

# Comhairle Contae Chorcaí Cork County Council

Morad Gharib,  
8 The Avenue,  
Riversdale,  
Rathcormac,  
Co. Cork,  
P61 FF61.

Pleanáil agus Forbairt,  
Halla an Chontae,  
Bóthar Charraig Ruacháin,  
Corcaigh T12 R2NC.  
Fón: (021) 4276891 • Faics: (021) 4276321  
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Suíomh Gréasáin: [www.corkcoco.ie](http://www.corkcoco.ie)  
Planning & Development,  
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3<sup>rd</sup> August, 2023

REF: D/258/23  
LOCATION: 6A, Riversdale, Rathcormac, Co. Cork, P61 F971.

**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 10<sup>th</sup> July 2023 the Planning Authority, having considered the question whether the change of use from restaurant dining room/retail to two-bedroomed apartment while complying with floor area and current guidelines at **6A, Riversdale, Rathcormac, 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 10(6)(b, c, and d) of the Planning and Development Regulations 2001-2022 (as amended), and,
- The particulars received by the Planning Authority on 10<sup>th</sup> July 2023

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

it is concluded that this application relates to a structure for which the permitted use does not fall within the scope as prescribed by Article 10(6)(b) of the Regulations and, therefore, does not constitute a development to which Article 10(6)(c) applies. As such any change of use from that permitted (restaurant) use to residential use would not constitute exempted development.

**And Now therefore the Planning Authority hereby decides that:**

The proposed change of use from restaurant dining room/retail to two-bedroomed apartment while complying with floor area and current guidelines at 6A, Riversdale, Rathcormac, Co. Cork **is development** and **is not exempted development**.

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

Yours faithfully,



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

*In order to process your query, it may be necessary for Cork County Council to collect Personal information from you. Such information will be processed in line with our privacy statement which is available to view at <https://www.corkcoco.ie/privacy-statement-cork-county-council>*

## Application for Declaration under Section 5 Planner's Report

Application Ref. No.:	D/258/23
Report From:	Peter O'Connor (AP)
Report To:	Noel Sheridan (SEP)
Question/Description to which Declaration relates:	Change of use from restaurant dining room/retail to a two bedroom apartment while complying with floor area and current guidelines.
Location:	Apartment 6A, Riversdale, Rathcormac, Co. Cork (P61 F971)
Applicant:	Morad Gharib
Date Submitted:	10/07/2023

### 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 a property identified as Apartment 6A, Riversdale, Rathcormac, Co. Cork (and to which the P61 F971 Eircode relates). The Applicant is 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:

*Change of use from restaurant dining room/retail to a two bedroom apartment while complying with floor area and current guidelines.*

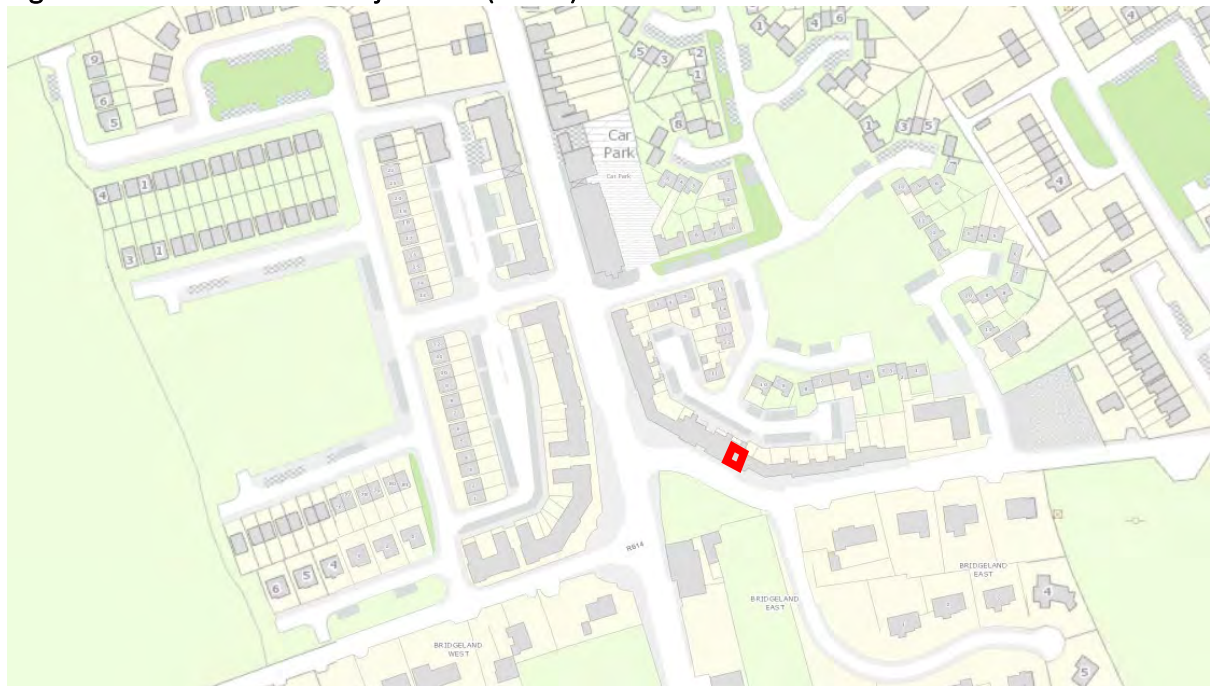
On the basis of the foregoing question as presented, it would appear that the specific proposal involves both change of use (from use as a restaurant dining area to a 2 bedroom apartment) as well as associated works to give effect to the change of use.

