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**John & Ann Marie O'Driscoll
C/o Michael Duffy
1 Clós na hEaglaise
Kilfenora
Co. Clare**

9th February 2024

Section 5 referral Reference R24-2 – John & Ann Marie O'Driscoll

Is the renovation of a traditional Shepherd's cottage development and if so is it exempted development?

A Chara,

I refer to your application received on 15th January 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas

**Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúirthóireacht Forbairt Gheilleagrach**

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department
Economic Development Directorate**

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No:

83119

Reference Number:

R24-2

Date Referral Received:

15th January 2024

Name of Applicant:

John & Ann Marie O'Driscoll

Location of works in question:

Knockaunsmountain, Fanore, Co. Clare

Section 5 referral Reference R24-2 – John & Ann Marie O'Driscoll

Is the renovation of a traditional Shepherd's cottage development and if so is it exempted development?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and
- (b) The details and particulars as submitted with the referral application.
- (c) The current condition and use of the existing building on site.

AND WHEREAS Clare County Council has concluded:

- (a) No details have been submitted with the application detailing the type of renovation works as proposed to be carried out at this location. In the absence of same it is considered that the works do not come within the scope of exempted development set out in section 4(1)(h) of the Planning and Development Act, 2000, as amended, and are not otherwise provided for under exempted development legislation.
- (b) Notwithstanding the above, from inspection of the site, and from examination of the site planning history and the referral file, there is no evidence demonstrating any residential use associated with this 'Shepherds Cottage'. Therefore the carrying out of renovation works to facilitate the change of use of the existing building to permanent habitable use would constitute a change of use that is material, having regard to the potential for consequences in planning terms, including the potential for implications in terms of wastewater, the provision of services in an unzoned, unserviced rural area, and the potential for the intensification of use of the narrow road fronting the site, and would, therefore, constitute development, which development does not come within the scope of any of the legislative provisions for exempted development.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate

to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the renovation of traditional 'Shepherd's cottage' to provide for a small dwelling for permanent occupancy at Knockaunsmountain, Fanore, Co. Clare is considered development which is not exempted development.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER 

Date:

9th February 2024

**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R24-2



Section 5 referral Reference R24-2

Is the renovation of a traditional Shepherd's cottage development and if so is it exempted development?

AND WHEREAS, John & Ann Marie O'Driscoll has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and
- (b) The details and particulars as submitted with the referral application.
- (c) The current condition and use of the existing building on site.

And whereas Clare County Council has concluded:

- (a) No details have been submitted with the application detailing the type of renovation works as proposed to be carried out at this location. In the absence of same it is considered that the works do not come within the scope of exempted development set out in section 4(1)(h) of the Planning and Development Act, 2000, as amended, and are not otherwise provided for under exempted development legislation.
- (b) Notwithstanding the above, from inspection of the site, and from examination of the site planning history and the referral file, there is no evidence demonstrating any residential use associated with this 'Shepherds Cottage'. Therefore the carrying out of renovation works to facilitate the change of use of the existing building to permanent habitable use would constitute a change of use that is material, having regard to the potential for consequences in planning terms, including the potential for implications in terms of wastewater, the provision of services in an unzoned, unserviced rural area, and the potential for the intensification of use of the narrow road fronting the site, and would, therefore, constitute development, which development does not come within the scope of any of the legislative provisions for exempted development.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the renovation of traditional 'Shepherd's cottage' to provide for a small dwelling for permanent occupancy at Knockaunsmountain, Fanore, Co.

Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.


Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

9th February 2024

**CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT**

FILE REF:	R24-2
APPLICANT(S):	John & Ann Marie O'Driscoll
REFERENCE:	Is the renovation of a traditional 'Shepherd's cottage' to provide for a small dwelling for permanent occupancy development and if so, is it exempted development.
LOCATION:	Knockaunsmountain, Fanore, Co. Clare
DUE DATE:	8th February 2024

Site Location

The site is located in the townland of Knockaunsmountain in Fanore. The site is located along the L10301. The site contains an existing structure constructed from stone with a galvanised roof. The site is located within a Heritage Landscape and is located along a Scenic Route, as per the Clare County Development Plan 2023-2029.

