



Comhairle Cathrach Chorcaí Cork City Council

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

Barbara Gaffney,
13 Carraig Ri,
Leamlara,
Co. Cork T56 HW02.

20/06/2023

**RE: Section 5 Declaration R782/23 Ballinlough Community Centre,
Ballinlough Road, Cork.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 22nd May 2023, I wish to advise as follows:

In view of the above and having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018,

The Planning Authority considers that –

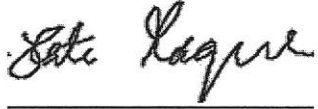
the expansion of the number of children from 34 to 55 in the Ballinlough Community Pre-School, Ballinlough Road, Cork **IS NOT DEVELOPMENT** and, therefore, **IS CONSIDERED EXEMPT.**

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 20th June 2023.



We are Cork.

Is mise le meas,



Kate Magner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council

PLANNER'S REPORT
Ref. R 782/23

Cork City Council
Development Management
Community, Culture & Placemaking
Directorate

Application type	SECTION 5 DECLARATION
Question	<i>Whether the expansion of the number of children from 34 to 55 in the Ballinlough Community Pre-School is exempted development.</i>
Location	Ballinlough Community Centre, Ballinlough Road, Cork.
Applicant	Barbara Gaffney
Date	20/06/2023
Recommendation	Is not development and, therefore, is considered exempt

INTERPRETATION

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

1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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

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

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

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the planning authority is not framed using the phrasing of section 5. The applicant states in the request, *"we operate a Montessori Pre-School which has been in existence in the community centre for 30 plus years. We wish to expand our numbers from 34 to 55 children.*

There will be no changes made to any part of the existing structure is more than capable in accommodating the increase in numbers.

For us to increase our numbers, Tusla require written confirmation from the Local Authority if we are exempt or if we require planning permission to increase your numbers."

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

Whether the expansion of the number of children from 34 to 55 in the Ballinlough Community Pre-School is exempted development.

3. SITE DESCRIPTION

The subject property is a single-storey building situated off of Ballinlough Road with vehicle access from Ballinlough Road.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development is for the expansion of the number of children from 34 to 55 in the Ballinlough Community Pre-School. No changes or alterations are proposed to the existing building.

5. RELEVANT PLANNING HISTORY

TP 03/27475 Permission GRANTED for site container for the purposes of storage to the side of building at Canon Horgan Youth Centre, Ballinlough, Cork

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

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

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
 - (i) the interior of the structure,*
 - (ii) the land lying within the curtilage of the structure,*
 - (iii) any other structures lying within that curtilage and their interiors, and*
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

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

Section 4(1)(h)

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

...

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

Section 4(2)

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

Section 4(3)

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

- (a) any of the developments specified in subsection (1), or*
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 6(1)

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

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

Article 10

(1) Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned*

Part 4 Exempted Development – Classes of Use

CLASS 8

Use—

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),*
- (b) as a crèche,*

- (c) as a day nursery,
- (d) as a day centre.

7. ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’.

It is noted that the Section 5 question being asked is whether the expansion of the number of children from 34 to 55 in the Ballinlough Community Pre-School is exempted development. It is further noted that this question relates to an increase in numbers of children attending the setting and does not include any physical alteration to the exterior or interior of the building, nor any change of use to incorporate additional area for the extra children attending.

The Planning and Development Act defines development as “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”. Works are defined as “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”. Given that the proposed structure not be altered in any way or, no change of use is proposed, it is not considered that any works have taken place.

Therefore, it is not considered that the expansion of the number of children from 34 to 55 in the Pre-School is development.

CONCLUSION

Is not development

8. ENVIRONMENTAL ASSESSMENT

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

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
- (b) as respects which an environmental impact assessment or an appropriate assessment is required,*

to be exempted development.

