ROSCOMMON COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 - DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

NOTIFICATION OF DECISION

Shane Comer,



Reference Number:

DED 548

Application Received:

16th March, 2023

Location:

Behy, Ballinameen, Boyle, Co. Roscommon.

WHEREAS a question has arisen as to whether to "demolish existing outbuilding, construct extension to the rear of dwelling, replace rear door to dwelling with window" at Behy, Ballinameen, Boyle, County Roscommon, is or is not development, or is or is not exempted development:

AND WHEREAS Roscommon County Council, in considering this application, had regard particularly to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- (c) Class 1 and Class 50 of Part 1 Article 6 Schedule 2 of the Planning and Development Regulations 2001 as amended
- (d) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Act 2000 (as amended)
- (e) The planning history of the site

AND WHEREAS Roscommon County Council has concluded that:

- (i) To demolish the existing outbuilding is development and is exempted development;
- (ii) To construct an extension on the southern elevation of the dwelling is development and is not exempted development;
- (iii) To replace the door on the southern elevation of the dwelling with a window is development and is not exempted development.

NOW THEREFORE:

By virtue of the powers vested in me by the Local Government Acts 1925 – 2019 and Section 5(2)(a) of the Planning and Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the application described above, it is hereby declared in respect of the said works at Behy, Ballinameen, Boyle, County Roscommon, having regard to the definitions and exempted development provisions contained within the Planning and Development Act 2000 (as amended) and associated Regulations that the said works as detailed in (i) above constitute development that is exempted development and that the said works as detailed in (ii) above constitute development that is not exempted development.

Any person issued with a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended) may, on payment to An Bord Pleanála of the prescribed fee, refer a Declaration for review within 4 weeks of the date of the issuing of the Declaration.

ADVICE NOTE

This Declaration is based on the relevant Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) at the date of issue. In the event that the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended) change prior to the works being carried out this Declaration may no longer apply.

Signed on behalf of the said Council

Administrative Officer,

Planning.

Date: 12th April 2023

Planner's Report on application under Section 5 of the Planning and Development Acts 2000 - 2011

Reference Number:

DED 548

Name and Address of Applicant:

Application for a Declaration under Section 5 of the Planning & Development Act, 2000 (as amended), regarding Exempted Development to "demolish the existing outbuilding, construct extension to the rear of the dwelling" and "replace rear door to dwelling with window" at Behy, Ballinameen, Boyle, County

Roscommon

Applicant:

Shane Comer

Date:

29th March 2023

WHEREAS a question has arisen as to whether to "demolish the existing outbuilding, construct an extension to rear of dwelling" and "replace the rear door to the dwelling with window" at Behy, Ballinameen, Boyle, County Roscommon is or is not development and is or is not exempted development.

I have considered this question, and I have had regard particularly to -

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended)
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001 (as amended)
- (c) Class 1 and Class 50 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)
- (d) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended)
- (e) The planning history of the site.

Site Location & Development Description

The subject residential property is located in Behy, Ballinameen, Boyle, County Roscommon and is accessed off the L10237 Local Tertiary Road. The closest designated site is the Lough Gara SPA (Site Code: 004048), which is approximately 6.2km west of the subject site. Tullaghan Bog (Roscommon) NHA is approximately 1.3km south west of the subject site. Having regard to the scale of the proposed development and the separation distances between the site and the Natura 2000 network, it is considered that the conservation objectives of the network will not be impacted.

It is proposed to "demolish the existing outbuilding, construct an extension to rear of the dwelling" and "replace the rear door to the dwelling with window." As per the submitted details, the proposed extension is 39sqm and the existing outbuilding to be demolished is less than 40sqm. The extension will be finished externally in nap plaster to match the existing.

Assessment

In accordance with the Planning and Development Act, 2000 (as amended), Section 3 (1) 'development' is defined as the following: "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". The proposed development is considered to be the carrying out of works. Works are defined in the Act as; "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure...". It is considered that to demolish the existing outbuilding, construct an extension to the dwelling and replace a door in the dwelling with a window constitutes development, as defined in Section 3 of the said Act.

