



# Comhairle Cathrach Chorcaí Cork City Council

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

Kathleen Healy  
1 Windermere Court  
Bishopstown  
Cork  
T12 CY6A

21th October 2020

**RE: R608/20**  
**Property: 1 Windermere Court, Bishopstown, Cork**

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I am asked to advise as follows:

Having regard to —

the date of construction of the development and the relevant exemptions in place at that time i.e. Class 6(ii) of Part 1 of Schedule 2 of the 2001 Planning and Development, the increase in paved area to front of house at 1 Windermere Court, Bishopstown, is **'development'** and is **'exempted development'**.

Yours faithfully,

Kerry Bergin  
Assistant Staff Officer  
Community, Culture and Placemaking  
Cork City Council



We are Cork.

PLANNER'S REPORT  
Ref. R 608/20

Cork City Council  
Development  
Management  
Strategic Planning  
and Economic  
Development

Application type      **SECTION 5 DECLARATION**  
Question              *Whether the increase in paved area to front of house (laid in 2011) is or is not development and if development or is not exempted development*  
Location              *1 Windermere Court, Bishopstown, Cork.*  
Applicant              Kathleen Healy

### 1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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.

### 1. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the Planning Authority is reworded as follows:

*'Whether the increase in paved area to front of house (laid in 2011) is development and if so is or is not exempted development'.*

### 2. SITE DESCRIPTION

The subject property comprises an end of terrace dwelling situated within a small housing enclave located off Barrett's Lane which runs between the Bishopstown and Curraheen Roads.

### 3. PLANNING HISTORY

T.P.78/7466:              Permission refused for the erection of terraced housing.

T.P.78/7821:              Permission granted for the erection of terraced housing.

T.P. 80/9235:              Permission granted for a change of house type of approved residential development— file unavailable from archives apart from MO and conditions.

T.P. 04/28313:              Permission refused for the construction of a house to side of existing house.

T.P. 09/33992:              Permission granted for the construction of a two storey extension to the side of the house.

E7109:                      Enforcement complaint received during construction of extension granted above in relation to possible subdivision of property and alterations made to a permitted development during construction – additional door and small increase in dimensions and internal layout. – File closed as no evidence of subdivision found and the alterations were deemed non-material alterations.

E7211: Enforcement complaint received re plastering of wall and construction of paved area to front of house which was not shown in the drawings attached to 09/33992– area of remaining landscaping was enclosed by a low kerbing. Enforcement file was closed following an investigation– no planning breach found – works to wall considered to fall under Section 4 (1(h) of the Planning and Development Act.

#### **4. CURRENT LEGISLATIVE PROVISIONS**

##### **4.1 Planning and Development Act, 2000 as amended**

*Section 2(1),*

*“exempted development” has the meaning specified in section 4.*

*“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),*

*4.(1) The following shall be exempted developments for the purposes of this Act—*

*...*

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

*Section 4(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, as amended.

*Section 4(3),*

*A reference in this Act to exempted development shall be construed as a reference to development which is—*

*(a) any of the developments specified in subsection (1), or*

*(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

##### **4.2 Planning and Development Regulations, 2001 as amended**

*Article 6(1),*

*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.*



Column 1 <i>Description of Development</i>	Column 2 <i>Conditions and Limitations</i>
	or otherwise allow for rainwater to soak into the ground.

I note that the applicant advises the works were completed in 2011 following construction for the extension – from the enforcement file the works were shown completed in a photograph taken in July 2011 therefore the 2001 Regulations were in force at the time of construction. These Regulations stated as follows:

**CLASS 6**

*(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.*      *The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.*

*(b) Any works within the curtilage of a house for—*

- (i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,*
- (ii) the provision to the front or side of the house of a hard surface for the parking of not more than 2 motor vehicles used for a purpose incidental to the enjoyment of the house as such.*

**5. ASSESSMENT**

**5.1 Development**

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’. ‘Works’ are defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

**CONCLUSION — is development**

**5.2 Exempted development**

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

No restrictive condition was attached to TP 80/9235 in relation to such development.

