

Comhairle Contae Chorcaí Cork County Council

An Rannóg Pleanála,
Halla an Chontae,
Bóthar Charraig Ruacháin,
Corcaigh T12 R2NC
Fón: (021) 4276891 Faics: (021) 4276321
Suíomh Gréasáin: www.corkcoco.ie
Planning Department,



Dirk & Rafaela Herberich,
Country View,
Garryndruig,
Kilbrittain,
Co. Cork
P72 PY06

County Hall,
Carrigrohane Road, Cork T12 R2NC
Tel: (021) 4276891 Fax: (021) 4276321

14th March, 2023

REF: D/210/23
LOCATION: Country View, Garryndruig, Kilbrittain, Co. Cork.

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

Dear Sir/Madam,

On the basis of the information and plans submitted by you on the 15th February, 2023 the Planning Authority having considered whether the installation of a wind turbine with a 7m mast height, 4m turbine diameter, total height of turbine and mast 9m within the curtilage of dwelling at **Country View, Garryndruig, Kilbrittain, Co. Cork** is or is not development and is or is not exempted development has declared that it is **not exempted development**.

Reason for Decision

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

- Sections 3 and 4 of the Planning and Development Acts 2000 (as amended)
- Article 9 (a) (iii) and (vi) of the Planning and Development Regulations 2001 (as amended)
- Class 2(b), Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended)

And Whereas Cork County Council has concluded that –

Having considered the information received and the provisions of both the Planning and Development Act and the Planning and Development Regulations, the wind turbine proposed constitutes “development” but is not considered exempted development having regard to the Conditions and Limitations on Class 2 Exempted Development. Condition 5 states that “the supporting tower shall be a distance of not less than the total structure height (including the blade of the turbine at the highest point of its arc) plus one metre from any party boundary” which equates to 10m. Having reviewed the proposal, the site plan indicated it will be located 5m from the western site boundary and 3.5m from the southern site boundary, therefore the proposal is not considered exempted development

and would require planning permission. It is considered that the proposal would also be de-exempted by Article 9 (a) (iii) *endanger public safety by reason of traffic hazard or obstruction of road users* and Article 9 (a) (vi) *interfere with the character of a landscape of the area*.

And Now therefore the Planning Authority hereby decides that

The installation of a wind turbine with a 7m mast height, 4m turbine diameter, total height of turbine and mast 9m within the curtilage of dwelling at **Country View, Garryndruig, Kilbrittain, Co. Cork** is development and 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

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 Ref D/210/23

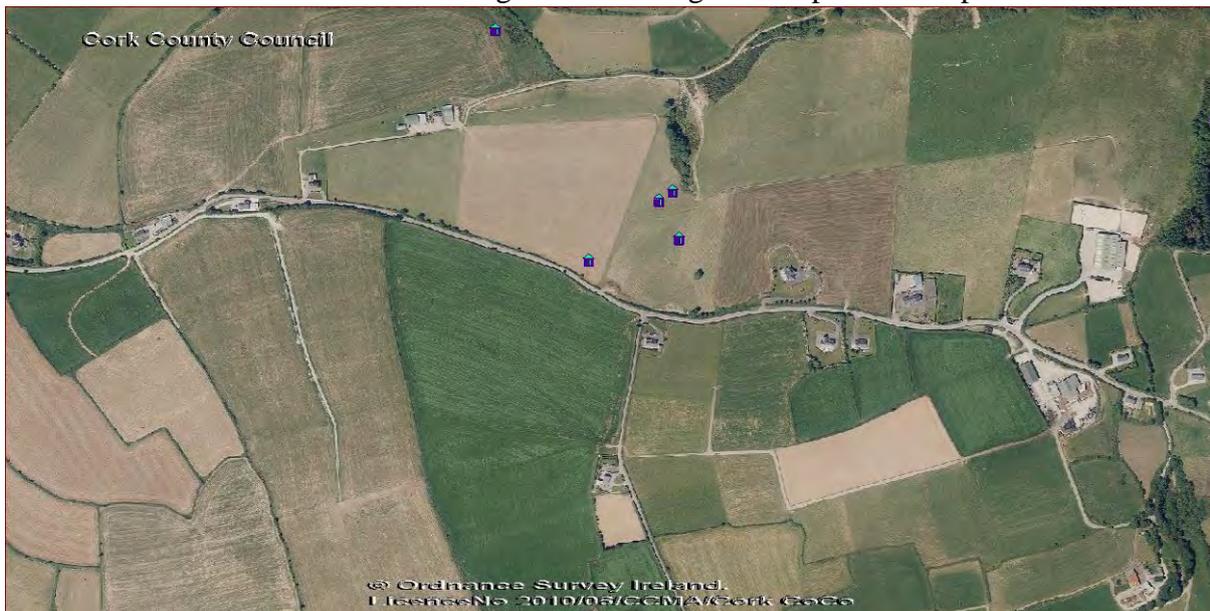
Declaration on Exempted Development under Section 5 of the Planning and Development Act 2000