Identification of the 'front' and 'rear' of the dwelling house

Notwithstanding the references to "the rear" of the dwelling in the declaration query posed, it is first necessary to consider whether or not the southern elevation of the dwelling (on which the proposed extension and elevation changes are proposed) represents "the rear" of the dwelling. It is noted that the site layout plan submitted as part of the Section 5 DED request documentation depicts the subject property accessed off the L1023 public road, at a location approximately 165 metres to the north east of the dwelling house, with an associated access track extending through a field and terminating on the northern side of the subject dwelling house. The northern elevation is identified on the submitted documentation as the 'front' elevation.

Further to an examination of the planning history of the subject site and an examination of satellite imagery from 2000, 2005 and the period 2011-2013, it is noted (a) that the only planning permission relating to the subject property is Planning Ref. No. PD/10/137 in which permission was granted for the installation of septic tank, percolation area and associated works and in which the identified site area is curtailed to the immediate vicinity of the dwelling house, and where there is no indication in that application of the existence of any access to the north of the dwelling and (b) prior to the period 2011-2013, there was no evidence of any form of vehicular access existing to the north of the dwelling, nor is there any record of permission for the creation of a domestic access of the nature shown on the submitted site layout plan. Instead, it is evident that the subject dwelling has traditionally been accessed off the public road (L10237) which runs immediately to the south of the dwelling. On the basis of the foregoing considerations, I do not consider that the depiction of the southern elevation of the dwelling as "the rear" of the property is correct, and instead I consider it appropriate and necessary to assess the request for a declaration of exempted development on the basis that the southern elevation represents the traditional front elevation of the dwelling.



Extract from RCC's GIS Mapviewer (satellite imagery 2011-2013)



Extract from RCC's GIS Mapviewer (satellite imagery 2005)



Extract from RCC's GIS Mapviewer (satellite imagery 2000)

<u>Examination of the various aspects of proposed development in the context of exempted development provisions</u>

1. Demolish existing outbuilding

The proposed demolition of the existing outbuilding, as indicated on the submitted details, is exempted development within the scope of Class 50 of the Planning and Development Regulations, 2001 (as amended).

Description of Development

Class 50

- (a) The demolition of a building, or buildings, within the curtilage of— (i) a house, (ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex.
- (b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.

Conditions and Limitations

- No such building or buildings shall abut on another building in separate ownership.
- The cumulative floor area of any such building, or buildings, shall not exceed: (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres.

3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

2. "Construct extension to rear of the dwelling" and "replace rear door with window"

As detailed in an earlier part of this report, the proposed extension is on the southern elevation of the dwelling house, with this elevation being the traditional, established <u>front</u> elevation and not "the rear" as it is purported to be in the submitted DED documentation. In examining the proposal in the context of the provisions of Section 4 (1) (h) of the Planning and Development Act 2000 (as amended) i.e. "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" the proposed works to replace the door with a window on the southern elevation of the dwelling would materially affect the external appearance of the traditional front elevation of the structure and would be inconsistent with the traditional character of this rural dwelling.

In examining the proposed extension to the southern elevation of the dwelling in the context of Article 6 of the Planning and Development Regulations 2001 (as amended), given the proposed location to the front of the dwelling, the extension does not constitute exempted development within the scope of Class 1 of Part 1 of Article 6 - Exempted Development General of the Regulations.

Schedule 2, Part 1 Exempted Development – General

Descri	ption	of	Deve	lopment
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Development within the curtilage of a house

Class 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

Conditions and Limitations

- 1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.
- (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.
- (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.
- 2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.
- (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or

extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

- (c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.
- 3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.
- 4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.
- (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.
- (c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.
- 5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.
- 6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.
- (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
- (c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.
- 7. The roof of any extension shall not be used as a balcony or roof garden.

With Regard to Article 9 (1)(a) of the Planning and Development Regulations, it is reasonable to conclude that on the basis of the information available, I do not consider that the proposed development individually or in combination with other plans or projects would be likely to have a significant effect on any European site. The need for Appropriate Assessment does not apply with respect to the current case.

I am satisfied that an Environmental Impact Statement or Appropriate Assessment are not required. It should be noted that any development for which Environmental Impact Assessment or Appropriate Assessment is required shall not be exempted development unless specifically exempted in regulations where there is provision in other legislation for the carrying out of EIA or AA. In addition, the restrictions on exemption Art 9 (1)(a) (viiB) exclude development which would otherwise be exempted development under these regulations where an AA is required.

