



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Muhammad Ilyas Ansari,
12 Clifton,
Grange, Douglas,
Cork,
T12 F9C7.

28/03/2024

**RE: Section 5 Declaration R831/24 – 12 Clifton Grange, Douglas, Cork,
T12 F9C7.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 07/03/2024, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).

The opening of a new window on the side elevation of an existing dwelling, 94cm from the site boundary at 12 Clifton Grange, Douglas, Cork, **Is Development** and is **Exempted Development**.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued.

Is mise le meas,

David O'Regan

Assistant Staff Officer,
Community, Culture &
Placemaking Directorate



We are Cork.

PLANNER'S REPORT Ref. R831 /24		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>See section 2 below</i>	
Location	12 Clifton, Grange, Douglas	
Applicant	Muhammad Ilyas Ansari	
Date	28/03/2024	
Recommendation	<i>Is Development and Is Exempted Development</i>	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. Requirements for a Section 5 Declaration

Section 5(1) of the Planning and Development Act 2000 as amended states,

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

The requirements for making a section 5 declaration are set out in the Act.

2. The Question before the Planning Authority

In framing the question to the planning authority, the applicant states in Q3 of the application form:

- *Window on the side of house*
- *The neighbour house boundary is 94cm from window*
- *neighbour house is not residential rather it is a dental clinic*
- *window size is 150x110cm width 150cm height 110cm*

Under additional details the applicant has provided the following:

I replaced the window from the backside of room to side over room and its distance from neighbour house boundary is 94cm. The neighbour house is not a residential rather it is a Dental Clinic.

In the interest of clarity it is considered appropriate to re-word the matter as follows:

Is the opening of a new window on the side elevation of an existing dwelling, 94cm from the site boundary, development and if so is it exempted development.

3. Site Description

The property in question is a one storey detached dwelling in an established residential area of detached dwellings.

4. Planning History

There are no recent relevant planning applications associated with the subject site or adjoining properties.

There is a closed Enforcement File associated with the site – Ref. No. 8637. Following a site inspection it was considered that an extension to the rear of the dwelling was exempted development. There is no reference to the side window in the report on file.

5. Legislative Provisions

5.1 *The Act*

Section 2(1),

“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),

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)(h),

The following shall be exempted developments for the purposes of this Act-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),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

6.1 *Development*

The first issue for consideration is whether or not the matter at hand is ‘*development*’.

‘*Development*’ as defined in the Act (3)(1) comprises two possible chief components: ‘*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*’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be

carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

'Works' is defined in section 2(1) of the Act as 'the carrying out of any works on, in, over, or under land' 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.'

I consider that the replication of a window constitutes works and is therefore development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development.

I note that there is no specific exemption relating to the opening of a new window on the external façade of a building. Section 4(1)(h) however provides that, development which does 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 are exempted development.

The subject window is on the side elevation, close to a site boundary and not visible from the public realm. I consider that the opening of a window on the side elevation of this dwelling does not materially impact upon the character of the building or upon the character of other dwellings in the vicinity. I consider that the development is exempted development and recommend that a declaration be issued accordingly.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. Conclusion

The question submitted has been revised to read as follows:

Is the opening of a new window on the side elevation of an existing dwelling, 94cm from the site boundary, development and if so is it exempted development?

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is development and is exempted development.

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).

The opening of a new window on the side elevation of an existing dwelling, 94cm from the site boundary, **Is Development** and is **Exempted Development**.



Martina Foley
Executive Planner

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924029
Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

MUHAMMAD ILYAS ANSARI

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

12 CLIFTON GRANGE DOUGLAS CORK
T12 F9C7

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:
Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

- Window on the side of house
- The neighbour house boundary is 94cm from window
- Neighbour house is not residential rather it is a dental clinic
- Window size is 150x110cm width 150cm height 110cm

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).

I replace the window from back side of room to side of room and its distance from neighbour house boundary is 94cm. The neighbour house is not residential rather it is a Dental clinic.

DEVELOPMENT MANAGEMENT
CCP
07 MAR 2024

CORK CITY COUNCIL

4. Are you aware of any enforcement proceedings connected to this site?
 If so please supply details:

NO

5. Is this a Protected Structure or within the curtilage of a Protected Structure? 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?