Site Location: County View, Garryndruig, Kilbrittain, Co. Cork

Proposed Development: i) Is planning permission required to for the proposed development – installation of a wind turbine with a 7m mast height ,4m turbine diameter, total height of turbine and mast 9m within the curtilage of a dwelling is exempted development.

Proposal /Context

The applicant is seeking a determination by the planning authority as to whether or not an installation of a wind turbine with a 7m mast height ,4m turbine diameter, total height of turbine and mast 9m within the curtilage of a dwelling is exempted development.



Planning History

98/4337 Construction of a Dwelling and Garage. Granted subject to 14 no. conditions.

Planning Policy

The site is within the Rural Housing area where RP 5-4 applies

It is within an area open to consideration as per the Wind Strategy in the CDP 2022

The site is within Rolling Patchwork Farmland as per the Landscape Strategy.

There are a number of archaeological monuments to the north of the site. The closest is 130m from the dwelling

Flooding

Site is not in a flood risk zone

Appropriate Assessment

The site is located within the screening zone of Courtmacsherry Estuary SAC and Courtmacsherry Bay SPA. The site is located circa 3km north of the SAC and SPA.

Having review the proposal there is insufficient information to screen out impact on Courtmacsherry Bay SPA based on the information submitted. A HDA screening report is required to determine whether the proposal will have impacts on Courtmacsherry Bay SPA

Legislative Context

According to **Section 3(1) of the Planning and Development Act (2000-2010)**, “development” means, save where the context otherwise requires, the carrying out of works on, in or under land or the making of any material change in the use of any structures or other land.

Section 4 of the same Act lists works that would be considered exempted development. It also conveys power on the Minister to make regulations to provide for any class of development to be exempted development for the purposes of the Act.

Of particular relevance to this application is Class 2(b) **Schedule 2 Part 1** of the **Planning and Development Regulations (2001 as amended)**.

(b) The construction, erection or placing within the curtilage of a house of a wind turbine.

Conditions and Limitations

1. The turbine shall not be erected on or attached to the house or any building or other structure within its curtilage.

2. The total height of the turbine shall not exceed 13 metres.

3. The rotor diameter shall not exceed 6 metres.

4. The minimum clearance between the lower tip of the rotor and ground level shall not be less than 3 metres.

5. **The supporting tower shall be a distance of not less than the total structure height (including the blade of the turbine at the highest point of its arc) plus one metre from any party boundary.**

6. Noise levels must not exceed 43db(A) during normal operation, or in excess of 5db(A) above the background noise, whichever is greater, as measured from the nearest neighbouring inhabited dwelling.

7. No more than one turbine shall be erected within the curtilage of a house.

8. No such structure shall be constructed, erected or placed forward of the front wall of a house.

9. All turbine components shall have a matt; non-reflective finish and the blade shall be made of material that does not deflect telecommunication signals.

10. No sign, advertisement or object, not required for the functioning or safety of the turbine shall be attached to or exhibited on the wind turbine.

Conditions and limitations

Article 9 of said Regulations lists a series of restrictions on exemptions which includes

- (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,
 - (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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,

- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,
- (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,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area 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,
- (x) consist of the fencing or enclosure of any land habitually open to or used by the

public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

- (xi) obstruct any public right of way,
 - (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area 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 and the development would materially affect the character of the area,
- (b) in an area to which a special amenity area order relates, if such development would be development: —
- (i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or
 - (ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or
 - (iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or
 - (iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,
- (c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures

for the purpose of giving effect to the Council Directive,

- (d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.
- (2) Sub-article (1)(a)(vi) shall not apply where the development consists of the construction by any electricity undertaking of an overhead line or cable not exceeding 100 metres in length for the purpose of conducting electricity from a distribution or transmission line to any premises.

