## 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



County Hall,

Carrigrohane Road, Cork T12 R2NC



Richard O' Sullivan & Martha Murphy, c/o Paul Reidy, Murphy New Homes, Clonmeen. Banteer. Co. Cork.

10th August 2023

REF: D/261/23

LOCATION: Coolnagearagh, Carrigadrohid, Macroom, Co. Cork.

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

Dear Sir & Madam,

On the basis of the information submitted by you on 14th July 2023 the Planning Authority, having considered the question whether the replacement of a Velux window serving the robes off bedroom 1 with a window similar in size to those serving bedroom 1 and bedroom 2 on the eastern (front) elevation at Coolnagearagh, Carrigadrohid, Macroom, Co. Cork is or is not development and is or is not exempted development considers that it falls outside the scope of **exempted development** provisions.

#### **Reason for Decision**

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

- Sections 2(1), 3(1), and 4(1) of the Planning and Development Act 2000 (as amended),
- Articles 6(1) and 9(1) and Schedule 2, Part 1 of the Planning and Development Regulations 2001, (as amended),
- The planning history of the site and Planning Reg. No. 23/4781, and
- The particulars received by the Planning Authority on 14<sup>th</sup> July 2023

#### And Whereas Cork County Council has concluded that -

- The provisions of section 4(1) (h) of the Planning and Development Act apply to existing structures
- The definition of structure in the Act includes any building constructed or made on, in or under any land and
- The dwelling in question has not been constructed

It should be therefore be considered in the context of compliance or non-compliance with the Planning permission as granted.

**And Now therefore Cork County Council** in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the said variation at **Coolnagearagh, Carrigadrohid, Macroom, Co. Cork** is considered to fall outside the scope of exempted development provisions under the Planning and Development Act, 2000, as amended.

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,

CATHAL DE BARÓID, 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 <a href="https://www.corkcoco.ie/privacy-statement-cork-county-council">https://www.corkcoco.ie/privacy-statement-cork-county-council</a>

#### D/261/23 - Section 5 Declaration

A Section 5 declaration is sought by Murphy New Homes on behalf of Richard O Sullivan and Martha Murphy in respect of the replacement of a permitted velux window serving a robes room to a similar window permitted on the front elevation of a permitted dormer dwelling at Coolnagearagh, Carrigadrohid, Co. Cork.

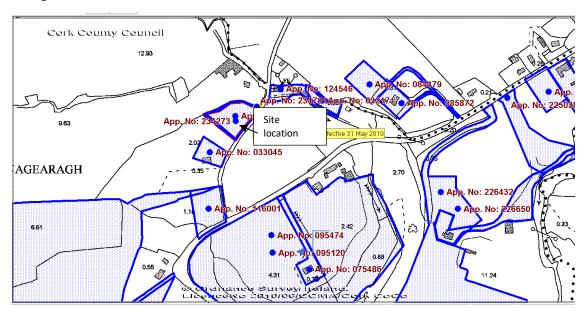


Plate 1: Subject Site Location

#### 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 the replacement of a velux window with a full size window similar to those permitted on the remainder of the dwelling is development and is or is not exempted development.

The subject dwelling has not been constructed yet. Permission was granted for a dormer dwelling under Pl. Ref 23/4781.

#### **Recent Planning History**

23/4781

Permission granted to Richard O'Sullivan, Martha Murphy for the decommissioning of the existing septic tank and percolation area. Permission is also sought to construct a dwelling house, install a new waste water treatment unit and polishing filter and all associated site works

#### Relevant Case Law

Horne v Freeney (1982) Internal alterations were undertaken during the course of construction of an amusement arcade. Here it was held that the permission was indivisible and that the planning permission should have been undertaken in its entirety. Mr. Justice

Murphy considered that it was not possible to undertake alterations during the construction simply because the variation would have been exempted once the building was completed.

