

The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1,  
D01 V902

<b>AN BORD PLEANÁLA</b>	
LDG- <u>027851-20</u>	
ABP- _____	
06 JUL 2020	
Fee: € <u>220</u>	Type: <u>cheque</u>
Time: _____	By: <u>Prop. Post.</u>
	email: - _____

27 College Grove,  
Ennis,  
Co Clare,  
V95 X0DW.

Date: - 2<sup>nd</sup> July 2020

Cork County Council Reference: - D/232/20

**Subject: - Appeal against the Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended) in relation to the proposed erection of a 1.2 metre fence on Privately Owned lands at Coast Road, Kilmichael East, Myrtleville, Co Cork.**

Dear Sir/Madam,

On behalf of the Mullins-Collins Family, who are the owners of the subject lands associated with the above Section 5 declaration, I wish to make an appeal against the decision to declare the erection of a fence on privately owned lands at the above address not exempted development and subject to planning permission.

To that end I enclose: -

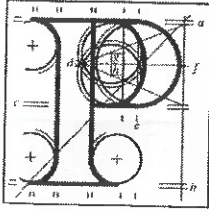
1. A cheque for €220 made payable to An Bord Pleanála for the Fee for this appeal,
2. Proof of my entitlement to appeal in the form of a letter from the Planning Authority dated 10/06/20 (labelled Item 4 attached),
3. A completed Planning Appeal Form with a full report setting out the grounds for our appeal,
4. A total of fourteen attachments to support the above report.

I trust this appeal is in order and complete but should you require any further information from me please do not hesitate to contact me. My address is included in the Planning Appeal Form and noted above along with my email address and my contact telephone number.

Yours Sincerely,



Brendan Mullins



An  
Bord  
Pleanála

## Planning Appeal Form

### Your details

#### 1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Brendan Mullins

(b) Address

27 College Grove,  
Ennis,  
Co Clare,  
V95 X0DW

### Agent's details

#### 2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

Not applicable

AN BORD PLEANÁLA

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(b) Agent's address

Not applicable

## Postal address for letters

3. During the appeal we will post information and items to you or to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1

The agent at the address in Part 2

## Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) **Planning authority**

(for example: Ballytown City Council)

Cork County Council

(b) **Planning authority register reference number**

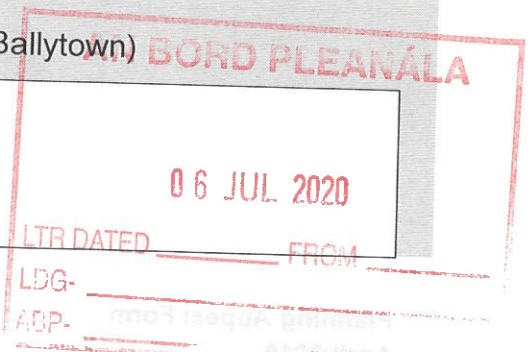
(for example: 18/0123)

D/232/20

(c) **Location of proposed development**

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Coast Road,  
Kilmichael East,  
Myrtleville,



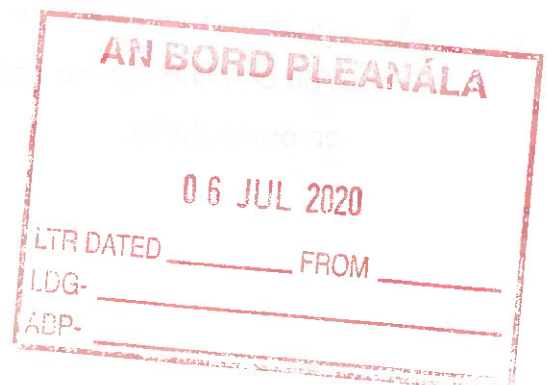
Co Cork.

## Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

Please see the attached document titled:-

**Appeal to An Bord Pleanála against the Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended) in relation to the proposed erection of a 1.2 metre fence on Privately Owned lands at Coast Road, Kilmichael East, Myrtleville, Co Cork.**



## Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

## Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you must include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

## Fee

8. You must make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

## Oral hearing request

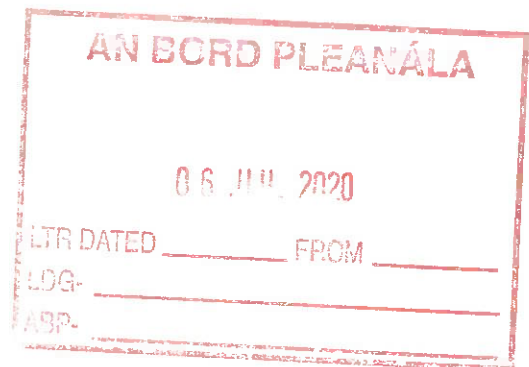
9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the “yes, I wish to request an oral hearing” box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the “No, I do not wish to request an oral hearing” box.

**Yes, I wish to request an oral hearing**

**No, I do not wish to request an oral hearing**



NALA has awarded this document its Plain English Mark

Last updated: April 2019.





**Appeal to An Bord Pleanála against the Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended) in relation to the proposed erection of a 1.2 metre fence on Privately Owned lands at Coast Road, Kilmichael East, Myrtleville, Co Cork.**

**Planning Authority:** - Cork County Council

**Cork County Council Reference:** - D/232/20

**Appeal By:** - Brendan Mullins on behalf of Mullins-Collins Family, Landowners

Dear Sir/Madam,

On behalf of the Mullins-Collins Family I wish to make an appeal against the above Section 5 declaration made by the Planning Authority, Cork County Council, on 10<sup>th</sup> June 2020. The declaration was in respect of Exempted Development under Section 5 of the Planning & Development Act 2000-2010, namely the erection of a fence on privately owned lands at Myrtleville, Co Cork. I make this appeal on behalf of the wider and extended Mullins-Collins Family who are the landowners associated with this case.

I wish to confirm that I also made a submission to the original Section 5 Query on request from the Planning Authority as can be seen from the file. I have received a copy of the declaration from the Planning Authority, who have confirmed to me that I am entitled to make this appeal (see Item 4 attached). Please note that, as a result of the then Covid 19 restrictions all information was conveyed to and from the Planning Authority by telephone and email on the recommendation of the Planning Authority. Therefore, the correspondence only contains my email address and does not have my home address on it. My home address was provided to the Planning Authority when requested and is provided herein.

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This case is in relation to the erection of a 1.2m high safety fence consisting of concrete posts and concrete rails and an access gate on the lands privately-owned by the Mullins-

Collins Family. The fence is to be set back 6.0m from the edge of the adjacent public road, the R612 Coast Road, Kilmichael East, Myrtleville, Co Cork.

The subject lands have been in the family for nearly 100 years and have been passed on from generation to generation over the years. The Mullins-Collins Family are extremely concerned about a risk to the public on these lands. There is currently no barrier to cars or people getting too close to an extremely dangerous, unprotected edge at the top of a very steep embankment. By erecting the fence as proposed, this risk will be eliminated while allowing off-road parking to remain. The subject Section 5 query by a third party and the subsequent declaration by the Planning Authority has impacted directly on the plans to erect this safety fence, which originally was due to be erected in March 2020. The Covid-19 Lockdown prevented the fence from being erected until May 2020. The consideration and subsequent declaration of the Section 5 status of the fence has delayed its erection since then.

The Mullins-Collins Family believe this process has been misused by the third party, who has misinformed the Planning Authority as to the plans of the landowners. We also believe the Planning Authority has not addressed the Section 5 query correctly, has introduced spurious and baseless information not offered by the Applicant and misinterpreting the landowner's plans in coming to their conclusions. By incorrectly declaring the erection of the safety fence as development that is not exempt from Planning Permission the Planning Authority are preventing the owners from addressing a very serious public safety risk on their lands. The legitimate rights of the owners to erect this 1.2m high fence on our privately owned lands, which is clearly exempted from planning permission, is the main issue of this appeal.

The chronology of events, communication and actions taken as they occurred for me in respect of this case are as follows:-

**06/05/20** – I was contacted by telephone by the Senior Executive Officer (SEO) from the Planning and Development Directorate of Cork County Council to verbally inform me that there had been a Section 5 Query raised and to seek an email address from me. I provided

the email address and informed the SEO that I would be happy to cooperate with any matter in respect of the query. I subsequently received the attached letter marked **Item 1** with the minimum information.

**15/05/20** – I was contacted by the Executive Planner by telephone and discussed our plans to erect a safety fence on the family owned lands. I explained to her that we were not intending to prevent parking on the subject lands but were simply erecting a safety fence to deal with a very dangerous situation. I also refuted the suggestion that there was a footpath from the lands accessing the seashore. I impressed upon the Executive Planner the urgency of the matter due to the safety risks on the site. She requested that I stall any plans to erect the fence until the matter was concluded by her.

**18/05/20** – I received a letter by email seeking further information. See emailed letter marked **Item 2** attached.

**19/05/20** – I responded to the request for information with a detailed description of the proposed fence as well as answering all queries raised in the letter. I also provided an accurate scaled map of the fence and associated extents of the family lands as requested clearly showing the position of the proposed fence. See **Item 3.1 & 3.2** attached.

**10/06/20** – I received a letter from the Planning Authority informing me of the decision. See **Item 4** attached. I subsequently emailed the Planning Office seeking a copy of the file and confirmation from them that I was entitled to appeal the decision, which was confirmed.

**16/10/20** – I received part of the planning file with the original query from the Applicant, which is undated, and the two planning reports by the Executive Planner. See **Item 5** attached.

When we examined the declaration by the Planning Authority, we were very taken aback by the reasons given by the Executive Planner, who has clearly made a number of mistakes in her interpretation of the details of the case, which led to her incorrect conclusions and subsequent declaration. We are compelled therefore to correct the situation and seek to overturn the declaration to allow us to erect the safety fence without further delay.

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The grounds for our appeal are summarised as follows:-

1. The Planning Authority did not apply the Planning & Development Act correctly in respect of the use of the subject lands.
2. The Planning Authority did not properly address the question that was raised by the original applicant, Mr Owen O'Brien.
3. The Planning Authority misinterpreted the situation on the subject lands in respect to natural features of the ground.
4. The Planning Authority incorrectly dismissed the reason for the proposed fence and incorrectly ignored the safety risk to the public.
5. There is an error in the planning report in respect of previous planning history.

These points are explained further below.

**No 1 - The Planning Authority did not apply the Planning & Development Act correctly in respect of the use of the subject lands.**

In her declaration, the Executive Planner has quoted Article 6(1) and 9(1) of the Planning and Development Act and relies in particular on the Article 9(1)(a)(x) that states "... development would not be exempted development for the purposes of the Act – (a) if carrying out of such development would: (x) consist of the fencing or enclosure of any lands habitually open to or used by the public during the 10 years preceding such fencing..." This is a very important point that is relied upon by the Executive Planner in her declaration. The fence is not exempted development if it encloses any land habitually open and used by the public during the 10 years preceding such fencing. In using this section of the Planning and Development Act as her reason for the declaration, the Executive Planner has effectively declared that the subject lands were both open to and used by the public for the last 10 years. Yet, the Executive Planner was aware that the subject lands were completely fenced off to accommodate a builder's compound between August 2018 and April 2020. The Executive Planner did not take this fact into account.

In August 2018 the neighbouring property owner, Mr Finbarr O'Callaghan, entered into an agreement to lease the subject lands from the landowners for a minimum period of 14 months in order to allow him to construct a new house on his property. These are the same lands that are the subject of the Applicants query i.e. the subject lands. The subject lands were fully fenced off and occupied by the building contractor's compound immediately thereafter. The compound was in place between August 2018 and is only now being removed as noted by the Executive Planner. See attached "Executed Licence Agreement" containing a map of this compound area between the landowners and the neighbour, Finbarr O'Callaghan, dated 28/08/18, marked **Item 6.1**. For convenience, I have extracted the map from the agreement – See **Item 6.2** – which clearly shows that the entire area of the subject lands was used by the neighbour and his building contractor. I also enclose a photograph of the compound in place during this period. See **Item 7**.

The Planning Authority, and particularly the Executive Planner, were fully aware of the use of the subject lands by the building contractor for this duration. It was brought to the attention of the Planning Authority and the Planner on a number of occasions by various parties including the neighbour. As further proof of this I enclose correspondence between the Planning Authority and the solicitor (O'Flynn Exhams Solicitors) representing the neighbour (Laura & Finbarr O'Callaghan) in respect of the builders compound that have been made available to me (see attached items):-

**Item 8** – Letter from the Planning Authority to Finbarr O'Callaghan dated 05/11/18

**Item 9** – A copy of the response to the Planning Authority from O'Flynn Exhams Solicitors on behalf of Finbarr O'Callaghan dated 26/11/18

**Item 10** - Letter from the Planning Authority to neighbour's solicitor (O'Flynn Exhams Solicitors) dated 14/01/19 in which the Planning Authority state that the Area Planner, who is the current Executive Planner, is aware of the compound and has request notice of the removal of the compound.

**Item 11** - Letter from the Planning Authority to neighbour's solicitor (O'Flynn Exhams Solicitors) dated 18/03/20 in respect of the compound.

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Furthermore, the Executive Planner has also noted the presence of this compound in her report dated 15/05/20 and includes a photograph of the reduced compound, as it is being removed from the site. The Executive Planner also states, in parenthesis, at the beginning of subsection 5 of her report *“(As an aside it is my understanding that the subject area of land was the subject of an enforcement complaint relating to the use of the land as a construction compound arising from the construction of the dwelling to the immediate west, on foot of the permission extended under 14/4160)”*. The Executive Planner fails to also point out that the use of the subject lands for the builder’s compound for a minimum of 14 months was agreed with the Planning Department and that the Executive Area Planner was party to this agreement. Her failure to mention these facts is both incorrect and misleading as these are important details, at a critical period in the use of these lands in deciding the Section 5 declaration.

The Executive Planner is therefore not correct when she states that the subject lands were “habitually open to or used by the public during the 10 years preceding such fencing”. On this point alone it is clear that the declaration is not in accordance with the Planning and Development Act and the Articles therein and it should be reversed.

**No 2 - The Planning Authority did not properly address the question that was raised by the original applicant, Mr Owen O’Brien**

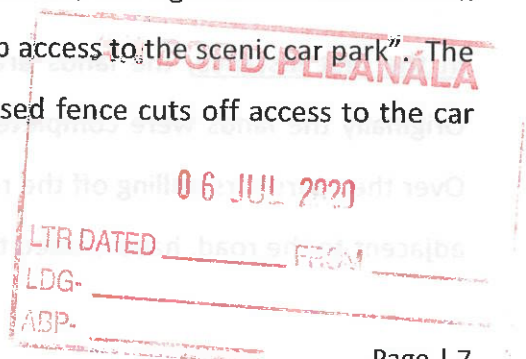
The Applicant of the Section 5 query, Mr O’Brien, queried the exempted status of a fence that he claimed was “...to stop access to a scenic car park”. With his query he provided an erroneous sketch of what he claimed was the proposed line of the new fence. The Executive Planner in dealing with the query undertook a site visit on the 05/05/20 and wrote an initial 12-page report, including pictures, detailing the site of the proposed fence. Her only reference point at that stage was the information supplied by the Applicant including the erroneous sketch. The Executive Planner’s initial report was completed on the 15/05/20, the same day the Executive Planner contacted me by telephone for the first time. This was also a number of days before the correct information was sought in writing from

me by the Planning Authority on the 18/05/20. The correct information was provided by me to the Planning Authority on the 19/05/20.

