# Comhairle Contae Chorcaí Cork County Council

John O' Brien, c/o Declan O' Callaghan, O' Callaghan Engineering & Design Ltd., Ballynona North, Dungourney, 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



18<sup>th</sup> August 2023

REF: D/270/23 LOCATION: Ballyling, Killeagh, 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 2<sup>nd</sup> August 2023 the Planning Authority, having considered the question whether or not the construction of a new vehicular entrance onto the public road at

**Ballyling, Killeagh, 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 and 3 of the Planning and Development Act, 2000 (as amended),
- Articles 6 and 9 of the Planning and Development Regulations, 2001 (as amended)
- Class 9 of Part 1 of Schedule 2 of the said Regulations, and
- The particulars received by the Planning Authority on 2<sup>nd</sup> August 2023

# And Whereas Cork County Council has concluded that -

The construction of a new vehicular entrance onto a public road at **Ballyling**, **Killeagh**, **Co. Cork** constitutes **development that is not exempted development**. The development does not come within the scope of Article 9(1)(a)(ii).

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

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# PLANNER'S REPORT - Ref. D/270/23

Application Type:	Section 5
Description:	Whether or not the following is or is not development and is nor is not exempted development:
	Construction of a new vehicular entrance onto the public road.
Location:	Ballyling, Killeagh, Co. Cork.
Applicant:	John O'Brien c/ Declan O Callaghan Engineering

# 1.0 REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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

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

# 2.0 THE QUESTION BEFORE THE PLANNING AUTHORITY

The question on which is declaration is whether the following is or is not development and is nor is not exempted development:

Construction of a new vehicular entrance onto the public road.

# 3.0 SITE LOCATION AND DESCRIPTION

The subject site is located within the townland of Ballyling, Killeagh. The site adjoins the L7850 local road. The site is adjoined by an existing agricultural entrance which is identified outside the redline boundary of the drawings submitted.

# 4.0 RELEVANT PLANNING LEGISLATION AND REGULATION

# Planning and Development Act 2000, as amended

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

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

"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;

Road "road" has the same meaning as in the Roads Act, 1993;

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

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.

Schedule 2, Part 1- (Exempted Development General)

Class 9 The relevant section of the Regulations which is referred to herein is Class 9. Class 9 and its conditions and limitations are as follows:

Column 1	Column 2 Conditions and Limitations
Description of Development	
Sundry Works	The height of any such structure shall not
CLASS 9	exceed 2 metres.
The construction, erection renewal or	
replacement, other than within or bounding the curtilage of a house, of any gate or gateway.	

Article 9(1) Restrictions on Exemption

"Development to which article 6 relates shall not be exempted development for the purposes of the Act-

(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,

(vii B) comprise development in relation to which a planning authority or An Bord

Pleanála is the competent authority in relation to appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

# **5.0 INTERNAL REFERRAL REPORTS**

- Area Engineer: 17.08.2023
  - The road number is L7850.
  - The road is excess of 4metres.
  - Proposed entrance doesn't create a hazard from a Roads Operations point of view.

### 6.0 ENVIRONMENTAL SCREENING

### **Environmental Impact Assessment**

Section 4(4) states that:

(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

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

# Appropriate Assessment

Section 177U (9) states that:

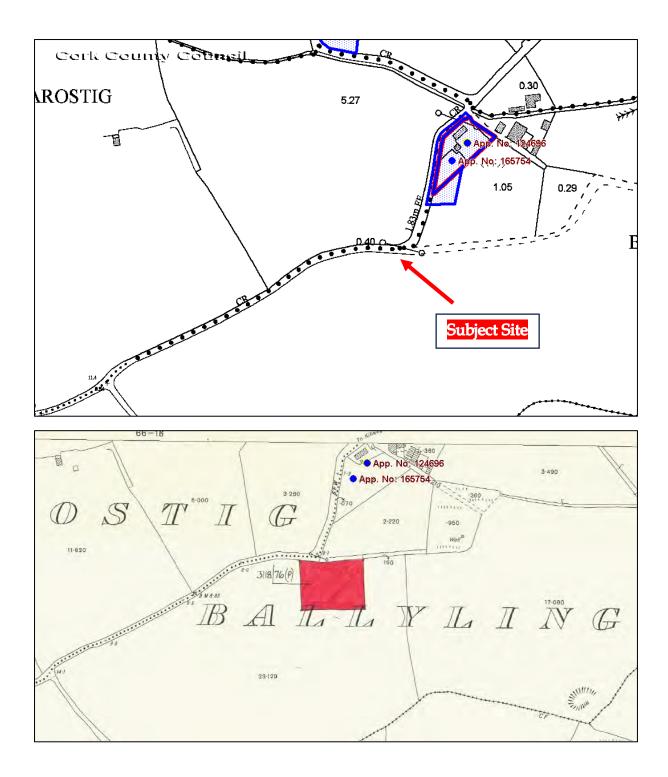
"In deciding upon a declaration for the purposes of Section 5 of this Act a planning authority or the Board, as the case maybe, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section."

