

# Comhairle Contae Chorcaí Cork County Council

Alexandra Whyte,  
13 Sarsfield Terrace,  
Youghal,  
Co. Cork.  
P36 NX22.

23<sup>rd</sup> May 2023

REF: D/236/23  
LOCATION: 13 Sarsfield Terrace, 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 26<sup>th</sup> April 2023 the Planning Authority, having considered the question whether or not the creation of a driveway at **13 Sarsfield Terrace, Youghal, Co. Cork** is or is not development and is or is not exempted development has declared that it **is development and is not exempted development.**

## **Reason for Decision**

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

- Sections 2(1) and 3(1) of the Planning and Development Act, 2000 (as amended)
- Article 9(1)(ii) of the Planning and Development Regulations, 2001 (as amended)
- The nature and width of the adjoining road, and
- The particulars received by the Planning Authority on 26<sup>th</sup> April 2023

**And Whereas Cork County Council has concluded that –**

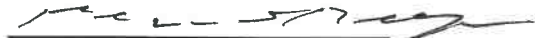
The creation of a driveway at 13 Sarsfield Terrace, Youghal **is development and is not exempted development.**

**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.**

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



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>*

## PLANNER'S REPORT - Ref. D/236/23

<b>Application Type:</b>	Section 5
<b>Description:</b>	Whether or not the following is or is not development and is nor is not exempted development:  A driveway
<b>Location:</b>	13 Sarsfield Terrace
<b>Referrer:</b>	Alexandra Whyte

### 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

Question 3 of the referral form sets out the following:

In 2010 I contacted the town council to ask if I needed planning permission to put in a driveway at the above address, I was told No I didn't. I put in the driveway in 2010 and a few weeks later the council lowered the kerb for me. I am now selling the above property and require an exemption for the purchasers solicitor. I have been advised it may be exempt under Class 6 of Exempted Development Article 6 - 'Provision for front of house for parking of one vehicle'.

### 3.0 RELEVANT PLANNING LEGISLATION AND REGULATIONS

#### ***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.*

*"alteration" includes—*

*(a) plastering or painting or the removal of plaster or stucco, or*

*(b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;*

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) 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 (1) Development to which article 6 relates shall not be exempted development for the purposes of 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,

Class 6 Part 1 of Schedule 2 as per 2001 Planning and Development Regulations

(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.	The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.
(b) Any works within the curtilage of a house for—	
(i) the provision to the rear of the house of a hard surface for use for any purpose	

<p>incidental to the enjoyment of the house as such, or,</p> <p>(ii) the provision to the front or side of the house of a hard surface for the parking of not more than 2 motor vehicles used for a purpose incidental to the enjoyment of the house as such</p>	
--	--

Class 6 Part 1 of Schedule 2 as amended in 2011

<p>(b) Any works within the curtilage of a house for—</p> <p>(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.</p>	<p>Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller,</p> <p>Or</p> <p>if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.</p>
--	---

#### 4.0 ENVIRONMENTAL ASSESSMENT

##### ***Environmental Impact Assessment***

I note the provisions of Sections 4(4) and 4 (4A) of the Act which states the following:

*(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.*

*(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—*

*(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*

*(b) as respects which an environmental impact assessment or an appropriate assessment is required,*

*to be exempted development.*

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**

I note the provisions of Section 177U(9) of the Act which states the following:

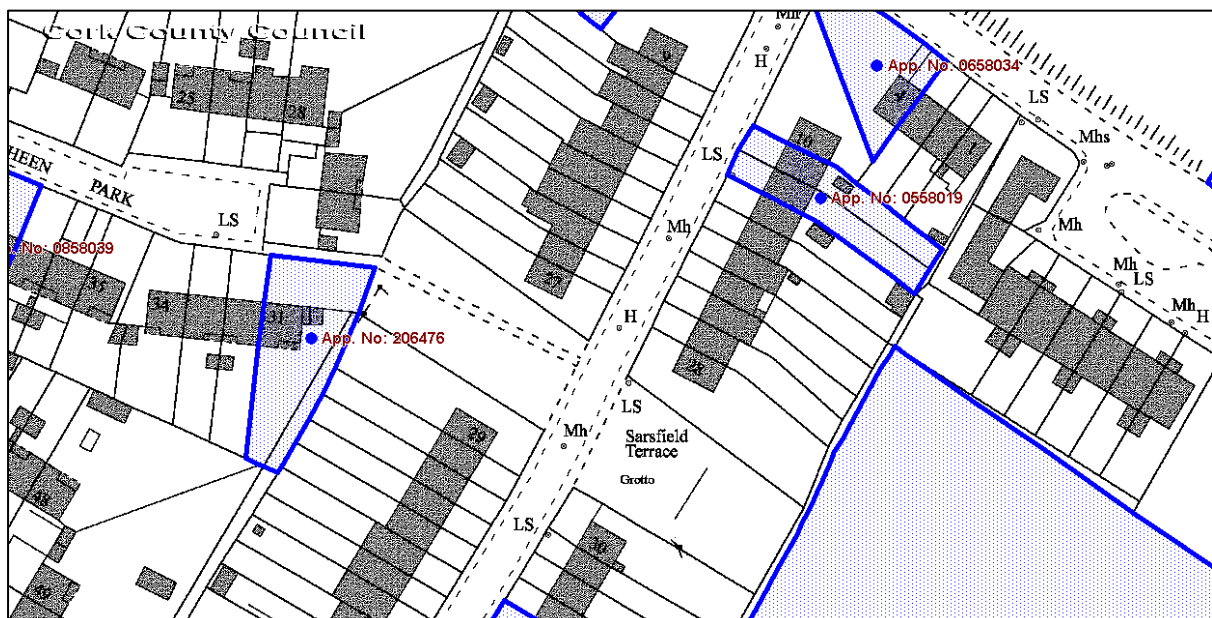
*(9) In deciding upon F722[a declaration or a referral under section 5] of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.*

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.

### **5.0 INTERNAL REFERRAL REPORTS**

None.

### **6.0 RECENT RELEVANT PLANNING HISTORY**



No relevant planning history.

### **7.0 PLANNING ASSESSMENT**

Site Inspection

I inspected the site on 19.05.2023. A photo of the site is included hereunder.



Image 1: Site Photo dated 19.05.2023



Image 2: Google Streetview dated April 2009

### 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. As shown in image 1 when compared with image 2, the creation of the driveway has been formed by the demolition of a front boundary wall. It is considered the works as detailed 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 restrictions on exemptions applied under Article 9(1)(a)(ii) of the Regulations include where the development would involve the material widening of the means of access to a public road, the surface carriageway of which exceeds 4m in width. I measured the adjoining carriageway on 19.05.2023 and it had a width of 5m.

I have referred to the 1:50 drawing submitted with this Section 5 referral. I note that an area of 31.74sq.m to the front of the building line is located within the bounds of the front garden. The submission states that the works to the driveway were undertaken in 2010. For this reason I have referred specifically to Class 6 as set out in the 2001 Planning and Development Regulations, prior to the amendment made to this Class in 2011. These Regulations under Class 6(b)(ii) provide for the provision to the front or side of the house of a hard surface for the parking of not more than 2 motor vehicles used for a purpose incidental to the enjoyment of the house as such.

Notwithstanding this, Article 9(1)(ii) which states that development to which Article 6 relates shall not be exempted development for the purposes of the Act 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. As noted at the time of my inspection the carriageway of the public road was 5m in width. For this reason irrespective of the exemption provided for within Class 6 of the 2001 Regulations, the provisions of Article 9 would de-exempt this.


Conclusion: is not exempted development

**8.0 DETERMINATION**

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 9(1)(ii) of the Planning and Development Regulations, 2001; and
- (c) The nature and width of the adjoining road.

It is concluded that the creation of a driveway at 13 Sarsfield Terrace, Youghal is development and is not exempted development.

  
**Siún McCarthy**  
**Executive Planner**  
**23.05.2023**







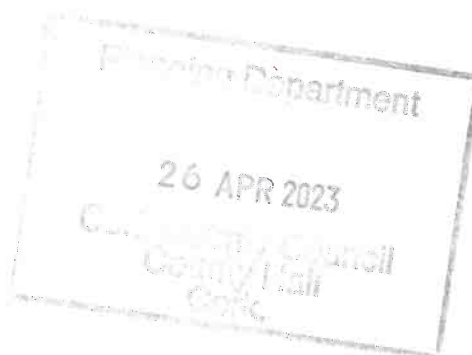
## **CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION**

### **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:**

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>



### **FOR OFFICE USE ONLY**

Receipt No.	
Cash/Cheque/ Credit Card	Card
Date	26/04/2023
Declaration Ref. No.	D/236/23

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 3<sup>rd</sup> 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](mailto: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)**

ALEXANDRA WHYTE (NEE WHEELER)

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

13 SARSPIELD TERRACE  
YOUGHAL  
CO. CORK  
P36 NX22

**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

In 2010 I contacted the town council to ask if I needed planning permission to put in a driveway at the above address, I was told No I didn't. I put in the driveway in 2010 and a few weeks later the council lowered the kerb for me. I am now selling the above property and require an exemption for the purchasers solicitor. I have been advised it may be exempt under Class 6 of Exempted Development Article 6 - 'Provision for front of house for parking of one vehicle'.