In her report dated 15/05/20 the Executive Planner had already formed a strong but incorrect opinion that the fence is to be erected adjacent to the public road, cutting off all access to a parking area when she states "...it is proposed to fence this land, through the erection of a concrete post and rail fence, presumably at the northern end of the subject land, adjoining the R612 Regional Road" and "The proposed fence is intended to be sited immediately south of the designated scenic route". The Executive Planner supports this presumption by referring to the sketch provided by the Applicant without first checking if this sketch was accurate. This incorrect map (and submission) was not made available to me when the Planning Authority sought further information from me on the 18/05/20. Therefore, I could not comment directly on it to point out the erroneous nature of it in my response as a result.

Without a copy of the Applicants submission and without knowing what the Executive Planner has presumed in her initial report, I responded to the request for information on the 19/05/20 and included in that response a scaled map of the actual location of the fence, a full 6.0m from the edge of the public road and a minimum of 6.0m from the northern end of the subject lands. The position of the fence is important as it was so located as to allow car parking adjacent to the R612 while eliminating a serious safety risk. I also detailed these facts in the text of my response along with the other details of the proposed fence (see items 3.1 & 3.2).

Significantly, the Executive Planner did not correct this assumption in any way when the correct information was provided to her by me on the 19/05/20. Her subsequent report dated 04/06/20 does not correct the previous assumptions and statements in respect of the position of the fence and whether it cuts off access to a parking area even though the line of the proposed fence is clearly different the Applicant's sketch, is a significant distance from the northern end of the subject lands and does not "stop access to the scenic car park". The Executive Planner continues to contend that the proposed fence cuts off access to the car park when it clearly does not.



It is our contention that the information provided by me on 19/05/20, which effectively corrected and refuted the Applicant's assertion in his query, was not properly taken into account by the Executive Planner and, had she done so, the original query should have been dismissed by the Planning Authority as there was no grounds to continue with the matter. Indeed, I had offered to provide this information to the Planning Authority on the 06/05/20 when I was first contacted by them as I believed the Applicant was obviously misinformed and, without having sight of the Applicants sketch, I could tell that the Applicants query was not based on the correct information. Had I been made aware of the erroneous sketch or been permitted to provide the correct information on the 06/05/20 the matter could have been resolved quickly and the safety fence would have been erected without delay.

We believe that the Executive Planner failed to take all necessary steps to establish the facts before she formed her initial conclusions, and had she done so the query would have been dismissed as unnecessary. In not taking these steps at an early stage she did not assess the situation correctly, particularly in her application of the Planning and Development Act. We therefore seek for the declaration to be reversed or dismissed.

**No 3 - The Planning Authority misinterpreted the situation on the subject lands in respect to natural features of the ground**

Further to the above point, and in advance of the Planning Authority seeking the correct information from me, the Executive Planner visited the subject lands on 05/05/20. In her subsequent report dated 15/05/20, she describes the lands *"to be hard surfaced and a pathway was noted as extending from the subject area towards the coastline to the south"*. This is a completely inaccurate description of the lands and totally misleading.

In the first instance, the lands are not hard surfaced. They have never been surfaced. Originally the lands were completely covered in grass and to a large extent they still are. Over the years cars pulling off the road, to either undertake a turning manoeuvre or to park adjacent to the road, have eroded the grass over the central area of the lands and the areas



immediately adjacent to the road and the natural shale and rock substrata have been exposed. In addition, as noted above, a builder's compound had been using the subject lands over the past 20+ months (since August 2018) and the reinstatement and reseeded of the lands had not yet taken place. As also noted above, the Executive Planner was fully aware of this compound.

However, even if the exposed and damaged areas are now a little larger than before the lands were used for a compound, it must be stated for the record that the lands were never hard surfaced by the landowners or anyone else to our knowledge other than by the builder for his purposes during the construction stages. Indeed, a significant portion of the lands are still covered with grass with a mature tree growing on the eastern end as can be seen in Item 7. To describe the lands as "hard surfaced" is a misrepresentation of the facts and to do so has implied that a formal arrangement for parking over the full area of the lands pre-existed when it did not. The description is totally incorrect, inaccurate and misleading.

In addition to this misleading description, the Executive Planner has failed to acknowledge that the proposal by the landowners, as shown in the details provided to her on the 19/05/20, is to permit parking on the lands immediately adjacent to the public road and, in the interest of safety to erect a safety fence such that vehicles can park safely.

In the second instance the Executive Planner has described a rough and dangerous animal track and dry water course that extends from one corner of the subject lands as being a "pathway". She observed this dry water course or scout when she visited the site prior to seeking the correct information from me. In my telephone call with her on the 15/05/20 I clearly explained to her that no such pathway existed, that there was no Right of Way over the lands and what she was looking at was not a route to the seashore. I also pointed out to her that the correct, safe route to the seashore, which has been in use for over 90 years, is via the Right of Way and the footpath approximately 20m East of the subject lands and the adjacent Atlantic House. I subsequently marked this Right of Way on the map I sent to the Planning Authority as part of my submission on the 19/05/20 marked Item 3.2 attached.

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In response to the Planning Authority on the 19/05/20 I also confirmed to that there was no Right of Way over the subject lands. While a water course/track may appear in on some Google Maps over the years, it does not appear on any Ordnance Survey maps as it does not exist and does not give access to the seashore. It is a natural feature on the very steep and dangerous slope that has been formed by water runoff from the subject lands and by animals. It is a loose and shale covered narrow channel or wadi that would be extremely dangerous to walk upon given the steepness of the slope of the loose nature of the hillside. The Executive Planner obviously clearly did not try to walk this wadi or she would have discovered that it is too steep to walk upon, is dangerous underfoot and does not give access to the seashore.

Even though I explained this to the Executive Planner when she rung me on the 15/05/20 she appears to be determined to describe it as a pathway without any basis and to then to rely upon her own incorrect description to give a foundation for her declaration when none exists.

For the avoidance of doubt in this matter, the Landowners have commissioned an independent Engineers Report on the watercourse/track, which is attached as **Item 12**. From it you will see that the Engineer, Pdraig Murphy BE, MIEI, Consulting Engineer, has described the feature as: -

- i. a scout or minor animal track,
- ii. on a steep incline and with a loose stone cover,
- iii. extremely dangerous,
- iv. completely overgrown and impassable.

It is unfortunate that the Executive Planner did not believe what I had told her on the telephone on the 15/05/20 and in my response on the 19/05/20 and that we have had to commission and independent Engineers Report to prove the nature of this natural feature and correct the record in this regard.

Importantly also is the fact that the Applicant, Mr O'Brien, who resides immediately adjacent to the subject lands (Atlantic House), in his original Section 5 query has not referred to this water course/animal track in any way. He has made no reference to it and his query is solely based on the car park. You would imagine that, if it were an habitually used access to the seashore he would have mentioned it in order to support his query. If the Applicant, a resident of the area, who lives immediately adjacent to the lands, did not think it should be included in the query then it obviously is not an habitually used access to the seashore and does not exist. Why then is the Executive Planner ignoring this fact and our subsequent information and deeming it to be a pathway in habitual use?

To describe this dangerous watercourse/track as a pathway is totally inaccurate, inappropriate and misleading but to then suggest that it provides access to the seashore when the official and safe access is immediately adjacent to the lands is worrying. It is a concern to us as landowners that a Planning Official is promoting the use of such a dangerous route to the seashore by referring to it in an official planning report even though the official route is immediately adjacent and available. The official route to the seashore was clearly identified by me in my response on the 19/05/20, as was the fact that there were no Rights of Way over the subject lands, yet the Executive Planner barely acknowledges these facts and continues to consider this watercourse/animal tract as an access to the seashore that was habitually use and she does so without any foundation. This is baffling.

The Landowners are very concerned about the possibility of foolhardy individuals attempting to use this watercourse/animal track to access the seashore in the mistaken belief that it is safe and is the official access to the seashore. To prevent this from developing, the landowners will be erecting signage on the proposed new fence to redirect the public to the official pathway 20m to the east of the subject lands as soon as the fence is erected. We will also erect signage to warn people of the dangerous edge and steep slope.

In summary, we believe the Executive Planner has: -

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- totally and completely misrepresented a dry watercourse and animal track as a “pathway... habitually used” in her report,
- ignored the details provided to her by the landowners in our response dated 19/05/20,
- ignored the fact that the original query from the Applicant did not even include this natural feature,

and in doing so has wrongly created a situation where the erection of the proposed safety fence and signage on private lands could be construed as not exempted development under Section 5 of the Planning and Development Act. This is not the correct application of this Act.

We therefore submit that the Executive Planner has...

- not described the lands accurately,
- has implied that there was a deliberate hard-surfaced area when there was not,
- has implied that the whole of the area was used for parking when it clearly has not,
- has not taken into account that the builders compound has occupied the area for the last 20+ months,
- has not taken into account that the landowners are positioning the proposed fence to allow safe parking adjacent to the R612,

and in doing so has drawn the wrong conclusions in her declaration when she states that “the development would not be exempted development as it would consist of the fencing or enclosure of land habitually open to or used by public during the 10 years preceding”.

**No 4 - The Planning Authority incorrectly dismissed the reason for the proposed fence and ignores the safety risk to the public.**

In her report dated 04/06/20 the Executive Planner states that “In my discussions with the Area Engineer 04/06/20, the Area Engineer also advised that he did not consider that the erection of the fence, as proposed, would give rise to a traffic hazard”. We have not been provided with any notes made of the conversation from either the Executive Planner or the Area Engineer but it is quiet clear that the Area Engineer did not oppose the erection of the fence on safety grounds. By referring this matter to the Area Engineer in a safety context,

the Executive Planner has introduced a public safety review and the Area Engineer has supported the need for the fence.

Public safety is at the heart of this matter. Public safety is embodied in the Planning and Development Act. The erection of the proposed fence is all about eliminating a traffic hazard and improving public safety. The Executive Planner has dismissed the existing safety risk to the public and to traffic on the subject lands even though she has made sure to confirm with the Area Engineer that the erection of the fence does not cause a traffic hazard. This is not a consistent approach to the application of the Act. It is one-sided and selective. To dismiss safety in her considerations, the Executive Planner is not acting in a reasonable way.

It is also noteworthy that the Executive Planner has visited and taken photographs of the subject lands and never mentioned the significant risk to the public the very dangerous edge of the lands and the very steep and dangerous slope from the lands poses at any stage in her report. Incredibly she has suggested that there is a "pathway" down this steep and dangerous slope without commenting on how dangerous this track would be if anyone attempted to climb down it. It appears that the Executive Planner has selectively included some features of the lands in her consideration but has excluded important public safety considerations, which are central to the case.

The erection of this safety fence has been carefully considered by the landowners. The landowners are prepared to invest in this fence for the good of public safety. It has been positioned to ensure that the parking is safely available adjacent to the public road (R612), while at the same time the fence is sited on a stable section of ground at an appropriate distance from the very dangerous edge. It is 6.0m from the road edge and has been confirmed by the Area Engineer as not causing traffic hazard. Once the fence is erected, a significant public safety risk will be eliminated and the area greatly improved. We believe this should have been taken into consideration and the original third party query dismissed.

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We also request that the safety intent of this fence be now considered in this appeal and the declaration be overturned/dismissed.

**No 5 - There is an error in the planning report in respect of previous planning history**

This is more a comment than strictly associated with the appeal. The Executive Planner refers to a previous planning file reference 02/1867 in her report dated 15/05/20 when she states; *“Permission was also granted on this site under Planning Reg. No. 02/1867 for the construction of a national maritime college, incorporating teaching, training and related facilities at Ringaskiddy.”* This Planning Reference (02/1867) is in relation to planning permission for a maritime college in Ringaskiddy, which is approximately 13 kilometres from and unrelated to the subject lands. The inclusion of this reference in the Executive Planners report and the relevance of it to this case is unexplained by the Executive Planner and has led to some confusion. If this is an error, it should have been corrected in the subsequent report. For the record, there has been no application for planning permission on the subject lands at any stage. It is noted that the Executive Planner does not rely on this erroneous reference in her conclusions.

**Summary**

The Mullins-Collins family, the owners of the subject lands, are deeply concerned that we have been prevented from erecting an urgently required safety fence on our lands at Myrtleville, Co Cork by the Planning Authority. The Planning Authority have caused this delay by incorrectly declaring that the proposed 1.2-metre high fence and gate that was to be erected wholly on private lands in May 2020 “is not exempted development” under the Planning and Development Act and requires planning permission. This declaration was in response to a third-party Section 5 Query. Had the third party not sought this clarification or the incorrect declaration not have been made by the Planning Authority the safety fence would have been erected at the beginning of May 2020 as soon as the builders compound had been removed following the lifting of the Covid-19 lockdown.

We submit that in coming to this declaration the Planning Authority has not correctly dealt with the planning query raised by the Applicant, Mr O'Brien, and has come to the incorrect conclusion in declaring the erection of the fence to be not exempted development. The basis of this appeal, as detailed above, is that: -

- a) The Executive Planner has failed to take into consideration the fact that the subject lands were completely fenced off since for 20+ months since August 2018 even though she was fully aware of the use of the lands by the building contractor. The lands were could not be considered to be habitually open to or used by the public during that period of the 10 years preceding the proposed fencing.
- b) The Executive Planner has not correctly addressed the query raised by the Applicant and has relied upon incorrect information supplied by the Applicant as the basis for her declaration. The Executive Planner has not acknowledged that the correct position of the proposed fence is a minimum of 6.0m metres from the public road and the northern edge of the subject lands and not as suggested by the Applicant in the plan he submitted with his Query. The Executive Planner, in her initial report dated 15/05/20, made an incorrect conclusion on where the fence is to be positioned and did not correct this understanding after the correct information was provided to her. Had she corrected her presumption she would have had to accept that access to the car park was not impeded by the fence. This should have been reason enough to dismiss the Applicants request and to declare the erection of the fence as exempted development as catered for under the Planning and Development Act.
- c) The Executive Planner does not acknowledge or take into her considerations the fact that the landowners are proposing to allow the parking area to remain adjacent to the public road but in a safer, more secure environment with the erection of a safety fence that will prevent vehicles from getting too close to a very dangerous edge and a very steep and dangerous slope.
- d) The Executive Planner introduced a spurious consideration when she declared a natural feature of the hillside, a dry water course / animal track, to be a pathway

APPROVED

08 JUL 2020

LTR DATED \_\_\_\_\_

LDG- \_\_\_\_\_

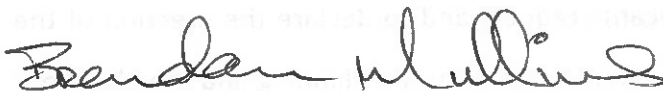
ABP- \_\_\_\_\_

providing access to the seashore when it is clearly not so. Had she fully investigated this wadi she would have seen that it is too dangerous to walk and does not lead to the seashore. This feature was not even included in the original query by the Applicant who is a resident of the area and lives immediately adjacent to the subject lands. Equally, and importantly, it is not marked on any Ordnance Survey map. The Executive Planner's description of this natural feature as a "pathway" is a misrepresentation of the facts and is without foundation or justification, yet it has been used as one of the central pillars to support the incorrect declaration. This is supported by the independent Engineers report.

- e) The Executive Planner has only selectively considered the safety of the site and in doing so ignores the purpose of the fence, which is to enhance public safety and eliminate a public risk and traffic hazard. In ignoring the safety risk on the subject lands, the Executive Planner is not applying the Planning and Development Act in an even handed and reasonable manner.

The Landowners are therefore seeking to have this declaration overturned or dismissed and the fence to be deemed exempted development under the Planning & Development Act in order to allow us to proceed with its erection without further delay.

