

# Comhairle Contae Chorcaí Cork County Council

Pleanáil agus Forbairt,  
Halla an Chontae,  
Bóthar Charraig Ruacháin,  
Corcaigh T12 R2NC.

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Suíomh Gréasáin: [www.corkcoco.ie](http://www.corkcoco.ie)

Planning & Development,  
County Hall,

Carrigrohane Road, Cork T12 R2NC.

Tel (021) 4276891

Email: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)

Web: [www.corkcoco.ie](http://www.corkcoco.ie)



Coiste Forbartha Béal Átha'n Ghaorthaidh CTR,  
C/O Tadhg Dineen,  
Kilmore,  
Ballingeary,  
Co. Cork.

11<sup>th</sup> February, 2025

REF: D/205/25

LOCATION: Casadh na Spride, Béal Átha'n Ghaorthaidh, 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 22<sup>nd</sup> January, 2025 the Planning Authority, having considered whether the construction of a new bandstand to replace an existing gazebo in a park owned by Cork County Council at **Casadh na Spride, Béal Átha'n Ghaorthaidh, Co. Cork** is or is not development or is or is not exempted development, has declared that it is **not exempted development**.

**Reason for Decision**

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

- Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended)
- Articles 33 and 50 of the Planning and Development Regulations 2001 – 2024(as amended)
- Article 80 of the Planning and Development Regulations 2001 - 2024(as amended)

**And Whereas the Planning Authority** hereby decides that

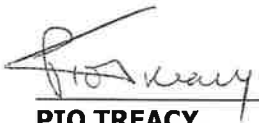
- (a) The works proposed represent development,
- (b) The proposed development falls outside of the scope of Class 33, Part 1, Schedule 2 of the Planning and Development Regulations 2001-2024,
- (c) The proposed development does not constitute exempted development as defined in section 4(1)(h) of the Planning and Development Act 2000 as amended,

The Planning Authority concludes that the demolition of an existing gazebo structure in a public park and construction of a new bandstand structure in its place at Casadh na Spride, Béal Átha an Ghaorthaidh, Co. Cork is development and is **not exempted development**.

**NOW THEREFORE, Cork County Council**, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the proposed construction of a bandstand to replace existing gazebo in a public park owned by Cork County Council at **Casadh na Spride, Béal Átha'nn Ghaorthaidh, Co. Cork** is **not exempted development**.

**Please note that under Section 5 Subsection 3(a) where a declaration is issued under this section, any person issued with a declaration under subsection 2(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.**

Yours faithfully,



**PIO TREACY,  
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 <https://www.corkcoco.ie/privacy-statement-cork-county-council>*

D205/25

**Declaration on Exempted Development Under Section 5 of the Planning and Development Act 2000 as amended.**

**1.0 Introduction**

1.1 Coiste Forbartha Béal Átha'n Ghaorthaidh CRT has submitted a Section 5 declaration asking whether the construction of a new bandstand to replace an existing gazebo in a park owned by Cork County Council, is or is not development and is or is not exempted development?

**2.0 Planning History and Policy**



2.1 There is no recent planning history on the site.

2.2 Béal Átha an Ghaorthaidh is designated as a Key Village in the settlement hierarchy of Cork County, as detailed in the Cork County Development Plan 2022-2028. The site is within the development boundary of the village. The site is zoned 'GR-01' which has the following objective "Maintain Memorial Park".



2.3 The objective does indicate the land is subject to flood risk.

2.4 The Scenic Route S34 runs along the south//southeastern side of the park.

**3.0 Relevant Legislation**

3.1 According to Section 2(1) of the Planning and Development Act 2000 (as amended), the definition of "Works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

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

3.3 Section 4(1)(h) of the Act is “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.”

#### 4.0 Assessment

4.1 The application form outlines that the Gazebo in the park has fallen into disrepair. It is located on the park owned by Cork County Council. They wish to erect a bandstand on the exact same location. The bandstand will look better which will help their Tidy Towns application for 2025. It will hopefully also act as a location for traditional music in the summer months. The local Pipe band hope to also have concerts there. The existing floor area is stated as 8.52 sqm. The proposed area is not stated but the drawings state that the overall width is to be 5m. The height of the existing and proposed structures has not been stated.

4.2 Casadh na Spride is a public park in the ownership of Cork County Council (PIR Current Interest No. is 32304). The application form states the Tidy Towns Committee maintain the park. The park is advertised as a picnic park with a sensory garden.