Assessment

Having reviewed the proposal, it is considered that the proposal would not fall within the conditions and limitations of Class 2(b) Schedule 2 Part 1 of the Planning and Development Regulations (2001 as amended) specifically in relation to its separation distance from any party boundary.

The tower measures 7m while the tip height of the blade is + 2 m giving an overall height of 9m. As per limitation no 5 the supporting tower shall be a distance of not less than the total structure height (including the blade of the turbine at the highest point of its arc) plus one metre from any party boundary which equates to 10m . Having reviewed the proposal, the site plan indicated it will be located 5m from the western site boundary and 3.5m from the southern site boundary, therefore the proposal is not considered exempted development.

Article 9 De-exemptions.

I have had verbal discussions with the Area Engineer who would also have concerns about the citing of a wind turbine in close proximity to a public road as it would be a traffic hazard. It is considered that the proposal would also be de-exempt by Article 9 (a) (iii) *endanger public safety by reason of traffic hazard or obstruction of road users,*

There are also concerns about the visual impact of the proposal having regard to its elevated position within this valley. It is considered that the proposal would also be de-exempt by Article 9 a (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.*

There is insufficient information on the file to make a determination in relation to the potential for impact on Courtmacsherry Bay Special Protection Area (SPA).

Having discussed the file with the Council archaeologist there is no potential for the proposal to impact on archaeology.

Conclusion

Having considered the information received and the provisions of both the Planning and Development Act and the Planning and Development Regulations the wind turbine proposed at County View, Garryndruig, Kilbrittain, Co. Cork constitutes "development" but is not considered exempted development having regard to the Conditions and limitations on Class 2 exempted development. Condition 5 states that ‘ the supporting tower shall be a distance of not less than the total structure height (including the blade of the turbine at the highest point of its arc) plus one metre from any party boundary which equates to 10m . Having reviewed the proposal, the site plan indicated it will be located 5m from the western site boundary and 3.5m from the southern site boundary, therefore the proposal is not considered exempted development and would require planning permission. It is considered the the proposal would also be de-exempted by Article 9 a) (iii) *endanger public safety by reason of traffic hazard or obstruction of road users* and Article 9 a) (vi) *interfere with the character of a landscape of the area.*

John Redmond
Area Planner
14/03/2023



CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST

(Please tick ✓)

- 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	
Date	
Declaration Ref. No.	

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.

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):	
(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 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 _____ _____
(d) Are you aware of any enforcement proceedings connected to this site?	Yes <input type="checkbox"/> No <input 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 type="checkbox"/>
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 / 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 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)	 
Date	14th February 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.

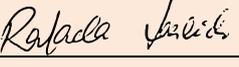
Special Categories of data / Sensitive Personal data include:

- 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	 
Date	14th February 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.