An exemption under Class 6(ii) of the 2001 Regulations was available at the time of construction allowing for paved area for the parking of 2 cars to be provided to the front of dwelling houses. I note that exemptions do not generally apply during construction of a development governed by a planning permission given the restrictions of Condition 1 – however in this case the application related to an extension which it is stated was completed prior to the construction of the paving to the front. It is considered reasonable to assume that the owner could have availed of the Class 6 exemption

notwithstanding the planning application which did not show the extended car parking area. I note also that there was no planning breach detected in the assessment/decision to close Enforcement file E7211. The development is therefore considered to have been exempted development at the time of construction under Class 6 of Part 1 of Schedule 2 of the 2001 Regulations.

#### **CONCLUSION — *is exempted development***

#### **6. ENVIRONMENTAL ASSESSMENT**

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state as follows:

##### *Section 4(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.*

##### *Section 4(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.*

##### *Section 177U(9)*

*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.*

#### **6.1 Screening for Environmental Impact Assessment**

Having regard to the contents of Article 103 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 environmental impact assessment is not required.

#### **6.2 Screening for Appropriate Assessment**

The applicant has not submitted an appropriate assessment screening report. 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 these European sites. Accordingly, it is considered that appropriate assessment is not required.

#### **7. CONCLUSION & RECOMMENDATION**

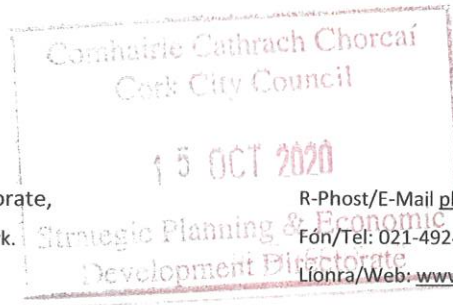
Having regard to the date of construction of the development and the relevant exemptions in place at that time i.e. Class 6(ii) of Part 1 of Schedule 2 of the 2001 Planning and Development, the increase in paved area to front of house at 1 Windermere Court, Bishopstown, is 'development' and is 'exempted development'.

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Evelyn Mitchell,  
Senior Executive Planner,  
28.10.2020

COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL

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



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

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

1 Windermere CRT, Bishopstown  
Cork. T12 CY6A.

**2. 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.

Is the increase in paved area to front of my house at above address, laid in 2011, an exempt development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

2009. See attached sketch. Planning granted in 2009. Extension built in 2010/2011 time frame. On completion of extension the drive paved area was increased to accommodate 2 cars as opposed to original one. The footpath was not altered i.e. single car width footpath entrance is as it originally was.

\* My house has gone sale agreed - taken 1 year to come to this point (with Covid) - the purchasers need proof of exemption for drive automatically assumed it was exempt.



3. Are you aware of any enforcement proceedings connected to this site?

If so please supply details:

No

4. 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?  N/A

5. Was there previous relevant planning application/s on this site?  YES

If so please supply details:

Planning ref TP 09/33992

**6. 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	N/A
(b) If a domestic extension, 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 type="checkbox"/> If yes, please provide floor areas. (sq m) This application refers only to paved area at front of my house
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) I have increased my house to accommodate 2 cars as opposed to 1 car	Proposed/existing use (please circle) paved area at front of house 2 cars

**8. 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	N/A	
If you are not the legal owner, please state the name and address of the owner if available	N/A	