#### 1. STATUTORY PROVISIONS

The following statutory provisions are relevant to this referral case;

#### Planning and Development Act 2000, as amended

Section 2(1) states as follows:-

"In this Act, except where the context otherwise requires – 'development' has the meaning assigned to it by Section 3 ..."

Section 3 (1) states as follows:-

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 4(1) identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

#### Planning and Development Regulations, 2001 as amended

Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

"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) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act.

#### **Assessment**

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

I inspected the site on the 09.08.2023. No development has started on site.



Figure 1 Front elevation permitted under 23/4871 - Vleux window serving robes room.



Figure 2 Submitted plans showing window in place of velux window

The alterations proposed are considered 'development' in accordance with Section 3 (1) of the Planning and Development Act, 2000.

The alteration proposed to the dwelling, to be considered as exempt is to be carried out during the construction of the dwelling as permitted under 23/4781 and constitutes a variation from that permission.

On the basis of this, the alteration cannot be considered under section 4 (1) h of the P&D Act, 2000 as amended as the works are not works for the maintenance, improvement or other alteration of an

<u>existing structure</u>, but rather works to be carried out during the construction of the residential development.

I note the judgement in relation to Horne V Freeney which concluded that for any development to avail of exempted development provisions in terms of Section 4(1)(h) exemptions of the Planning and Development Act, 2000 (as amended), it must have been completed in full accordance with the permission

Having inspected the site and noting that no development in relation to the construction of the dwelling has been carried out to date and having regard to case law the exemptions afforded under 4(1)(h) cannot be availed of as the dwelling has not been first been built in accordance with permitted plans.

#### **Conclusion**

WHEREAS a question has arisen as to Whether

The replacement of a velux window with a full size window on a permitted but not constructed dwelling

is development and is or is not exempted development:

**AND WHEREAS** Cork County Council, in considering this referral, had regard particularly to –

(a) Sections 1,2, 3, 4 and 6 of the Planning and Development Act, 2000, as amended

The Planning Authority has concluded that:

- (b) The provisions of section 4(1) (h) of the Planning and Development Act apply to existing structures and
- (c) The definition of structure in the Act includes any building constructed or made on, in or under any land and
- (d) The dwelling in question has not been constructed,

The Planning Authority therefore concludes that

A determination in relation to this matter does not fall within the scope of Section 5 of the Planning and Development Act 2000-2012, as amended

Carol Dunne

Executive Planner

Copal Dunne

09.08.2023

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I agree with the assessment and conclusion as outlined above.

Susan Hurley Acting SEP

Susen Handy







Thursday 13th July 2023.

The Secretary,
Planning Department,
Cork County Council,
County Hall,
Carrigrohane Road,
Cork.



Re: Section 5 Declaration of Exemption at Coolnagearagh, Carrigadrohid, Macroom, Co. Cork for Richard O'Sullivan & Martha Murphy.

Dear Sir / Madam,

In relation to the above application, I enclose the following documentation:

- Planning application fee € 80.00.
- 4 no. copies of Cork County Council Application for Section 5 Declaration of Exemption with contact details.
- 4 no. copies of Site Location Map, scale 1:2500.
- 4 no. copies of Site Location Map, scale 1:10560.
- 4 no. copies of Site Layout Plan, scale 1:500
- 4 no. copies of Proposed Dwelling House Design.

If you have any queries, please do not hesitate to contact our office

Yours faithfully,

Paul Reidy

**Murphy New Homes** 



# 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:

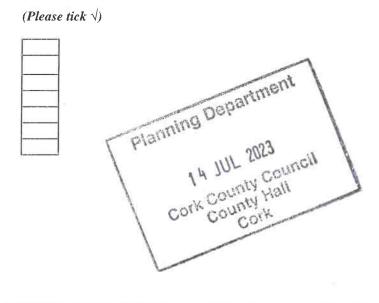
4 No. Copies of Site Layout Plan:

4 No. Copies Scaled Drawings of Development:

€80 Application Fee:

#### FOR OFFICE USE ONLY

Receipt No.	Per-0001178			
Cash/Cheque/ Credit Card	Chaque			
Date	14107/2023			
Declaration Ref. No.	D/261/23			