4.3 The existing structure is constructed of timber and has a grassed roof. Photographs of the structure and internal roof are as follows:





- 4.4 This Section 5 includes the demolition of the existing gazebo and the construction of a bandstand. It does mention the use of same for concerts but it isn't clear whether the question of use is being specifically being asked but by calling it a bandstand it is implicit in the meaning that bands and music will be played in the structure. I therefore suggest a reconfiguration of the question as follows:

“Whether the demolition of an existing gazebo structure in a public park and construction of a new bandstand structure in its place, is or is not development and is or is not exempted development?”

- 4.5 The first element of the question is the demolition of the existing gazebo. Class 50, Part 1, Schedule 2 of the Planning and Development Regulations 2001-2024 is an exemption (a) for demolition of a building or buildings, within the curtilage of (i) a house, (ii) an industrial building (iii) a business premises or (iv) a farmyard complex

or (b) for the demolition of part of a habitable house. It does not include demolition of structures in a public park.

4.6 The second element of the question is the construction of a new bandstand. I am satisfied having regard to the definitions of works and development, that the construction of the bandstand does constitute development. The next question is whether it could be considered exempted development?

4.7 Class 33, Part 1, Schedule 2 of the Planning and Development Regulations 2001-2024 as amended is as follows:

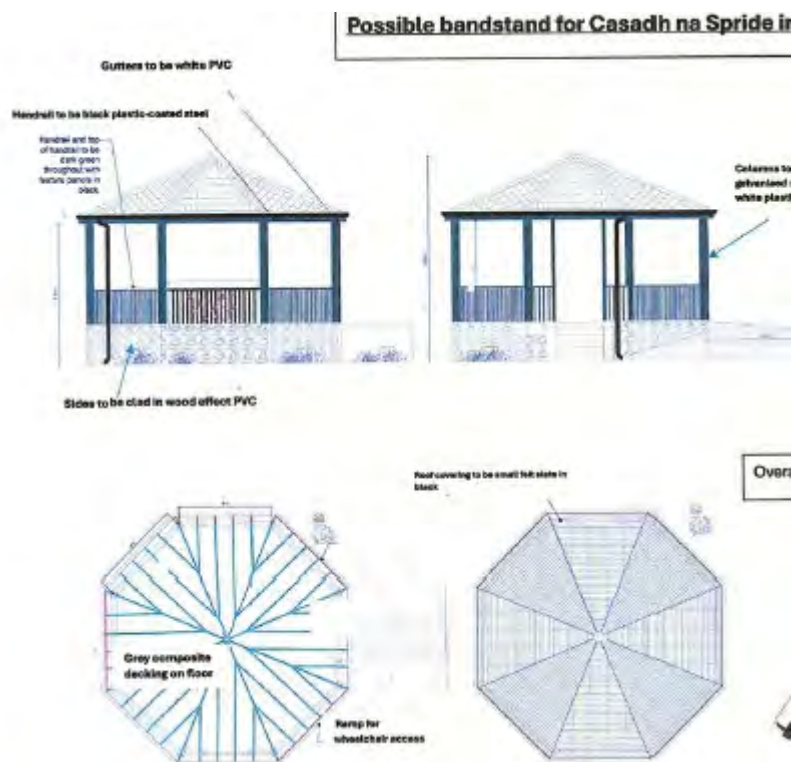
<p><i>Development for amenity or recreational purposes</i></p> <p><b>CLASS 33</b></p> <p>Development consisting of the laying out and use of land—</p> <p>(a) as a park, private open space or ornamental garden,</p> <p>(b) as a roadside shrine, or</p> <p>(c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.</p>	<p>The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated.</p>
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4.8 In my view, this class of exemption does not include the construction of structures or buildings, it relates to the laying out and use of the land itself. Therefore, I do not consider it applicable to the proposed construction of bandstand structure.

4.9 Section 4(1)(h) of the Act is for “*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.*”. In this case, a wooden structure with grassed roof is being wholly demolished and therefore I do not consider that 4(1)(h) can be applied to the demolition of the existing gazebo because complete removal of a structure does affect the external appearance of same.