Yours Sincerely,



Brendan Mullins

(on behalf of the Mullins-Collins Family)



ITEM 1

Comhairle Contae Chorcaí  
Cork County Council

Mr Brendan Mullins  
By e-mail

[REDACTED]

An Rannóg Pleanála,  
Halla an Chontae,  
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Email: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
Web: [www.corkcoco.ie](http://www.corkcoco.ie)



E-mail: [Kevin.oregan@corkcoco.ie](mailto:Kevin.oregan@corkcoco.ie)

Direct Dial: 021 4285352

Date 6<sup>th</sup> May 2020


**Re: Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended)**

*The Landowner is proposing to build a concrete fence to stop access to as scenic car park which has been in use for over 100 years. I am seeking to insist on planning being granted before construction begins.*

Dear Sir,

Please be advised that a declaration has been sought with respect to a Section 5 of the Planning and Development Act 2000, (as amended) from the Planning Authority by Mr Owen O'Brien, Atlantic House, Coast Road, Myrtleville with respect to whether the above description at lands at Car Park, Pollgor, Coast Road, Myrtleville, Co Cork constitutes development.

Yours Faithfully

  
Kevin O' Regan  
Senior Executive Officer  
Planning & Development Directorate

AN BORD PLEANÁLA	
06 JUL 2020	
LTR DATED _____	FROM _____
LDG- _____	
/BP- _____	

ITEM 2

# Comhairle Contae Chorcaí Cork County Council

Mr Brendan Mullins  
By e-mail

[REDACTED]

An Rannóg Pleanála,  
Halla an Chontae,  
Bóthar Charraig Ruacháin,  
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Web: [www.corkcoco.ie](http://www.corkcoco.ie)



E-mail: [Kevin.oregan@corkcoco.ie](mailto:Kevin.oregan@corkcoco.ie)

Direct Dial: 021 4285352

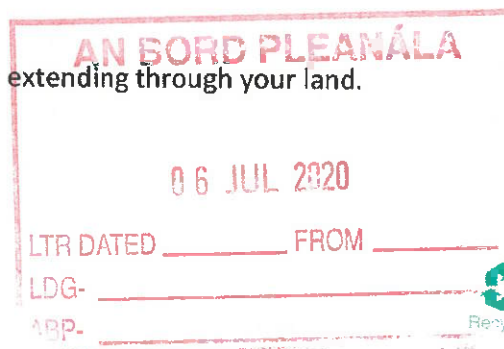
Date 18<sup>th</sup> May 2020

## Re: Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended)

Dear Mr Mullins,

Further to our recent correspondence in relation to the above the Area Planner has requested that the following information to enable the Planning Authority to make a determination in this case. **I wish to advise that you should formally respond in full and provide detailed responses to each of the following within 4 weeks of the date of this letter.**

1. Please clarify the intended siting of the proposed fence to be erected on the subject lands in your ownership and submit an appropriately scaled map identifying clearly the extent of the subject lands in your ownership and the intended siting of the proposed fence.
2. Verify that the proposed fence is to consist of concrete post and concrete rail construction and detail the intended height of the fence.
3. Please clarify if the subject land which is proposed to be fenced has been open to or used by the public within the ten years preceding the intended date of erection of the proposed fence.
4. Clarify if the proposed works consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore.
5. Clarify if there are any public Rights of Way extending through your land.




We are Cork.

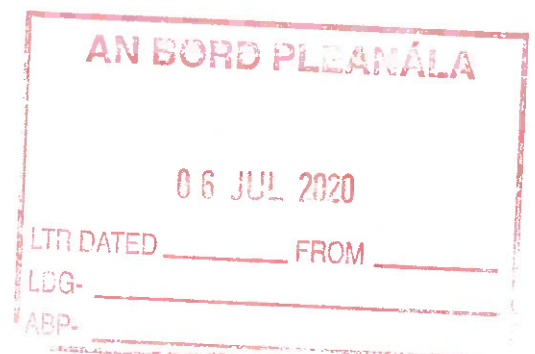


Recycled

Any documentary evidence, including legal opinion etc. with respect of the above questions may also be submitted to the Planning Authority

Yours Faithfully

  
Kevin O' Regan  
Senior Executive Officer  
Planning & Development Directorate



# ITEM 3.1

Mr Kevin O'Regan,  
Senior Executive Officer,  
Planning & Development Directorate,  
Cork County Council.

By email:- [REDACTED]

Date:- 19<sup>th</sup> May 2020

**Subject:- Proposed Safety Fence at Myrtleville, Co Cork**

## **Without Prejudice**

Dear Mr O'Regan,

Thank you for your letter dated 18<sup>th</sup> May 2020 and your previous emails.

In response, and without prejudice, I have attached in this email a copy of the requested details of the proposed safety fence for your attention and that of Ms Barry. The extended Mullins-Collins Family are deeply concerned by the public safety risk in this open area where there is currently no barrier in place to prevent vehicles or people from falling over a very dangerous edge at the top of a very high and steep slope. Accordingly, the Mullins-Collins family have committed to erect a safety fence on family lands while continuing to offer the parking amenity.

By way of background, which I believe is important, I would like to state that the wider Mullins-Collins family became increasingly aware of this safety issue when my late aunt and co-owner of the lands, Katherine Collins, became ill and passed away in 2018. We also became aware that some people had started accessing the rocky shoreline known as Poulgorm by climbing down a very steep and unstable slope in front of the open area instead of using the established pathway adjacent to Atlantic House as shown on the attached map. It is not known how long this practice has been going on and there is no right-of-way for this unofficial route. The official right-of-way and safe route to Poulgorm, as established for over 90 years, is along this adjacent pathway as shown.

To rectify matters, we arranged for the official pathway to be cleared of any overgrowth in 2018 and signs to be erected to direct people to the pathway. By way of a temporary arrangement with an adjacent property owner we also arranged for temporary fencing to be erected while their property was being rebuilt. This property is now effectively complete and the temporary fencing is about to be fully removed. It is therefore imperative that a more permanent fence be erected as soon as possible in order to eliminate the safety risk. Arrangements are in place for this fence to be erected immediately.

In respect of the fence details, we can confirm:-

- a. The fence will be 1.2m high.
- b. The fence will be set back 6.0m from the edge of the road pavement on stable ground within family lands to allow for off-road parking.
- c. The fence will extend between the boundaries of the adjacent properties with no gap other than the lockable gate.

AN BORD PLEANÁLA

06 JUL 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

- d. The fence will be a precast concrete post and rail fence (3No rails), which will ensure people and cars reasonably maintain a safe distance from the dangerous edge.
- e. The fence will be low enough (1.2m) so that it does not obstruct the sea view.
- f. The fence will include a 3.0m long, 1.2m high galvanised steel field gate at its western end to allow access to the lands. This gate will be secured by way of a padlock. The gate will be erected so that it will only open into the enclosed space, away from the public road.
- g. The details of the fence are shown on the attached file  
(See Fence Proposal\_Mullins-Collins \_ Myrtleville\_18.05.2020)

We can further confirm that there are no rights-of-way extending through the subject lands shown on the attached map.

We trust this clarifies the matter for you and we seek that this matter be brought to a swift conclusion to allow the necessary safety fence to be erected immediately.

Yours Sincerely,



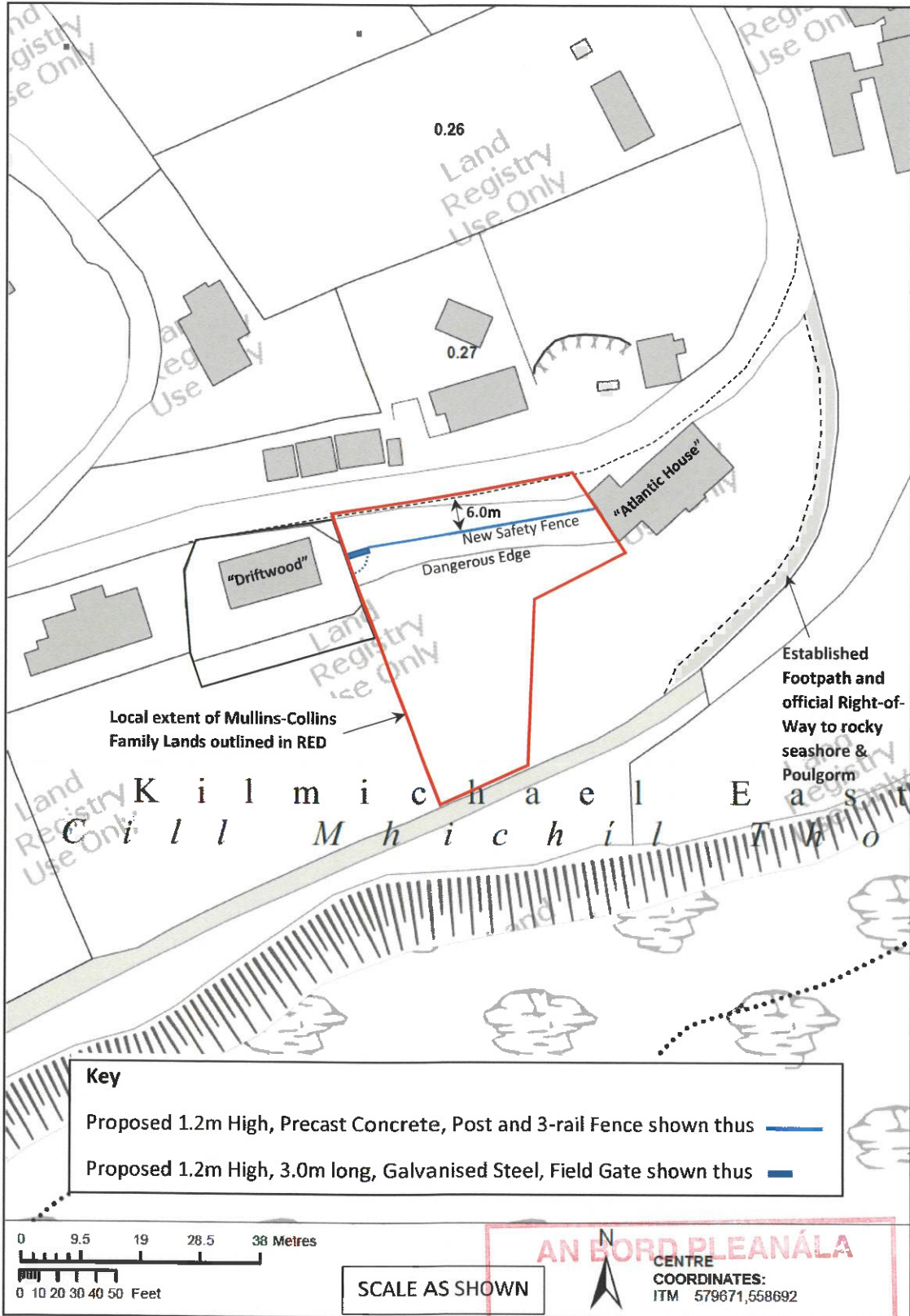
**Brendan Mullins** BE, MEng Sc,  
Chartered Engineer,  
on behalf of the Mullins-Collins Family

email:- [REDACTED]



ITEM 3.2

**Proposed Location of Safety Fence on Mullins-Collins Lands at Myrtleville, Co Cork**



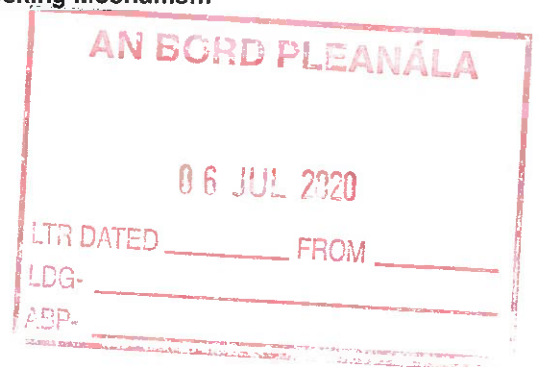
## Typical Details of Proposed Fence



Typical 1.2m high 3-Rail Precast Concrete Fence



Typical 1.2m high Galvanised Steel Field Gate with Locking Mechanism



ITEM 4

## Comhairle Contae Chorcaí Cork County Council

Brendan Mullins,  
By e-mail

10<sup>th</sup> June, 2020

Our Ref.: D/232/20

Re: **Declaration of Exempted Development under Section 5 of The Planning and Development Act 2000 – 2010.**

*Whether the proposed erection of a concrete post and rail fence at Coast Road, Kilmichael East, Myrtleville, Co. Cork is development and is or is not exempted development.*

Dear Sir,

Further to recent correspondence notifying you of a third party Declaration with regard to the above development I attach for your information copy of the Planning Authority's decision.

Yours faithfully,

  
KEVIN O'REGAN  
SENIOR EXECUTIVE OFFICER,  
PLANNING DEPARTMENT.

Encl.

An Rannóg Pleanála,  
Halla an Chontae,  
Bóthar Charraig Ruacháin,  
Corcaigh T12 R2NC.

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

Planning Department,

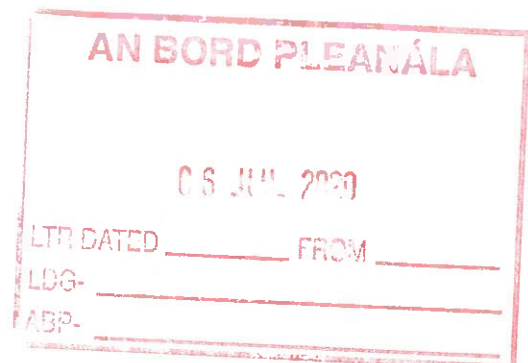
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Web: [www.corkcoco.ie](http://www.corkcoco.ie)



*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>*



# Comhairle Contae Chorcaí Cork County Council

Owen O'Brien,  
Atlantic House,  
Coast Road,  
Myrtleville,  
Co. Cork.

10<sup>th</sup> June, 2020

REF: D/232/20  
LOCATION: Site at Coast Road, Kilmichael East, Myrtleville, 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 by email on 28<sup>th</sup> April, 2020 the Planning Authority, having considered whether the proposed erection of a concrete post and rail fence at **Coast Road, Kilmichael, Myrtleville, Co. Cork** 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 the

- Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended
- Articles 6(1) and 9(1)(a)(x) of the Planning and Development Regulations, 2001
- Class 11(a) of Part 1 of Schedule 2 to the said Regulations and
- The submissions/declaration documents received by the Planning Authority and consultations with the Area Engineer

**And Whereas the Planning Authority** has concluded that –

- a) The land in question is not within the curtilage of a house,
- b) The construction of the subject fence would constitute works that come within the scope of Section 3(1) of the Planning and Development Act, 2000 and therefore constitute development,
- c) The proposed fence would come within the scope of the exempted development afforded under Class 11(a) of the Second Schedule, Part 1, to the Planning and Development Regulations, 2001, as amended but;
- d) The development would not be exempted development as it would consist of the fencing or enclosure of land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means to access to any seashore or other place of natural beauty or recreational utility, and therefore, the restriction on exemption under Article 9(1)(a)(x) of the Planning and Development Regulations 2001, as amended, applies in this instance.