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 <a href="http://www.corkcoco.ie/Privacy-Policy">http://www.corkcoco.ie/Privacy-Policy</a> 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 <a href="mailto:dpo@corkcoco.ie">dpo@corkcoco.ie</a> 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)

RICHARD O'SULLIVAN & MARTHA MURPHY

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

COOLNAGEARAGH, CARRIGADROHID,
MACROOM, 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

THE APPLICANTS WIGH TO REPLACE THE VELUX
SERVING THE ROBES OFF BEDROOM 1 WITH A WINDOW
SIMILAR IN SIZE OF THOSE SERVING BEDROOM I &
BEDDOOM 2 ON THE EASTERN (FRONT) ELEVATION.

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

<ul><li>(a) Floor area of existing/proposed structure(s):</li><li>(b) If a domestic extension is proposed, have</li></ul>	
(b) If a domestic extension is proposed have	PROPOSED HOUSE 232.5Mg
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 No If yes, please provide floor areas (m²) 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 No No
	If yes, please state relevant reference number(s)
LEGAL INTEREST OF APPLICANT IN T	
Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner B. Other
Where legal interest is "Other", please state	
Where legal interest is "Other", please state your interest in the land/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	
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):	RCHITECTURAL CONSERVATION AREA
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):  PROTECTED STRUCTURE DETAILS / A  Is this a Protected Structure/Proposed Protected Protecte	
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):  PROTECTED STRUCTURE DETAILS / A Is this a Protected Structure/Proposed Protected Structure:  Yes  No  If yes, has a Declaration under Section 57 of the Plator issued for the property by the Planning Authority	nning & Development Act 2000 been requested  Yes  No
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):  PROTECTED STRUCTURE DETAILS / A  Is this a Protected Structure/Proposed Protected Protecte	nning & Development Act 2000 been requested  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 <a href="http://www.corkcoco.ie/privacy-statement-cork-county-council">http://www.corkcoco.ie/privacy-statement-cork-county-council</a> 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

	for my personal in	nformation to l	e processed j	for the purpose st	ated above
CU.	THE RESERVE OF THE PARTY OF THE	STATE STATE STATE STATE			

Signed (By Applicant Only)	Harally Ruly O'CL
Date	06 Jul 2023 06 IL 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 <a href="https://www.corkcoco.ie/privacy-statement-cork-county-council">https://www.corkcoco.ie/privacy-statement-cork-county-council</a> 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	Hana Hung	Ruly of Cl
Date	06 Jul 2023	06 51 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: <a href="mailto:planninginfo@corkcoco.ie">planninginfo@corkcoco.ie</a> or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: <a href="mailto:westcorkplanninginfo@corkcoco.ie">westcorkplanninginfo@corkcoco.ie</a>
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.

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#### **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.

