

Comhairle Contae Chorcaí Cork County Council

Elizabeth Coleman,
c/o Kevin Curtin,
Survey & Design Services,
Windmill Hill,
Youghal,
Co. Cork.

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



5th December 2023

REF: D/297/23
LOCATION: Quarry Road, Youghal, Co. Cork, P36 X281.

**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 2nd November 2023 the Planning Authority, having considered the question whether or not the construction of a replacement septic tank at **Quarry Road, 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:

- Section 2(1), Section 3(1), Section 4(1) and Section 4(2) of the Planning and Development Act, 2000 (as amended),
- Article 6(1), Article 6(4) and Article 9 of the Planning and Development Regulations, 2001 (as amended),
- Class 41(g) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and
- The particulars received by the Planning Authority on 2nd November 2023.

And Whereas Cork County Council has concluded that –

The construction of a replacement septic tank at **Quarry Road, Youghal, Co. Cork** would constitute excavation works underground and is therefore, **development that is not exempted development** as set out Under Sections 2(1) and 3(1) of the Planning and Development Act, 2000 (as amended) and under the provisions of Article 6(4) of the Planning and Development Regulations, 2001 (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,



**KEVIN O' REGAN,
SENIOR EXECUTIVE OFFICER,
PLANNING DEPARTMENT.**

Application for Declaration under Section 5 Planner's Report

Application Ref. No.:	D/297/23
Report From:	Peter O'Connor (AP)
Report To:	Noel Sheridan (SEP)
Question/Description to which Declaration relates:	Construction of replacement septic tank
Location:	Quarry Road, Youghal, Co. Cork (P36 X281)
Applicant:	Elizabeth Coleman
Date Submitted:	02/11/2023

1. Introduction

This report relates to an application which has been made under Section 5(4) of the *Planning and Development Act 2000* (as amended) relating to the installation of a replacement septic tank within the curtilage of a dwelling located at Quarry Road, Youghal, Co. Cork (P36 X281). The Applicants are seeking a declaration from the Planning Authority as to whether the specific proposal is or is not development and/or is or is not exempted development.

2. Question

The question which has been presented to the Planning Authority within the submitted application form is as follows:

Construction of a replacement septic tank.

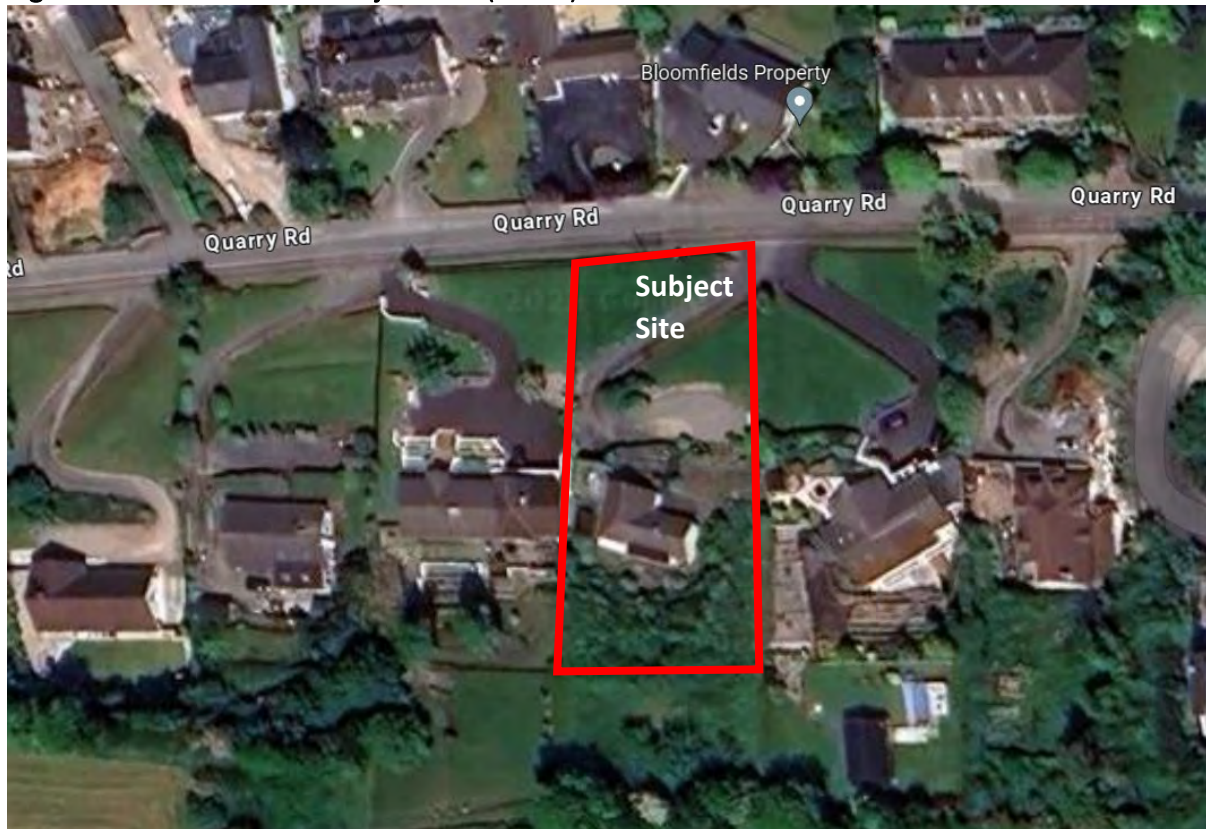
The application consists of the completed application form, two site location maps (@ scales of 1:10,560 and 1:1,000) and a simplistic site layout plan (@ a scale of 1:500). No other supporting documentation has been provided.