Recent Onsite Planning History

There is no recent planning history on site.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by John & Ann Marie O'Driscoll, the stated owners of the structure.

The applicants are seeking a Section 5 Declaration as to whether the renovation of a Shepherd's Cottage is development, and if so, is it exempted development?

A site inspection took place on 31st January 2023 where it was noted that there is a single storey stone building on site with a floor area of roughly 50sqm (approximately 5.25m x 9.75m). There was no residential use evident on date of inspection and building would require the undertaking of significant works to render it habitable.

In support of the Referral file an application form has been submitted along with a site location plan. No drawings detailing the type of renovation works as proposed have been included and no details relating to any previous residential use of the site have been submitted. Floor plans or elevational drawings of the structure have also not been submitted.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the Planning and Development Act 2000, as amended.

*S.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.*

‘Works’ are defined in Section 2 of the Planning and Development Act 2000, as amended as follows:

“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 4(1) (h) of the Act states that the following shall be exempted development for the purposes of this Act –

(h) development consisting of the use 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;

Development Plan Provisions

The site is located off a designed Scenic Route and within a Heritage Landscape

The site is within a recorded monument zone of notification and there are a significant number of monuments in the vicinity of the site.

The site is off a designated Recreational Route

The site is 5-600m from the Blackhead Poulsallagh SAC

Basis of Referral

Part 2 (a) of the application form states that question being asked as follows:

“Is the renovation of a traditional Shepherd’s cottage development and if so, is it exempted development”

Part 2 (b) of the application form further elaborates and states:

“Derelict Shepherd’s cottage on applicants farm can be renovated to provide a small dwelling for permanent occupancy”

For clarity and for assessment purposes the question therefore arising is:

“Whether the renovation of a traditional ‘Shepherd’s cottage’ to provide for a small dwelling for permanent occupancy is development and if so, is it exempted development”.

Particulars of the Development

No details have been submitted with the application detailing the type of renovation works proposed to be carried out at this location. From inspection of the building it is clear that significant alterations to the building would be required to bring this up to habitable standards including new doors, window openings etc. In the absence of detailed drawings of the type of renovation works proposed it is not possible to adequately assess the nature of the works as proposed and as such it is considered that the works do not come within the scope of exempted development set out in section 4(1)(h) of the Planning and Development Act, 2000, as amended.

I also note that the site is located off a designated Scenic Route (CDP 14.7) and within a Heritage Landscape (CDP 14.5), it is within a zone of notification for recorded monuments, off a recreational route and is approximately 500m from the Blackhead/Poulsallagh Complex SAC. It is likely therefore that a number of restrictions on exempted development would be applicable for this development as set out in Article 9 of the Regulations, however for now this referral, based on the details submitted can be assessed solely with regard to the primary legislation (Act).

Notwithstanding the above, the main component of the question being asked is whether the renovation of a cottage described as a ‘Shepherd’s cottage’ to provide for a small dwelling for permanent occupancy is development and if so, is it exempted development. There is no definition of a shepherds cottage under the planning legislation. From inspection of the site it is clear to me that the existing building functions as a shed/building for the storage of animals/farm materials and does not have an existing residential use. There are no services (e.g., electricity, water, septic tank) associated with the building. Any historic residential use is considered to have been long abandoned. The application itself is also limited in relation to any information with respect to any previous residential use on this site.

Based on the information before me, I am not satisfied that the subject structure has been used as a dwelling house. Even if it were the case that the site accommodated a residential use at some time, such a use is clearly abandoned and any change of use now to bring the building up to modern standards would result in material change of use in planning terms regarding service provision, wastewater provision, and the intensification of the road network/access point.

In light of the above therefore, it is clear to me that the renovation works proposed in this instance, making the subject structure in a habitable unit involve a material change of use and is not therefore exempted development.