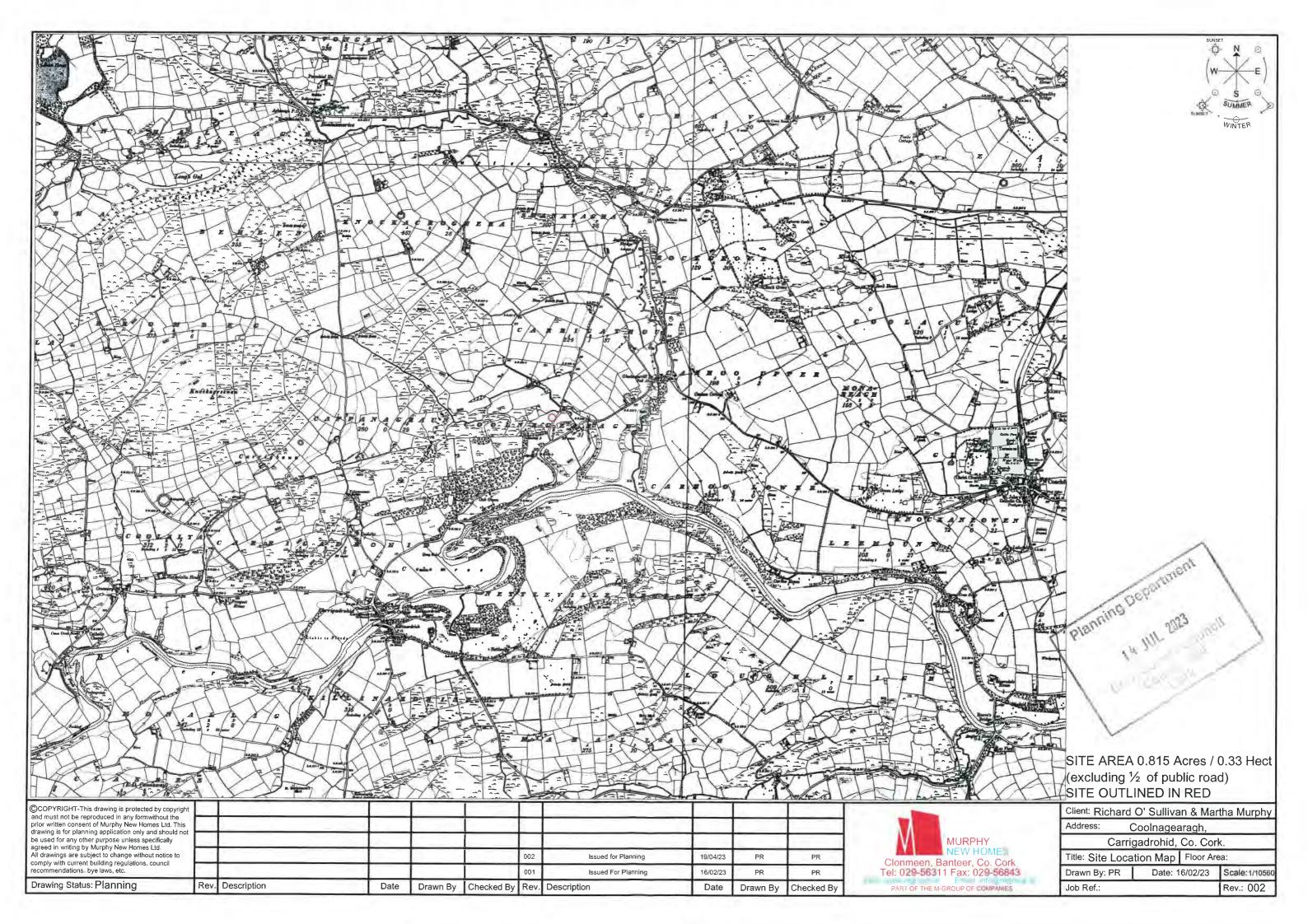
- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question which has arisen and 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.