3. Site Location and Description

The subject site is located on Quarry Road within the northern fringes of the built form of Youghal as illustrated within Figure 1 below. The site is located within the development boundary of the town on elevated ground overlooking the public road (the L-3807 Local road) which passes the northern site boundary on an east to west axis.

The site, as defined in the submitted site layout plan, consists of an existing dwelling, driveway (ending in a shared entrance) and an existing septic tank which is located adjacent to the eastern site boundary top the north east of the dwelling. The dwelling itself is understood to have been originally constructed in the early 1970's and is typical in its design of type of pattern book bungalows which were commonly constructed between throughout the 1970's and into the 1980's.

Figure 1: Location of the Subject Site (in red)



4. Planning History

The following planning applications were identified in relation to the subject site:

69/58039 – Permission for bungalow (granted).

81/58039 – Permission for the erection of porch (granted).

There is no history of enforcement relating to the subject site.

5. Planning Policy Framework

The site occurs within the development boundary for Youghal and is subject to the *Existign Residential/Mixed Residential and Other Uses* land use zoning designation under the provisions of the *Cork County Development Plan 2022*.

6. Legislative Framework

Planning and Development Act 2000 (as amended)

Section 2(1) of the *Planning and Development Act 2000* (as amended) states:

In this Act, except where the context otherwise requires –

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or

operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 (1) of the Planning and Development Act 2000 (as amended) states:

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.

Section 4 (1) of the Planning and Development Act 2000 (as amended) states:

The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4 (4) of the Planning and Development Act 2000 (as amended) states:

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.

Planning and Development Regulations 2001 (as amended)

Article 6 (1) of the Planning and Development Regulations 2001 (as amended) states:

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.

However, none of the classes of development which are specified within Schedule 2 (Parts 1 to 4), as referenced within Article 6(1), relate to the construction of replacement septic tanks (or similar types of below ground infrastructure development undertaken by private individuals).

However, noting the foregoing, Article 6 (4) of the Planning and Development Regulations 2001 (as amended) states:

(a) Subject to paragraph (b), the carrying out of such works as are necessary to secure compliance with the Building Regulations, 1997 (S.I. No. 497 of 1997) shall, in the case of development consisting of the construction of a dwelling or dwellings in respect of which permission under Part IV of the Act of 1963 was granted before 1 June 1992, be exempted development.

(b) Paragraph (a) shall not apply in the case of development consisting of the construction of a building designed for use as 2 or more separate dwellings.

