

Donegal County Council.  
Planning Service,  
County House,  
Lifford,  
Co. Donegal  
F93 Y622



Comhairle Contae  
Dhún na nGall  
Donegal County Council

Planning Services

RECEIVED DATE: 27/01/2025

[planning@donegalcoco.ie](mailto:planning@donegalcoco.ie)

Date: 27<sup>th</sup> January 2025  
Our Ref: 22119 DF

Dear Sir / Madam,

**RE: APPLICATION FOR A SECTION 5 DECLARATION REGARDING THE SITE AT BREEZY POINT, IN THE TOWNLAND OF ROSSNOWLAGH LOWER, ROSSNOWLAGH, CO. DONEGAL**

## 1.0 INTRODUCTION

On behalf of the applicant, Breezy Point Capital Ltd., Ardmore House, Main Street, Ballyshannon, Co. Donegal, we, John Spain Associates, 39 Fitzwilliam Place, Dublin 2 hereby request a Section 5 Declaration from Donegal County Council in respect of the installation of a gate serving No. 16 Breezy Point.

The purpose of this Section 5 referral request is to establish whether the installation of a gate is or is not exempted development.

This cover letter will describe the completed works and seek to demonstrate that they constitute exempted development.

We enclose the following information with the Section 5 application:

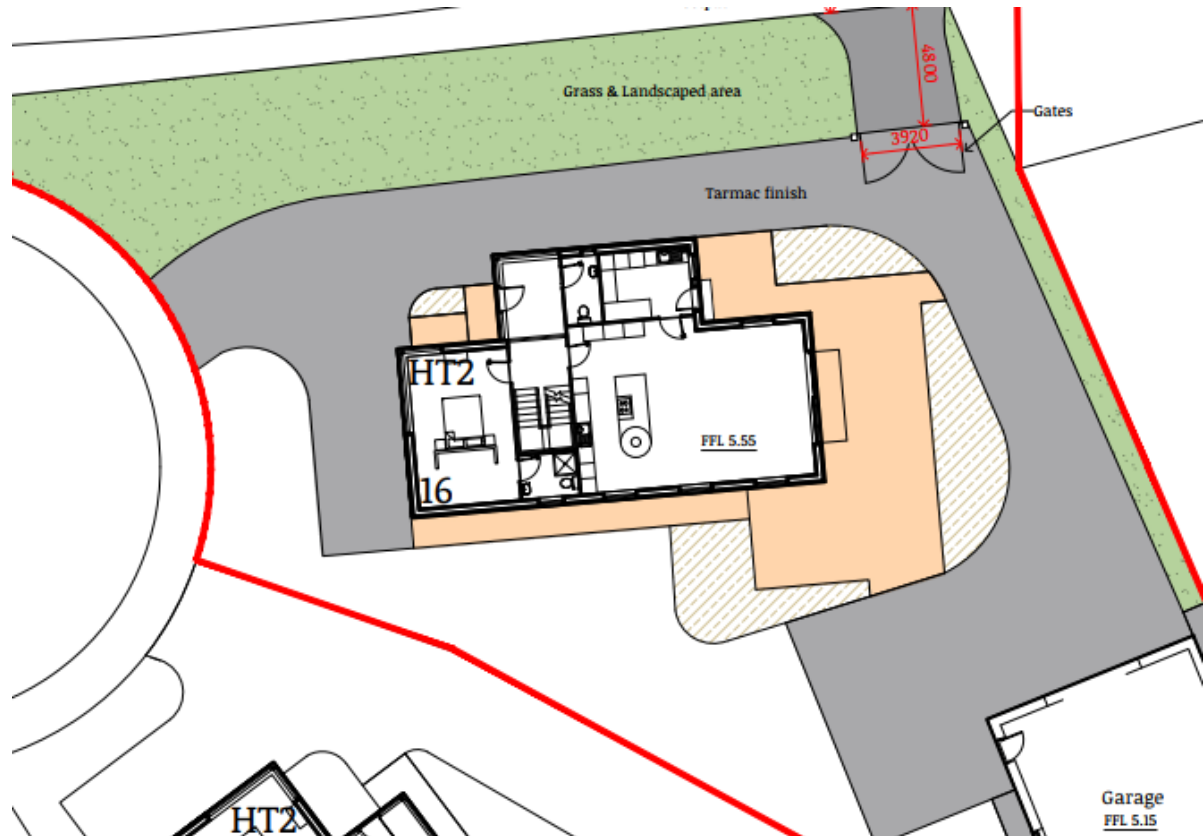
- Statutory fee of €80;
- Completed Section 5 Declaration Application Form;
- Cover Letter prepared by John Spain Associates;
- Drawings prepared by Allan Curran Architecture:
  - Site Location Map;
  - Site Layout Plan;
  - No. 16 Site plan; and
  - Gate elevations.