Recommendation

WHEREAS a question has arisen as to whether to "demolish existing outbuilding, construct an extension to the rear of dwelling, replace rear door to dwelling with window" at Behy, Ballinameen, Boyle, County Roscommon is or is not development and is or is not exempted development.

I have considered this question, and I have had regard particularly to -

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended)
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001 (as amended)
- (c) Class 1 and Class 50 of Part 1 Article 6 Schedule 2 of the Planning and Development Regulations, 2001 (as amended)
- (d) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended)
- (e) The planning history of the site.

Jamifer Foy

AND WHEREAS I have concluded that

- a) To demolish the existing outbuilding is development and is exempted development.
- b) To construct an extension to the southern elevation of the dwelling is development and is not exempted development.
- c) To replace the door on the southern elevation of the dwelling with a window is development and is not exempted development.
- d) The proposed development individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and that the requirement for AA or EIAR does not apply with respect to the current case.

Date: 29th March 2023

and I recommend that a declaration to that effect should be issued to the applicant.

Assistant Planner

Signed:

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Shane Comer,



Date:

20th March, 2023.

Planning Reference:

DED 548

Re:

Application for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended), regarding Exempted Development.

Development:

Demolish existing outbuilding, construct extension to rear of dwelling and replace rear door to dwelling with window at Behy, Ballinameen, Boyle, Co.

Roscommon.

A Chara,

I wish to acknowledge receipt of your application received on the 16th March, 2023, for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended), regarding Exempted Development along with the appropriate fee in the sum of €80.00 Receipt No. L01/0/221794 dated 16th March, 2023 refers, receipt enclosed herewith.

Note: Please note your Planning Reference No. is DED 548.

This should be quoted in all correspondence and telephone queries.

Mise le meas,

Administrative Officer,

Planning.

14th March 2023



Roscommon County Council Planning Department Áras on Chontae, Ardnanagh, Roscommon, F42 VR98

Att: Senior Planner

Ref: Application for a Declaration under Section 5 of the Planning & Development Act 2000-2022

Dear Sir/Madam,

This application for a Declaration under Section 5 of the Planning & Development Act 2000-2022 refers to proposed works at Behy, Ballinameen, Boyle, Co. Roscommon. The proposed works, the detail of which is set out on the attached documents, comprises of the demolition of an existing outbuilding, provision of a 39sq metre extension to the rear of an existing house and replacement of the existing rear door with a new window.

Documents attached:

- 1. Completed Section 5 application form
- 2. Site location map
- 3. Site layout plan showing location of proposed extension in place of existing outbuilding to be demolished
- 4. Drawings of existing dwelling and proposed new extension and showing location of proposed new window in place of existing rear door (new rear door to be provided in new extension)

It is my opinion that the works proposed are exempt having regard particularly to -

- (a) Section 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000-2022 (as amended)
- (b) Article 6 (1) of the Planning and Development Regulations 2001-2022 (as amended)
- (c) Schedule 2 Part 1, Exempted Development General, Class 1 and Class 50 of the Planning & Development Regulations 2001-2022, as amended;
- (d) Article 9 (1) of the Planning and Development Regulations 2001-2022(as amended)

Planning and Development Act, 2000 - 2022

Section 2(1) defines alteration as follows "alteration" includes—

- (a) plastering or painting or the removal of plaster or stucco, or
- (b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

'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.

Section 3 (1) Development:

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.

Exempted Development

- **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;

Planning and Development Regulations, 2001 - 2022, 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 Part1 opposite the mention of that class in the said column 1.

Schedule 2 - Part 1, Exempted Development - General

Description of Development

Development within the curtilage of a house

Class 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear of or to the side of the house.

Relevant conditions & limitations to Class 1;

The house is a detached single storey dwelling which has not been extended previously. The proposed extension does not exceed 40 sq. metres. The height of the walls of the proposed extension shall not exceed the height of the rear wall of the house. The height of the highest part of the roof of the proposed extension shall not exceed the height of the highest part of the roof of the dwelling.

The construction or erection of the proposed extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres (the curtilage of the dwelling is substantial as shown on the enclosed site layout plan with a larger landholding surrounding).

The dwelling is accessed via an existing private access lane and access point off the public road as shown on the site layout plan.