7. Assessment

Is or is Not Development

As noted above, the presented proposal involves the construction of a replacement septic tank within the curtilage of an existing dwelling which will involve the excavation of lands and the construction (or the placing of a pre-fabricated structure) of the below ground structure of the septic tank. Such activities are consistent with the definition of works as provided by Section 2(1) of the Act. Section 3(1) of the Act confirms that works is a form of development for the purposes of the Act. Therefore, I am satisfied that the proposal, as currently presented, represents development in terms of the Act.

Is or is not Exempted Development

Having regard to the specific nature of the question posed, the An Bord Pleanála decisions regarding the referrals made under ABP 312803-22, RL3532 and RL2340 (where in each case the Board determined that the installation of a new septic tank or wastewater treatments system was development and was not exempted development) are informative.

In terms of the Act, Section 4(1)(h) of the Act facilitates works to maintain, improve or alter a structure where such works relate to the interior of the structure or do not “...*materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures*”. However, Section 4(1)(h) is not applicable in this specific instance given that the current proposal relates to the replacement of an existing septic tank at a new position within the site.

In terms of the Regulations, there is no specific provision for the installation and maintenance of a domestic wastewater treatment system under the provisions of the Planning and Development Regulations 2001 (as amended).

Class 41(g) of Part 1 of Schedule 2 of the Regulations does facilitate remedial works on the basis of an advisory notice issued under section 70H(5) of the Water Services Act 2007. However, in this specific case, it is apparent that, firstly, the replacement of an existing septic tank in a new location does not constitute remedial works, and secondly, no evidence has been provided by the Applicant that an advisory notice issued under section 70H(5) of the Water Services Act 2007 has been issued. As such, it is concluded that the exemption provided by Class 41(g) is not applicable in this instance.

Article 6(4) of the Regulations confirms that works which are required to comply with the *Building Regulations, 1997 (S.I. No. 497 of 1997)* shall be exempted development where they relate to a dwelling built under the provisions of the *Local Government (Planning and Development) Act 1963* prior to June 1992. Part H of Schedule 1 of the Building Regulations relates to wastewater disposal and requires that:

A building shall be provided with such a drainage system as may be necessary for the hygienic and adequate disposal of foul water from the building.

The dwelling to which the application relates was permitted October 1969 (under Planning Reg. Ref. No. 69/58039) and, therefore, falls within the period to which Article 6(4) relates.

However, as confirmed within the application, the dwelling is already served by an existing septic tank and, no information has been provided to indicate that the existing system is of insufficient capacity or is prejudicial to the health of any person (as per Part H2 of Schedule 1 of the Building Regulations). As such, and on the face of the information which is currently available, the dwelling is currently served by an existing septic tank which complies with Part H of the Building Regulations 1997 and, therefore, Article 6(4) of the *Planning and Development Regulations 2001* (as amended) is not applicable.

In conclusion, it is also noted that Article 22 of the Regulations stipulates clearly and unambiguously the range of information required to be submitted with planning applications. As per Article 22 (2)(c), applicants for permission are required to provide with their application information regarding the disposal of wastewater and evidence as to the suitability of the site for the system proposed where such disposal is to take place on site.

Therefore, it is clear that development relating to wastewater disposal, including the replacement of a septic tank, is not a form of development that is not ordinarily intended to occur without the oversight of a formal assessment as part of a planning application by a Planning Authority.

In this regard, I note that this is an opinion which is shared by the Area Engineer who, in reporting on this file, observed that a site suitability assessment was required.

Having regard to the foregoing and noting the information which has been provided with the application, it is considered that the proposal to construct a replacement septic tank is development and is not exempted development.

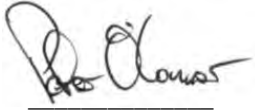
8. Conclusion and Recommendation

In considering this application for a declaration, regard has been had to:

- (a) Section 2(1), Section 3(1), Section 4(1) and Section 4(2) of the Planning and Development Act 2000 (as amended)
- (b) Article 6(1), Article 6(4) and Article 9 of the Planning and Development Regulations 2001 (as amended)
- (c) Class 41(g) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

And whereas, the Planning Authority has concluded that,

- (a) The construction of a replacement septic tank would constitute excavation works underground and is therefore, development, that is not exempted development as set out Under Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended) and under the provisions of Article 6(4) of the Planning and Development Regulations 2001 (as amended)