4.10 The new bandstand structure will consist of a felt slate roof, galvanised steel columns encased in a white plastic sleeve, wood effect PVC sides, white PVC gutters, black plastic coated steel railings and grey composite decking on the floor. I therefore consider it is completely different in design/character to the existing

wooden structure. Although not much detail has been provided about the use, there does seem to be a suggestion of a more intensive use of the structure (compared to the existing) for the use of bands and music. Also, it does appear that the area of the new structure is larger than the existing structure (for example width of existing structure is 3.5m but width of new structure would be 5m) and so could accommodate bands more easily than the smaller existing structure. Ultimately, I consider that section 4(1)(h) cannot be applied as this is not a case of a 'like for like' replacement where the new structure would be very similar to the structure being replaced. It is a completely new type of development and section 4(1)(h) is really only applicable to works to an existing structure.



4.11 Part XI of the Planning and Development Act 2000 as amended, relates to development by Local and State Authorities. Section 179 (1)(b) and (d) are relevant:

(b) Where a local authority that is a planning authority proposes to carry out development, or development belonging to a class of development prescribed under *paragraph (a)* (hereafter in this section referred to as "proposed development") it shall in relation to the proposed development comply with this section and any regulations under this section.

(d) This section shall also apply to proposed development which is carried out within the functional area of a local authority which is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority.

This allows the local authority to carry out certain development or to allow development to be carried out on behalf of or in partnership with the local authority (pursuant to a contract with the local authority).

- 4.12 This could allow the Tidy Towns Committee to under the required work on behalf of the local authority if they enter into a contract and whereby it falls under a class of development described in section 179 (a) of the Act. The list of same is detailed in article 80 (1) of the Planning and Development Regulations 2001-2024 as amended. The items listed from (a) through (j) do not include a public park or structures within same. However, item (k) refers to:

(k) any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.

- 4.13 The cost of the demolition of the existing gazebo, appropriate waste removal and the construction of the bandstand has not been stated. Therefore, based on the information submitted, I must conclude that the development as proposed is not exempted development.
- 4.14 I have considered section 4(1)(g) of the Planning and Development Act 2000 as amended which is for 'development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires or other apparatus, including the excavation of any street or other land for that purpose' but I conclude that neither the existing gazebo to be removed nor the proposed bandstand could be defined as 'apparatus'.

#### *Appropriate Assessment*

- 4.15 The subject site is not within any screening zones for SPA/SACs as identified on the Planning Enquiry System. However, it is within 1.6km of the screening zone of the The Gearagh Special Conservation Area. Having regard to the scale of the proposed development, its siting relative to the SAC, coupled with the lack of a hydrological connection between the site and the SAC, it is considered that the subject matters of this application would not be likely to give rise to significant impacts on the Natura 2000 site.

#### *Internal Consultants*

- 4.16 No reports from any internal consultants.

### **Recommendation**

Whereas a question has arisen as to whether the demolition of an existing gazebo structure in a public park and construction of a new bandstand structure in its place at Casadh na Spride, Béal Átha an Ghaorthaidh, Co. Cork is or is not development and is or is not exempted development?

And whereas the Planning Authority has had regard to:



- (a) Sections 2,3, 4 and 5 of the Planning and Development Act 2000 as amended,
- (b) Articles 33 and 50 of the Planning and Development Regulations 2001-2024 as amended,
- (c) Article 80 of the Planning and Development Regulations 2001-2024 as amended,

And whereas the Planning Authority has concluded that:

- (a) The works proposed represent development,
- (b) The proposed development falls outside of the scope of Class 33, Part 1, Schedule 2 of the Planning and Development Regulations 2001-2024,
- (c) The proposed development does not constitute exempted development as defined in section 4(1)(h) of the Planning and Development Act 2000 as amended,

The Planning Authority concludes that the demolition of an existing gazebo structure in a public park and construction of a new bandstand structure in its place at Casadh na Spride, Béal Átha an Ghaorthaidh, Co. Cork is development and is not exempted development.



Susan Hurley  
Executive Planner  
11/02/2025

D/205/25 – SECTION 5 DECLARATION OF EXEMPTION – ENGINEERS REPORT

Angela,

From the engineering perspective I do not have any objection to the proposal to remove the gazebo and erect a bandstand in its place.