1 6 MAR 2023

Class 50

- (a) The demolition of a building, or buildings, within the curtilage of -
 - (i) a house

Relevant conditions & limitations to Class 50;

The building to be demolished is an outbuilding/storage shed of floor area less than 40sq.metres that does not abut on another building in seperate ownership.

Exemptions under 4(1)(h);

The replacement of the existing back door with a window constitutes development which is exempted development on the basis that the works are for the improvement and alteration of the structure without materially impacting on the external appearance of the structure so as to render the appearance of the structure inconsistent with the character of the structure of neighbouring structures.

Article 9(1)

The development works are not constrained by any restrictions on exempted development detailed in Article 9 of the Planning & Development Regulations, 2001-2022.

In conclusion, having regard to the relevant Sections of the Planning and Development Act, 2000-2022 (as amended) and the Planning and Development Regulations 2001-2022 (as amended) as set out above, it is considered that the demolition of an existing outbuilding and the provision of a new 39sq. metre extension to the rear of the existing dwelling and replacement of the rear door of the dwelling with a window is Exempted Development.

Your confirmation in this regard is kindly sought via the attached formal application for a Section 5 Declaration.

Kind regards

Shane Comer

16 MAR 2023

PLANNING SECTION



Áras an Chontae, Roscommon, Co. Roscommon

Phone: (090) 66 37100

Email: planning@roscommoncoco.ie

Roscommon County Council

ANNING SECTION Application for a Declaration under Section 5 of the Planning & Development Act 2000, regarding Exempted Development

Name:	SHANE COMER
Address:	
	27/4
Name & Address of Agent:	N/A
Nature of Proposed Works	DEMOLISH EXISTING OUTBUILDING
·	CONSTRUCT EXTENSION TO REAR OF DWELLING
	REPLACE REAR DOOR TO DWELLING WITH
	WINDOW
Location (Townland & O.S No.)	BEHY - MAP SHEET 1861
	TOTAL PLOOP APPA 101 0
Floor Area	TOTAL FLOOR AREA 101 m2 EXTENSION FLOOR AREA 39 m ²
Height above ground level	0.20m
neight above ground level	30.20H
Total area of private open space	DWELLING SITE ON LANDHOLDING OF 1.28 Ha
remaining after completion of this	
development	
Roofing Material (Slates, Tiles,	TO MATCH EXISTING
other) (Specify)	SLATE OR GALVANISED SHEETING
Proposed external walling (alaster	NAP PLASTER TO MATCH EXISTING
Proposed external walling (plaster, stonework, brick or other finish,	MALI LASTER TO MATCH EXISTING
giving colour)	
66 .0.000.1	
Is proposed works located at	REAR
front/rear/side of existing house.	

Roscommon County Council

Application for a Declaration under Section 5 of the Planning & Development Act 2000, regarding Exempted Development

Has an application been made previously for this site If yes give ref. number	YES FOR A SEPTIC TANK REF 10/137
(include full details of existing extension, if any)	FOR A SEI TIC TAINK KEI 10/13/
Existing use of land or structure	DWELLING + FARM LAND
Proposed use of land or structure	AS ABOVE
Distance of proposed building line from edge of roadway	APPROX 101M FROM PUBLIC ROADWAY
Does the proposed development involve the provision of a piped water supply	EXISTING
Does the proposed development involve the provision of sanitary facilities	EXISTING

Signature:

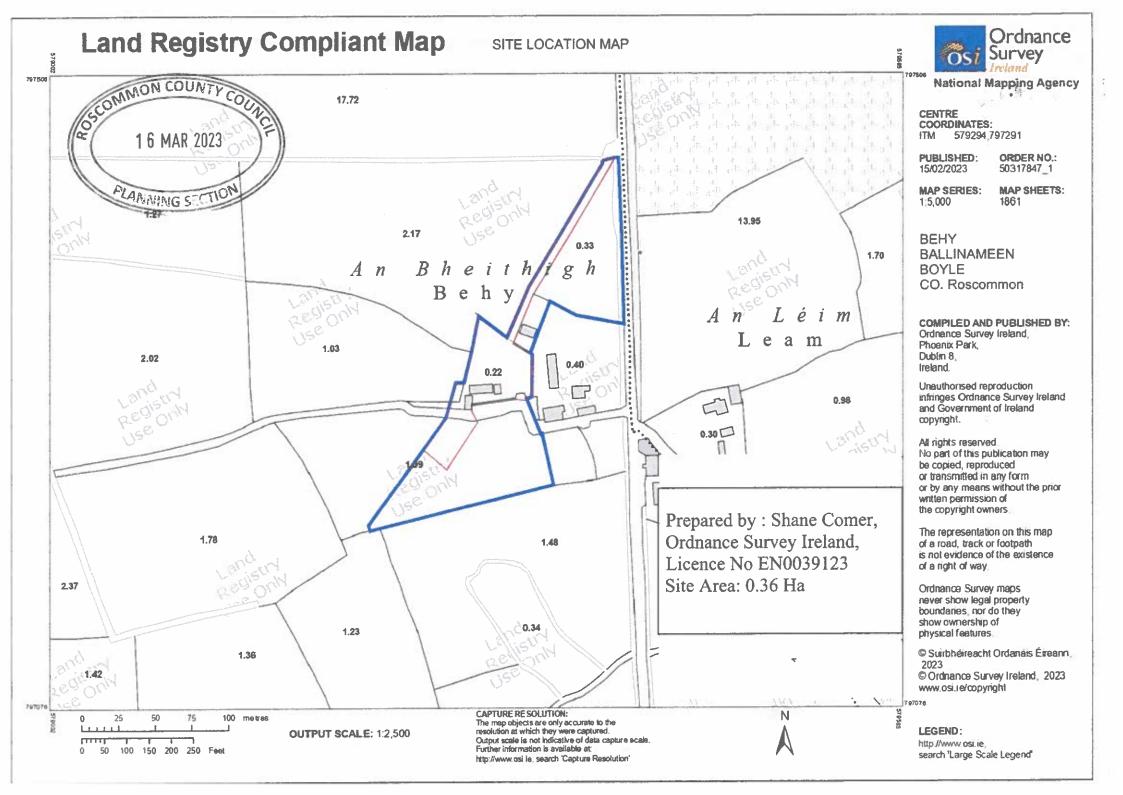
Date:

14-03-2023

Note: This application must be accompanied by:-

- (a) €80 fee
- (b) Site Location map to a scale of 1:2500 clearly identifying the location
- (c) Site Layout plan to the scale of 1:500 indicating exact location of proposed development
- (d) Details specification of development proposed





Roscommon County Council Roscommon County Council
Aras an Chontae
Roscommon
09066 37100

16/03/2023 15:07:42

Receipt No. : L01/0/221794

SHANE COMER

PLANNING APPLICATION FEES GOODS 80.00 VAT Exempt/Non-vatable DED 548

80.00

Total :