However, while the application is supported by a site location map and a set of floor plan drawings which illustrate the proposed internal layout, no elevation drawings have been submitted and it is unclear whether the proposal relates to the ground or the first floor of the specific unit.

### 3. Site Location

The subject site is located towards the southern end of the village overlooking the junction between the Cork Road (R-639 Regional road) and the Castlelyons Road (L-1520 Local road), as illustrated within Figure 1 below. The site is positioned within a terrace and is the eastern most of three two storey commercial units set within the terrace overlooking the junction. The Rathcormac Inn occurs on the southern side of the junction while the lands to the north, east and west are primarily residential in nature. This part of Rathcormac, to include the subject site, was developed about 20 years ago and is mixed use in nature.

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



#### 4. Planning History

The following applications relates to the subject property:

00/5737	Permission for a residential development – 109 no. dwellings; 6 no. apartments; 5 no. serviced sites, 6 no. retail units & 6 no. office units & single storey creche (granted).
04/5374	Permission for Alterations and change of use of retail unit and office unit (no. 6) for use as restaurant/takeaway
05/7248	Permission for extension of opening hours of restaurant/takeaway

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

#### 5. Planning Policy Framework

The site falls within the defined Development Boundary of Rathcormac as defined within the *Cork County Development Plan 2022*. The LAP mapping also confirms that the subject site occurs within an area that is defined as Flood Zone B.

#### 6. Legislative Framework

Section 3(1) of the Act provides the following definition for development:

*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.*

Having regard to the foregoing definition, I also note the following definition which is provided in regards to 'works' by Section 2 of the Act:

*"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.*

In addition to the provisions of the Act, there are also various provisions of the *Planning and Development Regulations 2001* (as amended) which are relevant. Having regard to the specific proposal for which the declaration has been sought, Article 10(6) of the Regulations is relevant.

Articles 10(6)(b) and 10(6)(c) of the Regulations confirm that a change of use to residential use of any building which is permitted for a use which is consistent with those uses identified as Class 1, 2, 3, 6 or 12 within Part 4 of Schedule 2 to of the Regulations shall be exempted development (to include any works associated with the said change of use) subject to the following conditions and limitations:

- The subject structure must have been:
  - Completed before the making of the *Planning and Development (Amendment) (No. 2) Regulations 2018*;
  - Used for the purpose of its current use class;
  - Vacant for a period of at least 2 years;
- And the works/development must:
  - Be commenced and completed during the relevant period;
  - Not render the external appearance of the structure inconsistent with its character or that of neighbouring structures.
  - Not be inconsistent with the architectural and streetscape character of area.
  - Be consistent in terms of fenestration with the remainder of the structure and with the wider streetscape.
  - Not involve the undertaking of works which conflicts with the Development Plan.
  - Not result in the creation of more than 9 residential units.
  - Adhere to the minimum floor area and storage area requirements of the relevant Ministerial Guidelines in regards to apartment design.
  - Ensure that all habitable rooms benefit from adequate natural light.
  - Not materially affect the character of a protected structure or any element of a protected structure which has been specifically identified.
  - Contravene or be inconsistent with a condition as attached to a permission which relates to the structure.
  - Must not occur to any structure which is within (i) an area to which a special amenity order relates; (ii) an area of special planning control; and/or (iii) within the relevant perimeter of an site designated under the Major Accidents Directive.

Finally, sub article 10(6)(d)(xi) states that *"No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply"*.