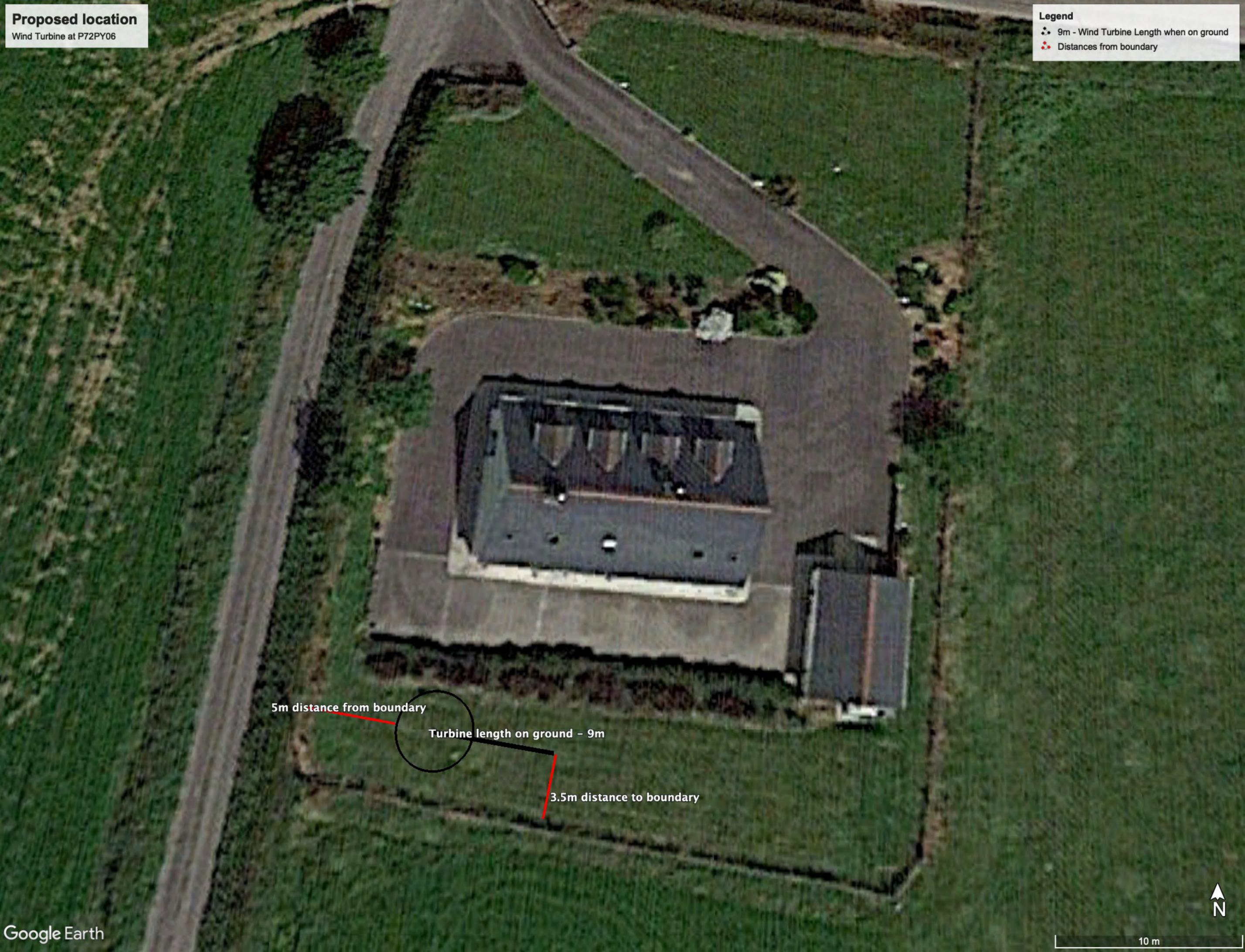
The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be 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	14th February 2023

Proposed location
Wind Turbine at P72PY06

Legend
•• 9m - Wind Turbine Length when on ground
•• Distances from boundary



Planning Pack Map



CENTRE COORDINATES:
ITM 548570,548247

PUBLISHED:
13/02/2023

ORDER NO.:
50317232_1

MAP SERIES:
1:5,000

MAP SHEETS:
6667

COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

Unauthorised reproduction
infringes Ordnance Survey Ireland
and Government of Ireland
copyright.

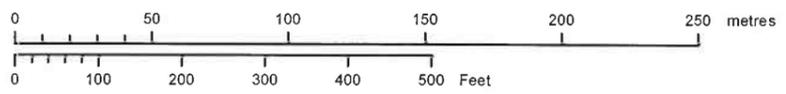
All rights reserved.
No part of this publication may
be copied, reproduced
or transmitted in any form
or by any means without the prior
written permission of
the copyright owners.

The representation on this map
of a road, track or footpath
is not evidence of the existence
of a right of way.

Ordnance Survey maps
never show legal property
boundaries, nor do they
show ownership of
physical features.