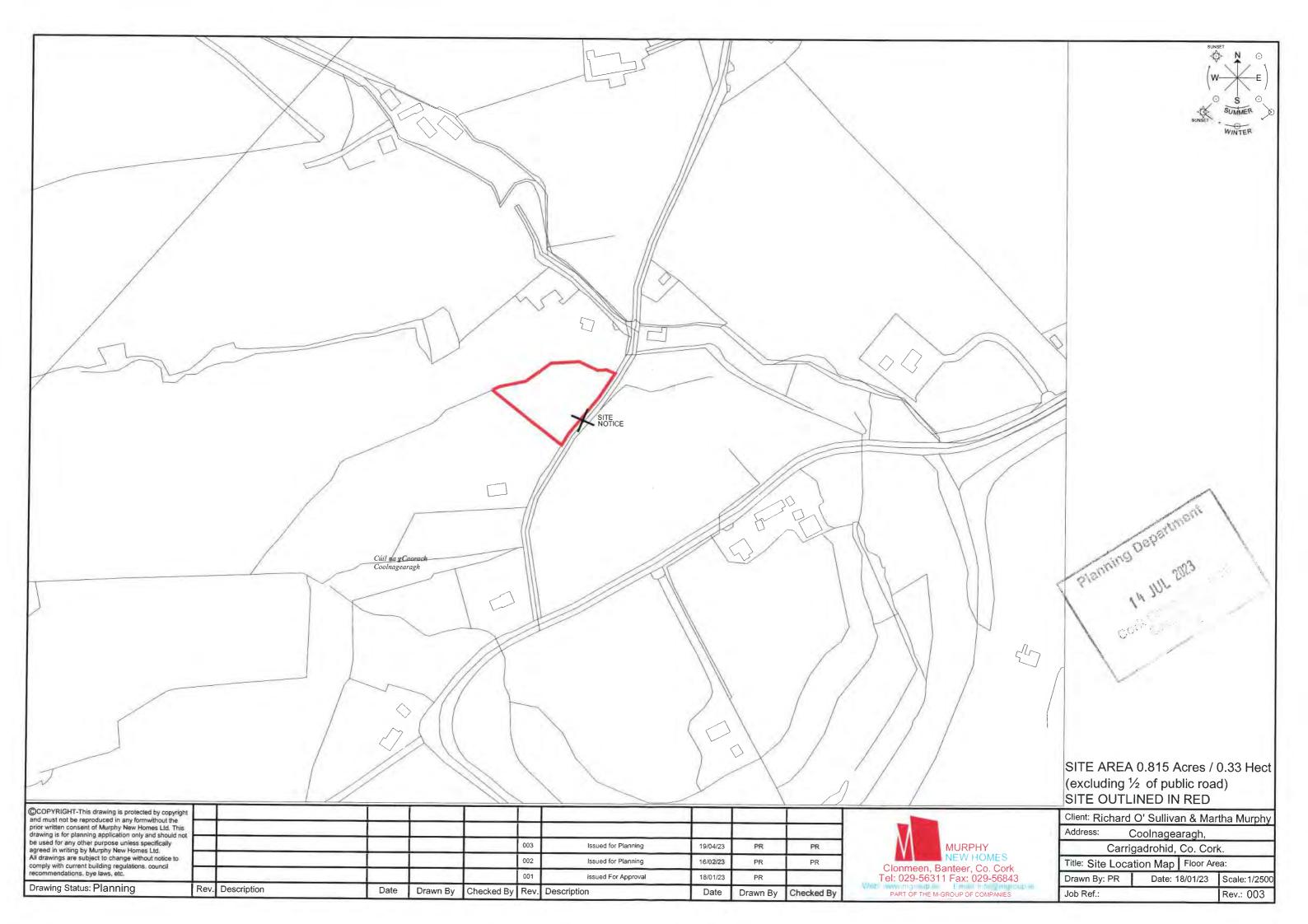
The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be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