## **7. Assessment**

### Is or is Not Development

As noted above, the presented proposal appears to involve the change of use of the first floor of a vacant building from its permitted use as a restaurant dining area to a 2 bedroom apartment. Having reviewed the drawings which accompanied the application, I am satisfied that this proposed change of use also involves works.

Therefore, having regard to the definition of development, as provided by Section 3(1) of the Act, I am satisfied that the proposal, as currently presented, represents development in terms of the Act in the form of both change of use and works.

### Is or is not Exempted Development

Article 10(6)(b) and Article 10(6)(c) of the Regulations provide for a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 of Schedule 2 as exempted development. However, the structure to which this application relates is permitted for use as a restaurant (under Planning Reg. Ref. No. 04/5374), a use which is not listed within any of Class 1, 2, 3, 6 or Class 12 of Part 4 of Schedule 2 of the Regulations.

Therefore, it is concluded that this application relates to a structure for which the permitted use does not fall within the scope as prescribed by Article 10(6)(b) of the Regulations and, therefore, does not constitute a development to which Article 10(6)(c) applies. As such any change of use from that permitted (restaurant) use to residential use would not constitute exempted development.

## **8. Conclusion and Recommendation**

Having regard to the foregoing, it is considered that the proposal for the development consisting of the:

*Change of use from restaurant dining room/retail to a two bedroom apartment while complying with floor area and current guidelines.*

Is development and is not exempted development on the basis that the permitted restaurant use is not a class of use to which Article (10)(6) of the *Planning and Development Regulations 2001* (as amended) is applicable.



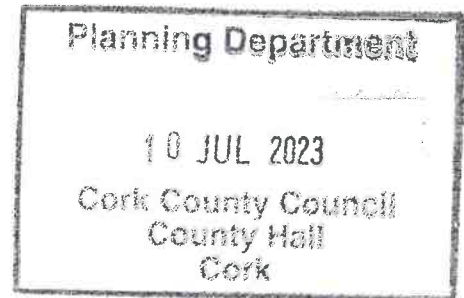
# CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

## APPLICANT CHECKLIST

(Please tick ✓)

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

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



## FOR OFFICE USE ONLY

Receipt No.	R2-000272
Cash/Cheque/ Credit Card	Cheque
Date	10/07/2023
Declaration Ref. No.	D/258/23

DATE STAMP HERE

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

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

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

## **DATA PROTECTION**

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

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

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

MORAD GHARIB

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

APARTMENT 6A  
RIVERSDALE  
RATHCORMAC  
CO-CORK  
P61 F971

**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

Change of use from Restaurant Dining Room / Retail  
To a two bedroom Apartment.  
While complying with floor area and current  
guidelines.

Planning Department  
10 JUL 2023  
Cork County Council  
County Hall  
Cork



**4. APPLICATION DETAILS:**

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square metres (m<sup>2</sup>)

(a) Floor area of existing/proposed structure(s):	75.88 Sqm
(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	  <u>Restaurant Dinning Room/Retail</u>  <u>Two bed Residential Apartment.</u>
(d) Are you aware of any enforcement proceedings connected to this site?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please state relevant reference number(s):

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

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is "Other", please state your interest in the land/structure:	/	
If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):	/	

**6. PROTECTED STRUCTURE DETAILS / ARCHITECTURAL CONSERVATION AREA:**

Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected Structure: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority: Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please state relevant reference No. <u>N/A</u>
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

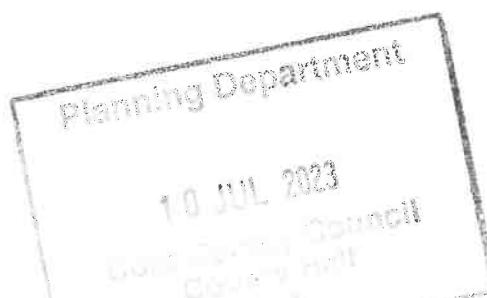
Signed (By Applicant Only)	Morad Ghanib
Date	01/07/2023

### **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 <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	Morad Ghanib
Date	01/07/2023

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](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, Skibbreen, Co. Cork, P81 AT28.