**Regards**

**Séamus O’Dhuibhir** | **Innealtóir Feidhmiúcháin Sinsearach** | **Bóithre agus Iompar**

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

**Tairseach na gcustaiméirí:** [www.yourcouncil.ie](http://www.yourcouncil.ie)

**James Dwyer** | **Senior Executive Engineer** | **Roads & Transportation**

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# CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

## APPLICANT CHECKLIST

(Please tick ✓)

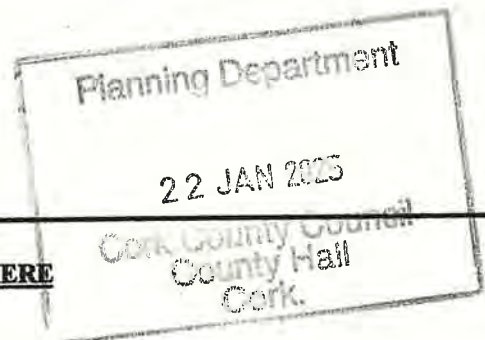
- 4 No. Copies of Application Form:
- 1 No. Copy of Contact Details:
- 4 No. Copies 6" O.S. Maps:
- 4 No. Copies 25" O.S. Maps:
- 4 No. Copies of Site Layout Plan:
- 4 No. Copies Scaled Drawings of Development:
- €80 Application Fee:

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
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## FOR OFFICE USE ONLY

Receipt No.	PL20002469
Cash/Cheque/ Credit Card	POSTAL ORDER
Date	22/1/25
Declaration Ref. No.	D/205/25

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)**

Coiste Forbartha Béal Átha'n Ghaorthaidh CTR  
Tadhg O Duinnín, An Chill Mhór, Béal Átha'n Ghaorthaidh  
Cathairlach

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

Casadh na Spride. Béal Átha'n Ghaorthaidh

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 Gazebo in the park in Ballingearry has fallen into disrepair. It is located on the park owned by Cork County Council.

We wish to erect a bandstand on the exact same location .  
The bandstand will look better which will help our Tidy Towns application for 2025.  
It will hopefully also act as a location for traditional music in the summer months.

The local Pipe band hope to also have concerts there.

We asked out council area engineer (James Dwyer) If we needed planning for the new bandstand, he referred us to planning

Helen O Sullivan asked we lodge a section 5 application.

**PLANNING DEPARTMENT**

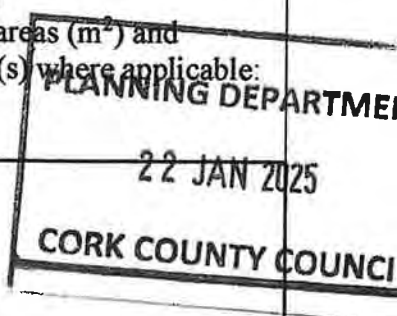
**22 JAN 2025**

**CORK COUNTY COUNCIL**

**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):	8.52 m squared
(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 checked="" type="checkbox"/> If yes, please provide floor areas (m <sup>2</sup> ) 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	
<input type="text" value="It provides a shelter in the park"/>	<input type="text" value="Same as before"/>
(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):
<input type="text" value="There isn't any"/>	



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

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner <input type="checkbox"/>	B. Other <input checked="" type="checkbox"/>
Where legal interest is "Other", please state your interest in the land/structure:	The Tidy Towns committee maintain the Park. The council own the land.	
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):	Cork County Council.	

**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 checked="" 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 checked="" type="checkbox"/>

**7. APPROPRIATE ASSESSMENT:**

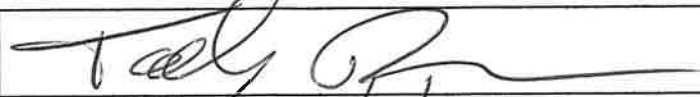
Would the proposed development require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site (SAC, SPA etc)? Yes  No

**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	12/1/25

**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	12/1/25

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.**

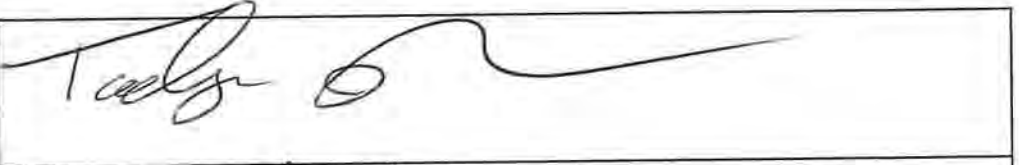
**ADVISORY NOTES:**

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.