Peter O'Connor
Executive Planner
04.12.2023

Appendix – Area Engineer’s Comments:

From: Paul ODonovan <Paul.ODonovan@CorkCoCo.ie>

Sent: Monday 27 November 2023 13:55

To: Peter OConnor <Peter.OConnor@CorkCoCo.ie>; Michael J. Lucey <MichaelJ.Lucey@CorkCoCo.ie>

Cc: Eveleen Crowley <Eveleen.Crowley@CorkCoCo.ie>

Subject: RE: Section 5 Ref. No. D297.23 - Quarry Road, Youghal

Hi Peter,

An exemption is not appropriate. They should apply for planning with a site suitability assessment for the proposed new septic tank.

Regards,

Paul



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"/>
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FOR OFFICE USE ONLY

Receipt No.	PL20002310
Cash/Cheque/ Credit Card	Cheque
Date	2/11/23
Declaration Ref. No.	D/297/23

DATE STAMP HERE

You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want 3rd parties to view.

In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required:

- A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit
- Correspondence from Teagasc (detailing how the land reclamation would benefit the land in question for agricultural purposes)
- Details of existing and proposed levels
- Details of fill material and duration of fill.

DATA PROTECTION

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are made available for public inspection.

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at <http://www.corkcoco.ie/Privacy-Policy> or hardcopy from our offices at County Hall, Carrigrohane Road, Cork, Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to dpo@corkcoco.ie or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

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

ELIZABETH COLEMAN

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

QUARRY ROAD
YONGHAL
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 REPLACEMENT	PLANNING DEPARTMENT 02 NOV 2023 CORK COUNTY COUNCIL County Hall, Cork
SEPTIC TANK	

4. APPLICATION DETAILS:

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

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

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

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner <input 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):		

PLANNING DEPARTMENT
 02 NOV 2023
 CORN CO. COUNCIL
 County Hall, Cork

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

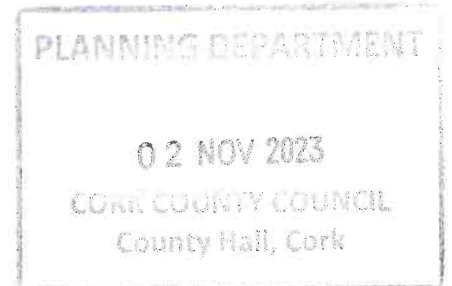
Signed (By Applicant Only)	
Date	16/10/23

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	
Date	16/10/23

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 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:

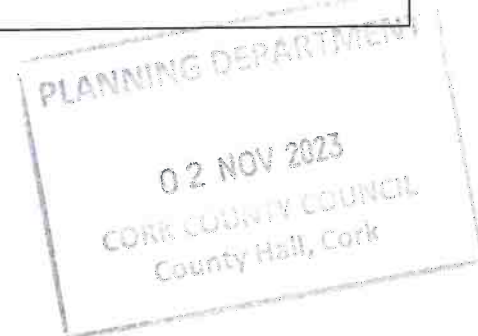
The application must be accompanied by the required fee of €80
 The application must be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.
 Sufficient information should be submitted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