Section 177U(9)

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

8.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that **environmental impact assessment is not required.**

8.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required.**

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the expansion of the number of children from 34 to 55 in the Ballinlough Community Pre-School, Ballinlough Road, Cork **IS NOT DEVELOPMENT** and, therefore, **IS CONSIDERED EXEMPT.**



Eoin Cullinane
Assistant Planner
20/06/2023

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924709

Líonra/Web: www.corkcity.ie

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

1. NAME OF PERSON MAKING THE REQUEST

Barbara Gaffney

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

Ballinlough Community Centre, Ballinlough Road Cork

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

We operate a Montessori Pre-School which has been in existence in the community centre for 30 plus years. We wish to expand our numbers from 34 to 55 children.

There will be no changes made to any part of the existing structure is more than capable in accommodating the increase in numbers.

For us to increase our numbers Tusla, require written confirmation from the local authority if we are exempt or if we require planning to increase your numbers

DEVELOPMENT MANAGEMENT
CCP

22 MAY 2023

CORK CITY COUNCIL

Where legal interest is 'Other', please state your interest in the land/structure in question	Tenant
If you are not the legal owner, please state the name of the owner if available	Ballinlough community centre

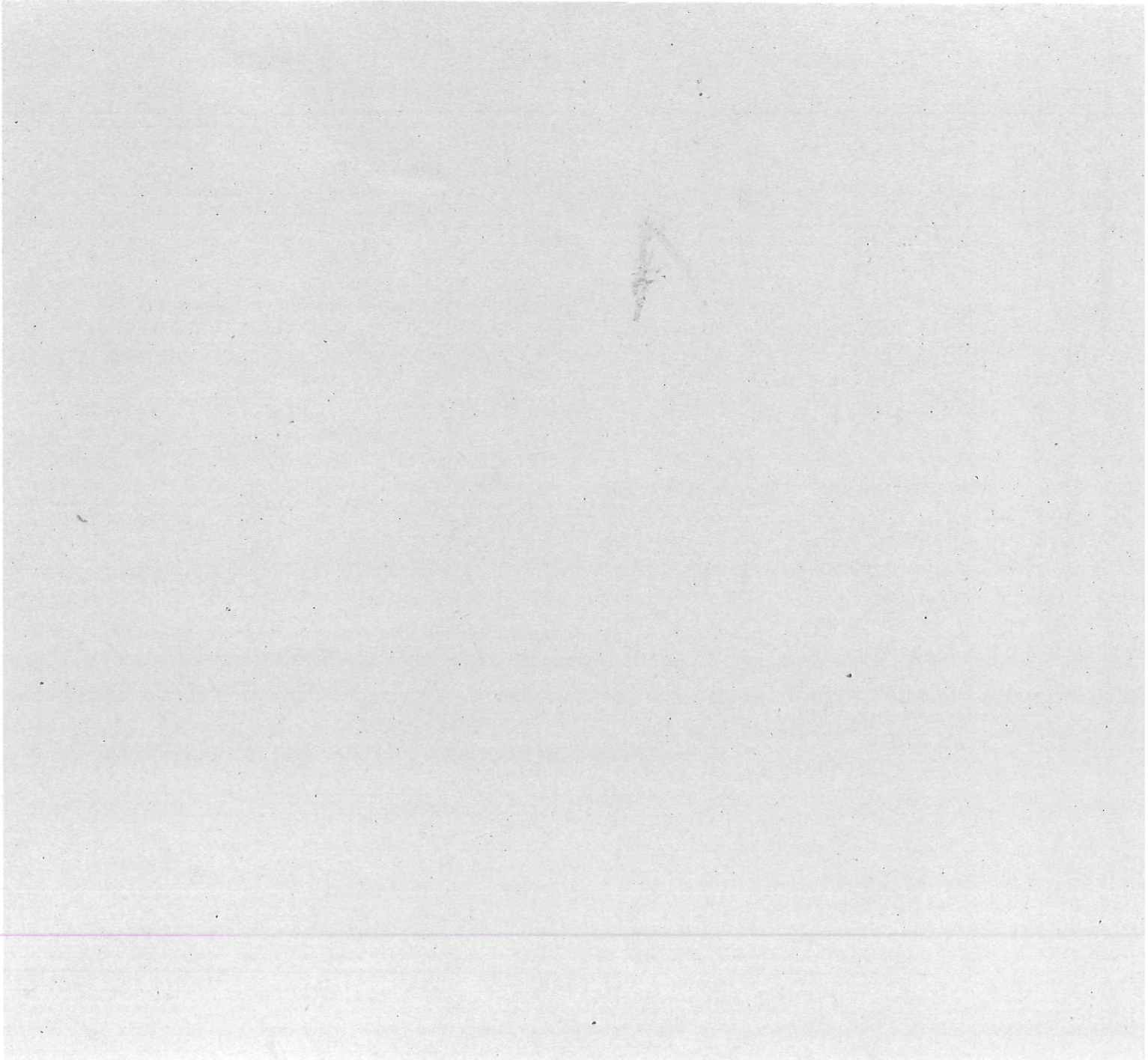
8. I / We confirm that the information contained in the application is true and accurate:

Signature: Barbara Gaffney

Date: 22/5/2023

CONFIDENTIAL CONTACT DETAILS

These details will not be made available to the public.



ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

**The Development Management Section, Community, Culture & Placemaking
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.**

- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>.

We request that you read these as they contain important information about how we process personal data.

Land Registry

County Cork

Folio 26242L

Register of Ownership of Leasehold Interest

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	<p>The Leasehold interest in the property shown coloured Purple as plan(s) DMN8V on the Registry Map, situate in the Parish of St. Nicholas, in the Electoral Division of BALLINLOUGH C. The leasehold interest was created by Sub Lease dated 15-MAY-2009 from CORK CITY COUNCIL to DONAL COUNIHAN, MICHAEL CROWLEY, BRENDAN J. O'DRISCOLL, PAT DILLON, ADRIAN WILKINSON for the term of 99 years from the 15-MAY-2009 at the rent as specified in the lease.</p> <p>This Sub Lease is registered as a burden on folio(s) CK4005L, entry no. 4 and ranks in the priority set down by Section 74 of the Registration of Title Act 1964 as amended. As between this lease burden and prior charges registered on Folio(s) CK4005L, (if any), the provisions of Section 62(10) of the aforementioned Act apply.</p> <p>The Registration does not extend to the mines and minerals</p>	From Instrument D2011LR139852H

Land Registry

County Cork

Folio 26242L

**Part 1(B) - Property
Parts Transferred**

No.	Prop No:	Instrument:	Date:	Area (Hectares) :	Plan:	Folio No:

Land Registry

County Cork

Folio 26242L

Part 2 - Ownership

Title Good Leasehold

No.	
1	13-DEC-2011 DONAL COUNIHAN of 17 Silverdale Avenue, Skehard Road, Cork and D2011LR139852H MICHAEL CROWLEY (CANON) of Parochial House, Ballinlough Road, Cork and BRENDAN J. O'DRISCOLL of J J O'Driscoll Superstore, Ballinlough Road, Cork and ADRIAN WILKINSON (REVERAND) of The Rectory, Carrigaline Road, Cork and PAUL DILLON of Dillons Foodstore, Wallace's Avenue, Cork are full owners.