Conclusion

WHEREAS a question has arisen as to whether the renovation of a traditional 'Shepherd's cottage' to provide for a small dwelling for permanent occupancy is development and if so, is it exempted development.

AND WHEREAS Clare County Council in considering this referral had particular regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and
- (b) The details and particulars as submitted with the Referral application
- (c) The current condition and use of the existing building on site.

AND WHEREAS Clare County Council has concluded

- (a) No details have been submitted with the application detailing the type of renovation works as proposed to be carried out at this location. In the absence of same it is considered that the works do not come within the scope of exempted development set out in section 4(1)(h) of the Planning and Development Act, 2000, as amended, and are not otherwise provided for under exempted development legislation.
- (b) Notwithstanding the above, from inspection of the site, and from examination of the site planning history and the referral file, there is no evidence demonstrating any residential use associated with this 'Shepherds Cottage'. Therefore the carrying out of renovation works to facilitate the change of use of the existing building to permanent habitable use would constitute a change of use that is material, having regard to the potential for consequences in planning terms, including the potential for implications in terms of wastewater, the provision of services in an unzoned, unserviced rural area, and the potential for the intensification of use of the narrow road fronting the site, and would, therefore, constitute development, which development does not come within the scope of any of the legislative provisions for exempted development.

NOW THEREFORE Clare County Council in exercise of its powers conferred on it by Section 5(2) of the Planning & Development Act 2000 (as amended) hereby decides that the renovation of a traditional 'Shepherd's cottage' to provide for a small dwelling for permanent occupancy at Knockaunsmountain, Fanore, Co. Clare is development, and is **not** exempted development.



Assistant Planner

Date: 7/2/24



Senior Executive Planner

Date: 07/02/24











COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

John & Ann Marie O'Driscoll
C/o Michael Duffy
1 Clós na hEaglaise
Kilfenora
Co. Clare

16/01/2024

Section 5 referral Reference R24-2 – John & Ann Marie O'Driscoll

Is the renovation of a traditional Shepard's cottage development and if so is it exempted development?

A Chara,

I refer to your application received on 15th January 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Brian Fahy
Planning Department
Economic Development Directorate

Clare County Council
Aras Contae an Chláir
New Road
Ennis
Co Clare

16/01/2024 12:53:40

Receipt No: L1CASH/0/359377
***** REPRINT *****

JOHN & ANN MARIE O'DRISCOLL
C/O MICHAEL DUFFY
1 CLOS NA HEAGLAISE
KILFENORA
CO CLARE

SECTION 5 REFERENCES 80.00
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered :
CREDIT CARDS 80.00

Change : 0.00

Issued By : L1CASH- Noilin Hayes
From : MAIN CASH OFFICE LODGEMENT AF
Vat reg No.0033043E

15 JAN

P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

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Website: www.clarecoco.ie



Comhairle Contae an Chláir
Clare County Council

R24-2

**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration

John & Ann Marie O'Driscoll
Crimlin,
Craggagh,
Fanore,
Co. Clare.

(b) Telephone No.:

(c) Email Address:

(d) Agent's Name and address:

Michael Duffy
1 Clós na hEaglaise, Kilfenora, Co. Clare.

2. DETAILS REGARDING DECLARATION BEING SOUGHT

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT

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

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

Is the renovation of a traditional Shepard's cottage development and if so is it exempt development.

(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

Derelict Shepard's cottage on applicants farm can be renovated to provide a small dwelling for permanent occupancy.

(c) List of plans, drawings etc. submitted with this request for a declaration:

(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

Site location map with location marked in Red.