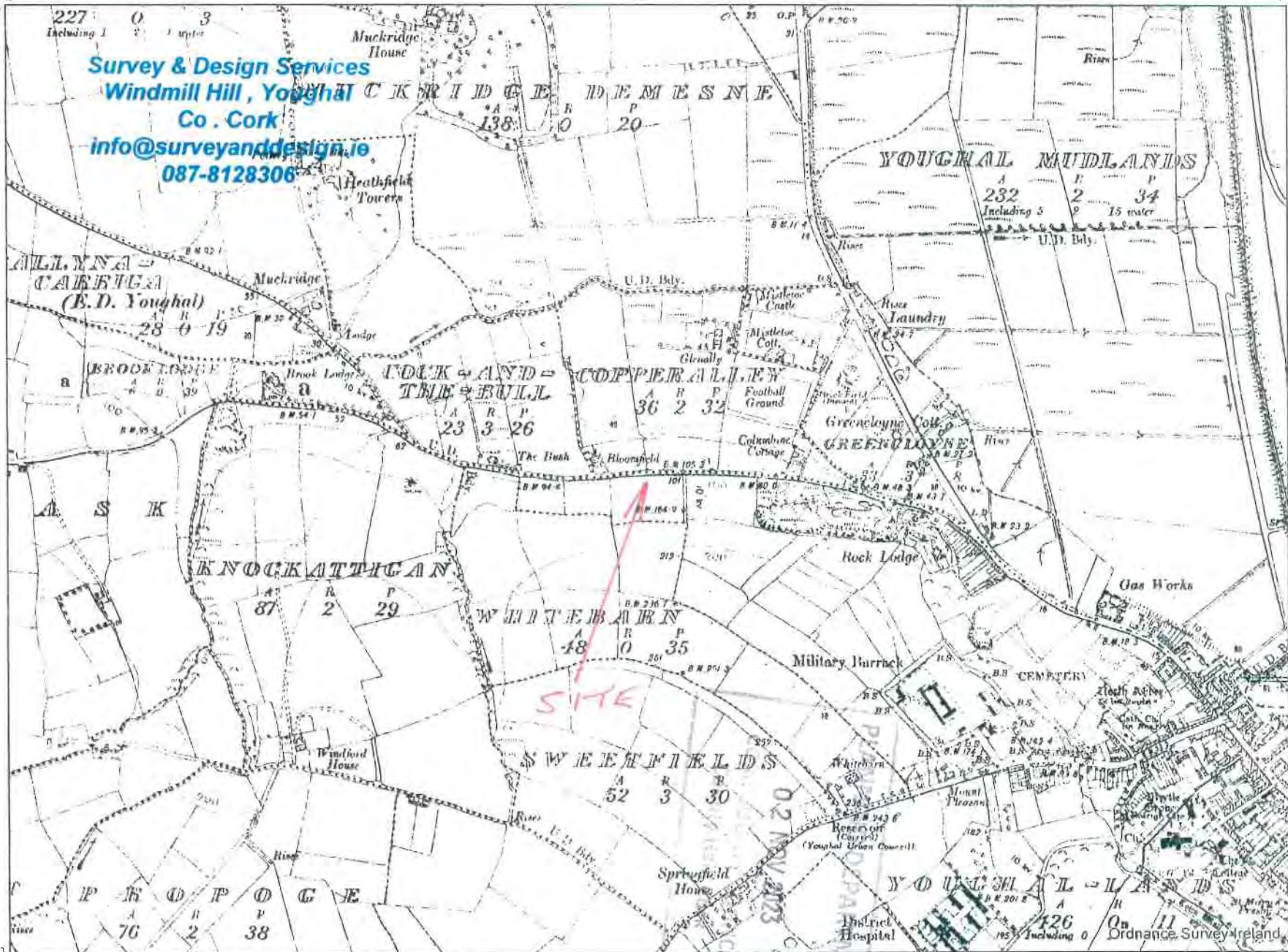
Signed (Applicant or Agent as appropriate)	 KEVIN CURTIN BE AGENT
Date	16/10/23



Site Location Map



007832



012023

CENTRE COORDINATES:
ITM 809063,578802

PUBLISHED: 28/10/2023
ORDER NO.: 50365252_1

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

COMPILED AND PUBLISHED BY:
National Mapping Division of Tailte Éireann,
Phoenix Park,
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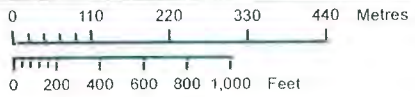
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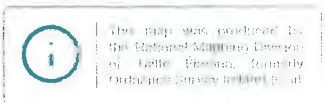
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OUTPUT SCALE: 1:10,560

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, search 'Capture Resolution'