Planning Department

26 APR 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 (m<sup>2</sup>)

(a) Floor area of existing/proposed structure(s):	31.74m <sup>2</sup>
(b) If a domestic extension is proposed, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> 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 <sup>2</sup> ) and previous planning reference(s) where applicable: Planning Department
(c) If a change of use of land and/or building(s) is proposed, please state the following:  Existing/previous use  Front garden	Proposed use 26 APR 2023 Cork County Council County Hall Cork.  Front driveway
(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 checked="" 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 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>[Signature]</i>
Date	17-4-23

**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>[Signature]</i>
Date	17-4-23

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](mailto:planninginfo@corkcoco.ie) or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: [westcorkplanninginfo@corkcoco.ie](mailto: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.

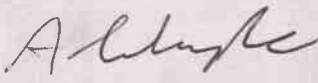
The application should be sent to the following address:

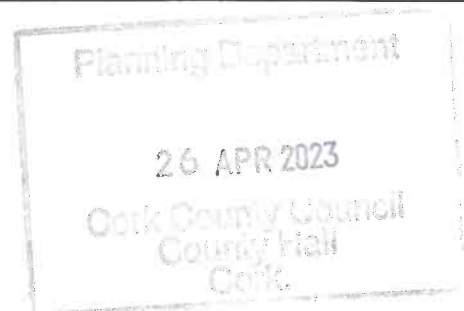
The Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork Road, Skibbereen, Co. Cork, P81 AT28.

- 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:**

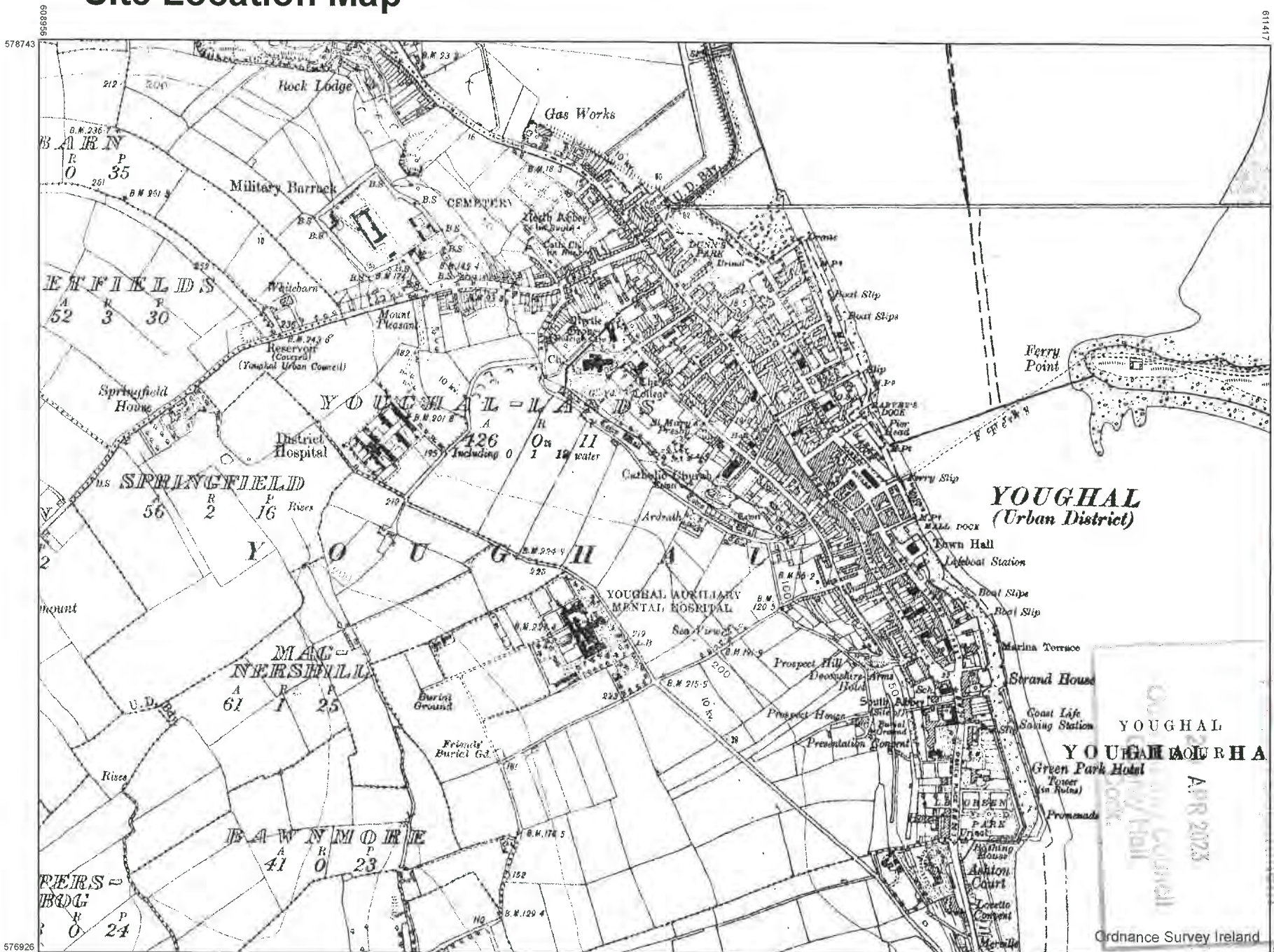
Signed (Applicant or Agent as appropriate)	
Date	17.4.23