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Knockaunsmountain, Fanore, Co. Clare. ITM: 512667,703711
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No.
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Owner. Family farm.
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	n/a
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes owner applicant
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No.
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	No. Pre -1963 Shepard's cottage
(h) Date on which 'works' in question were completed/are likely to take place:	Summer 2024

SIGNED:



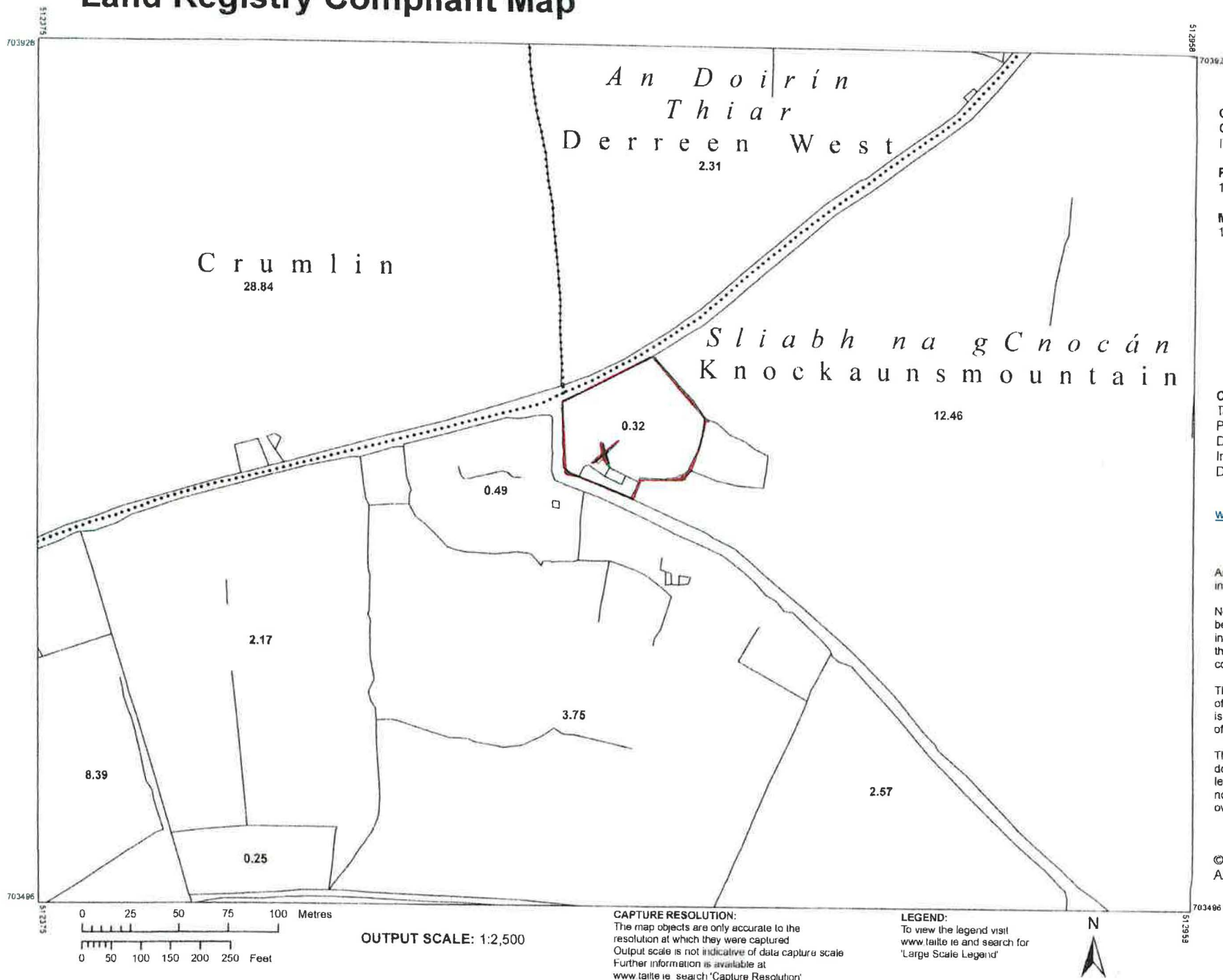
DATE:

15/01/2024

Land Registry Compliant Map



**Tailte
Éireann**



**CENTRE
COORDINATES:**
ITM 512667,703711

PUBLISHED: 15/01/2024
ORDER NO.: 50377348_1

MAP SERIES: 1:5,000
MAP SHEETS: 3794

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