The height of the gate is 1.7m, 3.9 m in width and is located to the side of No. 16.

## 2.0 SITE LOCATION AND DESCRIPTION

The subject site is located in the townland of Rosstown Lower, within the settlement of Rosstown Co. Donegal which is located approximately 7km north of Ballyshannon. The site faces the Ardliath Road, and is bound by an existing residential development, Beach Cottages, located directly to the south.

The residential development is now nearing completion. Figure 2 below illustrates the recent status of the site and the high quality of finish associated with the units.



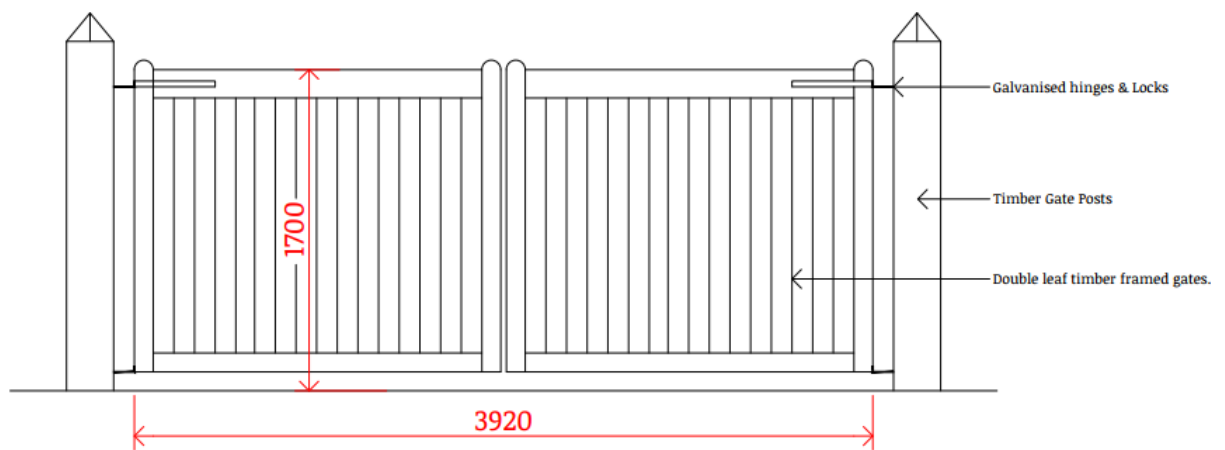
**Figure 1: Site layout plan (Source: Allan Curran Architects, 2025).**

Unit No. 16 is located in the north east corner of the development and is accessed via the internal road. The subject gate is located to the north of this house, fronting the Rosstown Lower road.

The height of the gate is 1.7m, 3.9 m in width and is located to the side of No. 16 to the north.