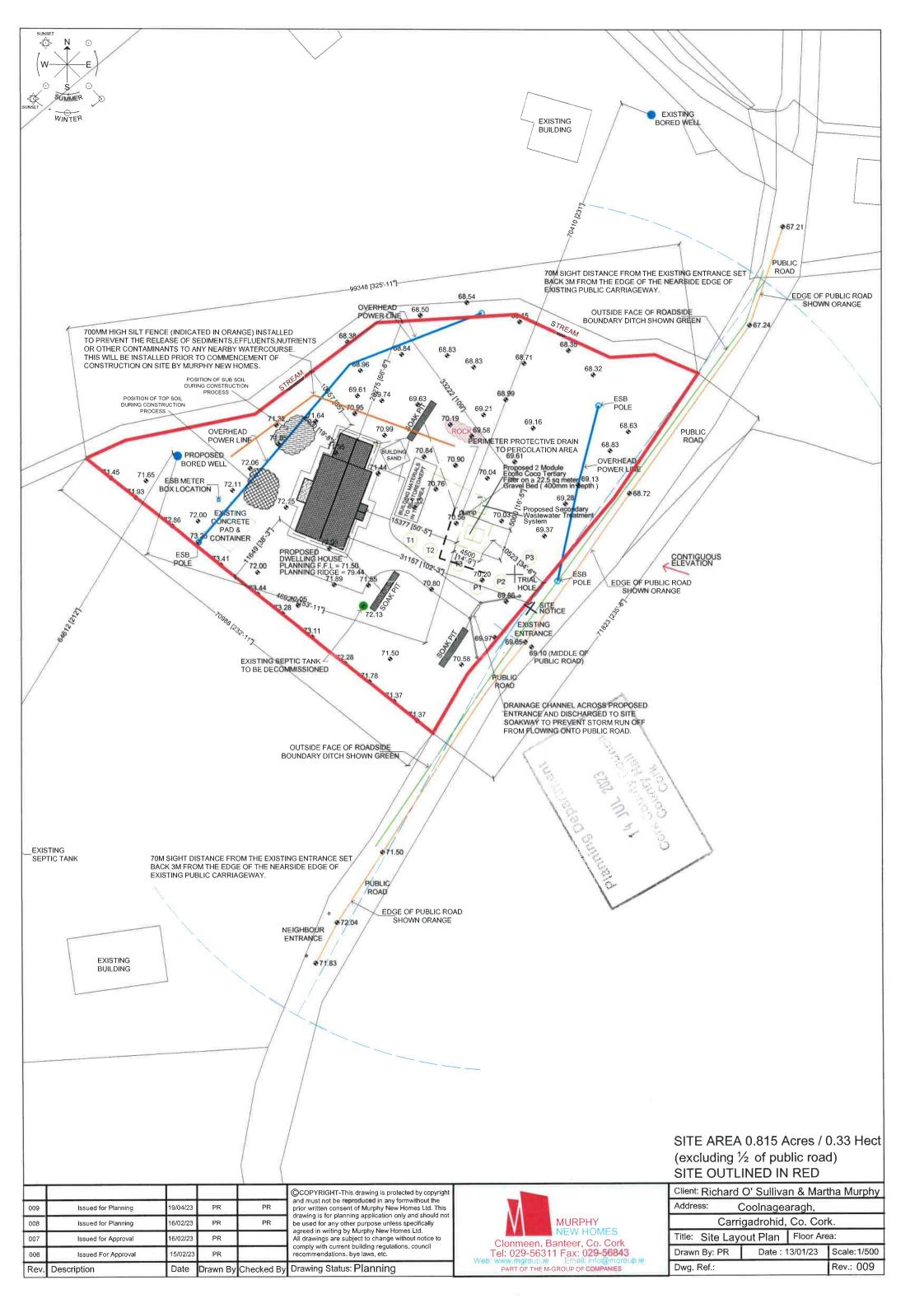
9. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the <u>Planning and Development Acts 2000</u>, as amended and the Regulations made thereunder:

Signed (Applicant or Agent as appropriate)	Paul New (For APPLICANTS).
Date	07/07/23.

