C mhairle Contae Chorcaí Cork County Council

Rannóg Pleanála, Teach Norton, Bóthar Chorcaí, An Sciobairín, Co. Chorcaí P81 AT28. Fón: (028) 40340 • Faics (028) 21660 Suíomh Greasain: www.corkcoco.ie Planning Section, Norton House, Cork Road, Skibbereen, Co. Cork P81 AT28. Co. Cork 1'01 ALZO. Tel: (028) 40340 • Fax: (028) 21665. No. PLANNING (WEST) DEPT



3 0 MAY 2023

CORK COUNTY COUNCIL NORTON HOUSE, SKIBBEREEN, Co. CORK PS1 AT28

Mr. Michael O'Brien. Ballycommane, Durrus, Bantry, Co.Cork.

29<sup>th</sup> May, 2023.

Our Ref: D/17/23.

#### RE/ Declaration request on exempted development under Section 5 of the Planning & Development Act, 2000 (as amended).

Dear Sir,

On the basis of the information and plans submitted by you on 3<sup>rd</sup> May, 2023, the Planning Authority declares that the proposed external alterations to the north and western elevations of a permitted agricultural building on site at Ballycommane, Durrus, Bantry, Co. Cork is exempt development under Section 4(1)(h) of the Planning & Development Act, 2000 as amended. The Planning Authority is satisfied that the proposed use of the building for horticultural purposes can be interpreted as agriculture and is therefore considered to be exempt development in accordance with Section 2(1) of the Planning & Development Act, 2000 as amended.

Please note that any material departure from the proposals as submitted may remove the development from the Exempted category and require the submission of an application for Permission under the Act.

This exemption does NOT itself empower a person to carry out a development unless that person is legally entitled to do so.

Receipt No. WCP11563, in respect of  $\in 80.00$ , is issued herewith.

Yours faithfully,

**KEVIN O'REGAN** 

SENIOR EXECUTIVE OFFICER.



### Anne Lordan

From: Sent: To: Subject: Tim Twomey Thursday 25 May 2023 15:48 Anne Lordan RE: D/17/23 - Section 5 Request

Hi Anne,

I agree with the Area Planner's recommendation.

Regards, Tim

From: Anne Lordan <Anne.Lordan@CorkCoCo.ie> Sent: Thursday 25 May 2023 11:59 To: Tim Twomey <Tim.Twomey@CorkCoCo.ie> Subject: FW: D/17/23 - Section 5 Request

Hi Tim,

Attached report from Ms. Olivia Field, Area Planner for your recommendation and sign-off.

Regards

Anne.

Anne Lordan | Oifigeach Foirne Cúnta | Pleanáil agus Foirbairt Comhairle Contae Chorcaí | Teach Norton | Bóthar Chorcaí | An Seiobairín | Co. Chorcaí | P81 AT28 | Éire T +353-(0)28 – 40340 | Ext. 7121 Anne.Lordan@corkcoco.ie | www.corkcoco.ie Tairseach na gcustaiméirí: www.yourcouncil.ie

Anne Lordan | Assistant Staff Officer | Planning and Development Cork County Council | Norton House | Cork Road | Skibbereen | Co. Cork | P81 AT28 | Ireland T +353-(0)28 – 40340 | Ext. 7121 <u>Anne.Lordan@corkcoco.ie</u> | www.corkcoco.ie Customer Portal: www.yourcouncil.ie

From: Olivia Field <<u>Olivia.Field@CorkCoCo.ie</u>>
Sent: Wednesday 24 May 2023 16:20
To: Tim Twomey <<u>Tim.Twomey@CorkCoCo.ie</u>>
Cc: Anne Lordan <<u>Anne.Lordan@CorkCoCo.ie</u>>; Kevin O'Regan <<u>kevin.oregan@CorkCoCo.ie</u>>
Subject: FW: D/17/23 - Section 5 Request

Hi Tim,

Please find attached my report for the above S5 application.

Thanks,

### Planner's Report - Ref No. D/17/23

Declaration on Exempt Development under Section 5 of the Planning and Development Act 2000 as amended.

Applicant – Michael O'Brien

Date Application Received: 03/05/2023

Decision Date: 30/05/2023

### Section 5 Declaration Request

The applicant has submitted a request for a declaration under Section 5 (1) of the Planning and Development Act 2000, as amended.