**Figure 2: The subject gate as completed (Source: Allan Curran Architects, 2025).**



**Figure 3: extract from gate elevation drawing (Source: Allan Curran Architecture, 2025).**

### 3.0 LEGISLATIVE FRAMEWORK

The Planning and Development Act 2000, as amended, at Section 3(1) provides a definition of development for the purposes of the Act. The Act provides for exemptions which are detailed under the Planning and Development Regulations 2001, as amended. In this case Class 5 of Part 1 of Schedule 2 is the relevant provision.

We note the relevant provisions of Class 5 which provides for the construction of a gate, which states:

*“CLASS 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete*

We note the following associated conditions:

- “1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.*
- 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.*
- 3. No such structure shall be a metal palisade or other security fence”*

In response to the above, the height of the gate is 1.7m and is located to the side of No. 16.

The proposed Section 5 relates to the gate, not the wall therefore 2. above is not considered relevant.

The gate is wooden and is not a metal palisade or other security fence.

The gate therefore falls within the provisions of Class 5.

#### 4.0 ARTICLE 9 RESTRICTIONS

Article 9 of the Planning and Development Regulations 2001 (as amended) provides for the following restrictions on exemptions that are relevant to the proposal under consideration (an assessment is provided after each point):

*“9. (1) 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—*

*(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,”*

JSA have reviewed the planning history associated with the subject lands and its parent permission (see appendix 1). No such condition preventing the inclusion of gate at this location is noted.

*(ii) “consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,”*

The gate itself is 3.9m wide and once opened will enable a means of access not exceeding 4m in width (3.9m) to the public road therefore in accordance with the above condition.

*(iii) “endanger public safety by reason of traffic hazard or obstruction of road users”*

The gate is not intended to be the primary access point of the house and to be used only occasionally by the occupants therefore will not endanger public safety by reason of traffic hazard or obstruction of road users. There are no obstacles to visibility proximate to the gate.

*(iiia) “endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft”*

No solar panels or similar works are proposed, as such it is not considered that the proposed change of use will result in hazardous glint and / or glare.

*(iv) “except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan”*

No new building or porch provided as part of this development.

*(v) “consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies”*

There are no works under a public road proposed as part of this development.

- (vi) *“interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan”*

The proposed development will not impact any sensitive view or prospects as it does not comprise any further works to the building.

- (vii) *“consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan”*

There is no excavation, alteration or demolition of ‘places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan’ proposed as part of the intended use.

- (viiA) *“consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended”*

There is no excavation, alteration or demolition of any architectural monument proposed as part of the intended use.

- (viiB) *“comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site”*

Due to the nature and scale of the gate, it is not considered that the proposed development would be likely to have a significant effect on the integrity of a European site. The site is not located within nor is in close proximity to a European site or qualifying interests.

- (viiC) *“consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000”*

It is not considered that the proposed development would be likely to have an adverse impact on an area designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000.

- (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”*

There is no extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use proposed as part of this application.

- (ix) *“consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan”*

There is no demolition or alteration of a building proposed as part of this application.

- (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”*

There is no fencing proposed as part of this application that would prevent public access to ‘any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility’.

- (xi) *“obstruct any public right of way”*

The proposed use will not obstruct any public right of way. There is no right of way present on the subject lands.

- (xii) *“further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area”*

The subject site is not located within an Architectural Conservation Area.

- b) *“in an area to which a special amenity area order relates, if such development would be development:-*
- (i) *of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or*
  - (ii) *consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or*
  - (iii) *of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or*

- (iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited”*

The subject site is not located in a special amenity area as such the above considerations do not apply.

- c) “if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive”*

Part 10 does not apply to the proposed development as the Application is not by or on behalf of a local authority.

- d) “if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.”*

It is not considered that the proposed development will have any significant repercussions on major accident hazards due to its nature and scale.

- 2) “Sub-article (1)(a)(vi) shall not apply where the development consists of the construction by any electricity undertaking of an overhead line or cable not exceeding 100 metres in length for the purpose of conducting electricity from a distribution or transmission line to any premises.”*

There are no overhead lines or cables proposed as part of this development.