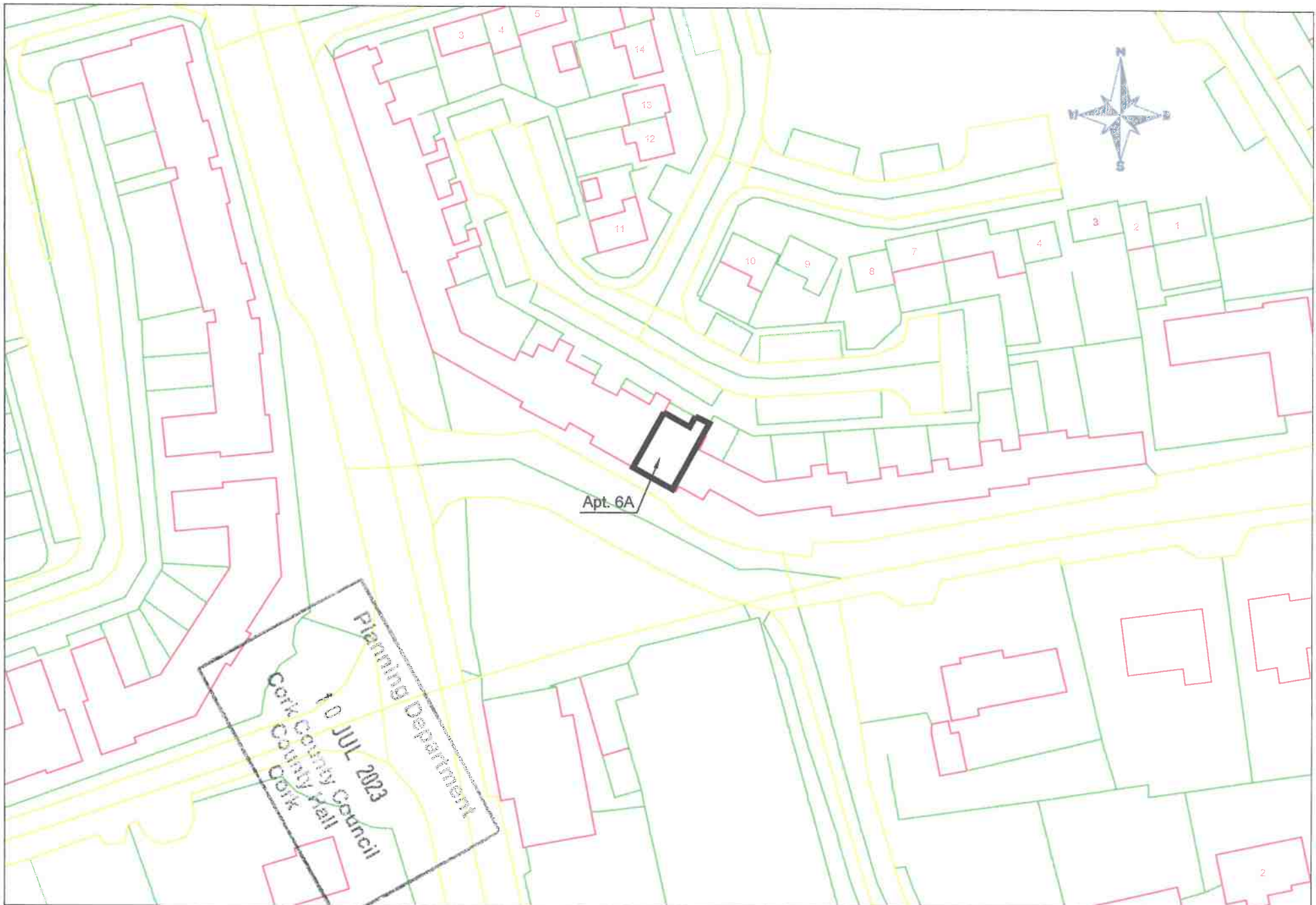
- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question which has arisen and 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	01/07/2023





Computer generated map based on digital map provided by Ordnance Survey Office  
 Under Order No: 50343575. SKU: 471018 Coordinates: 580634,591408

<b>PROJECT TITLE:</b> Apartment 6 A Riversdale	
<b>DRAWING TITLE:</b> Location Map	
<b>Sheet Size:</b> A4	<b>Scale:</b> 1:1000
<b>Date:</b> July 2023	



Computer generated map based on digital map provided by Ordnance Survey Office  
Under Order No: 50343575. SKU: 471018 Coordinates: 580634,591408