The 2 no. questions on which the Declaration is requested are:

- a) Whether moving 2 no. doors from the west side to north side elevation of a farm building is development or exempt development and;
- b) Whether changing the use of the cattle house to a flat-bed for organic farming (horticulture) is development or exempted development.

### Site Location and Description

There is an existing small farm complex and dwellinghouse on site which is located in the rural townland of Ballycommane, to the east of Durrus village.

### **Planning History**

Under ref. no. 21/491 the applicant was granted planning permission on 11/10/2021 for a slatted cattle house (162 sqm) and straw storage shed (64 sqm) on site.

Maps



### Site Zonings

In terms of planning designations, the site is in a rural area which is designated as a High Value Landscape area in the current Development Plan.

The site does not lie within any AA screening zone for the Natura 2000 Network.

The lands are susceptible to pluvial flooding according to the Planning Enquiry System.

There are 2 no. recorded monuments located on the adjoining site to the north east including a Bolder Burial - CO 131-005002 and a pair of Standing Stones CO 131 - 005001.

### Legislative Context

The statutory provisions relevant to this referral case:

### Planning & Development Act, 2000 as amended

Section 2 (1) of the 2000 Planning and Development Act states as follows:-

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

In Section 2 (1) of the Act "works" are interpreted as including "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".

"Agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly,

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

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

Section 4(1)(h) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act and S4(1)(a) states:

(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

S41(h) states '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

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development.

(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.

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is— (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and (b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.

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

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

"Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1."

Part 3 of the Second Schedule of the Regulations sets out exempt development – Rural.

Class 9 states the following:

#### CLASS 9

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

- No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
- 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
- No such structure shall be situated within 10 metres of any public road.
- No such structure within 100 metres of any public road shall exceed 8 metres in height.
- 5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
- No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

### Restrictions on Exempt Development

Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act. The most relevant conditions include:

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an 36 objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended.

### Internal Reports

None received.

### Assessment

There are 2 no. questions being raised under this Section 5 Declaration which are as follows:

- 1. Whether moving 2 no. doors from the west side to north side elevation of a farm building is development or exempt development and;
- 2. Whether changing the use of the cattle house to a flat-bed for organic farming (horticulture) is development or exempted development.

### Question 1 – External alterations to permitted building.

The applicant has been granted planning permission under ref. no. 21/491 to construct a cattle house and straw storage shed on this site.

The applicant is proposing to relocate 2 no. doors from the west side elevation to the north side elevation of the permitted agricultural building. The north side elevation is not visible from the adjoining public road to the south.

It is considered that the proposed external alterations to the north and western elevations of the permitted agricultural building are minor in nature and would 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.

The Planning Authority is also satisfied that the proposed fenestration changes would not interfere with the character of this High Value Landscape.

It is therefore considered that the proposed external alterations to the north and western elevations of a permitted agricultural structure is exempt development under Section 4 (1)(h) of the Planning and Development Act 2000, as amended.

#### Question 2 – Change of use from cattle house to horticulture.

The applicant has been granted planning permission under ref. no. 21/491 to construct a cattle house and straw storage shed on this site.

The applicant is proposing to change the use of the permitted cattle house to horticultural use i.e. for the production of organic fruit and vegetables in raised bed(s).

Having regard to section 2 (1) of the Planning and Development Act 2000 as amended, 'Agriculture' is interpretated as the following:

'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly, Having regard to the Act's interpretation of 'Agriculture', the Planning Authority is satisfied that the proposed use of the building for horticultural purposes can be construed as agriculture and is therefore considered to be exempt development in accordance with Section 2 (1) of the Planning and Development Act, 2000 as amended.

### <u>AA</u>

The site is not located within the potential zone of influence of any Natura 2000 network site(s).

#### Conclusion & Recommendation

The Planning Authority is satisfied that the proposed fenestration changes would 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, nor would it interfere with the character of this High Value Landscape.

It is therefore considered that the proposed external alterations to the north and western elevations of a permitted agricultural building on site is exempt development under Section 4 (1)(h) of the Planning and Development Act 2000, as amended.

The Planning Authority is satisfied that the proposed use of the building for horticultural purposes can be interpreted as agriculture and is therefore considered to be exempt development in accordance with Section 2 (1) of the Planning and Development Act, 2000 as amended.