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

### 7.0 PLANNING HISTORY

There are no recent planning applications associated with this site.

In terms of historical files on site I note the following applications 1941/81 is identified as a file nearby however this pertains to an extension to dwelling house similarly 76/3118 relates to the erection of a bungalow. Nether application is considered relevant to this Section 5.



30.2 301 50 App. No: 124696 TD No: 165754 BAL 70 80 Charins 280 10 1000 SERO A 50000

# 8.0 PLANNING ASSESSMENT

# Is or is not development?

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

# Conclusion: is development.

# Is or is not exempted development?

The second aspect to consider in this referral is whether or not the development is or is not exempted development. Article 6(1) Class 9 (Schedule 2, Part 1) refers to 'the construction, erection renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway'. The condition limitation in Column 2 is that 'the height of any such structure does not exceed 2 metres'. The posts and gate as shown on drawing JBO-05 are less than 2m.



A further consideration is whether or not if any of the provisions as set out in Article 9(1) of the Planning and Development Regulations apply in this instance. Article 9 de-exempts various development that would otherwise be exempted under Article 6.

Article 9(1)(a)(i) de-exempts development where it would contravene a condition attached to a permission. As per section 7.0 of this report I have reviewed the planning history of the site and note that there are no relevant conditions pertaining to these lands.

Article 9(1)(a)(ii) de-exempts development where it would result in the creation / widening of access to public road of more than 4 metres in width. The site adjoins the L7850 local road which the Area Engineer notes is in excess of 4m and is a public road. The subject development is therefore de-exempted.

Article 9(1)(a)(iii) de-exempts development where it would endanger public safety by reason of a traffic hazard or obstruction of road users. The Area Engineer states that the proposed development would not cause a traffic hazard.

Conclusion: is not exempted development.

# 9.0 RECOMMENDATION

Based on my assessment above I consider that the 'construction of a new vehicular entrance onto the public road' constitutes **development that is not exempted development**.

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

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

The development does not come within the scope of Article 9(1)(a)(ii).

Marthu

Siún McCarthy Executive Planner 18.08.2023



Planning Department, Cork County Council, County Hall, Cork. 27 / 07 / 2023

# Re: Planning Exemption for John O'Brien, at Ballyling, Killeagh, Co. Cork.

Dear Sir / Madam,

Please find enclosed the following: -

- 1. 4 no. copies of Section 5 Declaration of Exemption Application Form.
- 2. 4 no. copies of 6" O.S. Map.
- 3. 4 no. copies of 25" O.S. Map.
- 4. 4 no. copies of Site Layout Plan.
- 5. 4 no. copies of Scaled Drawings of Development.
- 6. €80 Application fee.

I trust that this is to your satisfaction but should you have any questions or queries, please contact the undersigned.

Yours sincerely,

/Declan O'Callaghan, BE (Civil), MIEI

**Planning Department** 

- 2 AUG 2023

Cork County Council County Hall Cork

# Ballynona North, Dungourney, Co.Cork

Directors: D.O'Callaghan, A.Hynes O'Callaghan Engineering & Deisgn Ltd. T/A O'Callaghan Engineering & Deisgn Company Registration Number: 426966

Tel: 021-4668365 / 066-8531270 Emell: declanocallaghan@gmail.com VAT No: IE 9579223 G



# <u>CORK COUNTY COUNCIL APPLICATION</u> FOR SECTION 5 DECLARATION OF EXEMPTION

# APPLICANT CHECKLIST

<u>4 No. Copies of Application Form:</u>
<u>1 No. Copy of Contact Details:</u>
<u>4 No. Copies 6" O.S. Maps:</u>
<u>4 No. Copies 25" O.S. Maps:</u>
<u>4 No. Copies of Site Layout Plan:</u>
<u>4 No. Copies Scaled Drawings of Development:</u>
<u>680 Application Fee:</u>

# FOR OFFICE USE ONLY

Receipt No.	P12-0002290
Cash/Cheque/ Credit Card	Chaque
Date	02/08/2020
Declaration Ref. No.	0/270/23

(Please tick  $\checkmark$ )

# **X X X X X**

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)

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- 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 <u>dpo@corkcoco.ie</u> 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)

John O'Brien

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

Ballyling, Killeagh, 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

Construction of a new vehicluar entrance onto the public road	
	Planning Department
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# 4. APPLICATION DETAILS:

Answer the following if applicable.	Note:	Floor areas	are	measured	from	the	inside	of the	extern	al
walls and should be indicated in squ	are me	etres (m <sup>2</sup> )								

	man
(a) Floor area of existing/proposed structure(s):	N / A
<ul> <li>(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):</li> </ul>	Yes No I If yes, please provide floor areas (m <sup>2</sup> ) and previous planning reference(s) where applicable: N/A
<ul><li>(c) If a change of use of land and/or building(s) is proposed, please state the following:</li></ul>	
Existing/previous use	Proposed use
(d) Are you aware of any enforcement proceedings connected to this site?	Yes No V 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 <b>B.</b> Other
Where legal interest is <b>"Other"</b> , 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 Structure: Yes No	curtilage of a Protected
If yes, has a Declaration under Section 57 of the Planning & Developm or issued for the property by the Planning Authority: Yes	nent Act 2000 been requested
If yes, please state relevant reference No	Planning Department
Is this site located within an Architectural Conservation Area (ACA), a Development Plan? Yes No	as designated in the County 0.2 AUG 2023

# 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 <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

*I give permission for my personal information to be processed for the purpose stated above* 

Signed (By Applicant Only)	× John oh
Date	01/08/2023

# **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.ic/privacy-statement-cork-county-council">https://www.corkcoco.ic/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	& Alm of
Date	01/08/2023

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.

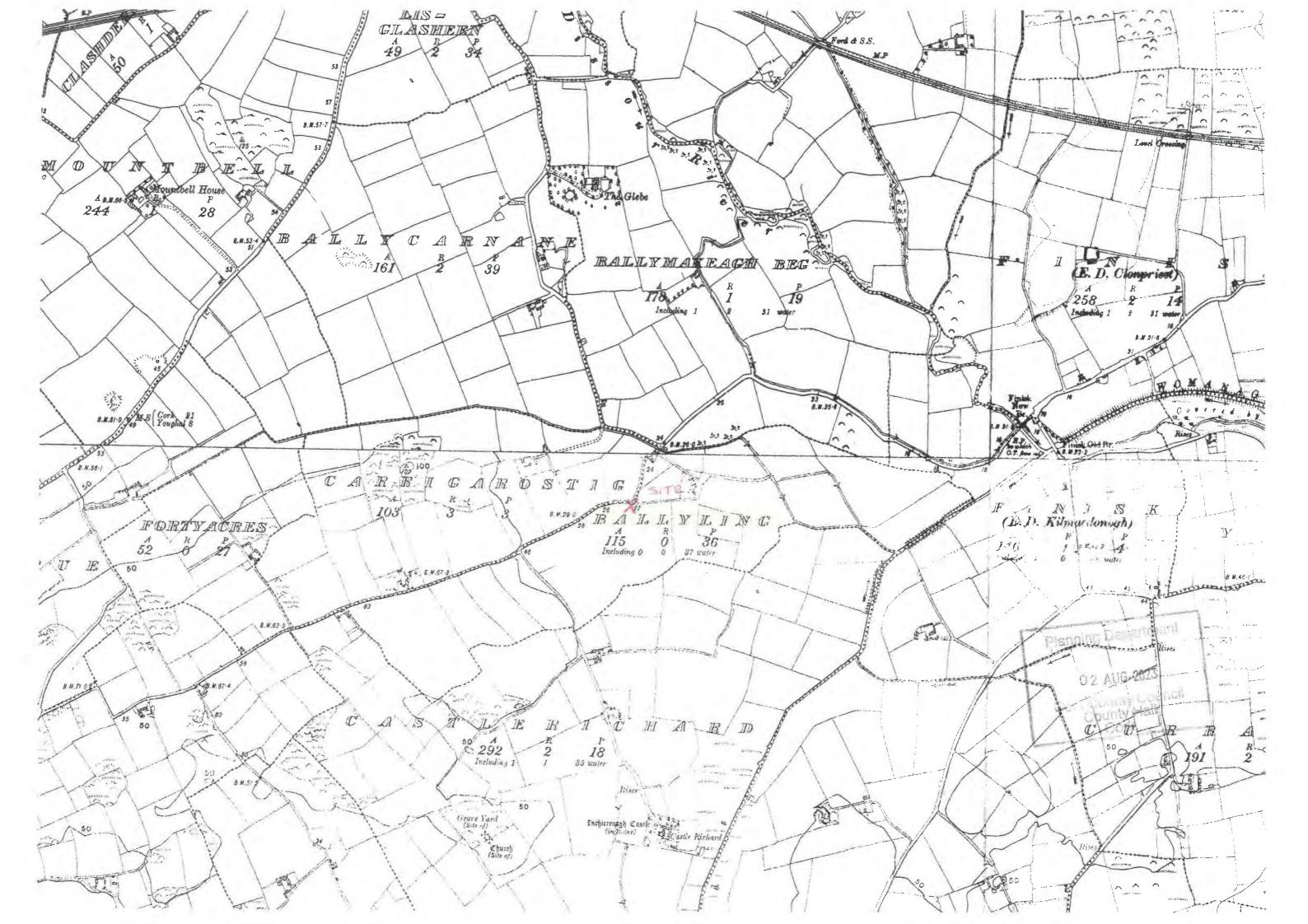
- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question which has arisen and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