6. Was there previous relevant planning application/s on this site?
 If so please supply details:

7. 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 meters (sq. M)

(a) Floor area of existing/proposed structure/s	
(b) If a domestic extension, 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"/> If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)

7. LEGAL INTEREST

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 in question		
If you are not the legal owner, please state the name of the owner if available		

8. I / We confirm that the information contained in the application is true and accurate:

Signature: 

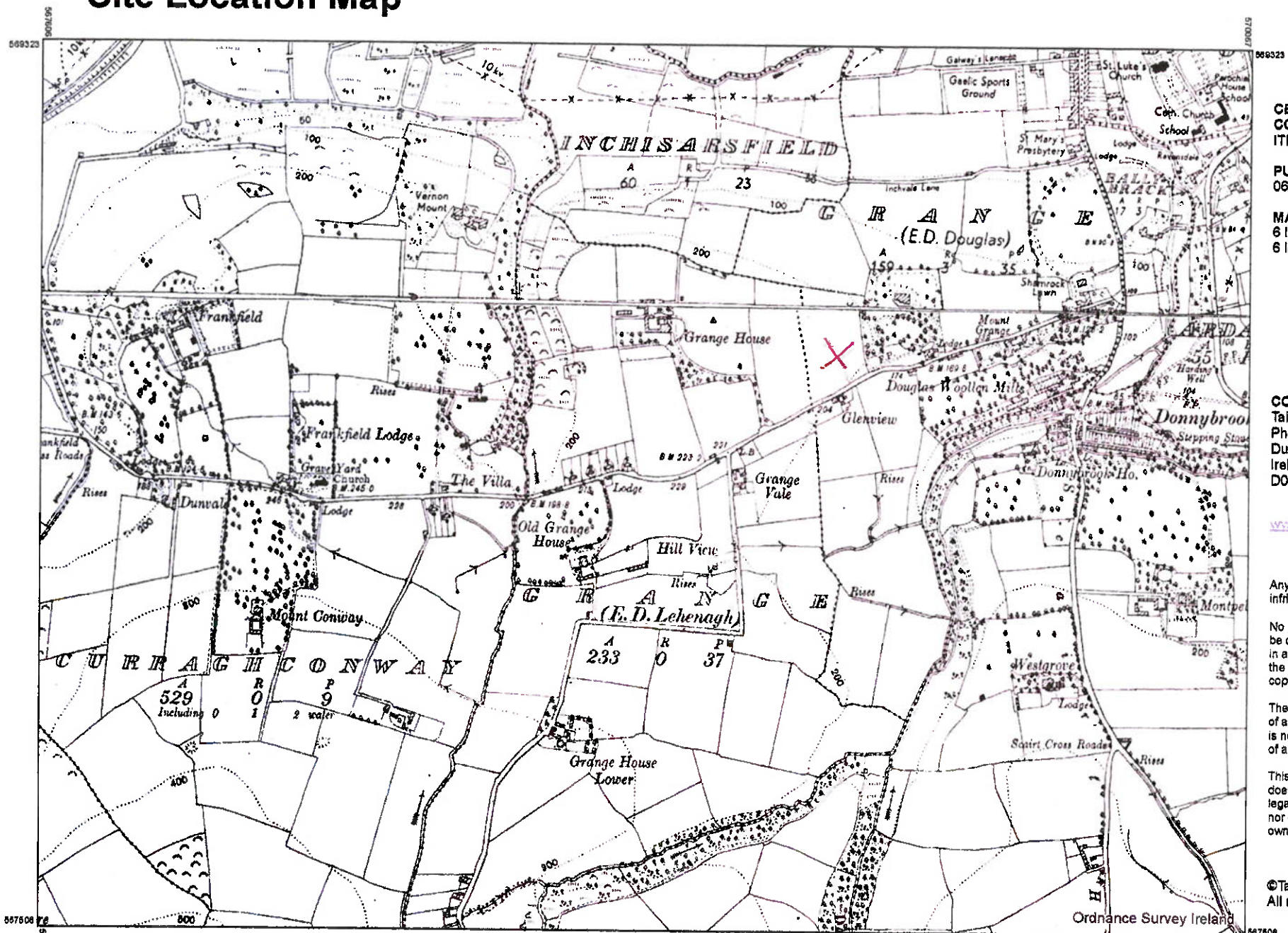
Date: 1 / 12 / 2024

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-
 - * NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED
 - (a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,
 - (b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,
 - (c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,
 - (d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,
 - (e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,
 - (f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,
 - (g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,
 - (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,
 - (i) plans and drawings shall indicate the name and address of the person by whom they were prepared.
2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.
3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.