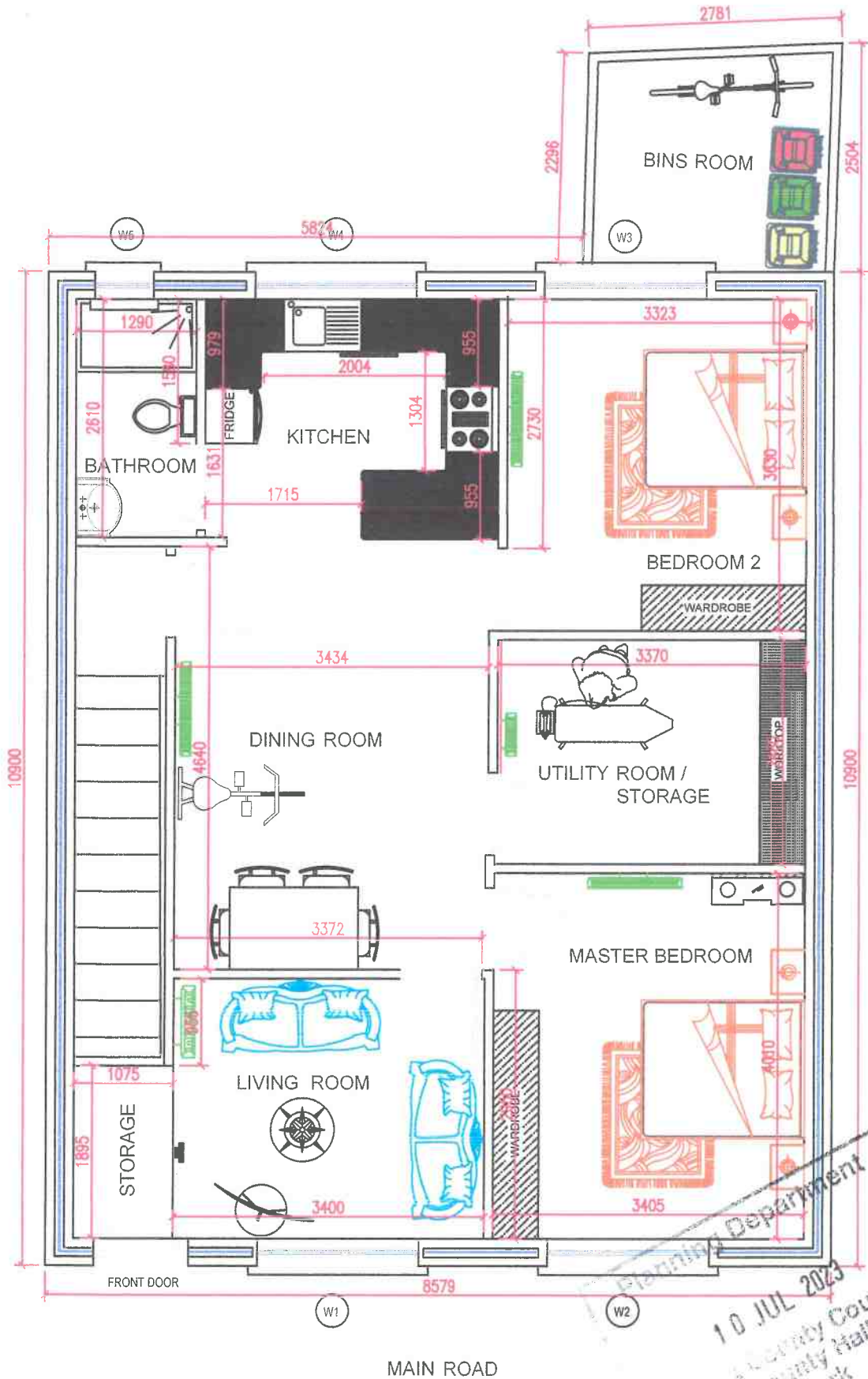
<b>PROJECT TITLE:</b> Apartment 6 A Riversdale	
<b>DRAWING TITLE:</b> Location Map	
Sheet Size: A4	Scale: 1:2500
Date: July 2023	



Planning Department  
 10 JUL 2023  
 Cork County Council  
 County Hall  
 Cork

Computer generated map based on digital map provided by Ordnance Survey Office  
 Under Order No: 50343575. SKU: 471018 Coordinates: 580634,591408

<b>PROJECT TITLE:</b> Apartment 6 A Riversdale	
<b>DRAWING TITLE:</b> Site Layout	
Sheet Size: A4	Scale: 1:250
Date: July 2023	



**NOTES**

Total internal floor area = 75.88 m<sup>2</sup>

PROJECT TITLE

Apartment 6A Riversdale

Scale: 1 / 60

Drawing Title:

Proposed Layout

Date: July 2023

10 JUL 2023  
 Planning Department  
 Kerry Council  
 County Hall  
 Cork