Land Registry

County Cork

Folio 26242L

Part 3 - Burdens and Notices of Burdens

No.	Particulars

The Property Registration Authority An tÚdarás Clárúcháin Maoine



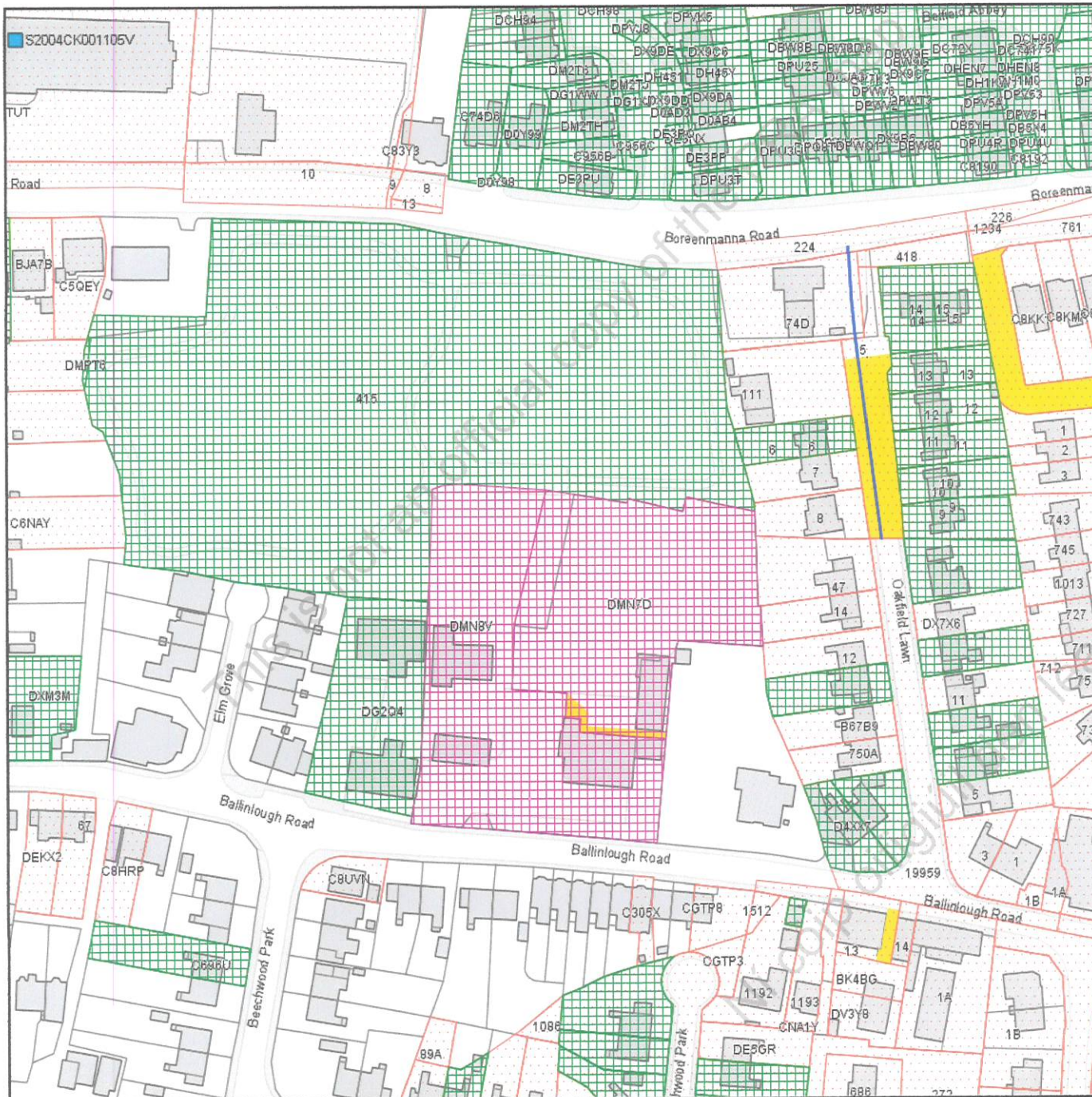
Official Property Registration Map

This map should be read in conjunction with the folio.

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

For details of the terms of use, and limitations as to scale, accuracy and other conditions relating to Land Registry Maps, see www.prai.ie.

This map incorporates Ordnance Survey Ireland (OSI) mapping data under a licence from OSI. Copyright © OSI and Government of Ireland.



(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold
- 'S' Register

(see Section 8(b)(II) of Registration of Title Act 1964 and Rule 224 & 225 Land Registration Rules 1972 - 2010).

Burdens (may not all be represented on map)

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

A full list of burdens and their symbology can be found at: www.landdirect.ie

The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent.

(see Section 85 of the Registration of Title Act, 1964). As Inserted by Section 62 of the Registration of Deed and Title Act 2006.

Creation Date: 22 May 2023 10:34:58