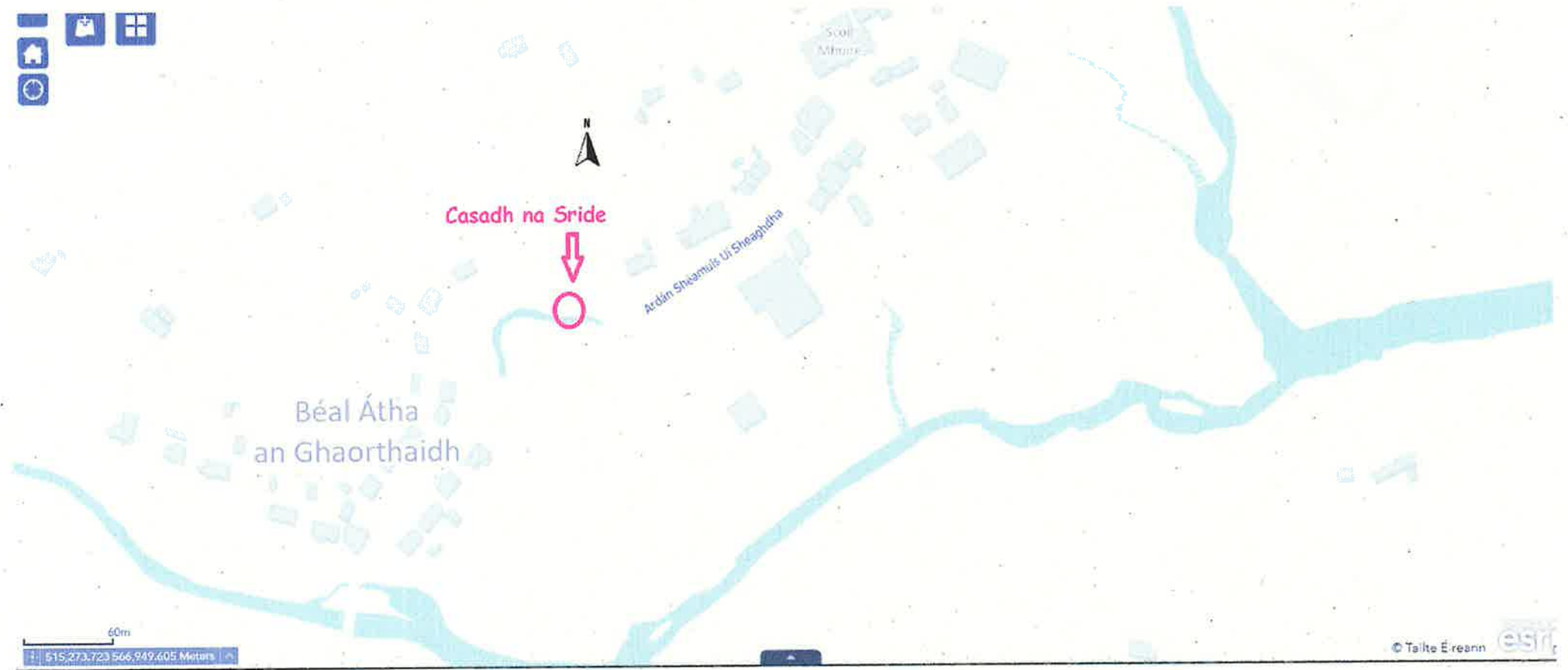
- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question which has arisen and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