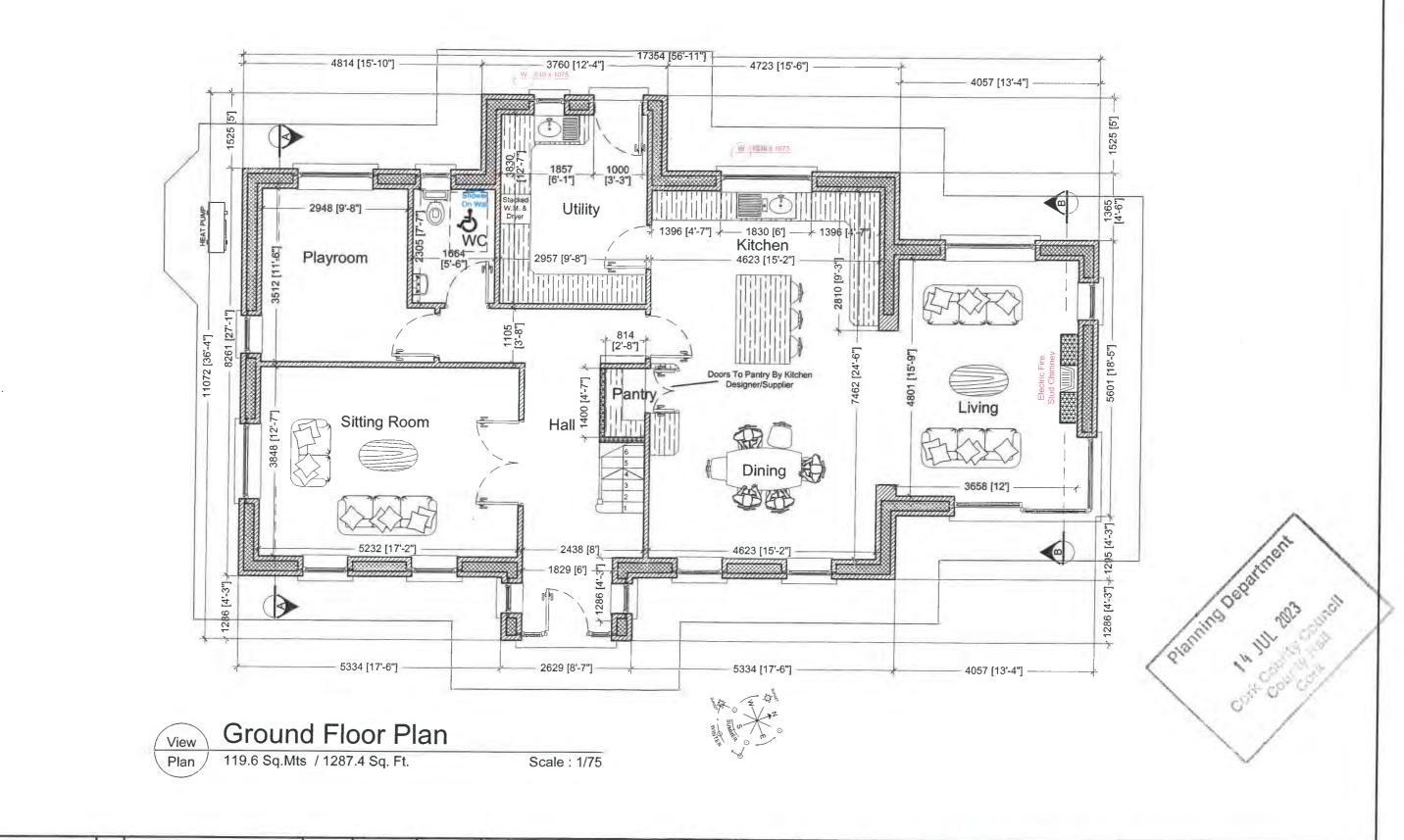












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	Rev.	Description	Date	Drawn By	Checked By	Rev.	Description	Date	Drawn By	Checked By
	006	Client Modifications	15/02/23	PR		001	Issued For Approval	12/01/23	СС	
to	007	Issued for Planning	16/02/23	PR	PR	002	Client Modifications	18/01/23	СС	
	008	Issued for Planning	19/04/23	PR	PR	003	Client Modifications	20/01/23	СС	
This	009	Issued for Approval	07/07/23	PR		004	Client Modifications	27/01/23	СС	
right e						005	Client Modifications	15/02/23	PR	

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MURPHY
NEW HOMES
Clonmeen, Banteer, Co. Cork
Tel: 029-56311 Fax: 029-56843
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Client: Richard O'Sullivan & Martha Murphy				
Address: Coolnagearagh,				
Carrigadrohid, Macroom, Co. Cork.				
Title: Ground Floor Plan Floor Area: 232.3 Sq. Mtrs 2501 Sq. Ft.				
Drawn By: CC	Scale: 1/75			
Job Ref.:		Rev.: 009		