# Site Location Map



Tailte Éireann



**CENTRE COORDINATES:**  
ITM 610187,577835

**PUBLISHED:** 17/04/2023  
**ORDER NO.:** 50329128\_1

**MAP SERIES:** 6 Inch Raster, 6 Inch Raster, 6 Inch Raster  
**MAP SHEETS:** \$1\_WD040+040A, CK067, WD037

**COMPILED AND PUBLISHED BY:**  
National Mapping Division of Tailte Éireann, Phoenix Park, Dublin 8, Ireland. D08F6E4

[www.tailte.ie](http://www.tailte.ie)

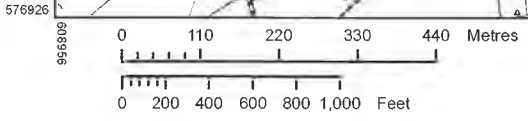
Any unauthorised reproduction infringes Tailte Éireann copyright

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 owner.

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

Topographic maps produced by the National Mapping Division of Tailte Éireann never show legal property boundaries, nor do they show ownership of physical features.

© National Mapping Division of Tailte Éireann, 2023 All rights reserved.



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: [www.osi.ie](http://www.osi.ie), search 'Capture Resolution'

**LEGEND:**  
To view the legend visit [www.osi.ie](http://www.osi.ie) and search for 'Large Scale Legend'



This map was produced by the National Mapping Division of Tailte Éireann, formerly Ordnance Survey Ireland (OSI)