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

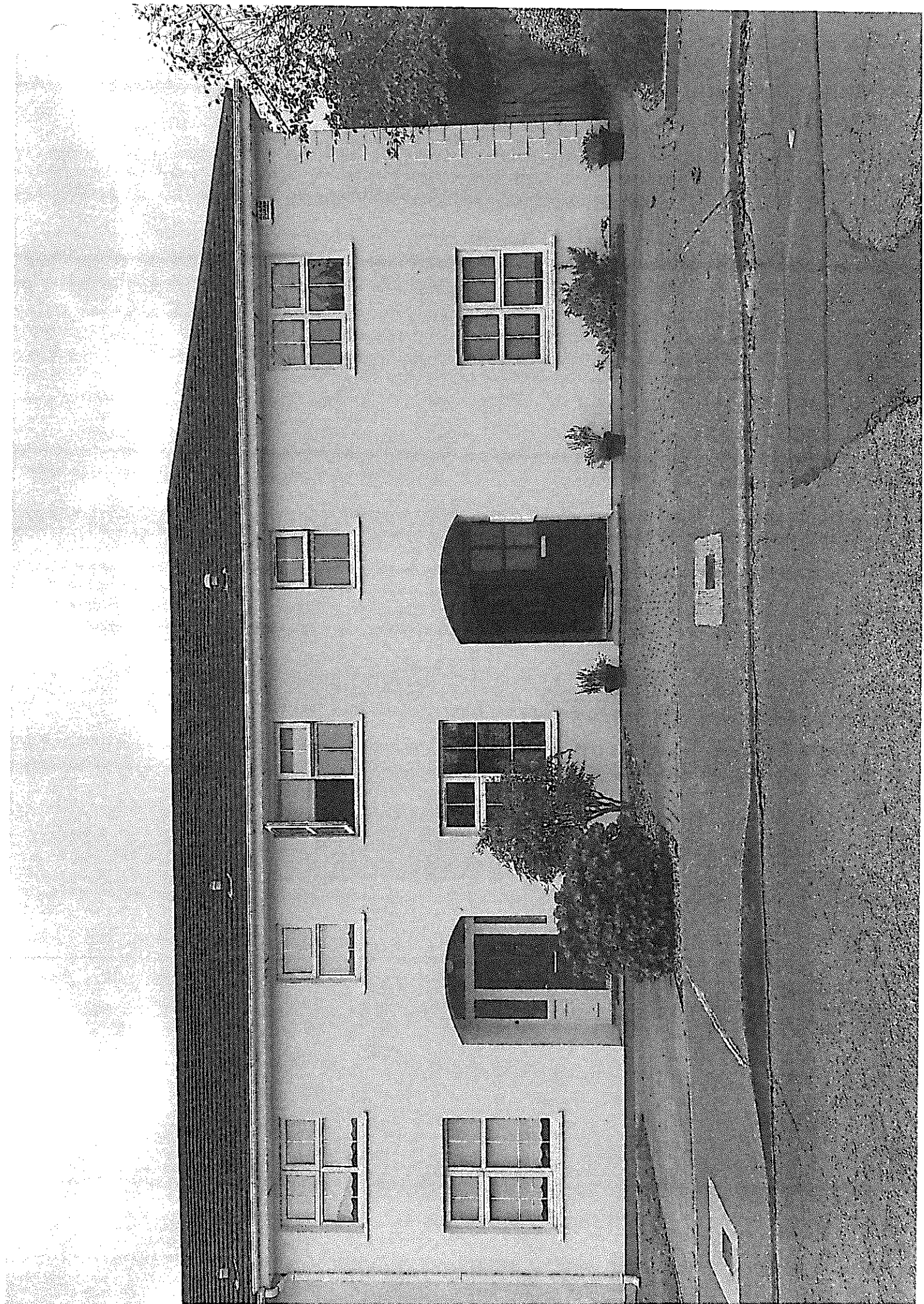
Signature: Kathleen Healy.

Date: 14<sup>th</sup> Oct 2021

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- 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 is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration 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 was due to be issued by the Planning Authority.

*The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration 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.*

**DATA PROTECTION:** The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution.







The Property  
Registration Authority  
An tÚdarás  
Clárúcháin Maoinne

Folio: CK27383F

This map should be read in conjunction with the folio.

Registry maps are based on OSI topographic mapping. Where registry maps are printed at a scale that is larger than the OSI published scale, accuracy is limited to that of the original OSI map scale.

For details of the terms of use and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see [www.pral.ie](http://www.pral.ie).

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(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- Subleasehold

Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- ▽ Soak Pit



A full list of burdens and their symbology can be found at: [www.landdirect.ie](http://www.landdirect.ie)

The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent. (see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.

1:1000 Scale