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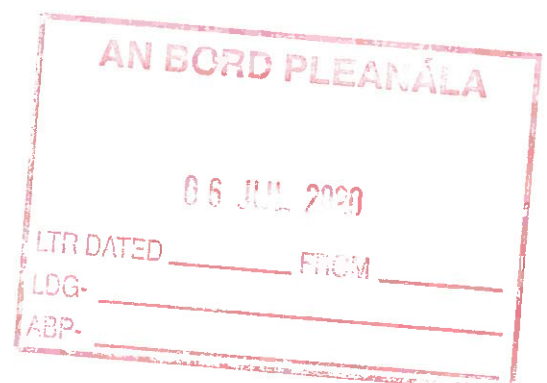


**NOW THEREFORE, Cork County Council**, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the proposed construction of a fence measuring 1.2 metres high at Coast Road, Kilmichael, Myrtleville, Co. Cork **is development and is not exempted development.**

**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.**



ITEM 5

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

OWEN O'BRIEN

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

CAR PARK AT POLLGORM  
COAST ROAD  
MYRLIEDVILLE CO. CORK

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 LANDOWNER IS PROPOSING TO  
BUILDS A CONCRETE FENCE TO  
STOP ACCESS TO A SCENIC  
CAR PARK WHICH HAS BEEN IN  
USE FOR OVER 100 YEARS  
I AM SEEKING TO INSIST ON  
PLANNING BEING GRANTED  
BEFORE CONSTRUCTION BEGINS.

AN BORD PLEANALA  
06 JUL 2020  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

**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):	
(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 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>PUBLIC CAR PARK</u>	<u>PRIVATE HANDS</u> <u>FENCED OFF</u>
(d) Are you aware of any enforcement proceedings connected to this site?  NO	Yes <input type="checkbox"/> No <input 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 type="checkbox"/>	B. Other <input checked="" type="checkbox"/>
Where legal interest is "Other", please state your interest in the land/structure:	<u>HOUSE OWNER IMMEDIATELY EAST OF LAND</u>	
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):	<u>BRENDAN MULLINS - COLLIPS ESTATE</u>	

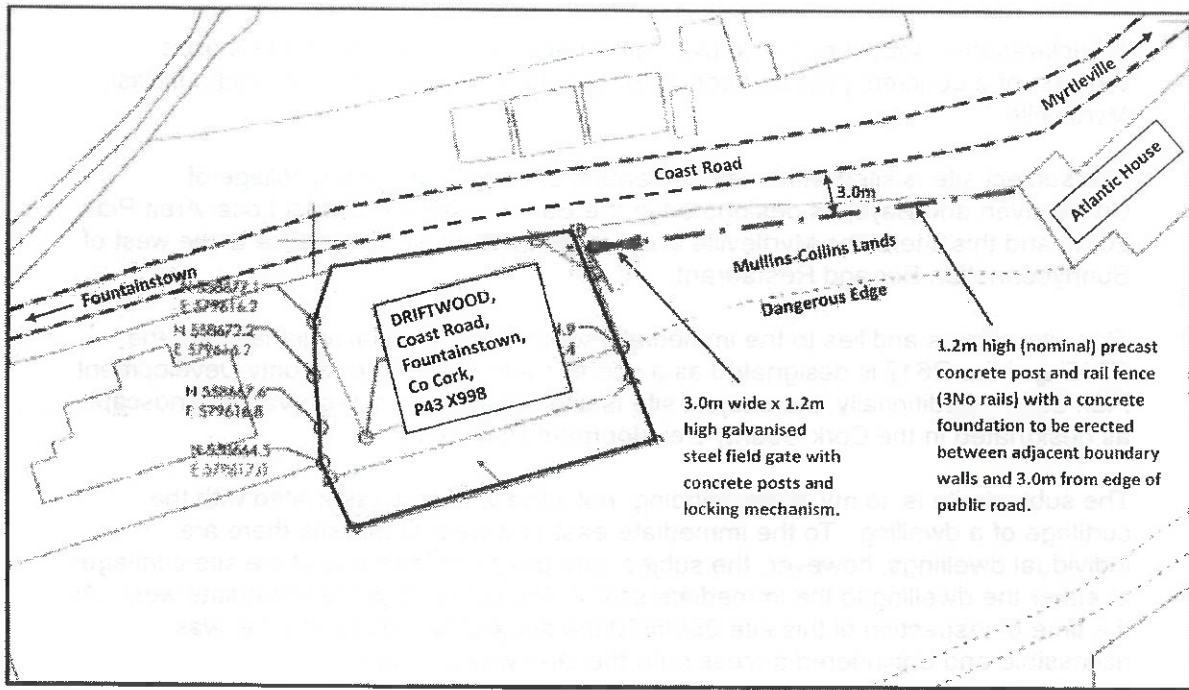
**6. PROTECTED STRUCTURE DETAILS / ARCHITECTURAL CONSERVATION AREA:**

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

**Permanent Fence to Mullins-Collins Lands at Myrtleville, Co Cork**



Document Classification: Class 1 - General

**AN BORD PLEANÁLA**

06 JUL 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

L.DG- \_\_\_\_\_

APP- \_\_\_\_\_

## 1. General Details

<i>Applicant/Agent's Name</i>	Owen O Brien (Third Party applicant) <i>Brendan Mullins – Collins Estate (landowner)</i>
<i>Description</i>	Whether the proposed erection of a concrete post and rail fence is development and is or is not exempted development
<i>Location</i>	Coast Road, Kilmichael East, Myrtleville.

## 2. Declaration Sought

A declaration is sought by the above named applicant regarding the proposed erection of a concrete post and concrete rail fence at Coast Road, Kilmichael East, Myrtleville.

The subject site is sited within the settlement boundary of the Key Village of Crosshaven and Bays, as designated in the Bandon Kinsale District Local Area Plan 2017, and this site in the Myrtleville area, is also sited a short distance to the west of Bunnyconnellan Bar and Restaurant.

This site adjoins and lies to the immediate south of the coastal regional road, the R612 and the R612 is designated as a scenic route in the Cork County Development Plan 2014. Additionally, the subject site is sited in an area of High Value Landscape, as designated in the Cork County Development Plan 2014.

The subject site is, to my understanding, not sited within or associated with the curtilage of a dwelling. To the immediate east and west of this site there are individual dwellings, however, the subject site does not form part of the site curtilages of either the dwelling to the immediate east or the dwelling to the immediate west. At the time of inspection of this site 05/05/20 the subject site was open, i.e. was accessible and unhindered access onto the land was available.

The above named applicant is a third party i.e. not the property / land owner and seeks the view of the Planning Authority regarding whether the proposed erection of a concrete post and rail fence is or is not development and is or is not exempted development.

It is contended in the application documents that a fence is proposed on the subject land at Coast Road, Kilmichael East, Myrtleville "to stop access to a scenic car park which has been in use for over 100 years", as is stated in the submitted application form.

The submitted application form describes the current use of the subject land as a "Public Car Park" and it is proposed to fence this land, through the erection of a concrete post and rail fence, presumably at the northern end of the subject land, adjoining the R612 Regional Road, as is suggested by the submitted site plan.

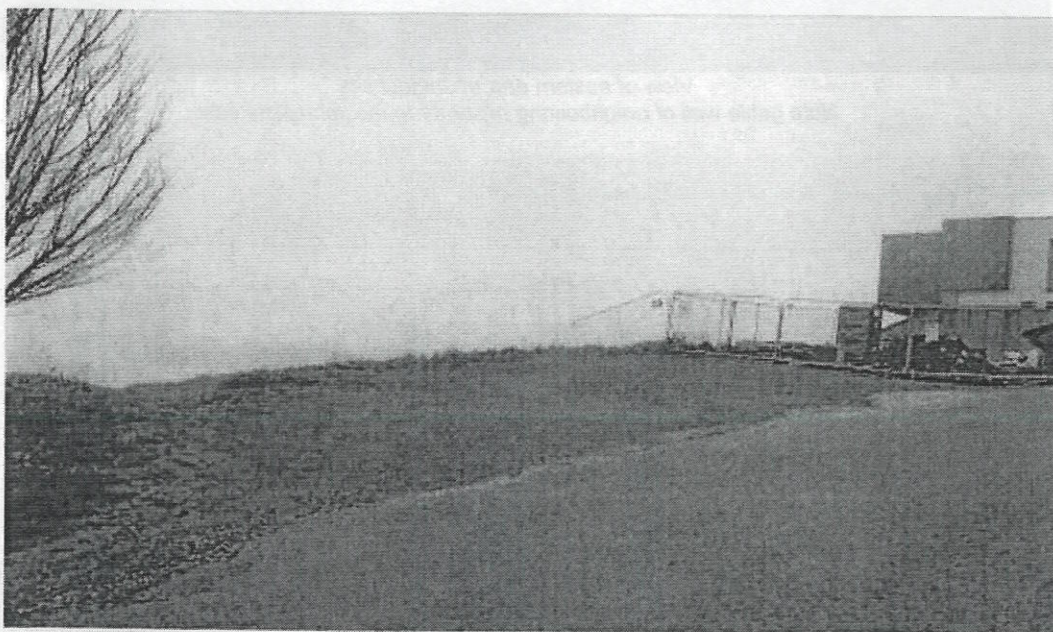
At the time of inspection of the subject site it was evident that the subject area of land is open to the R612 to the immediate north, with no existing boundary treatment in place. The subject area of land appeared to be hard surfaced and a pathway was also noted as extending from the subject area towards the coastline to the south.

No cars were parked to the southern side of the R612 on the subject land at the time of inspection, however, the site was inspected at a time of inclement weather.

I have also looked at an aerial photograph of the subject site, as is evident below, and the aerial photograph has indicated the presence of cars parked on the subject land, at the time the aerial photograph was taken.

*(I have been informed by Mr Kevin O Regan, SEO Planning Department that the owner(s) of the subject area of land where the fence is proposed has been informed of the subject Section 5 Declaration request.*

*I also engaged in a telephone conversation with the landowner Mr. Mullins, by telephone, on 15/05/20).*



***Part of subject site and intended location of proposed concrete post and rail fence  
(in the absence of clarity/ confirmation of same from the relevant landowner)***

AN BORD PLEANÁLA

06 JUL 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



*View of eastern end of subject site  
Note gable wall of neighbouring property to the immediate east*



*View of western end of subject site  
Note newly constructed dwelling to the immediate west*





*Dwelling to the immediate east of intended siting of concrete post and rail fence*

**AN BORD PLEANÁLA**  
06 JUL 2020  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
REP. \_\_\_\_\_



*Pathway visible from subject area of land, facilitating access to coastline*



View of pathway leading to the coast from subject area of land



Extract from Google Maps  
 Note the presence of cars on the subject site  
 Pathway leading from the subject area also visible

### 3. Planning History

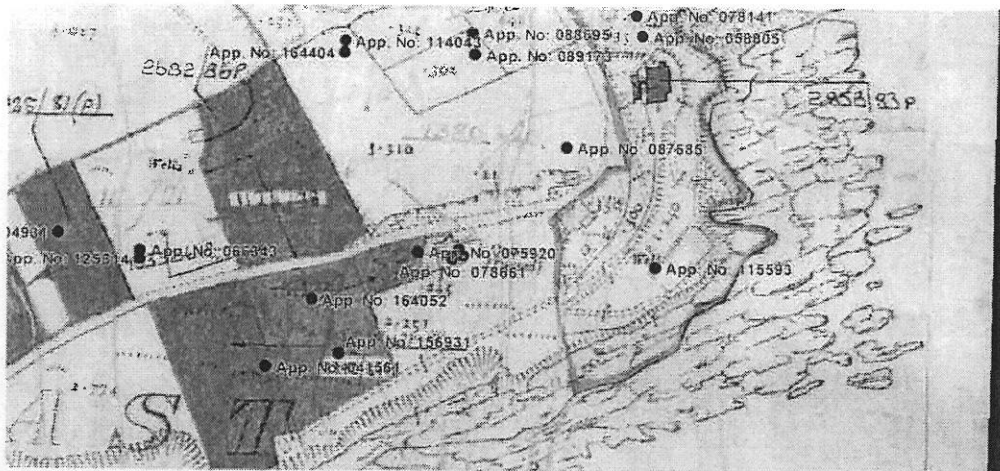
**AN BORD PLEANÁLA**

06 JUL 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ADP- \_\_\_\_\_



Extract from Planning Register – history layer activated



Extract from Planning Register – with aerial photography layer activated

Note presence of 3 no. cars within subject site and part of encircled area hard surfaced / not grassed  
 Pathway from subject site also visible and indicated by arrow

## 4. Statutory Provisions

### (A) Planning and Development Act 2000 (as amended)

Works are defined in Section 2 of the Planning and Development Act 2000 as amended to include "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal".

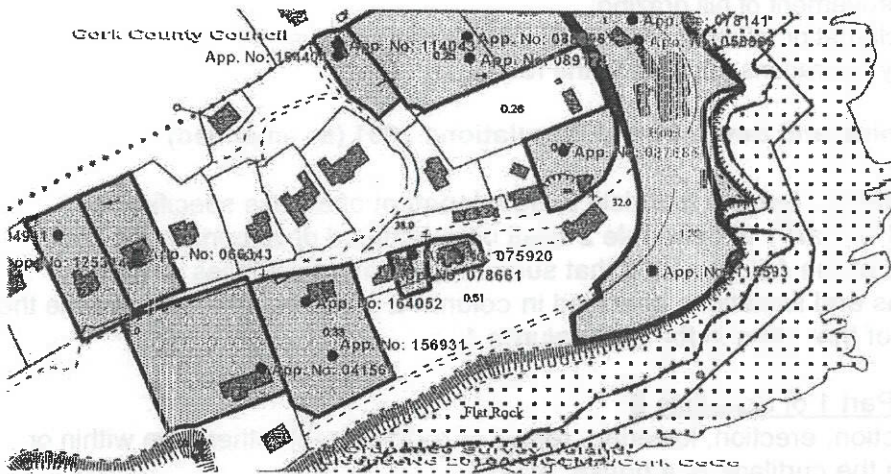
Section 2(1) of the Planning and Development Act states as follows: "In this act, except where the context otherwise requires – 'development' has the meaning assigned to it by Section 3..."

Section 3.1 of the 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"

There is no evidence of a planning history on this site, with no record of any previous planning applications thereon since 1963, as per the extracts from the Planning Register below.

Immediately to the west of this site, permission was most recently granted under Planning Reg. No. 14/4160 for the demolition of dwelling and construction of dwellinghouse with semi-basement and proprietary treatment unit - extension of duration to permission granted under Planning Ref. No. 08/8741. (*The permission extended under 14/4160 has now been implemented and a new dwelling constructed thereon*).

Permission was also granted on this site under Planning Reg. No. 02/1867 for the construction of a national maritime college, incorporating teaching, training and related facilities at Ringaskiddy.



Extract from Planning Register



Extract from Planning Register – history layer activated

**AN BORD PLEANÁLA**

06 JUL 2020

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Section 4(1) of the Act outlines development which is exempted development for the purposes of the Act. Section 4(1)(l) of the PDA refers to development consisting of the carrying out of any of the works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced or works consisting of land reclamation or reclamation of estuarine marsh land and of callows, referred to in section 2 of that Act.

'Works' as defined by the Land Reclamation Act 1949 include the following:

- a. field drainage;
- b. land reclamation;
- c. the construction and improvement of watercourses;
- d. the removal of unnecessary fences;
- e. the construction of new fences and the improvement of existing ones;
- f. improvement of hill grazing;
- g. reclamation of estuarine marsh land and of callows;
- h. any operations ancillary to the foregoing.

**(B) Planning and Development Regulations 2001 (as amended)**

Article 6(1) states: 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.

Class 11 of Part 1 of Schedule 2

The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –

- (a) any fence (not being a hoarding or sheet metal fence), or
- (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

The conditions and limitations attached to this Class are as follows:

1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.
2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.

