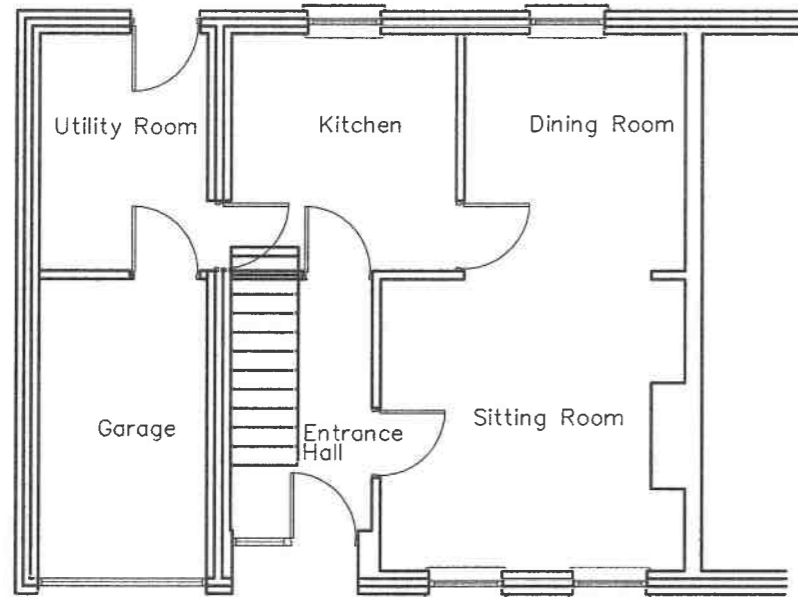


Pitched Roof Installed

Window Installed

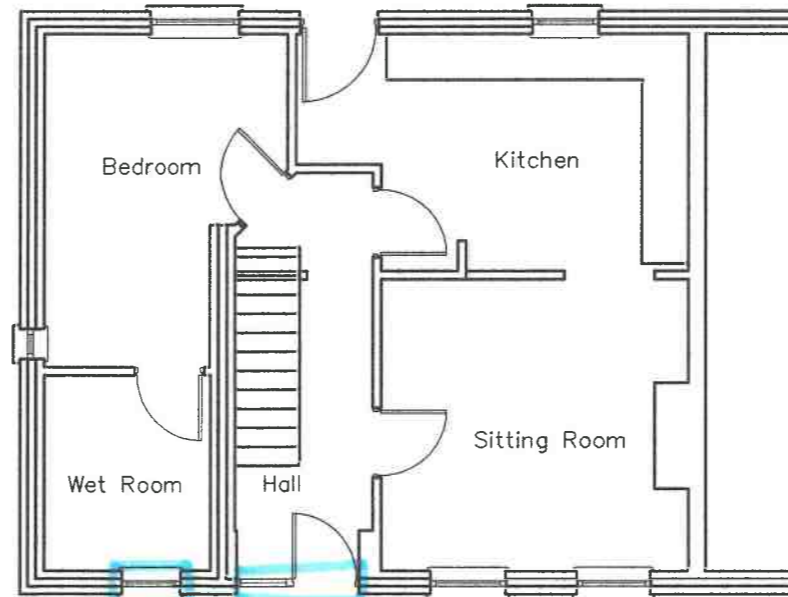
Front Door brought Forward

Existing Facade



Original Floor Plan

1983



Existing Floor Plan

2016



Kieran O'Connor, BEng MIEI, Clogheen House, Mallow, Co. Cork. Tel: 087/8126698		
Client: Tim Bohan Mallow, Co. Cork		
Project: Exemption	Title: Elevation/Plan	
Scale: 1:100	Date: May 2023	Drawing No: 05-23-TB-1