Olivier field

Olivia Field Assistant Planner Cork County Council 24/05/2023



### <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>€80 Application Fee:</u>

### FOR OFFICE USE ONLY

Receipt No.	
Cash/Cheque/ Credit Card	
Date	
Declaration	
Ref. No.	

(Please tick  $\downarrow$ )

RFG. NO PLANNING (WEST)

0 3 MAY 2023

CORK COUNTY COUNCIL NORTON HOUSE, SKIBBEREEN, Co. CORK P81 AT28

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

<u>http://www.corkcoco.ie/Privacy-Policy</u> 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)

MICHAEL OBRIEN

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

BALLYCOMMANE DUNRUS BANTRY CO CORK. P75 V 219

### 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

MOVING TUO DOORS FROM VEST SIDE TO NORTH SIDE OF FARM BUILZING. CHANGING INSIDE USE FROM CUBICLE TO FLAT BED FOR ORGANIC FARMING NORTON HOUSE, SKIBBEREN, Co. CORK CORK COUNTY COUNCIL INTIMI AIMNAIG REG NO.

### 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  $(m^2)$ 

(a) Floor area of existing/proposed structure(s):	162.4
<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 No If yes, please provide floor areas (m <sup>2</sup> ) and previous planning reference(s) where applicable:
<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
CUBICLE FARM	ORGANIC FEAT FLAT
DUILD ING	BED BUIDING
(d) Are you aware of any enforcement proceedings connected to this site?	Yes No X
Proceedings Anning (Wiese) DEPARTMENT	If yes, please state relevant reference number(s):
~3 MAY 2023	
CODE	

### 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. 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 curtilage of a Protected Structure: Yes No
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 No
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 No

### 7. APPROPRIATE ASSESSMENT:

Would the proposed development require an appropriate assessment becaus	se it would	be lik	cely to
have a significant effect on the integrity of a European site (SAC, SPA etc)?	Yes	No	ľx]
2	and the second second		

### 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)	Michael O Ories
Date	215/2023

### **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	Michael O Drin
Date	215/2023

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: <u>planninginfo@corkcoco.ie</u> or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: <u>westcorkplanninginfo@corkcoco.ie</u> 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.

REG No. PLANNING (MIES CORK NORTON HOUSE, SKIBBEREEN, Co. CORK

### **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.

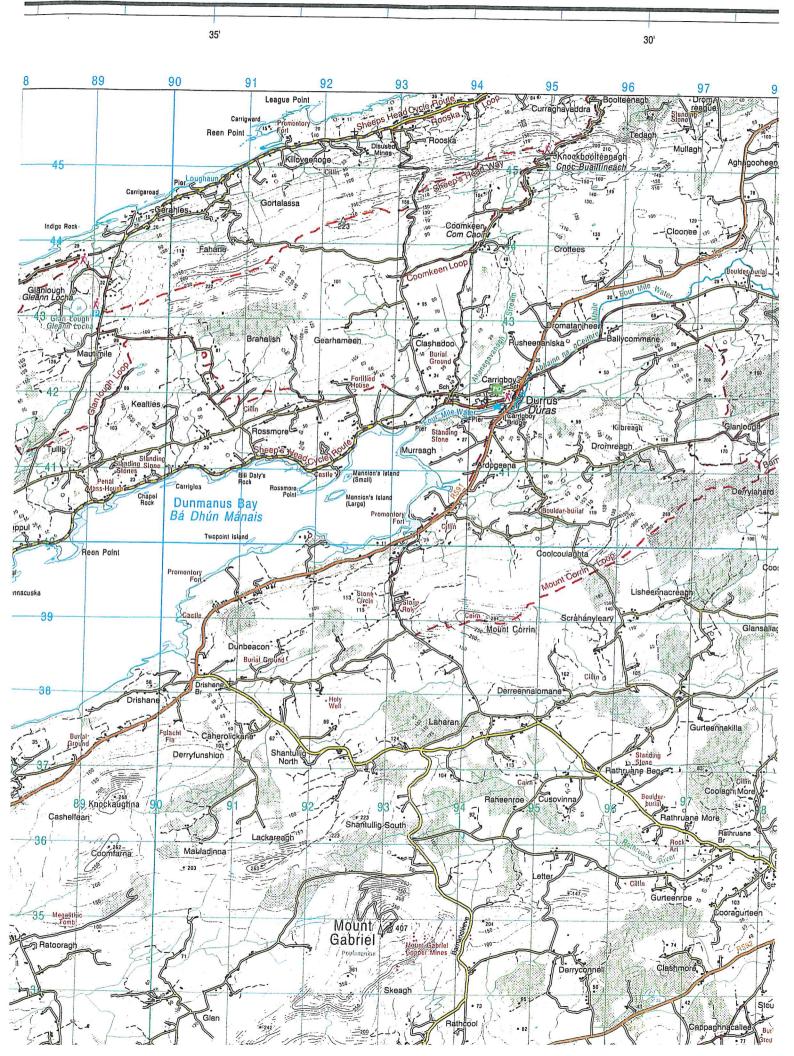
The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be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