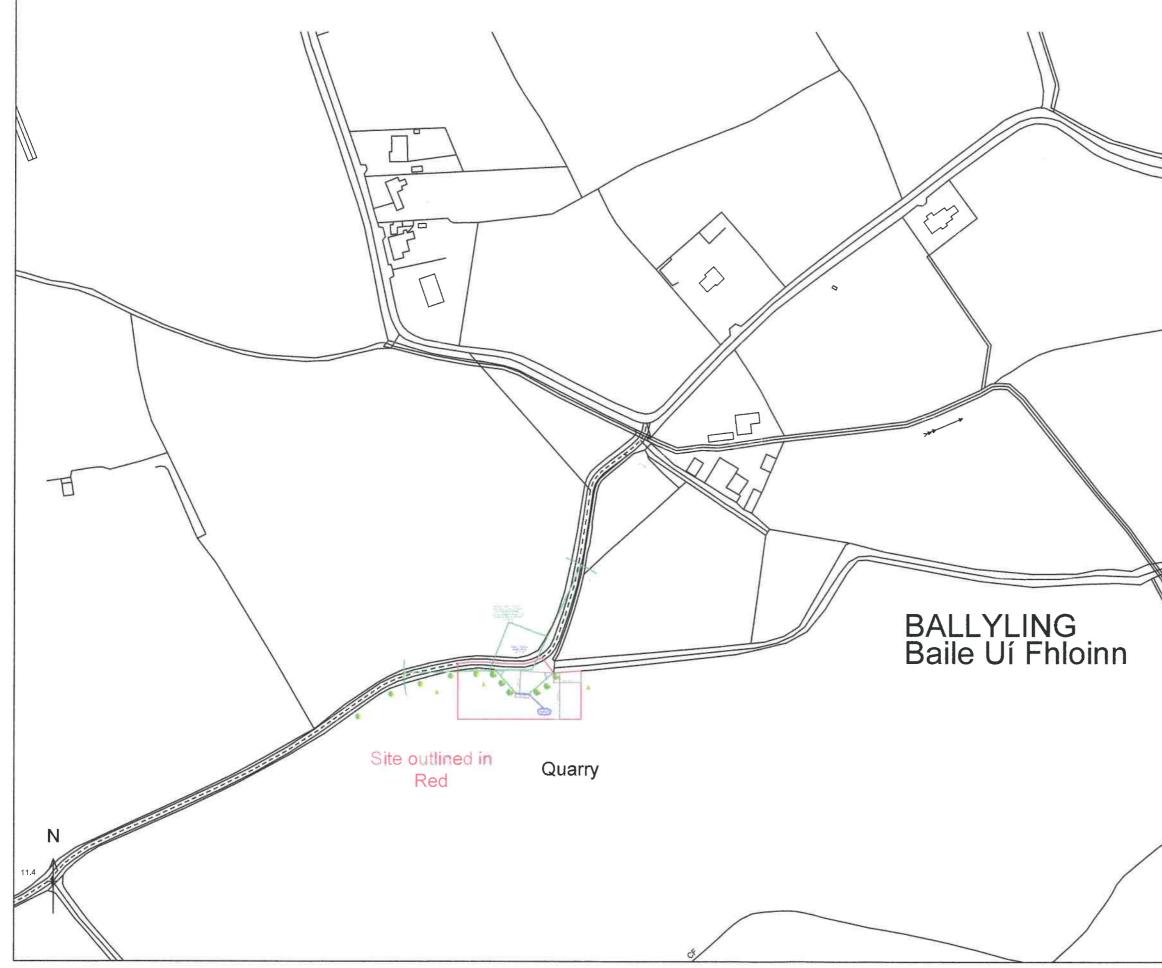
The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be 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 <u>Planning and Development Acts 2000</u>, <u>as amended</u> and the Regulations made thereunder:

Signed (Applicant or Agent as appropriate)	* Ahsh
Date	61/08/2023

Planning Department 0 2 AUG 2023
Conc County Council County Hail





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	NOTES: All dimensions in m Do not scale. Drawing to be used application only.			
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	O'Callaghan Engineering Ballynona North, Dungourney, Co. Cork. Tel: 021 - 4668365 Mob.: 086 - 8531270 Client John O'Brien, Ballyling, Killeagh, Co. Cork. Title Site Location Map			
	D.O'Callaghan	Date 27 - Drg. No	07 - 20	023