Article 9(1) states that development to which Article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would:

- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) Obstruct any public right of way,

## 5. Assessment

*(As an aside it is my understanding that the subject area of land was the subject of an enforcement complaint, relating to the use of the land as a construction compound arising from the construction of the dwelling to the immediate west, on foot of the permission extended under 14/4160).*

Having regard to the matters outlined above, the subject declaration relates to the proposed erection of a concrete post and concrete rail fence to the southern side of the R612 Regional Road, at Coast Road, Kilmichael East, Myrtleville. The proposed fence is intended to be sited to the immediate south of a designated scenic route, in an area of High Value Landscape and is to be constructed on land that does not form part of the curtilage of a dwelling. An indicative location for the proposed fence has been put forward by the third party applicant.

The question before the Planning Authority raises the question about whether the proposed erection of a concrete post and concrete rail fence to the southern side of the R612 along part of the Coast Road in Myrtleville is development and is or is not exempted development.

For the purposes of assessment of this Section 5 request the 2 main questions that arise are:

1. Is the erection of a post and rail concrete fence along / beside a road development?
2. Is the erection of a post and rail concrete fence along / beside a road exempted development?

**Is the erection of a post and wire fence along a road development?** As detailed above, Section 3(1) of the Planning and Development Act 2000 as amended states that "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. Given that the proposed concrete post and rail fence comprises works on the land in question, comprising a series of concrete posts driven into the ground and connected by a series of concrete rails, it is considered that the proposed fence would constitute development.

**Is the erection of a post and rail concrete fence along / beside a road exempted development?** The second question that arises in the assessment of this Section 5 request is whether the proposed development is or is not exempted development.

In my view given that the subject Section 5 request has been submitted by a third party, and to enable the Planning Authority to determine the second question above, it would be appropriate and prudent to get clarity from the landowner regarding the intended siting of the proposed fence and to get certainty in relation to the intended siting of the fence and its height, material finish etc.

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It is also my view that it would be appropriate to request further information regarding these matters, having regard in particular to the provision of Section 4(1)(l) of the Planning and Development Act 2000 (as amended) and the provisions of the Planning and Development Regulations 2001 (as amended), most notably the provisions of Article 9 (1)(a) (iii), (vi) and (x). Given the applicant's contention that the area of land where the fence is proposed to be erected relates to a "Public Car Park which has been in used for over 100 years", clarity is also required from the landowner regarding whether the subject area of land has been habitually open to or used by the public during the 10 years preceding the intended erection of such fencing or enclosure for recreational purposes or as a means of access to any seashore.

Once the Planning Authority received clarity regarding the intended siting of the proposed fence, and in terms of its construction etc., it would be appropriate to seek the views of the Area Engineer with respect to whether the proposed fence would endanger public safety by reason of traffic hazard or obstruction of road users, having regard to Article 9(1)(a)(iii).

## **6. Conclusion**

Accordingly, whereas the Planning Authority has been requested to adjudicate on whether the proposed erection of a concrete post and rail fence is development and is or is not exempted development at Coast Road, Kilmichael East, Myrtleville, it is considered that further information is required to enable the assessment of the subject request.

Where a question has arisen as to whether the proposed erection of a concrete post and concrete rail fence at Coast Road, Kilmichael East, Myrtleville is or is not development and is or is not exempted development, additional information is required.

- (a) It is recommended that the Planning Authority write to the site owner, i.e. Mr Brendan Mullins and advise him that a third party has sought a declaration with respect to Section 5 of the Planning and Development Act 2000 (as amended) and a declaration has been sought from the Planning Authority with respect to the proposed erection of a concrete post and concrete rail fence on land understood to be in his / his family ownership at Coast Road, Kilmichael East, Myrtleville.

Having regard to the submitted declaration request, the Planning Authority requires the owner of the said land to submit information in order to enable the Authority to issue a declaration on the question.

The following further information is required from the site owner:

1. Please clarify the intended siting of the proposed fence to be erected on the subject lands in your ownership and submit an appropriately scaled map identifying clearly the extent of the subject lands in your ownership and the intended siting of the proposed fence.
2. Verify that the proposed fence is to consist of concrete post and concrete rail construction and detail the intended height of the fence.



3. Please clarify if the subject land which is proposed to be fenced has been open to or used by the public within the ten years preceding the intended date of erection of the proposed fence.
4. Clarify if the proposed works consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore.
5. Clarify if there are any public Rights of Way extending through your land.

Any documentary evidence, including legal opinion etc with respect of the above questions may also be submitted to the Planning Authority.

***The site owner should also be advised that they should formally respond in full to the matters above within 4 weeks of receipt of the request for information from Cork County Council.***

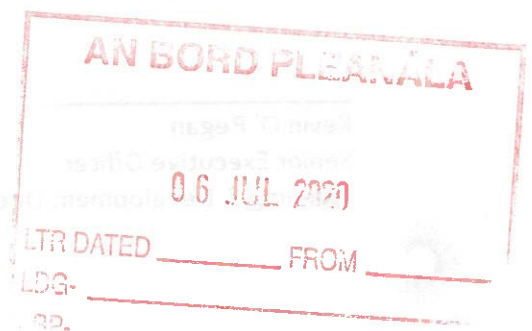
- (b) It is also recommended that the Planning Authority would write to the applicant in this case, i.e. Mr Owen O Brien and inform him that the Planning Authority is seeking information from the owner of the subject land to enable the Authority to adjudicate on the submitted declaration request.

Mr O Brien should be advised that the land owner is being given 4 weeks to formally submit the information required to enable the Planning Authority to make a determination on the declaration requested.

**I refer this Section 5 request to the Senior Executive Planner for further comment.**

---

Ronnie Barry,  
Executive Planner,  
15/05/20.

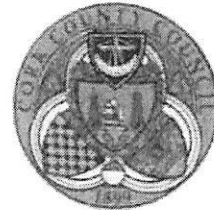


Comhairle Contae Chorcaí  
Cork County Council

Mr Owen O'Brien  
By e-mail

[REDACTED]

An Rannóg Pleanála,  
Halla an Chontae,  
Bóthar Charraig Ruacháin,  
Corcaigh T12 R2NC.  
Fón: (021) 4276891 • Fais: (021) 4276321  
R-phost: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
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Planning Department,  
County Hall,  
Carrigrohane Road, Cork: T12 R2NC.  
Tel (021) 4276891 • Fax (021) 4276321  
Email: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
Web: [www.corkcoco.ie](http://www.corkcoco.ie)



E-mail: [Kevin.oregan@corkcoco.ie](mailto:Kevin.oregan@corkcoco.ie)

Direct Dial: 021 4285352

Date 18<sup>th</sup> May 2020

**Re: Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended)**

Dear Mr Owens,

Please be advised that the Planning Authority has requested the following information from the site owner to enable it make a determination in this matter. Mr Mullins has been requested to provide the following within 4 weeks of this letter.

6. Please clarify the intended siting of the proposed fence to be erected on the subject lands in your ownership and submit an appropriately scaled map identifying clearly the extent of the subject lands in your ownership and the intended siting of the proposed fence.
7. Verify that the proposed fence is to consist of concrete post and concrete rail construction and detail the intended height of the fence.
8. Please clarify if the subject land which is proposed to be fenced has been open to or used by the public within the ten years preceding the intended date of erection of the proposed fence.
9. Clarify if the proposed works consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore.
10. Clarify if there are any public Rights of Way extending through your land.

Yours Faithfully

---

**Kevin O' Regan**  
Senior Executive Officer  
Planning & Development Directorate



We are Cork.



Recycled

## 1. General Details

<i>Applicant/Agent's Name</i>	Owen O Brien (Third Party applicant) <i>Brendan Mullins – Collins Estate (landowner)</i>
<i>Description</i>	Whether the proposed erection of a concrete post and rail fence is development and is or is not exempted development
<i>Location</i>	Coast Road, Kilmichael East, Myrtleville.

## 2. Comments in response to further information submitted and conclusion

The subject Section 5 request was deferred in the first instance and further information was sought from the property owners to enable the Planning Authority to make a determination on whether the proposed erection of a concrete post and rail fence at Coast Road, Kilmichael East, Myrtleville is or is not development and is or is not exempted development. The request for further information asked 5 no. questions of the property owners i.e.

- 1. Please clarify the intended siting of the proposed fence to be erected on the subject lands in your ownership and submit an appropriately scaled map identifying clearly the extent of the subject lands in your ownership and the intended siting of the proposed fence.*
- 2. Verify that the proposed fence is to consist of concrete post and concrete rail construction and detail the intended height of the fence.*
- 3. Please clarify if the subject land which is proposed to be fenced has been open to or used by the public within the ten years preceding the intended date of erection of the proposed fence.*
- 4. Clarify if the proposed works consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore.*
- 5. Clarify if there are any public Rights of Way extending through your land.*

As per my earlier report on the subject Section 5 request, it is considered that the proposed erection of a concrete post and rail fence on the subject land at Coast Road, Kilmichael East, Fountainstown would constitute development.

The second question that arises in the assessment of this Section 5 request is whether the proposed development is or is not exempted development. Clarity was sought from the landowner in relation to the intended siting of the subject fence, its intended height material finish etc. The response received has submitted a site plan

**A. BORD PLEANÁLA**  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
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which clearly indicates that the proposed fence is to consist of a 1.2 m high precast concrete post and 3 rail fence, as per the site plan received 19/05/20. It is also noted at to the west of the proposed fence a 1.2 m high, 3 m long galvanised steel field gate is also proposed.

Given that the intended siting of the proposed fence does not lie within the curtilage of a house, the proposed fence would appear to come within the scope of Schedule 2, Part 1, Class 11 of the Planning and Development Regulations 2001 (as amended).

However, having regard to the Restrictions on exemption set out in Article 9 of the Planning and Development Regulations 2001 (as amended), clarity was also sought from the landowner in relation to whether the subject land upon which the fence is to be sited has been open to or used by the public within the ten years preceding the intended date of erection of the proposed fence, in relation to whether the proposed works involve the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore and in relation to whether there are any public Rights of Way extending through your land.

In response to the questions posed in 3, 4, and 5 of the request for further information the representative of the property owner has confirmed that there are no public rights of way in place over the subject land. The established footpath and official Right of Way to the rocky seashore and Poulgorm have been identified as being located to the east of the subject site, extending from an area to the east of Atlantic House. The response to question 5 raised in the request for further information is noted.

In my view the representative of the landowner has not directly addressed the matters raised in questions 3 and 4 of the request for further information and the representative of the landowner has not provided clarity regarding whether the area proposed to be fenced has been open to or used by the public within the ten years preceding the intended date of erection of the proposed fence or whether the proposed development will consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore.

However, notwithstanding the lack of clarity provided to the issues raised in questions 3 and 4, it is evident from the information contained in the representative's response that the subject area of land, described as an open area in the response received, has been used by members of the public. The response received indicates that it is not known when a pathway from the subject area of land started to be used by members of the public to facilitate access to Poulgorm and the shoreline. However, it is also my understanding that the subject area of land has been used habitually open to and used by members of the public, particularly as an area of public parking for a number of years, extending to decades of such use. I have also discussed this issue with the Area Engineer (*by telephone 04/06/20*) and he has confirmed that the subject area, upon which a fence is proposed to be erected, has been open to or used by the public within the ten years preceding the intended date of erection of the proposed fence and that the proposed works consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore.

To my knowledge the subject area is often referenced as a "car park", having been habitually used for this purposes for years / decades, to facilitate access to the foreshore, even if people were availing of the pathway from the subject land or accessing the seashore for recreational purposes via the Right of Way to the east.

In my discussions with the Area Engineer 04/06/20, the Area Engineer also advised that he did not consider that the erection of the fence, as proposed, would give rise to a traffic hazard.

While as outlined above the construction of the proposed fence at the subject location could ordinarily be considered to come within the scope of Schedule 2, Part 1, Class 11 of the Planning and Development Regulations 2001 (as amended), having regard to the Restrictions on exemption set out in Article 9 of the Planning and Development Regulations 2001 (as amended) and most particularly to the provisions of Article 9 (1)(a)(x), it is my considered view that the proposed fence would constitute development and would not be exempted development. The restriction of exemption set out in Article 9 (1)(a)(x) states essentially that "*development to which article 6 relates shall not be exempted development for the purposes of the Act – if the carrying out of such development would – consist of fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility*" and in my view the proposed works / development involving the proposed erection of a fence on the subject land would consist of the fencing or enclosure of land habitually open to or used by the public for in excess of 10 years preceding such fencing or as a means of access to the seashore.

Accordingly, whereas the Planning Authority has been requested to adjudicate on whether the proposed erection of a concrete post and rail fence is development and is or is not exempted development at Coast Road, Kilmichael East, Myrtleville and having had regard to:

- (a) (a) sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 6(1) and 9(1)(a)(x) of the Planning and Development Regulations, 2001, as amended, and Class 11(a) of Part 1 of Schedule 2 to those Regulations, and
- (c) the submissions / declaration documents received by the Planning Authority and consultations with the Area Engineer,

And whereas Cork County Council concludes that

- (a) the land in question is not within the curtilage of a house,
- (b) the construction of the subject fence would constitute works that come within the scope of Section 3(1) of the Planning and Development Act, 2000, and, therefore, constitutes development,
- (c) the proposed fence would come within the scope of the exempted development afforded under Class 11(a) of the Second Schedule, Part 1, to the Planning and Development Regulations, 2001, as amended; but;

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ADD. \_\_\_\_\_

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- (d) the development would not be exempted development as it would consist of the fencing or enclosure of land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore or other place of natural beauty or recreational utility, and, therefore, the restriction on exemption under Article 9(1)(a)(x) of the Planning and Development Regulations 2001, as amended, applies in this instance.

And 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 fence measuring 1.2 metres high at Coast Road, Kilmichael East, Myrtleville is **development and is not exempted development**.

*(As an aside it is noted that the response to the request for further information has raised matters regarding public safety, as a rationale for the need to erect the proposed fence, without delay. It should be noted that the subject Section 5 request is solely focussed on whether the proposed fence is development and is or is not exempted development, as per the provisions of Section 5 of the Planning and Development Act 2000 (as amended). Matters regarding public safety (save for matters associated with traffic hazard) are not relevant considerations for the purposes of determining the subject request).*

**I refer this Section 5 report to the Acting Senior Planner for further comment.**

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Ronnie Barry,  
Executive Planner,  
04/06/20.

Proposed Fencing Type



Environmental Classification: Class 1 - General

ANDREW FERRÁLA

06 JUL 2020

DATE DATED \_\_\_\_\_ FROM \_\_\_\_\_

DR- \_\_\_\_\_

\_\_\_\_\_

ITEM 6.1

Dated this 28<sup>th</sup> day of August 2018

**MARGARET MULLINS**

**AND**

**THE LEGAL PERSONAL REPRESENTATIVES IN THE ESTATE OF KATHERINE VERONICA COLLINS**

**"the Licensor"**

**AND**

**FINBARR O'CALLAGHAN**

**"the Licensee"**

**LICENCE AGREEMENT**

**Re Site at Coast Road, Fountainstown, Co. Cork**

<b>AN BORD PLEANÁLA</b>	
06 JUL 2020	
LTR DATED	FROM
LDG-	
ABP-	



THIS AGREEMENT made the 28<sup>th</sup> day of August 2018

**BETWEEN:**

1. **MARGARET MULLINS** and the **LEGAL PERSONAL REPRESENTATIVES IN THE ESTATE OF KATHERINE VERONICA COLLINS** both c/o Ovens Bridge, Ovens, Co. Cork (hereinafter called "**the Licensor**" which expression shall, where the context so admits or requires include their successors and assigns) of the one part; and
2. **FINBARR O'CALLAGHAN** of 32 The Fastnet, Lancaster Gate, Western Road, Cork (hereinafter called "**the Licensee**" which expression shall, where the context so admits or requires, include his successors, assigns, servants and agents) of the other part.