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



Planning Pack Map



CENTRE COORDINATES:
ITM 609063,578802

PUBLISHED: 28/10/2023

ORDER NO.: 50365252_1

MAP SERIES: 1:2,500

MAP SHEETS: 6301-A

SITE LOCATION MAP

ELIZABETH COLEMAN QUARRY ROAD YOUGHAL

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

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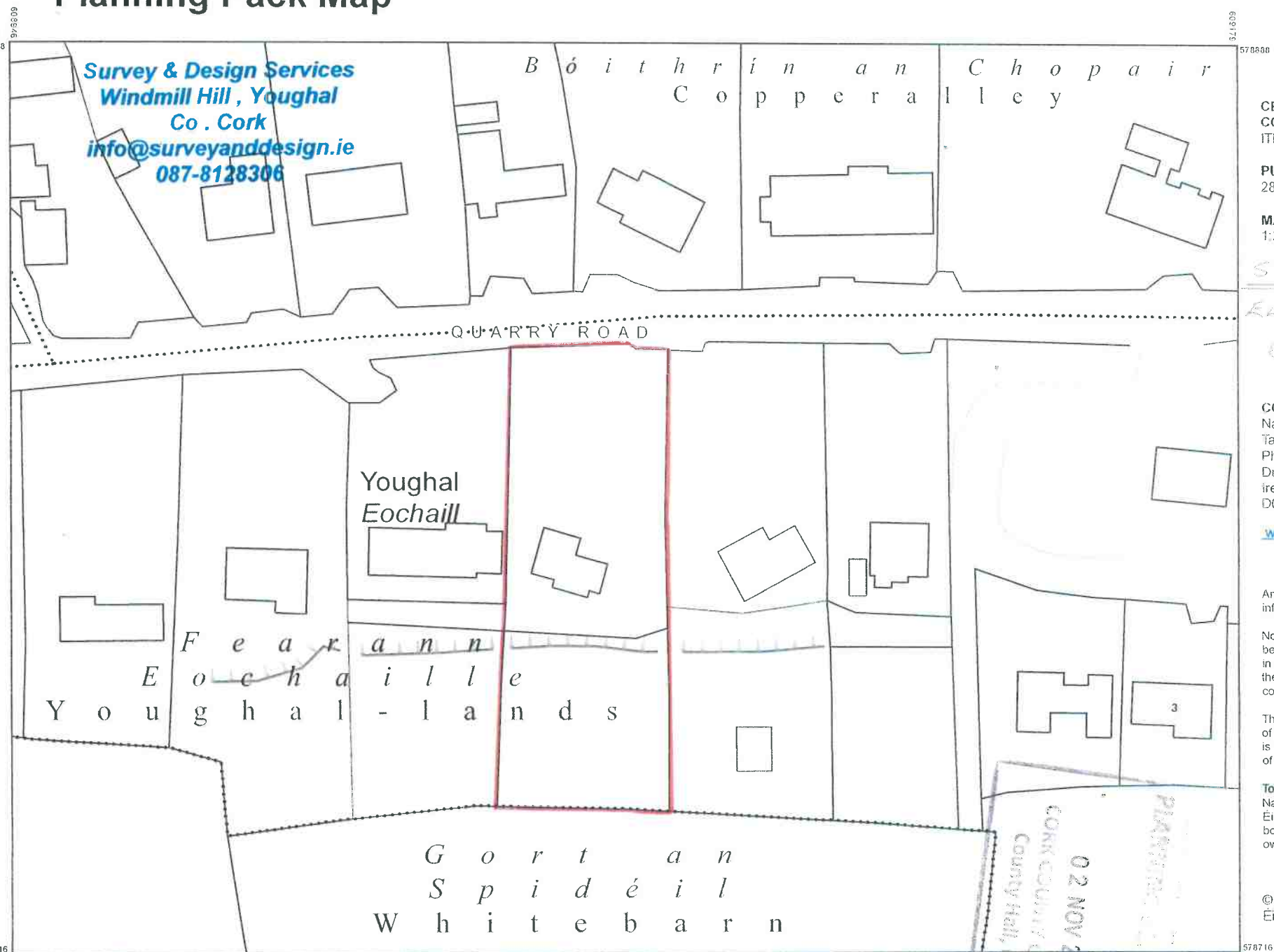
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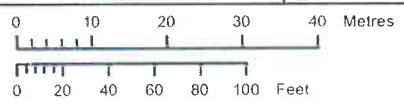
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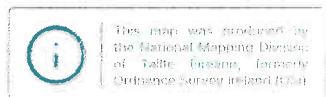
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OUTPUT SCALE: 1:1,000