80 00 EUR

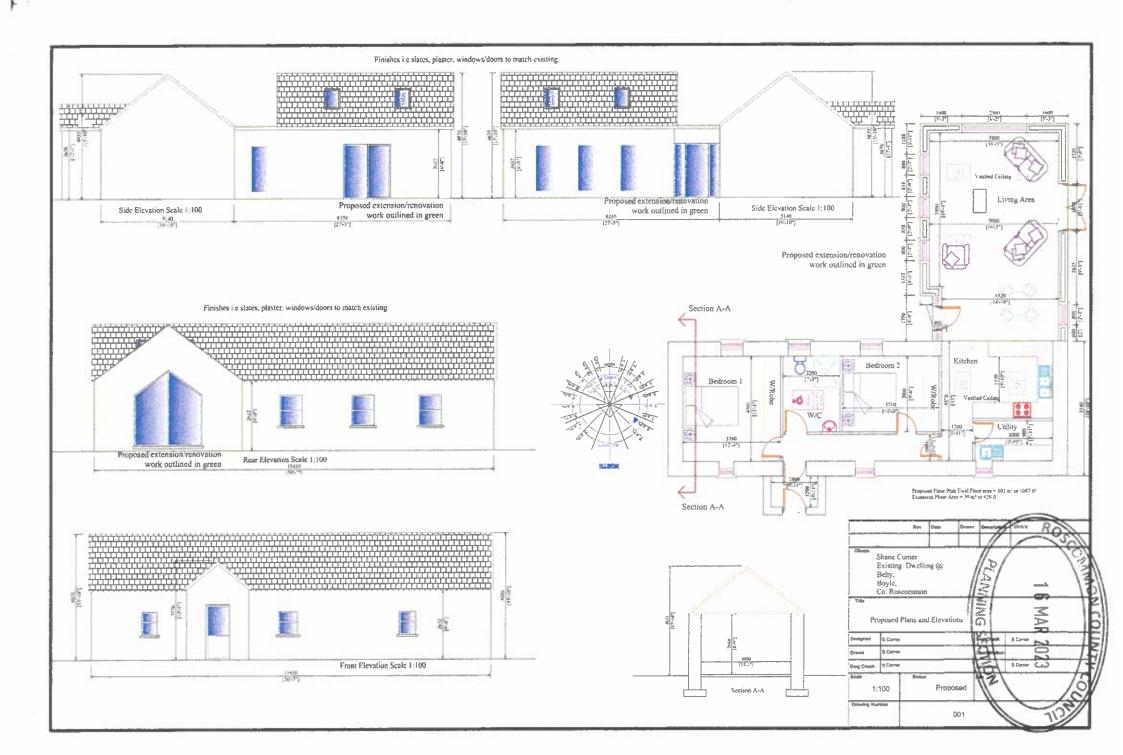
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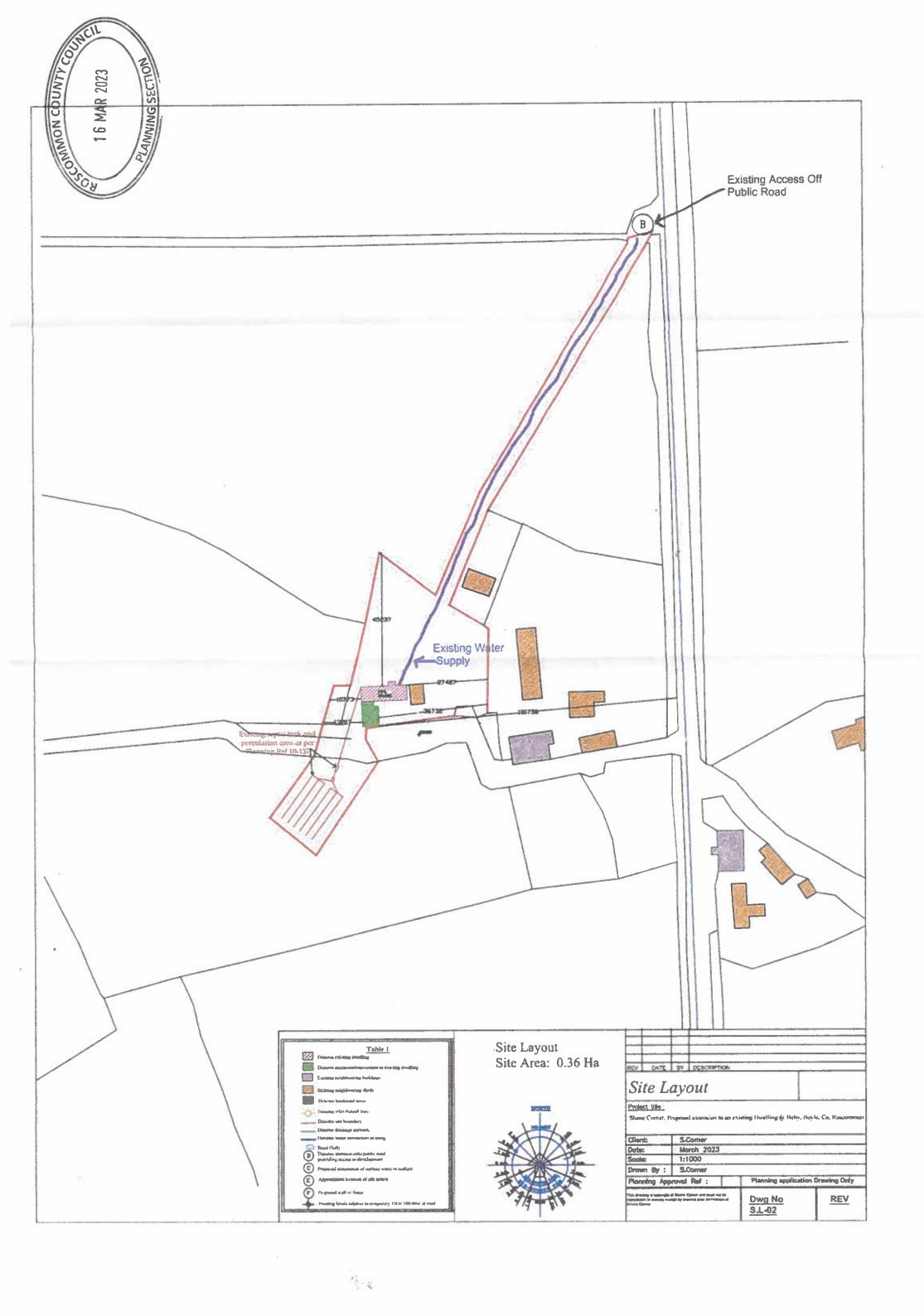