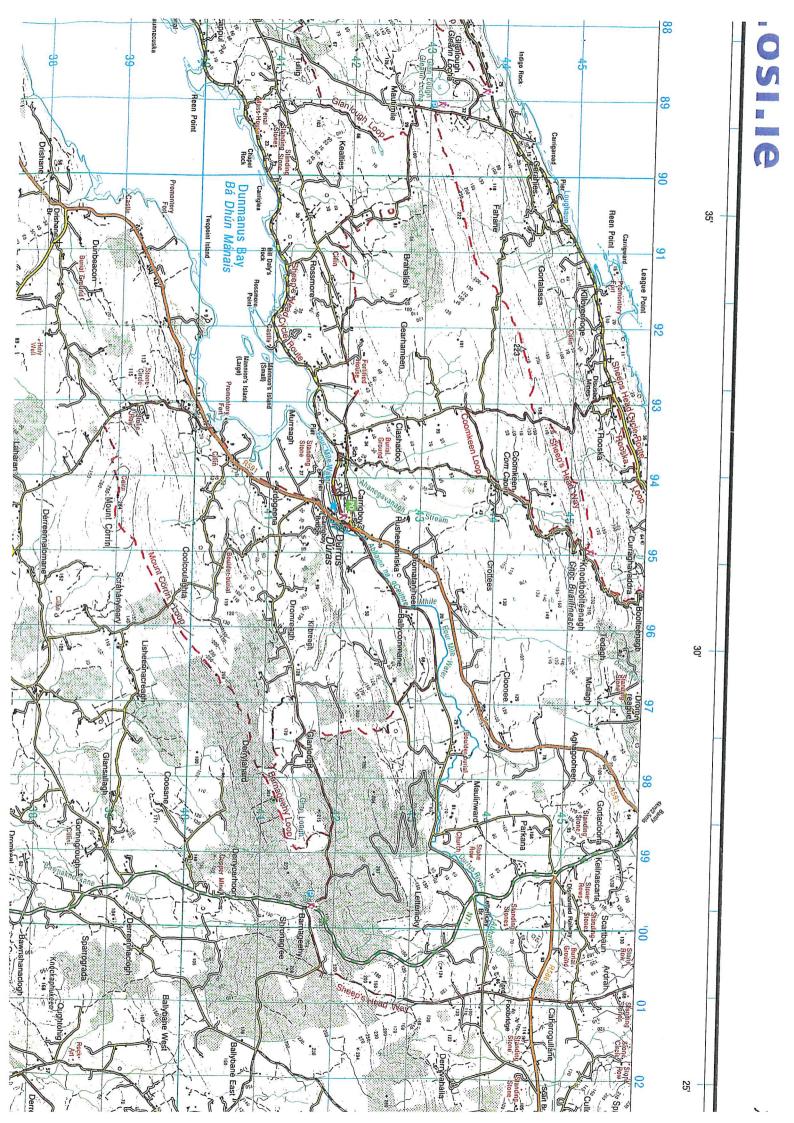
9. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the <u>Planning and Development Acts 2000</u>, <u>as amended</u> and the Regulations made thereunder:

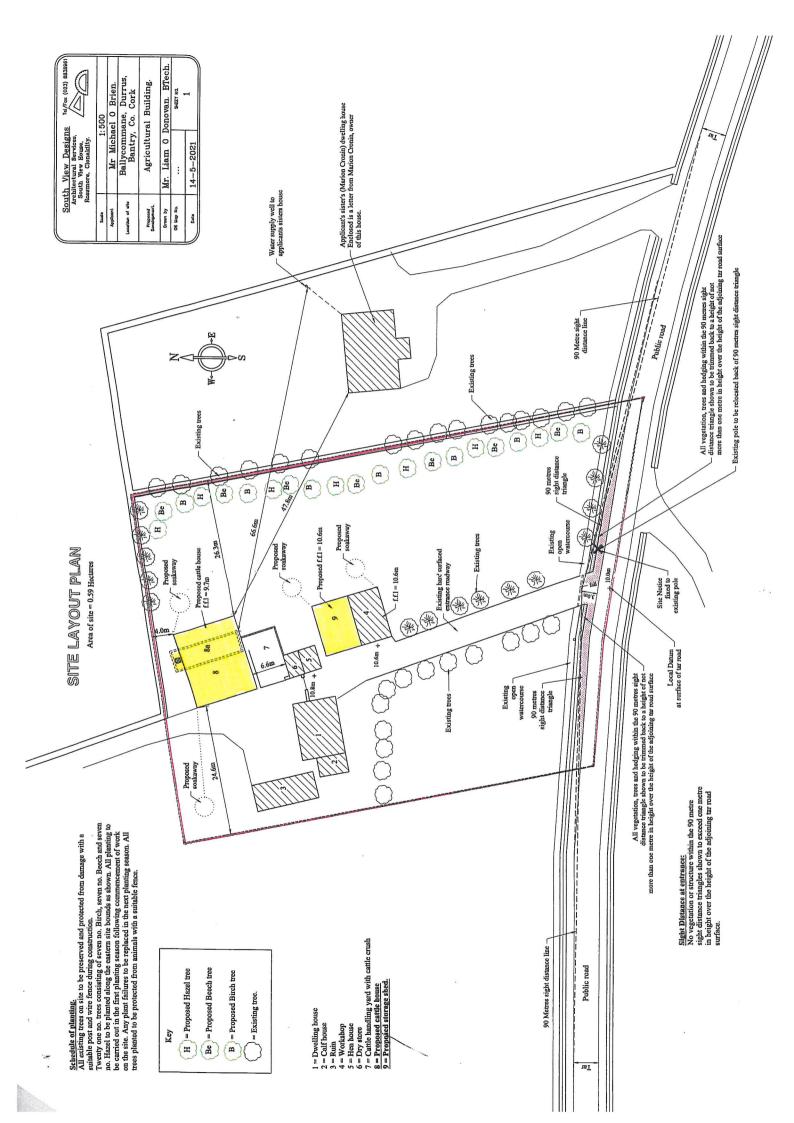
Signed (Applicant or Agent as appropriate)	Michael ODi
Date	215/2023

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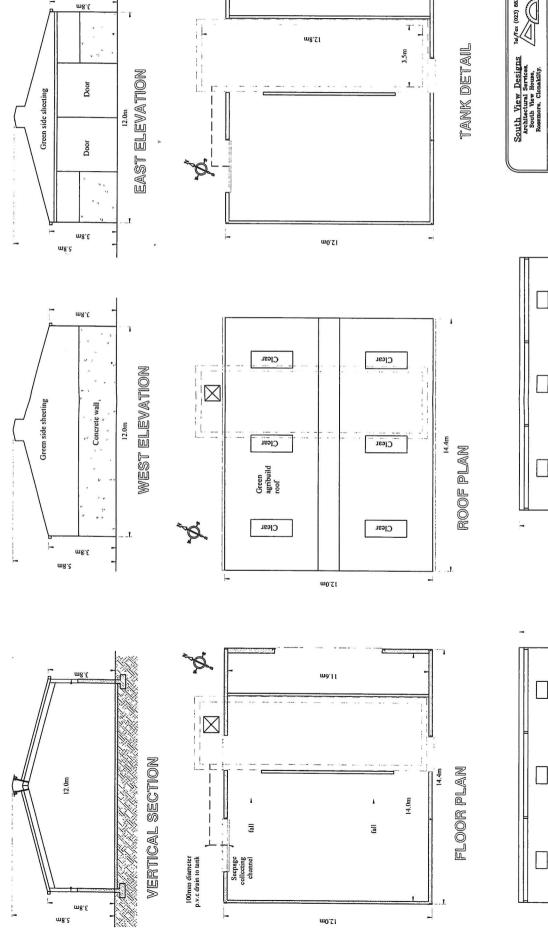
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South View Designs Ta/Fox (02) B020001 Architectural Services. Research. Chankly, Researc