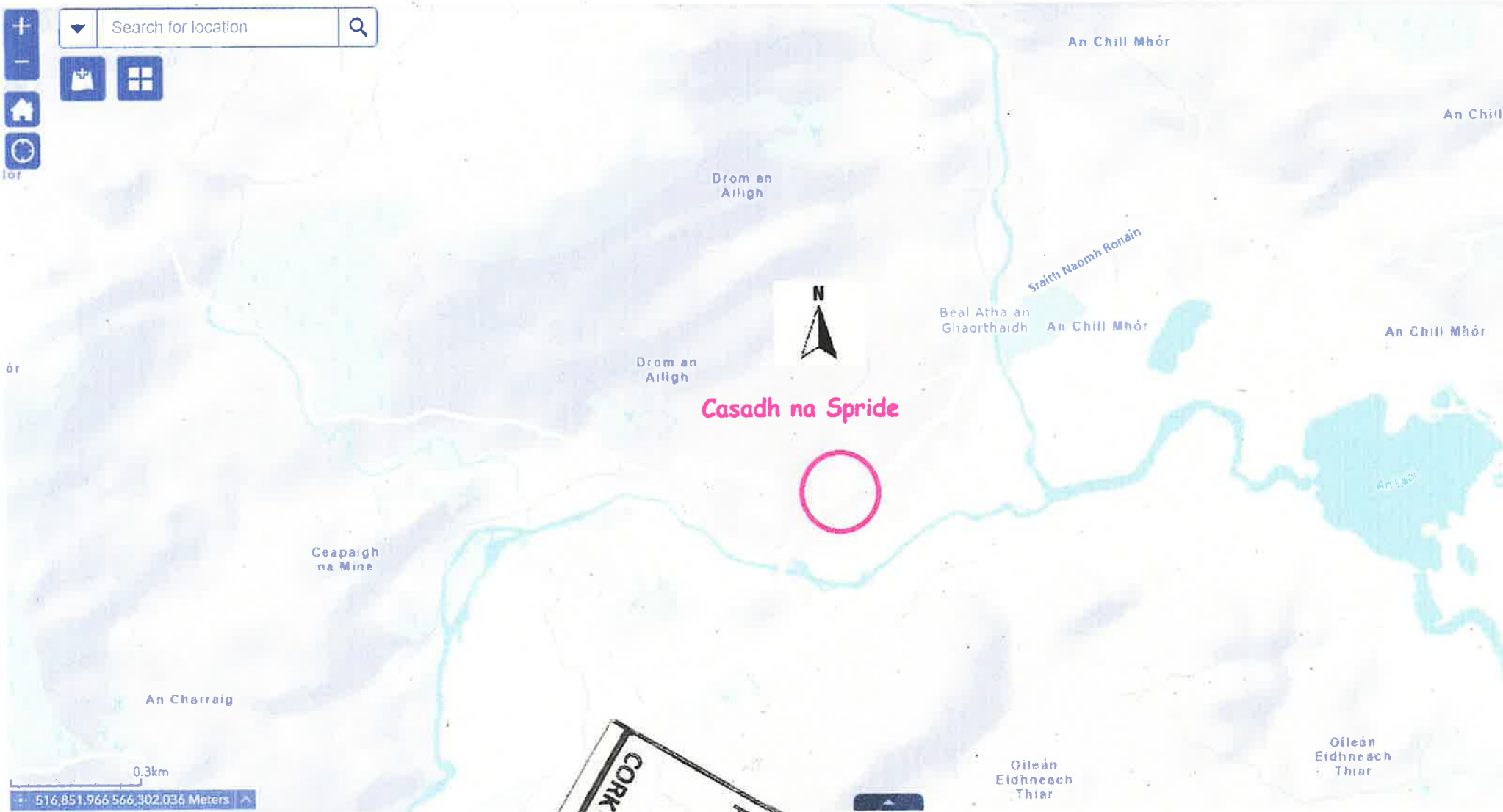
Signed (Applicant or Agent as appropriate)	
Date	12/1/25





PLANNING DEPARTMENT  
22 JAN 2025  
CORK COUNTY COUNCIL





PLANNING DEPARTMENT  
22 JAN 2025  
CORK COUNTY COUNCIL

B. Allin O'Leary

**Possible bandstand for Casadh na Spride in Ballygeary**

Gutters to be white PVC

Handrail to be black plastic-coated steel

Handrail and top of handrail to be dark green throughout with feature panels in black.