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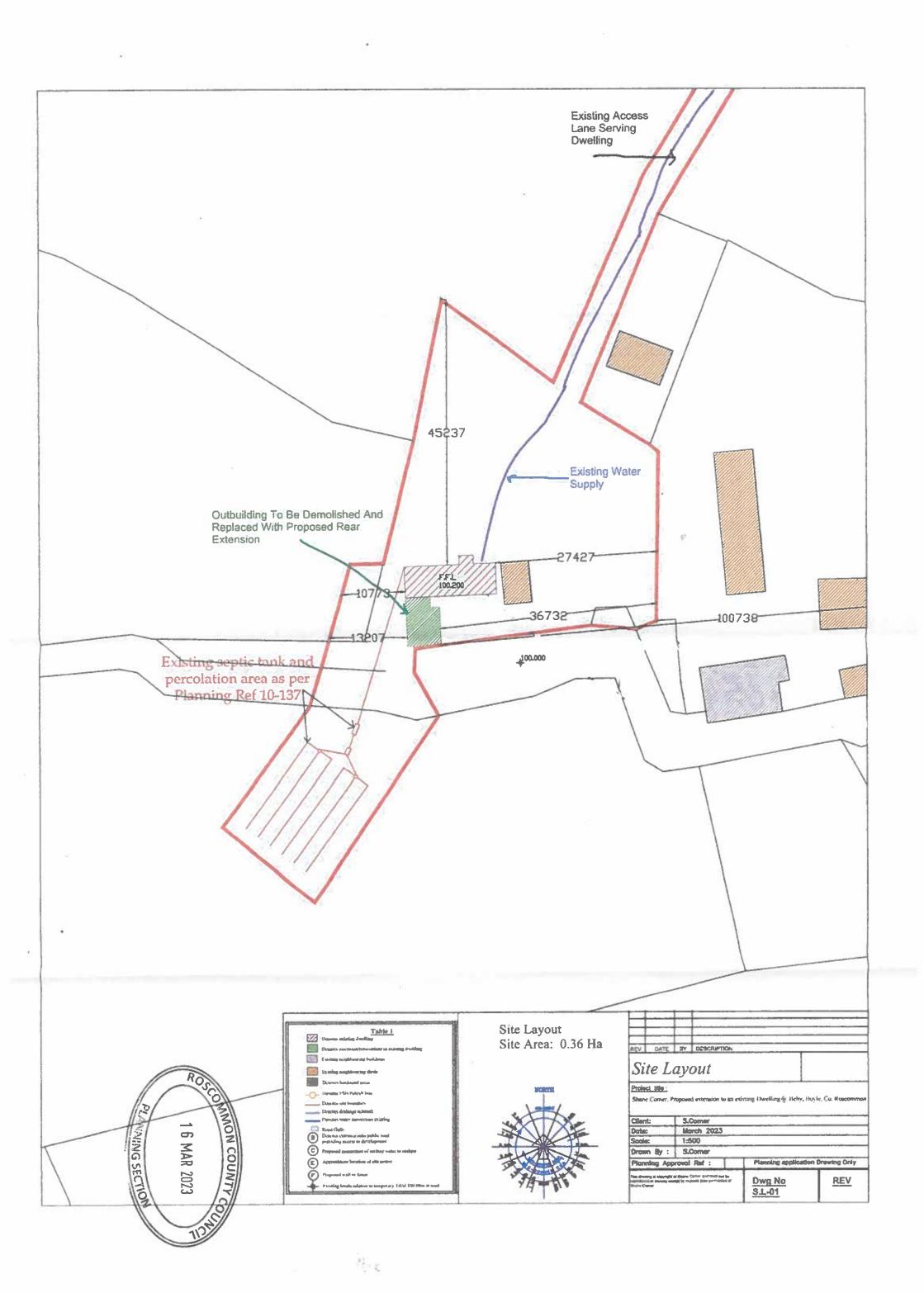
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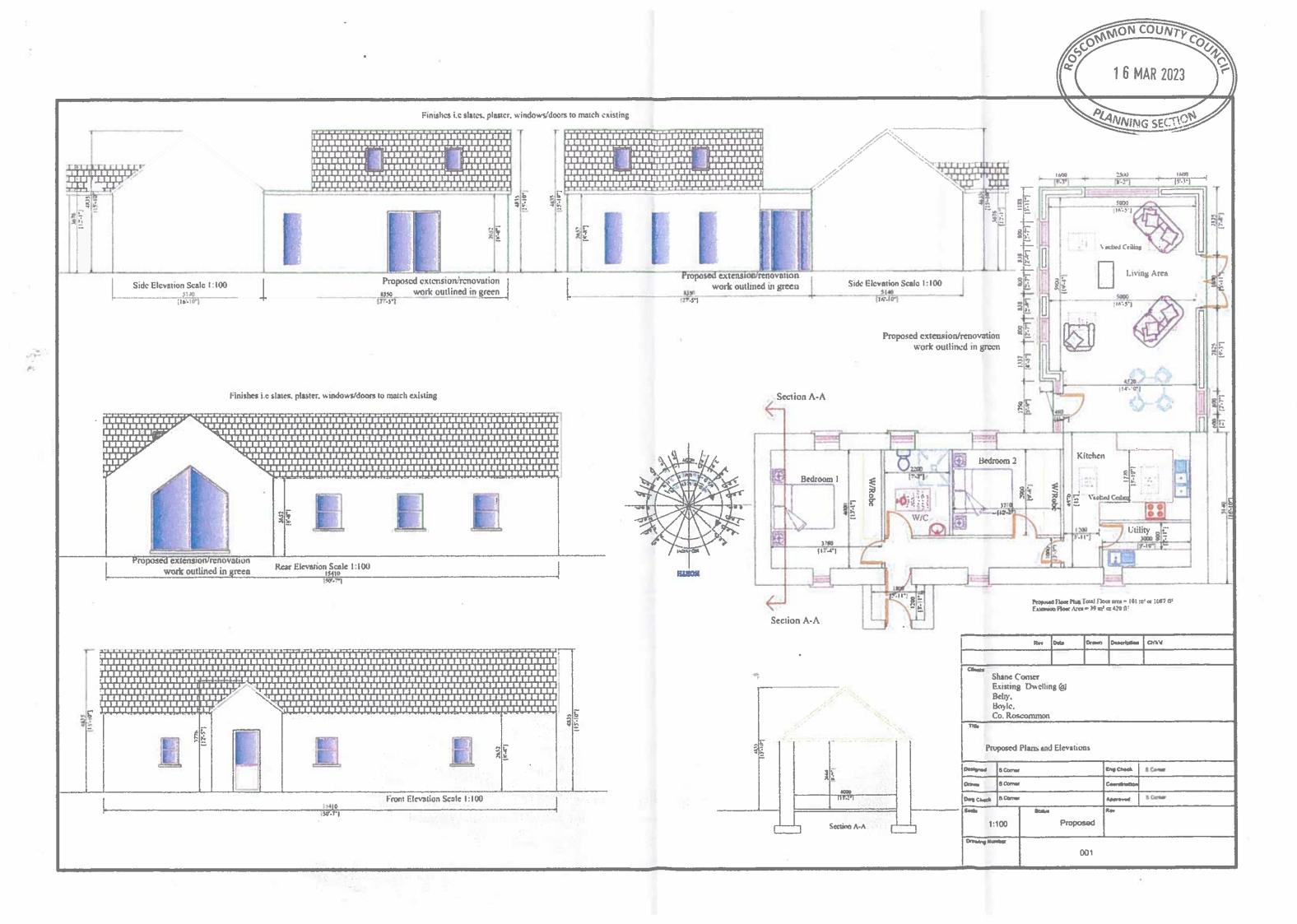
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Issued By Bernadine Duignan From Central Cash Office









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