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement where the context so admits the following words and phrases shall have the following meanings;

<b>"Commencement Date"</b>	Means 15 <sup>th</sup> day of August 2018;
<b>"Contract"</b>	means the Contract for Sale dated 26 <sup>th</sup> February 2018 and made between (1) Katherine Veronica Collins and Margaret Mullins of the one part and (2) Conor O'Mahony of the other part;
<b>"Licensed Area"</b>	means the Licensor's Lands
<b>"Licence Fee"</b>	means the sum of €50.00 per week;
<b>"Licence Period"</b>	means 14 months from the Commencement Date;
<b>"Licensor's Lands"</b>	means the site shown outlined in red on the Map or Plan annexed at Schedule 2 hereto
<b>"Local Authority"</b>	means Cork County Council
<b>"Permitted Use"</b>	means exclusive use of the Licensed Area by the Licensee or its agents for the purpose of a construction site compound incorporating site parking, offices, material storage and work area as required.
<b>"Works"</b>	means the Works defined by Schedule 1 hereto;

**WHEREAS:**

- A. The Licensors are the legal and registered owners of the Licensor's Lands.
- B. The Licensors have agreed to grant the Licensee a licence to use the site shown outlined in red on the Map or Plan annexed at Schedule 2 hereto (hereinafter called the "Licensed Area") upon the terms and conditions hereinafter more particularly set out.

- C. The Licensee desires to use the Licensed Area as a temporary construction site compound for the purpose of site parking, offices, material storage and work area as required.
- D. The Licensee has agreed to erect a temporary builder's fence around the Licensed Area and to clear the official pathway to Poll Gorm.

**NOW THIS AGREEMENT WITNESSETH:**

**2. GRANT OF LICENCE**

- 2.1 In consideration of the payment by the Licensee to the Licensor of the Licence Fee and in consideration of the Licensee carrying out the Works specified at Schedule 1 hereto and the covenants and conditions herein contained and on the part of the Licensee to be observed and performed and subject always to the provisions of clause 4 (termination), the Licensor hereby licences the Licensee the right for the Licence Period to use the Licensed Area for the Permitted Use.

**3. LICENCEE'S UNDERTAKINGS**

- 3.1 The Licensee covenants, agrees and undertakes as follows:
  - 3.1.1 to pay to the Licensor the weekly Licence Fee of €50.00 (Fifty Euro) from the Commencement Date to the completion of this Licence Agreement. The total accumulated Licence Fee shall be payable by the Licensee at the end of the Licence Period or within 15 months from the date hereof. In the event that the Permanent Fence (as defined in Schedule 1 hereto) is to be erected by the Licensee's contractor, the value of the total accumulated Licence Fee will be put towards the cost of the Permanent Fence.
  - 3.1.2 prior to entering the Licensor's Lands or to allowing any contractors on to the Licensor's Lands, the Licensee shall furnish a copy of their contractor's public liability insurance to the Licensor to confirm that there is adequate insurance cover in place and the Licensee shall have responsibility for ensuring that any contractors or agents using the Licensor's Lands shall maintain such adequate insurances in full force and effect throughout the course of the Licence Period;
  - 3.1.3 to carry out the Works as specified in Schedule 1 on the Licensed Area strictly in accordance with the terms of this Agreement;
  - 3.1.4 to ensure that the Works are carried out in accordance with planning legislation and to comply with the conditions of Planning Permission (if any) and any other requirements of planning legislation insofar as they relate to the Works;
  - 3.1.5 to procure that the Licensor's Lands will, at all times during the currency of this Agreement, be secured against unauthorised entry;
  - 3.1.6 not to litter or deposit rubbish on the Licensed Area and to leave the Licensed Area in a clean and tidy condition and free of the Licensee's equipment, goods and chattels at the end of the term of this Licence;

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- 3.1.7 not to use the Licensed Area in such a way as to cause any nuisance, damage, disturbance, annoyance, inconvenience or interference to the Licensor or the owners / occupiers of any other adjoining properties;
- 3.1.8 not to cause damage to the Licensor's Lands or to any public utility services in, under or over the Licensor's Lands or adjacent thereto or the surface of any road, footpath or covering thereon;
- 3.1.9 to repair and make good any damage caused to the Licensed Area by him or his employees, servants and agents of which notice in writing shall be given by the Licensor within 28 days of the giving of such notice or such other period as the notice may specify and, in the event of the Licensee's failure to comply with such notice, the Licensor may carry out the work referred to therein and recover the cost thereof on demand from the Licensee;
- 3.1.10 not to knowingly do any act, matter or thing which would or might constitute a breach of any statutory requirement affecting the Licensed Area or which would or might invalidate in whole or in part any insurance effected in respect of the Car Park from time to time;
- 3.1.11 to indemnify and keep indemnified the Licensor and his successors and assigns against all and any actions, expenses, costs, claims, damages and other liabilities whatsoever and consequential losses of any and every kind in respect of the injury or death of any person, damage to any property or losses and expenses of the Licensor howsoever arising directly or indirectly out of the use by the Licensee of the Licensed Area or any of the rights herein granted or any other rights or easements licensed to the Licensee in accordance with the provisions of this Licence or out of any breach, non-performance, non-observance of any of the covenants of the Licensee in this Licence, the breach by Licensee of any of the provisions of this Licence and/or any act, neglect or default by the Licensee or any person authorised by the Licensee to use or enter onto the Licensed Area;
- PROVIDED ALWAYS** that the liability of the Licensee shall not include any matter that arises from any act, neglect or default of the Licensor or any person authorised by the Licensor;
- 3.1.12 to observe such rules and regulations as any of the Licensor or their Agent may make and of which the Licensor shall notify the Licensee from time to time governing the Licensee's use of the Licensed Area.

#### 4. TERMINATION

- 4.1 The rights granted by this License shall determine immediately on notice given by the Licensor at any time following any breach by the Licensee of any of its obligations contained in this Licence, which have not been remedied or made good by the Licensee within a reasonable time of being requested to do so by the Licensor.

4.2 Upon the expiration of the Licence Period the Licensee shall immediately vacate the Licensed Area and, in such event, the Licensee acknowledges that it shall have no further interest in the Licensed Area.

4.3 The Licensee shall have the right to terminate this Licence as of the expiration of the first six months of the Licence Period ('the Termination Date') subject strictly to the followings terms and conditions:-

- a. The Licensee shall serve on the Licensor a notice in writing exercising the said termination right ("the Notice") not later than 2 months prior to the Termination Date (and in this regard time shall be of the essence).
- b. The Licensee shall, on the Termination Date, have observed and performed the covenants and conditions binding on the Licensee's part contained in this Licence.
- c. The Licensee shall vacate the Licensed Area on the Termination Date.
- d. Notwithstanding the Notice, the Licensee shall continue to be responsible for all covenants and conditions contained in this Licence up to the Termination Date.
- e. Any such termination shall be without prejudice to any antecedent breach by the Licensee of any of the covenants and conditions herein contained.

## 5. GENERAL

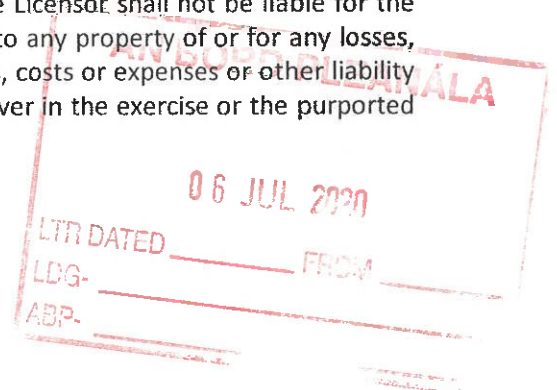
5.1 This Licence is not intended nor shall it operate or be deemed to operate either at law or in equity as a demise of any property the subject of this Licence nor shall the Licensee, by virtue of this Licence, have or be entitled to any estate right or interest in any property the subject of this Licence nor shall the relationship of landlord and tenant exist or arise or be deemed to exist or arise between the parties hereto.

5.2 The Licensee shall not be entitled to call upon the Licensor to grant a further licence of the Licensed Area for a further term.

5.3 The benefit of this Licence is personal to the Licensee and shall not be capable of being assigned by the Licensee to any other person or entity.

5.4 The Licensor may assign, mortgage, charge or otherwise alienate its interest in this Licence to any third party.

5.5 Save in respect of its own acts or omissions, the Licensor shall not be liable for the death of any person or injury to or for damage to any property of or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Licensee or any person whatsoever in the exercise or the purported exercise of the right granted by Clause 2 hereof.



- 5.6 All notices given pursuant to the provisions of this Agreement shall be in writing and shall be sufficiently served if delivered by hand or sent by recorded delivery to the last known address of the party to be served.
- 5.7 If the Licensee shall fail to pay any sum reserved or made payable hereunder within 21 days of the day of demand and in the manner herein described for the payment of same, such unpaid sum shall bear interest from the day on which the same was due until the day of actual payment at a rate of 8%.
- 5.8 The laws of Ireland only shall apply to this Licence in every particular and the courts of Ireland shall have sole jurisdiction to which the parties exclusively submit.
- 5.9 Any dispute or difference which shall arise touching the provisions of this Agreement or the operation or construction thereof or the rights and liabilities of the Licensor and the Licensee hereunder shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the Licensor and the Licensee or in default of agreement to be appointed on the application of either party by the President for the time being of the Incorporated Law Society of Ireland such appointed arbitrator being either a Solicitor or Quantity Surveyor of at least seven years standing and experienced in property development and the Arbitration Act 2010 shall apply accordingly **PROVIDED HOWEVER** that if the Arbitrator shall relinquish his appointment or die, or if it shall become apparent that for any reason he shall be unable or shall become unfit or unsuited (whether because of bias or otherwise) to complete his duties, or if he shall be removed from office by Court Order, a substitute may be appointed in his place and in relation to any such appointment the procedures herein before set forth shall be deemed to apply as though the substitution were an appointment de novo which said procedures may be repeated as many times as may be necessary. Any determination by the arbitrator shall be binding on the parties and any arbitrator so appointed shall be requested to give his determination on any matter referred to him within seven days of such referral.

**IN WITNESS** whereof the Licensor and the Licensee have hereunto set their hands and affixed their seals the day month and year first herein written.

SIGNED AND DELIVERED AS A DEED  
by the said Margaret Mullins in the  
presence of:

*Aidan McMahon*

*M - Mullins*

Aidan McMahon  
Solicitor  
Orpen Franks  
28/30 Burlington Road  
Dublin 4

SIGNED AND DELIVERED AS A DEED  
by Brendan Mullins as Legal Personal  
Representative of Katherine Veronica  
Collins in the presence of:

*Aidan McMahon*

*Brendan Mullins*

Aidan McMahon  
Solicitor  
Orpen Franks  
28/30 Burlington Road  
Dublin 4

SIGNED AND DELIVERED AS A DEED  
by Peter Walsh as Legal Personal  
Representative of Katherine Veronica  
Collins in the presence of:

*Aidan McMahon*

*P Walsh*

Aidan McMahon  
Solicitor  
Orpen Franks  
28/30 Burlington Road  
Dublin 4

SIGNED AND DELIVERED AS A DEED  
by Laura O'Callaghan (as Attorney for  
Finbarr O'Callaghan) in the presence  
of:

*Laura O Callaghan  
as attorney for  
Finbarr O Callaghan*

*AOU Callaghan  
Solicitor  
58 Court Mall  
Cork*

AN BORD PLEANÁLA  
06 JUL 2020  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ASP- \_\_\_\_\_

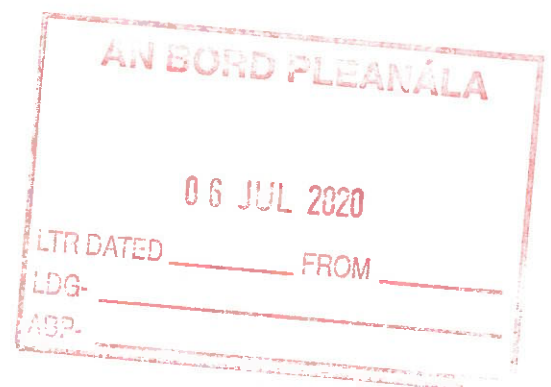
## SCHEDULE 1

### "The Works"

The Licensee covenants, agrees and undertakes to carry out the following works to the Licensed Area:

1. Within 4 months from the commencement of this Licence, the Licensee shall clear the official pathway to Poll Gorm, as shown highlighted in yellow on the Map annexed at Schedule 3 hereto, in such a manner that the pathway is accessible and safe for public access.
2. As soon as the work specified at para. 1 above is fully completed and no later than 4 months from the commencement of this Licence, the Licensee shall erect a suitable temporary builder's fence ("the Temporary Fence") around the Licensed Area.
3. The Temporary Fence shall be of appropriate specification and material; such specification to be agreed in advance by the Licensor.
4. The Temporary Fence will be fully maintained in place by the Licensee throughout the duration of this Licence Agreement.
5. The Temporary Fence shall extend across the entire width of the front boundary of the Licensed area, connecting to the boundary walls of both adjoining properties to the East and West of the Licensed Area, thereby preventing access by members of the public to the Licensed Area and also preventing any access by members of the public to Poll Gorm via the Licensed Area.
6. The line of the Temporary Fence at the front boundary of the Licensed Area shall be parallel to the public roadway, being the Coast Road, which is in charge of the Local Authority, with a separation distance of 2.5 metres between the Temporary Fence at the front boundary of the Licensed Area and the edge of the public road in order to allow for one width of car parking parallel to the public roadway.
7. As soon as the work specified at para. 1 and para. 2 above is complied with and within 14 days of the commencement of this Licence, the Licensee shall erect a sign on the temporary fence to re-direct members of the public to the official pathway to Poll Gorm.
8. The Temporary Fence and the sign re access to Poll Gorm as specified at para. 7 above shall remain in place for between twelve and fourteen months or such other duration as is agreed between the parties.
9. All costs and risks associated with the Works specified at paragraphs 1–8 above shall be the responsibility of the Licensee and paid for by the Licensee and the Licensee shall indemnify the Licensor in relation to all costs and risks associated with the Works set out above.
10. The Licensor will seek approval from the Local Authority for a circa 1.2m high fence with gate access to the public roadway (the "Permanent Fence") to be permanently erected on the line of the Temporary Fence or such other line as may be agreed by the Licensor within 12 months from the date hereof. The details and exact specification of the Permanent Fence will be agreed upon by the Licensor at a later date. The Permanent Fence around the Licensed Area shall be erected prior to the Temporary Fence being removed so that there is no break in continuity of a fence around the Licensed Area.