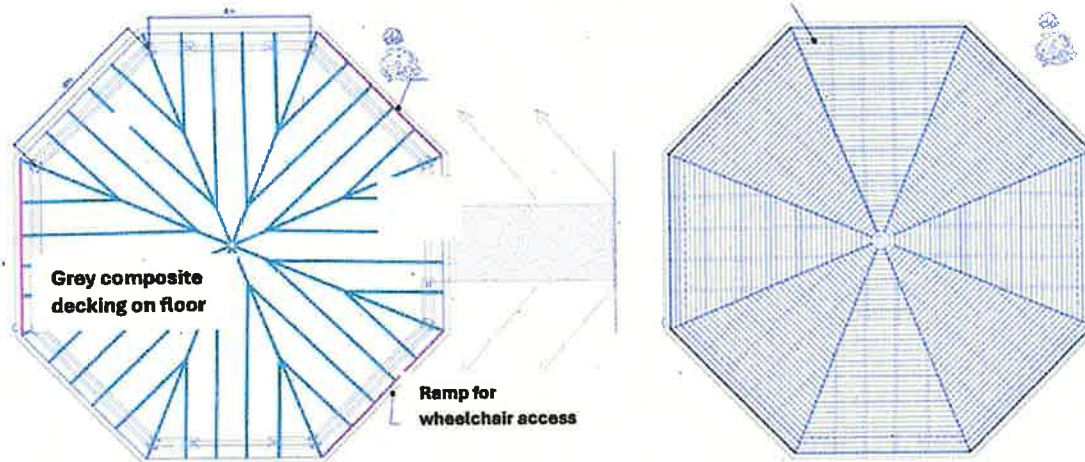


Columns to be 100 dia galvanised steel encased in a white plastic sleeve

Sides to be clad in wood effect PVC

Roof covering to be small felt slate in black

Overall width to be 5m

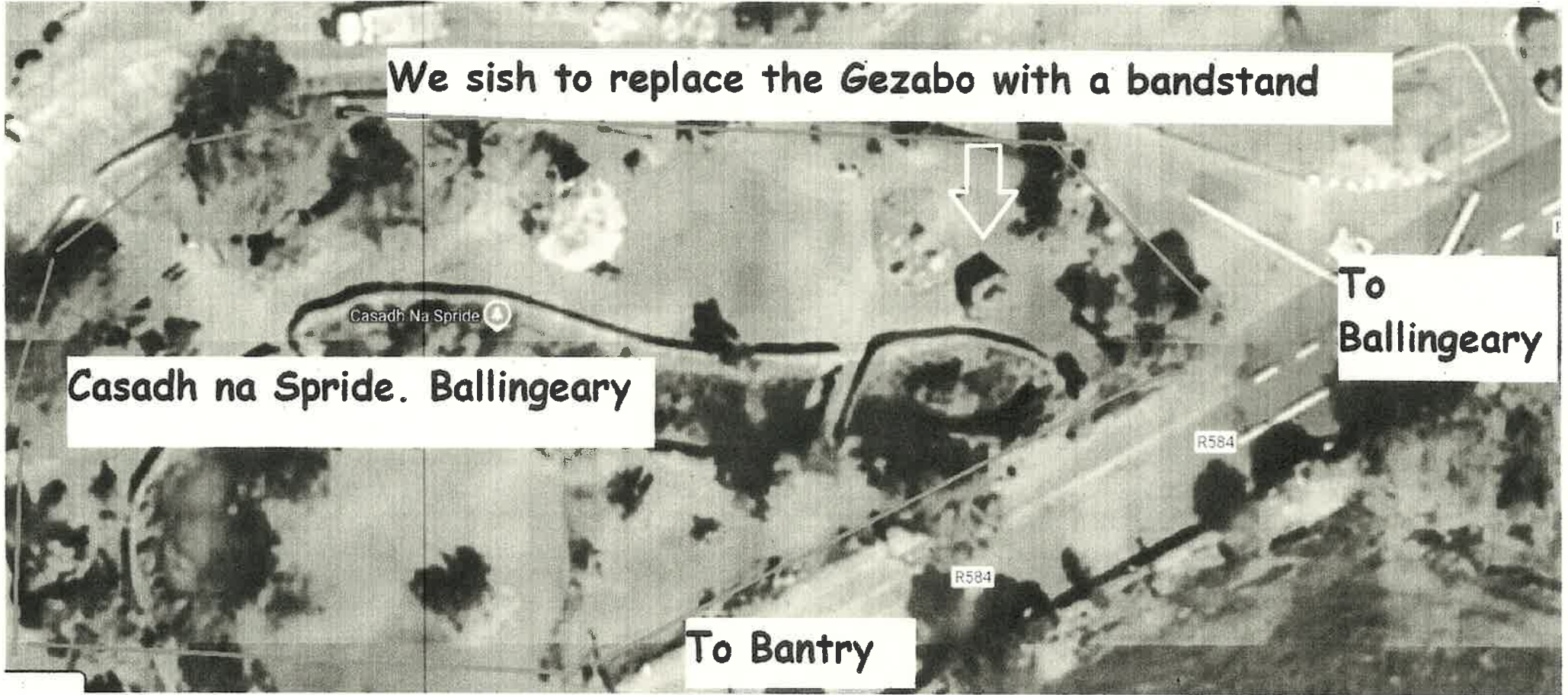


Grey composite decking on floor

Ramp for wheelchair access



We sish to replace the Gezabo with a bandstand



Casadh na Spride. Balingeary

To  
Ballygeary

To Bantry

PLANNING DEPARTMENT  
22 JAN 2025  
CORK COUNTY COUNCIL