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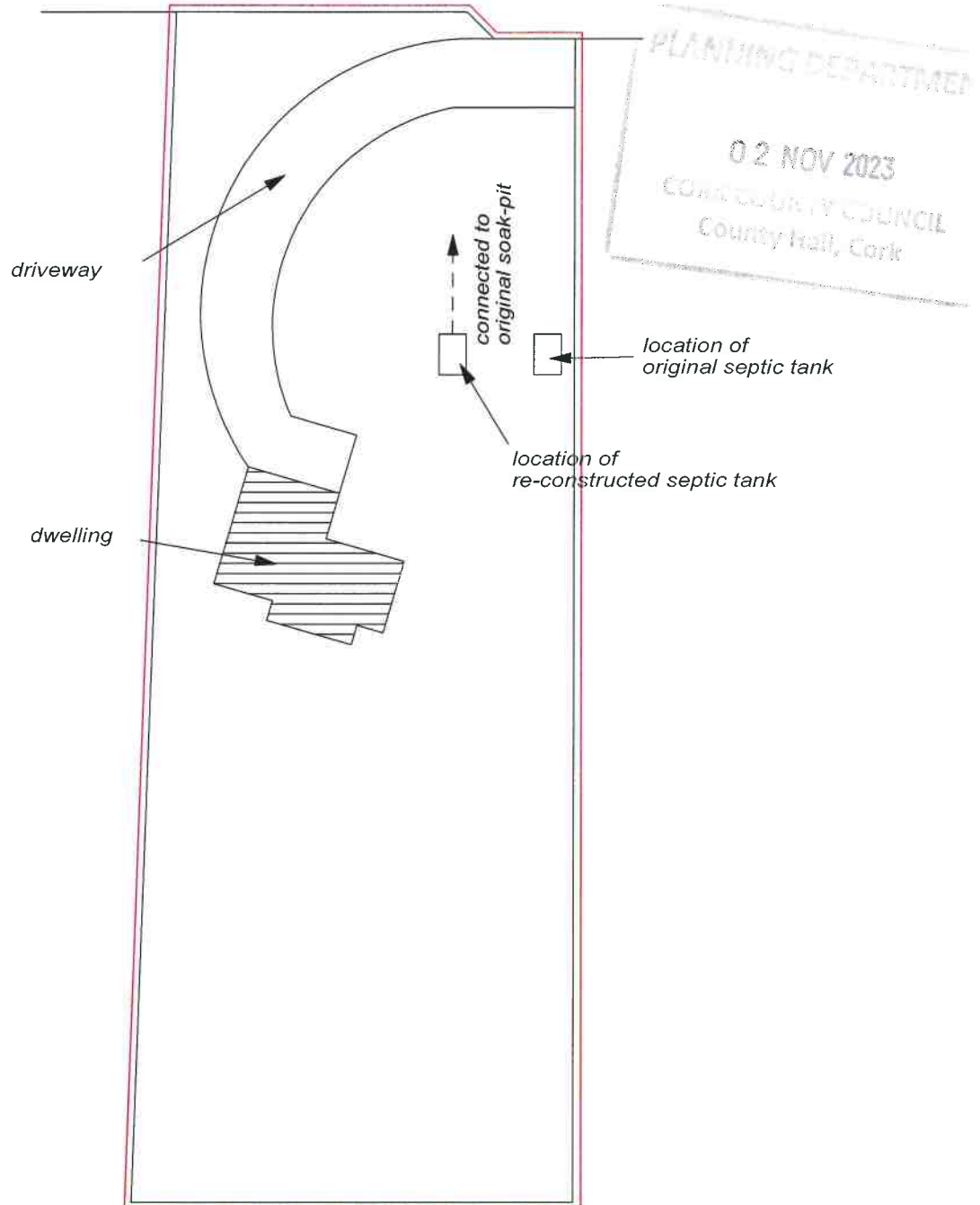
LEGEND:
To view the legend visit www.osi.ie and search for 'Large Scale Legend'



NORTH



SITE LAYOUT PLAN



ELIZABETH COLEMAN
QUARRY ROAD
YOUGHAL

SCALE 1: 500