11. At any stage during the continuation of this Licence Agreement, in the unlikely event that the Licensor is forced to consider a change to this Agreement or if approval from the Local Authority cannot be reached in relation to the installation of the Permanent Fence, or for any other fair reason, the Licensee acknowledges and agrees that the Temporary Fence will be moved, adjusted or removed by the Licensee and any equipment, cabins or materials will also be moved or removed by the Licensee on the direction of the Licensor. In such circumstances, the Licensee covenants, agrees and undertakes to leave the Licensed Area in a clean and tidy condition and free of the Licensee's equipment, goods and chattels at the end of the term of this Licence. If any of the events envisaged in this paragraph arise, the Licensor shall be required to give the Licensee 2 weeks' notice in writing to move, adjust or remove the Temporary Fence and to move or remove any equipment, cabins or materials from the Licensed Area. Termination of this Licence Agreement shall be in accordance with Clause 4.
12. The Licensee owns the land as shown outlined in black on the Map annexed at Schedule 2 hereto and marked thereon as "Subject Site" ("the Subject Site"). A temporary "catcher" fence as shown marked by the red dotted line on the Map or Plan annexed at Schedule 2 hereto (the "Catcher Fence") shall be erected by the Licensee at a nominal 3.0m distance below and to the sides of the site owned by the Licensee in order to contain any overspill from the Licensee's site during construction of the property on the Subject Site. The Catcher Fence will be removed by the Licensee at the appropriate time prior to the completion of the construction of the property on the Subject Site or within 12 months from the date hereof, whichever is earlier.
13. The current boundary fences and walls of the Licensee's land ("the Subject Site") as shown outlined in black on the Map or Plan annexed at Schedule 2 hereto may be removed by the Licensee to aid construction of the property thereon during the period of this Licence. On completion of the construction works on the Subject Site or within 12 months from the date hereof, whichever is earlier, the permanent fences around the boundary of the Licensee's land ("the Subject Site") shall be re-installed by the Licensee in accordance with the agreed co-ordinates as set out in the Contract.

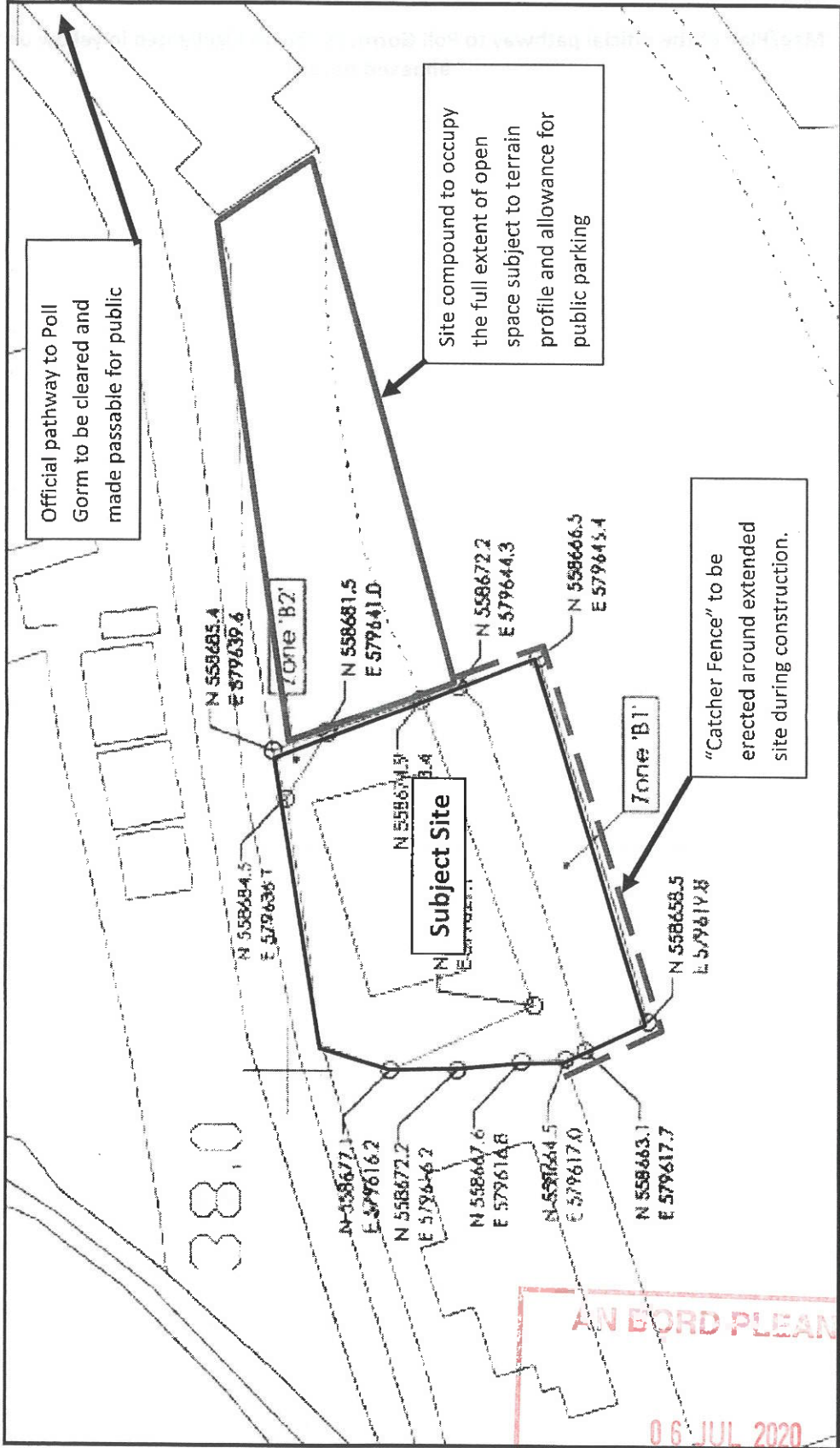




**SCHEDULE 2**

**Map/Plan of the Licensed Area shown outlined in red on the Map/ Plan annexed hereto**

**Site Compound Areas associated with Myrtleville Site owned by Finbarr O'Callaghan**



**AN BORD PLEANÁLA**

06 JUL 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

**SCHEDULE 3**

**Map/Plan of the official pathway to Poll Gorm, as shown highlighted in yellow on the Map annexed hereto**



and the other is a path leading to the old mill, which is a very old mill.



> Back  
The area selected is not registered with the Land Registry. Information about this property may be available from the Registry of Deeds.

Print Current View  
Help

Gaeilge



XY 579850, 558672  
Scale 1 : 1000  
Townland Kilmichael East  
Barony Kerry Currihy  
County Cork

AN BORD PLEANÁLA  
06 JUL 2000  
DATED \_\_\_\_\_ FROM \_\_\_\_\_

Dated this 28<sup>th</sup> day of August 2018

**MARGARET MULLINS**

**AND**

**THE LEGAL PERSONAL REPRESENTATIVES IN THE ESTATE OF KATHERINE VERONICA COLLINS**

**"the Licensor"**

and

**FINBARR O'CALLAGHAN**

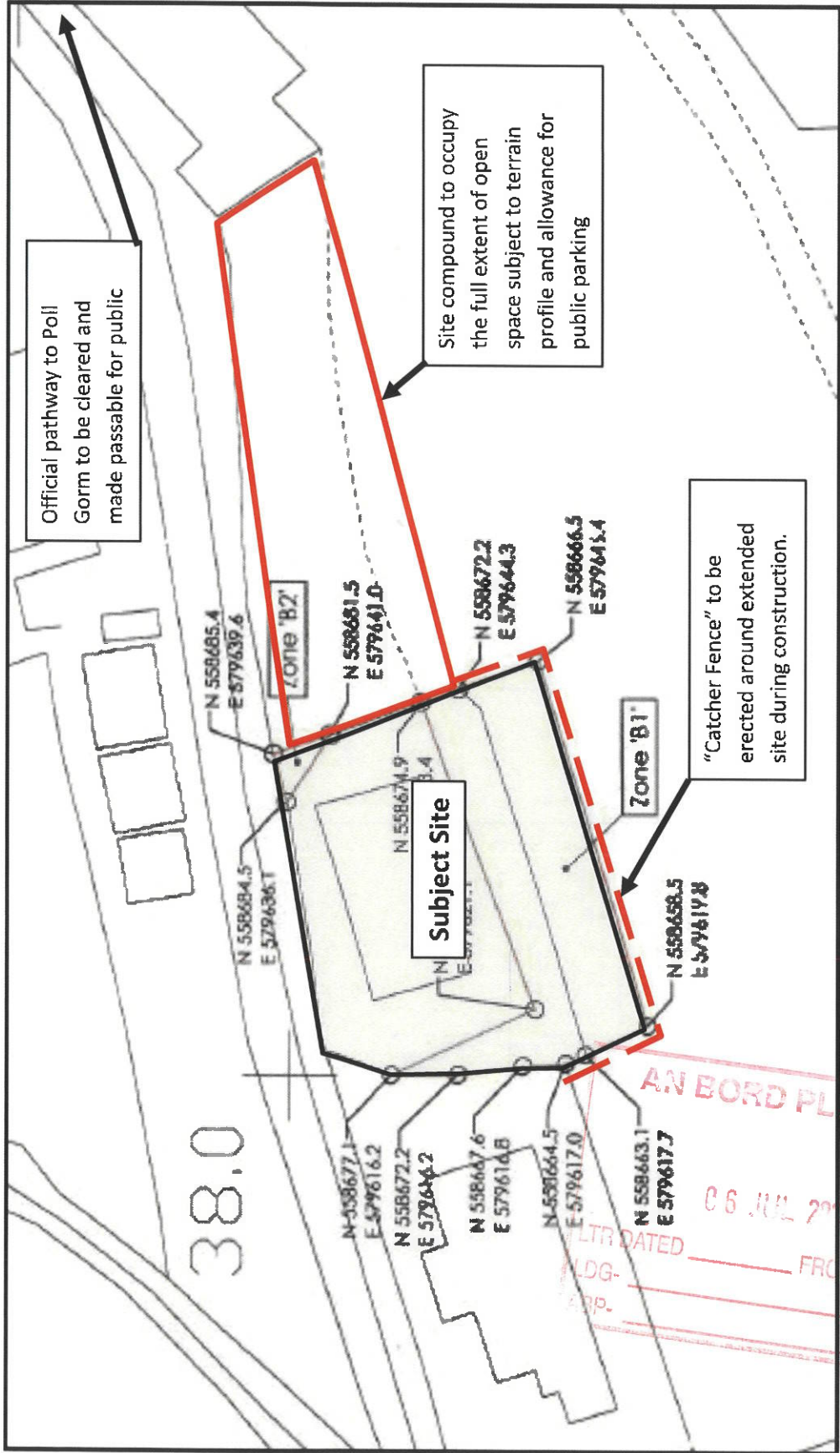
**"the Licensee"**

**LICENCE AGREEMENT**

**Re Site at Coast Road, Fountainstown, Co. Cork**

ITEM 6.2

**Site Compound Areas associated with Myrtleville Site owned by Finbarr O'Callaghan**



ITEM 7

**Item 7 – Photograph of Builders Compound on Subject lands at Myrtleville, Co Cork.**

Photograph also shows the limited parking available on the lands during construction, the grassed areas outside of the compound and the mature tree.



06 JUL 2020  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

Item 8

# Comhairle Contae Chorcaí Cork County Council

Finbarr O'Callaghan,  
c/o Cetti Developments  
Unit 7 Portgate Business Park  
Monkstown,  
T12XT51,  
Co. Cork.

An Rannóg Pleanála,  
Halla an Chontae,  
Bóthar Charraig Ruacháin,  
Corcaigh T12 R2NC.  
Fón: (021) 4276891 • Faics: (021) 4276321  
R-phost: [planninginfo@corkeoco.ie](mailto:planninginfo@corkeoco.ie)  
Suíomh Gréasáin: [www.corkeoco.ie](http://www.corkeoco.ie)  
Planning Department,  
County Hall,  
Carrigrohane Road, Cork T12 R2NC.  
Tel (021) 4276891 • Fax (021) 4276321  
Email: [planninginfo@corkeoco.ie](mailto:planninginfo@corkeoco.ie)  
Web: [www.corkeoco.ie](http://www.corkeoco.ie)



**By Registered Post**

05/11/2018

**Ref: EF18184**

## **WARNING LETTER PURSUANT TO SECTION 152 OF THE PLANNING AND DEVELOPMENT ACT, 2000. [WL/18/327]**

**Re: Alleged unauthorised builders compound built on cark park  
at Coast Road, Myrtleville, Co. Cork.**

Dear Sir,

It has come to the attention of the Planning Authority that unauthorised development described above may have been, is being or may be carried out on the said lands.

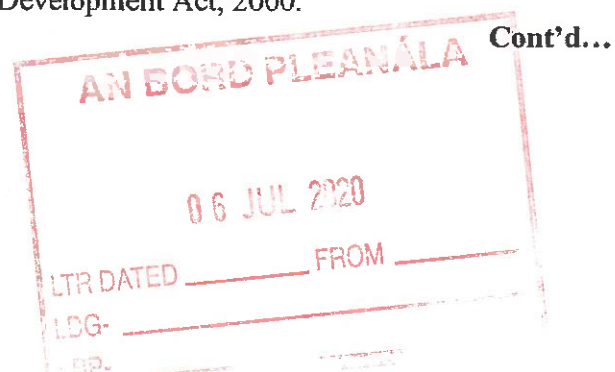
Any person who has carried out or is carrying out unauthorised development shall be guilty of an offence pursuant to Section 151 of the Planning and Development Act, 2000.

However, please note that this matter may be the subject of investigation by the Planning Authority.

When a Planning Authority considers that unauthorised development has been, is being or may be carried out, an Enforcement Notice may be issued.

Officials of the Planning Authority may at all reasonable times enter on the above premises for the purposes of inspection of the alleged unauthorised development.

Any person served with this letter may make submissions or observations in writing regarding the purported offence to the Planning Authority not later than 4 weeks from the date of service of this letter. Any such submissions or observations received will be considered by the Planning Authority in deciding whether to issue an Enforcement Notice pursuant to Section 154 of the Planning and Development Act, 2000.





A person who is guilty of an offence under Sections 151 and 154 of the Planning and Development Act, 2000 shall be liable to the penalties set out in the Schedule 1 attached hereto.

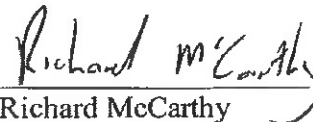
In addition, any costs reasonably incurred by the planning authority in relation to enforcement proceedings may be recovered from a person on whom an Enforcement Notice is served or where court action is taken.

**Finally, please note that Cork County Council will consider all written submission or observations made by you within the prescribed time period of 4 weeks of the date of the service of this letter, and other material considerations in deciding whether to proceed with enforcement action against you in the form of an Enforcement Notice described above, and/or to initiate legal proceedings against you. Accordingly, it is in your own interest to make such submissions or observations within the time allowed.**

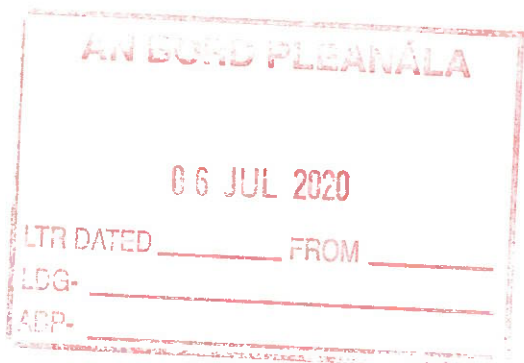
The foregoing is **WITHOUT PREJUDICE** to all and any proceedings and actions which the Council may consider appropriate and expedient to take in relation to this matter.

Please quote Ref. No. EF18184 in any correspondence or direct contact with the Enforcement Section.