©Suirbhéireacht Ordanáis Éireann, 2023
©Ordnance Survey Ireland, 2023

www.osi.ie/copyright



OUTPUT SCALE: 1:2,500

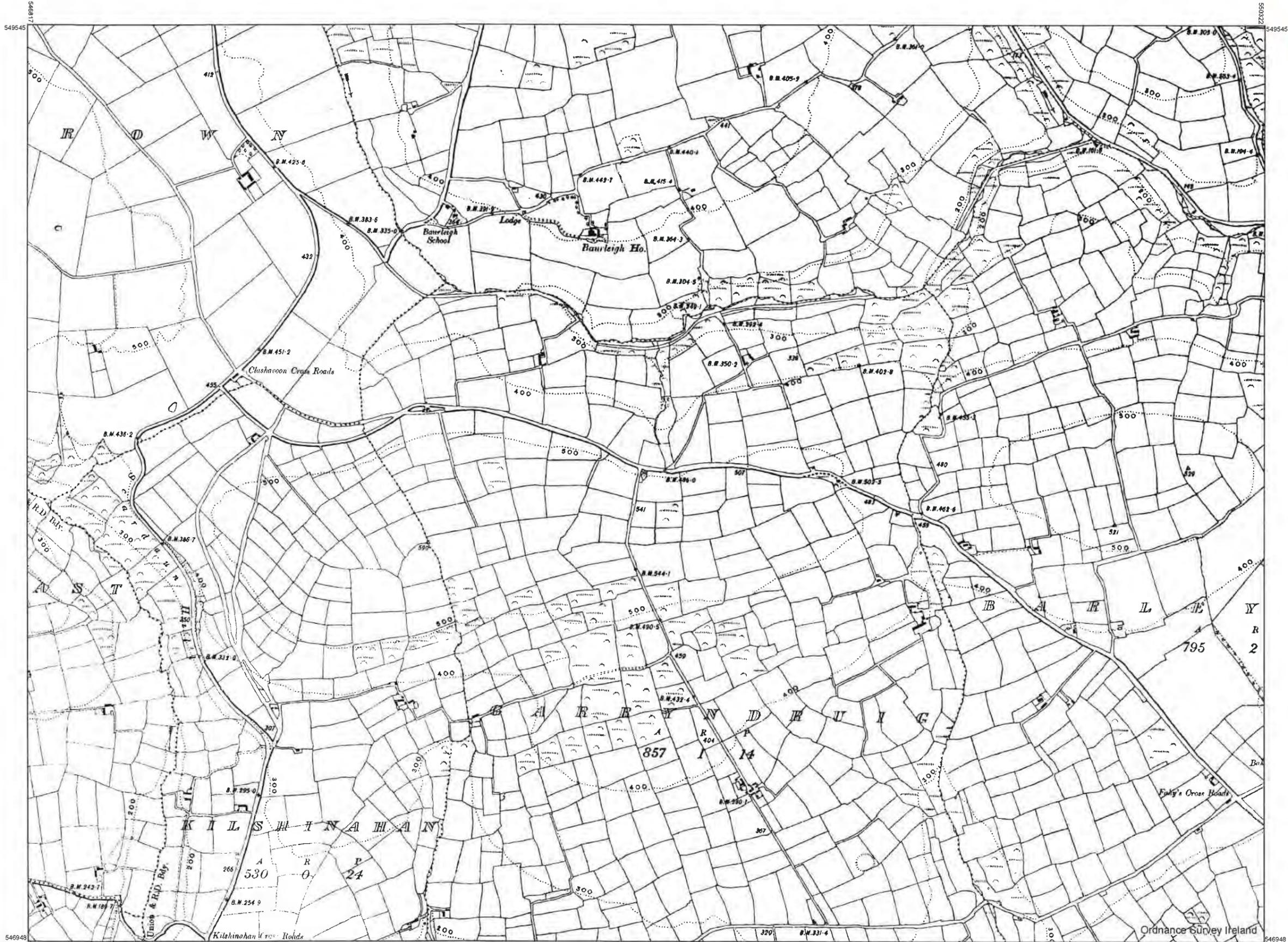
CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'



LEGEND:

<http://www.osi.ie>;
search 'Large Scale Legend'

Site Location Map



CENTRE COORDINATES:
ITM 548570,548247

PUBLISHED: 13/02/2023 **ORDER NO.:** 50317232_1

MAP SERIES: 6 Inch Raster **MAP SHEETS:** CK123

COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland

Unauthorised reproduction infringes Ordnance Survey Ireland and Government of Ireland copyright.

All rights reserved
No part of this publication may be copied, reproduced or transmitted in any form or by any means without the prior written permission of the copyright owners.

The representation on this map of a road, track or footpath is not evidence of the existence of a right of way.

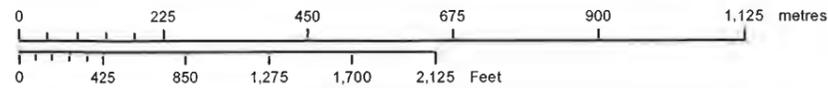
Ordnance Survey maps never show legal property boundaries, nor do they show ownership of physical features.

©Suirbhéireacht Ordánais Éireann, 2023
©Ordnance Survey Ireland, 2023

www.osi.ie/copyright

LEGEND:

<http://www.osi.ie>, search 'Large Scale Legend'



OUTPUT SCALE: 1:10,560

CAPTURE RESOLUTION:
The map objects are only accurate to the resolution at which they were captured
Output scale is not indicative of data capture scale
Further information is available at <http://www.osi.ie>, search 'Capture Resolution'