Site Location Map



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CENTRE COORDINATES:
ITM 568837,568415

PUBLISHED: 06/03/2024
ORDER NO.: 50387369_1

MAP SERIES: 6 Inch Raster
MAP SHEETS: CK074
6 Inch Raster CK086

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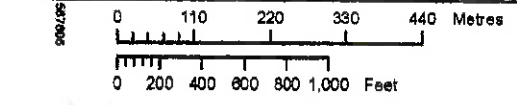
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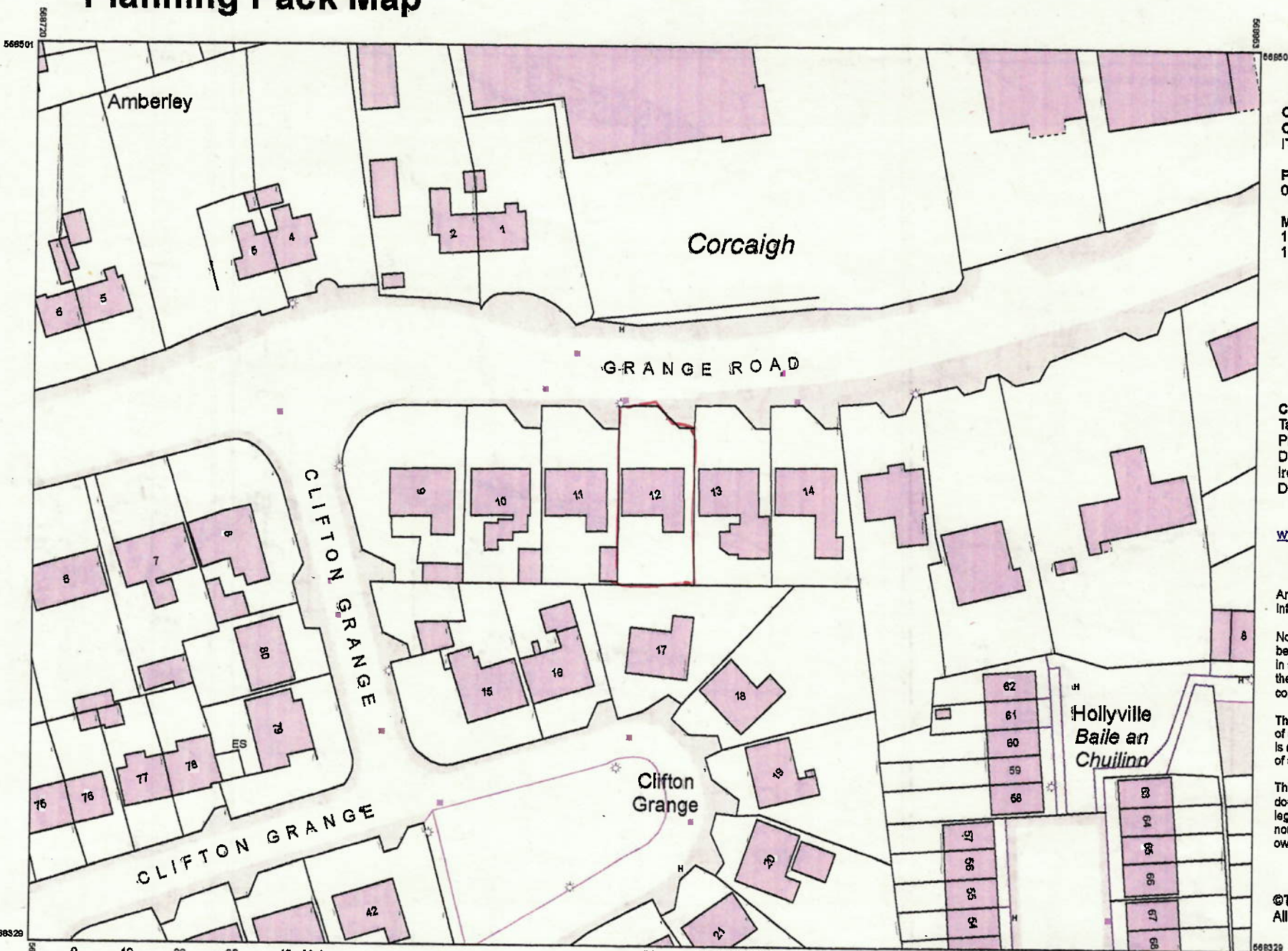
LEGEND:
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Planning Pack Map



**Tailte
Éireann**



**CENTRE
COORDINATES:**
ITM 568837,568415

PUBLISHED: 06/03/2024
ORDER NO.: 50387369_1

MAP SERIES: 1:1,000
1:2,500
MAP SHEETS: 6428-12
6428-C

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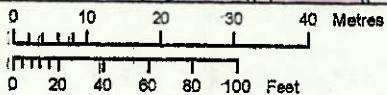
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