Yours faithfully,

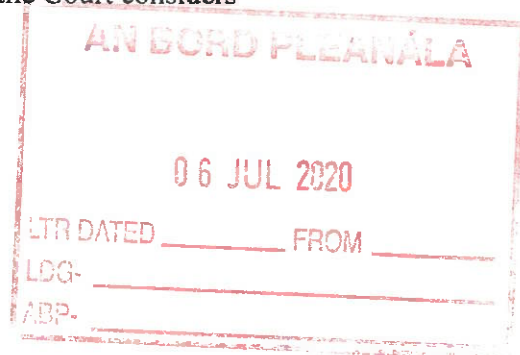


Richard McCarthy  
Enforcement Section  
Planning Department  
Cork County Council,  
County Hall,  
Cork.



**SCHEDULE 1**  
**CONSEQUENCES OF NON-COMPLIANCE & PENALTIES FOR OFFENCES**  
**PLANNING AND DEVELOPMENT ACT, 2000, as amended**  
**by the PLANNING AND DEVELOPMENT (AMENDMENT) ACT, 2010**

1. Pursuant to Section 156(1) of the Act a person who is guilty of an offence under Sections 151 and 154 shall be liable-
  - a) On conviction on indictment, to a fine not exceeding €12,697,380.78 or to imprisonment for a term not exceeding two years, or to both, or
  - b) On summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding six months, or to both.
  
2. Pursuant to Section 156(2) of the Act, where a person is convicted of an offence referred to in No. 1 above and there is a continuation by him or her of the offence after his or her conviction, he or she shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable-
  - a) On conviction on indictment, to a fine not exceeding €12,697.38 for each day on which the offence is so continued, or to imprisonment for a term not exceeding two years, or to both, provided that if a person is convicted in the same proceedings of two or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed two years or
  - b) On summary conviction, to a fine not exceeding €1,500 for each day on which the offence is so continued or to imprisonment for a term not exceeding six months, or to both, provided that if a person is convicted in the same proceedings of two or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed six months.
  
3. Pursuant to Section 156(3) of the Act, where a person is convicted of an offence referred to in No. 1 above involving the construction of an unauthorised structure, the minimum fine shall be-
  - a) On conviction on indictment, the estimated cost of the construction of the structure or €12,697.38, whichever is less, or
  - b) On summary conviction, the estimated cost of the construction of the structure or €2,500, whichever is less, except where the person convicted can show to the court's satisfaction that he or she does to have the necessary financial means to pay the minimum fine.
  
4. Pursuant to Section 156(8) of the Act, on conviction of an offence under Section 154 of the Act, the court may, in addition to imposing the penalties specified in Nos. 1 and 2 above, order the person convicted to take all or any steps specified in the relevant enforcement notice within such period as the Court considers appropriate.



ITRUL 9

AC/SMcS/OCA68/11

26 November 2018

Richard McCarthy  
Enforcement Section  
Planning Department  
Cork County Council  
County Hall  
Cork

**RE: WARNING LETTER PURSUANT TO SECTION 152 OF PLANNING AND DEVELOPMENT ACT 2000  
(WL/18/327)  
ALLEGED UNAUTHORISED BUILDERS COMPOUND AT COAST ROAD, MYRTLEVILLE, CO. CORK (REF.  
EF18184)  
OUR CLIENT: FINBARR AND LAURA O'CALLAGHAN**

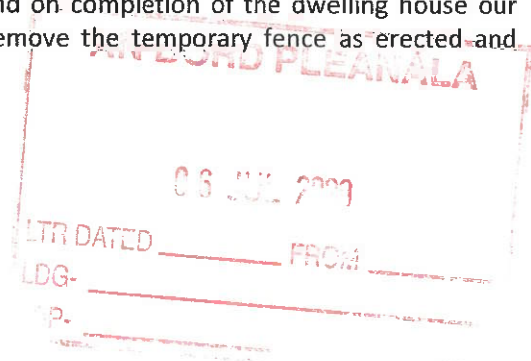
Dear Sirs,

We refer to your letter of 5 November 2018 issued to our client Finbarr O'Callaghan c/o Cetti Developments.

Our client purchased the adjoining property as comprised within Folio 59699 County Cork and part of the property comprised in Folio 26946 County Cork now known as "Ocean View" Myrtleville Co. Cork in February of this year. Pursuant to Planning Permission 08/8741 as extended by Planning Permission Reference 14/04150 (hereinafter "the Planning Permission") our client is currently in the course of construction of the dwelling house in accordance with the Planning Permission granted.

As part of the construction work, our client entered into a Licence Agreement with the adjoining owners of land to use the land (the subject of the Warning Letter) as a site compound incorporating car parking, offices, material storage and work area for a period of fourteen months from 15 August 2018 during the course of construction of the dwelling house. The use of the site compound is temporary and is merely in place to facilitate the construction of the dwelling house on the adjoining site for which the Planning Permission has been granted. Please note pursuant to the Licence Agreement a temporary fence was erected parallel to the public roadway which is in charge of the local authority with the separation distance of 2.5 metres between the temporary fence and the edge of the public road to ensure one width of car parking to the public roadway was maintained.

Please note the use of the adjacent land whilst construction is being carried out for which the Planning Permission has been granted is of a temporary nature and on completion of the dwelling house our client will vacate the construction site compound and remove the temporary fence as erected and reinstate the site to its former condition.

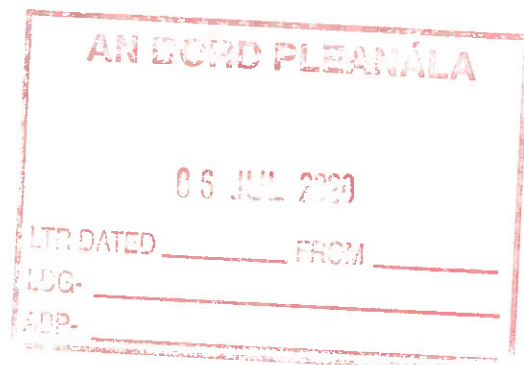


We would also refer to the provisions of Statutory Instrument No. 600 of 2001 (Planning and Development Regulations 2001) and in particular (Exempted Developments, Schedule 2 Part 1- Class 16) which permits "the erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works is being or is about to be, carried out pursuant to a granted planning permission of structures, works, plant or machinery needed temporarily in connection with that development during the period for which it has been carried out" provided the structures are removed at the expiration of the period and provided the land is reinstated. As advised above our client will reinstate on completion of the construction of the dwelling house in accordance with the Planning Permission granted.

We trust the Council understands the position and will deem the matter as now settled.

Yours faithfully,

AEIBHIN CAHALAN  
O'FLYNN EXHAMS  
ac@ofx.ie



ITEM 10

Comhairle Contae Chorcaí  
Cork County Council

Aeibhin Cahalan,  
O'Flynn Exhams Solicitors,  
58 South Mall,  
Cork,  
T12 RY29

An Rannóg Pleanála,  
Halla an Chontae,  
Bóthar Charraig Ruacháin,  
Corcaigh T12 R2NC.  
Fón: (021) 4276891 • Faics: (021) 4276321  
R-phost: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
Suíomh Gréasáin: [www.corkcoco.ie](http://www.corkcoco.ie)  
Planning Department,  
County Hall,  
Carrigrohane Road, Cork T12 R2NC.  
Tel (021) 4276891 • Fax (021) 4276321  
Email: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
Web: [www.corkcoco.ie](http://www.corkcoco.ie)



15 JAN 2019

Your Ref: AC/SMcS/OCA68/11

Ref: EF18184

Date: 14/01/2019

Re: **Alleged unauthorised builders compound built on car park  
at Coast Road, Myrtleville, Co. Cork.**

Your Clients: **Finbarr and Laura O' Callaghan**

Dear Madam,

I acknowledge receipt of your letter received on the 27<sup>th</sup> November 2018 in the above connection, the contents of which are noted.

It is considered that the subject builder's compound which has been constructed would generally be considered exempted development under Class 16 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, (as amended).

However, you are reminded of the obligation under Class 16 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, (as amended) to remove the structures, works, plants or machinery needed temporarily in connection with the dwelling house under construction (planning reg. ref. 08/8741 and extended under planning reg. ref. 14/4160) and to reinstate the land to its previous condition

For clarity the Area Planner has requested you to provide in writing within a period of 1 month of the date hereof, details of when the temporary fence will be removed and the site reinstated.

Please quote Ref. No. EF18184 in any correspondence or direct contact with the Enforcement Section.

<b>AN BORD PLEANÁLA</b>	
06 JUL 2020	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	



Yours faithfully,



Richard McCarthy  
Enforcement Section  
Planning Department

**AN BORD PLEANÁLA**  
06 JUL 2020  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

ITEM 11

Comhairle Contae Chorcaí  
Cork County Council

An Rannóg Pleanála,  
Halla an Chontae,  
Bóthar Charraig Ruacháin,  
Corcaigh T12 R2NC.  
Fón: (021) 4276891 • Fais: (021) 4276321  
R-phost: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
Suíomh Gréasáin: [www.corkcoco.ie](http://www.corkcoco.ie)  
Planning Department,  
County Hall,  
Carrigrohane Road, Cork T12 R2NC.  
Tel (021) 4276891 • Fax (021) 4276321  
Email: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
Web: [www.corkcoco.ie](http://www.corkcoco.ie)



Aeibhin Cahalan,  
O'Flynn Exhams,  
58 South Mall,  
Cork,  
T12 RY29.

19 MAR 2020

Date: 18/03/2020

Ref: EF/18/184

Re: **Alleged unauthorised builders compound built on car park at Coast Road, Myrtleville, Co. Cork.**

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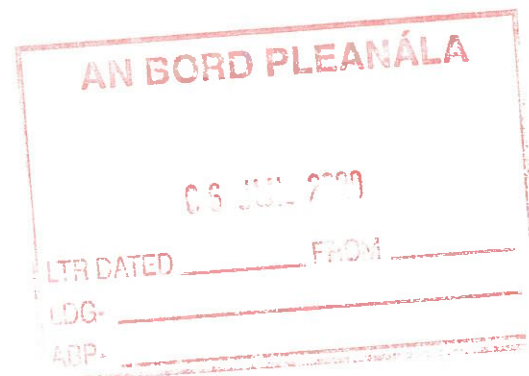
Dear Madam,

I acknowledge receipt of your letter received on 09/Mar/2020 in the above connection, the contents of which are noted.

Please quote Ref. No. EF/18/184 in any correspondence or direct contact with the Enforcement Section.

Yours faithfully,

Kevin Ginn  
Enforcement Section  
Planning Department



ITEM 12

Weir Side, Riverview,  
Bandon, Co. Cork  
Tel: (023) 88 42178, Mobile (086) 8111297  
E-Mail: carberyengineer@gmail.com  
V.A.T. No. IE 3597878MH

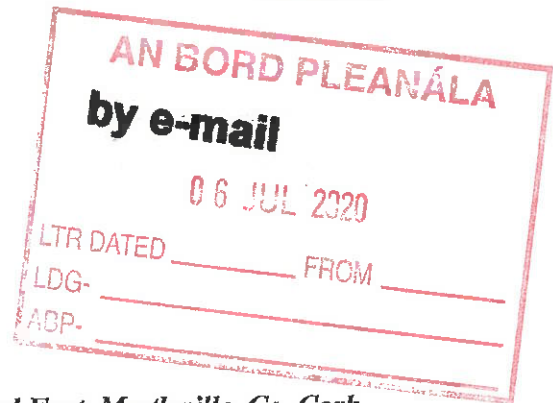
*Padraig Murphy* B.E., M.I.E.I.  
Consulting Engineer

01/07/2020

Our Ref: PM/CO'B/6818  
Your Ref:

F.A.O. Mr. Brendan Mullins

Email: [bmmullins@gmail.com](mailto:bmmullins@gmail.com)



*Re: Mullins-Collins Lands at Coast Road, Kilmichael East, Myrtleville, Co. Cork*

A Chara,

I refer to your instructions in the above matter and I confirm that I carried out an inspection of the locus of this dispute. I now enclose for your attention one set of colour photographs along with this Report.

You will recall that when I examined the locus approximately 9 months ago, it was almost totally taken up with the building compound. This has now been removed but the extent of the compound area is still evident from the hardcore that was laid by the builder during the works.

I am seriously concerned about the use of this ground as a car park without the benefit of a safety fence. As **Photograph No. 2** clearly shows, the fall off from the parking area is extremely steep and is unprotected. There is not even a fence or a raised area to prevent a car overtopping the bank.

It is my opinion that is imperative that a fence be erected here as soon as possible.

There is a recognised path to Poll Gorm and it is on the Myrtleville side of the Atlantic House and it is shown clearly in **Photograph No. 4 and 5**. In fact if one examined the old Ordnance Sheet for this area i.e. the 25" (1888 to 1913) one would see that this area was a disused quarry and that there was a footpath along the route of this path. It was wider then but for the past 80 years, according to Mr. Mullins, it was a recognised path to Poll Gorm. This path can be cleared of vegetation and debris and some individual is dumping hedge trimmings on it but this path is of an even gradient that can be easily walked. It is bounded by a wall on the southern side for the main part and it is fenced from the adjoining site on the right-hand side.



I examined the scout that has been referred to in the Executive Planners Report as a pathway. This cannot be described as a pathway in any sense of the meaning. It is extremely dangerous; it was never intended as a passageway for humans and cannot be described as such. If anything, it is an animal track at best. I have attempted to travel along it and in places it is impassable and completely overgrown. It is dangerously steep and unregulated. The surface that I could see consists of loose shale that would suggest it is a dry stream or track made by animals. It also appears to be totally unused except perhaps by such animals.

In my opinion it is imperative that a safety fence be erected here as soon as possible or there will be a serious accident.

Should you have any further difficulties please do not hesitate to contact me.

Yours Sincerely,

  
Padraig Murphy B.E.

Enc.

## LIST OF ENCLOSED PHOTOGRAPHS:

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**Photograph No. 1** This is a photograph taken showing the entire area. The Atlantic House is on the left, the compound then extends from the tree up to where Mr. O'Callaghan's refurbished dwelling is.

**Photograph No. 2** This is a photograph taken showing the extensive fall off the front of the parking area which in my opinion is an extremely dangerous safety feature off what is known as the parking area.

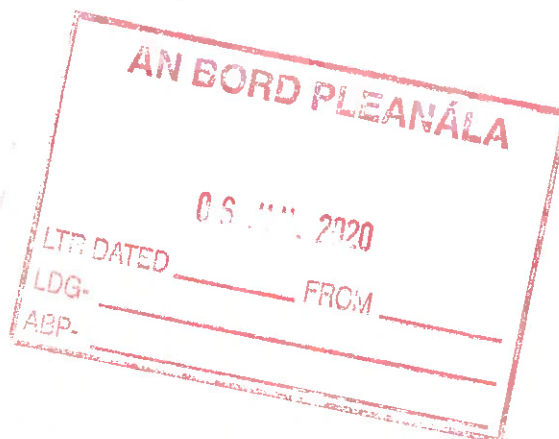
**Photograph No. 3** This is a photograph that highlights the acuteness of the slope in this vicinity.

**Photograph No. 4** This is a photograph taken showing the entrance to the proper footpath which is located just on the other side of Atlantic House's garden. You can see that the wall is on the left and the garden fence is on the right letting the space in between for the pathway.

**Photograph No. 5** This is a closer view of that entrance.

**Photograph Nos. 6 & 7** These are photographs taken showing the lower section of the scout and showing that on the 30<sup>th</sup> June when one would expect it to be well used in the recent fine weather, this path is not used and it is overgrown.

**Appendix No. 1** This is a copy of the old Ordnance Sheet and you can see that the old footpath is shown quite clearly in this and it is still in the same position.





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AN BORD PLEANÁLA  
06 JUL 2020  
ATED \_\_\_\_\_ FROM \_\_\_\_\_