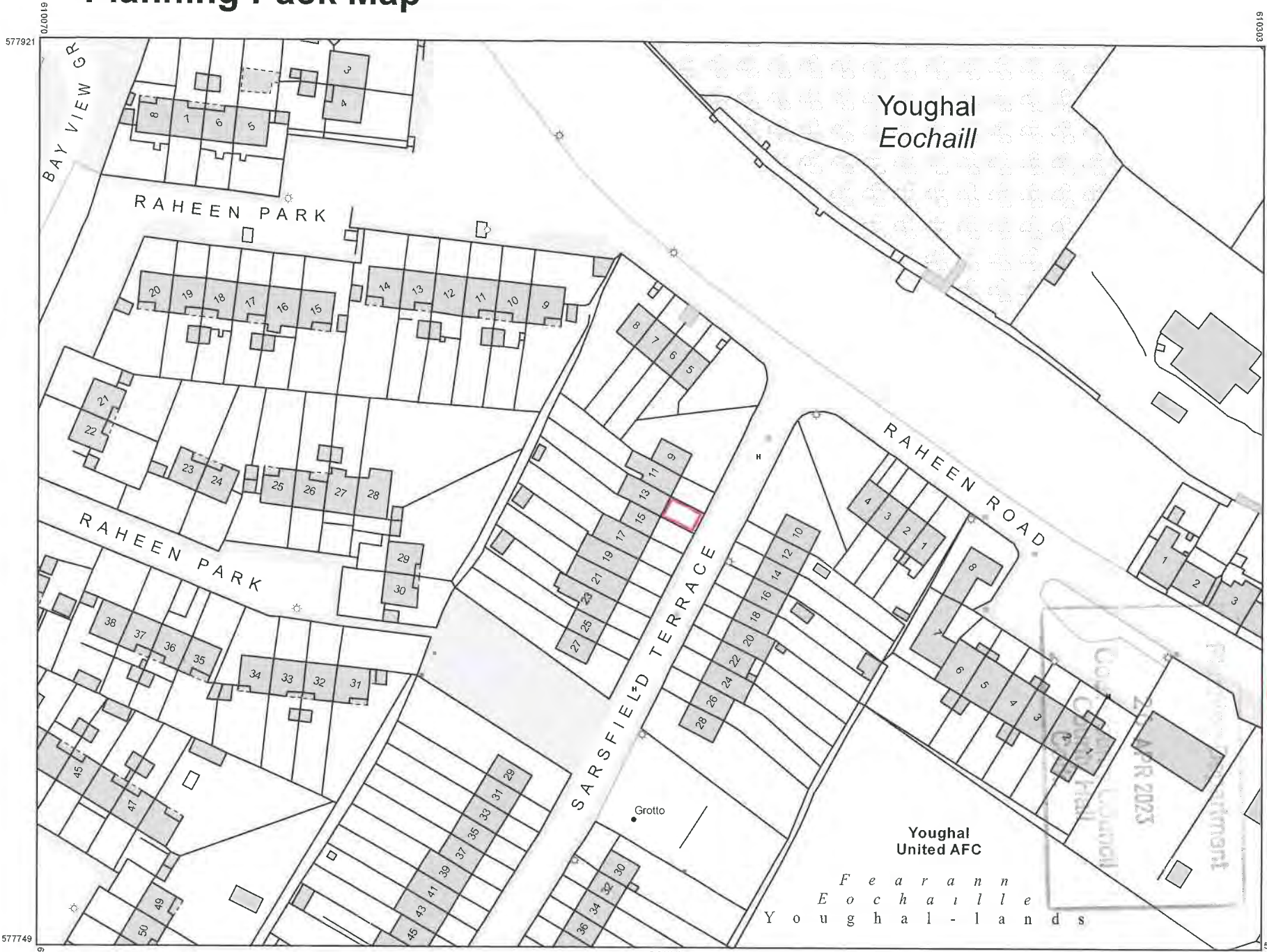
578743 966605 576926 966605

611417 578743 576926 611417

# Planning Pack Map



Tailte Éireann



**CENTRE COORDINATES:**  
ITM 610187,577835

**PUBLISHED:** 17/04/2023  
**ORDER NO.:** 50329128\_1

**MAP SERIES:** 1:1,000  
**MAP SHEETS:** 6301-08  
1:1,000 6301-13

**COMPILED AND PUBLISHED BY:**  
National Mapping Division of Tailte Éireann,  
Phoenix Park,  
Dublin 8,  
Ireland.  
D08F6E4

[www.tailte.ie](http://www.tailte.ie)

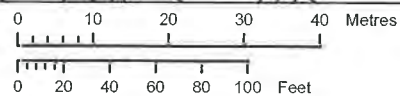
Any unauthorised reproduction infringes Tailte Éireann copyright.

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 owner.

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

Topographic maps produced by the National Mapping Division of Tailte Éireann never show legal property boundaries, nor do they show ownership of physical features.

© National Mapping Division of Tailte Éireann, 2023. All rights reserved.




OUTPUT SCALE: 1:1,000

**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 [www.osi.ie](http://www.osi.ie), search 'Capture Resolution'

**LEGEND:**  
To view the legend visit [www.osi.ie](http://www.osi.ie) and search for 'Large Scale Legend'



 This map was produced by the National Mapping Division of Tailte Éireann, formerly Ordnance Survey Ireland (OSi)





RACE

RAH

9

11

13

15

17

19

21

23

10

12

14

16

1

2

3

4

Soc. County Council  
County Hall  
DUBLIN  
26 APR 2023

Planning Department

13 SARSFIELD TERRACE  
P36 NX22

15

13

11

Planning Department

26 APR 2023

Planning Officer  
Mall

FOOTPRINT OF DRIVEWAY

4.6m

PREPARED BY:  
MAIS WHITE,  
SEAFIELD EAST  
LOCAL AUTH

6.9m

31.74m<sup>2</sup>

6.9m

4.6m

Seafield Terrace

1:50