- 3) “For the avoidance of doubt, sub-article (1)(a)(vii) shall not apply to any operation or activity in respect of which a Minister of the Government has granted consent or approval in accordance with the requirements of regulation 31 of the Habitats Regulations 1997, and where regulation 31(5) does not apply.”*

The above consideration is not considered directly relevant to the subject referral.



## **5.0 SUMMARY AND CONCLUSIONS**

This application for a Section 5 Declaration is made on behalf of the applicant, Breezy Point Capital Ltd., Ardmore House, Main Street, Ballyshannon, Co. Donegal, and seeks a declaration in respect of installation of the gate is or is not considered exempted development.

As set out in the above cover letter, it is respectfully submitted that the installation of the gate is considered to constitute exempted development under Class 5 of the Planning and Development Regulations 2001, as amended.

Please do not hesitate to contact us should you require any further information in relation to the application for a Section 5 Declaration.

Yours sincerely,



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**John Spain Associates**

## **Appendix 1: PLANNING HISTORY**

We note the following relevant planning history on site:

### **DCC Reg. Ref. 10/20469**

Lodged 20/12/2010 this application comprised:

*“Erection of sixteen detached houses (eleven one and a half storey and five two storey) each with separate boiler house/store and all associated site works.”*

Subsequently granted 21/02/2012.

This application included condition 1(b) *“Footpath and street lighting from site to the village centre shall be in accordance with plans and details submitted to the Planning Authority on 26/1/2012 save as otherwise required hereinafter.”*

### **DCC Reg. Ref. 17/50192 (Extension of Duration)**

The applicant lodged an application for an extension of duration of the above referenced permission DCC Reg. Ref. 10/20469 on 13/02/2017, as per the above this application is described as:

*“Erection of 15 no. Detached houses (ten one and a half storey and five two storey) each with separate boiler house/store and all associated site works.”*

This was subsequently granted 07/04/2017.

### **DCC Reg. Ref. 20/51900**

Lodged 10/12/2020 this application comprised:

*Changes to 15 no. Detached houses (10 no. One and a half storey and 5 no. Two storey) each with separate boiler house / store and all associated site works granted under planning permission reference no. 10/20469 and extension of duration reference no. 17/50192 to include the following (1) change of house design to the 15 no. Detached houses (2) relocation of turning head to service road serving house no's. 5-16 (3) relocation of the rear boundaries to houses 15 and 16.*

Subsequently granted 11/03/2021. We note this application comprised a extension of duration of permission of Reg. Ref. 17/50192.

### **DCC Reg. Ref. 22/51591**

Lodged 22/09/2022.

*Erection of two number domestic garages associated with dwelling numbers 15 and 16 and all associated site works granted permission under planning permission reference no. 10/20469, extension of duration reference no. 17/50192, planning permission 21/51900 and 22/50967.*

Granted 10/11/2022.

### **DCC Reg. Ref. 22/50967**

Lodged 07/06/2022:

*Completion of 15 no. Dwelling houses and all associated site development works.*

Granted 01/08/2022.

**DCC Reg. Ref. 2350070 ABP 316223-23**

As set out in the notices the proposed development comprises:

*“the development will consist of the erection of a one and a half storey dwelling house and all associated site works including public space landscaping”*

Granted 16/02/2024



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## SECTION 5 APPLICATION

FOR DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

**Completed application form & supporting documentation to be returned to the Planning Authority by email to [planning@donegalcoco.ie](mailto:planning@donegalcoco.ie)**

<b>Name of Applicant(s):</b>	
<b>Agent Name:</b> (if applicable)	
<b>Location of Proposed Development / Works:</b> (Townland or postal address as appropriate and Eircode if available)	
<b>Description of Proposed Development including details of works (where applicable):</b> (Only works listed below will be assessed under <u>this</u> section 5 application)	



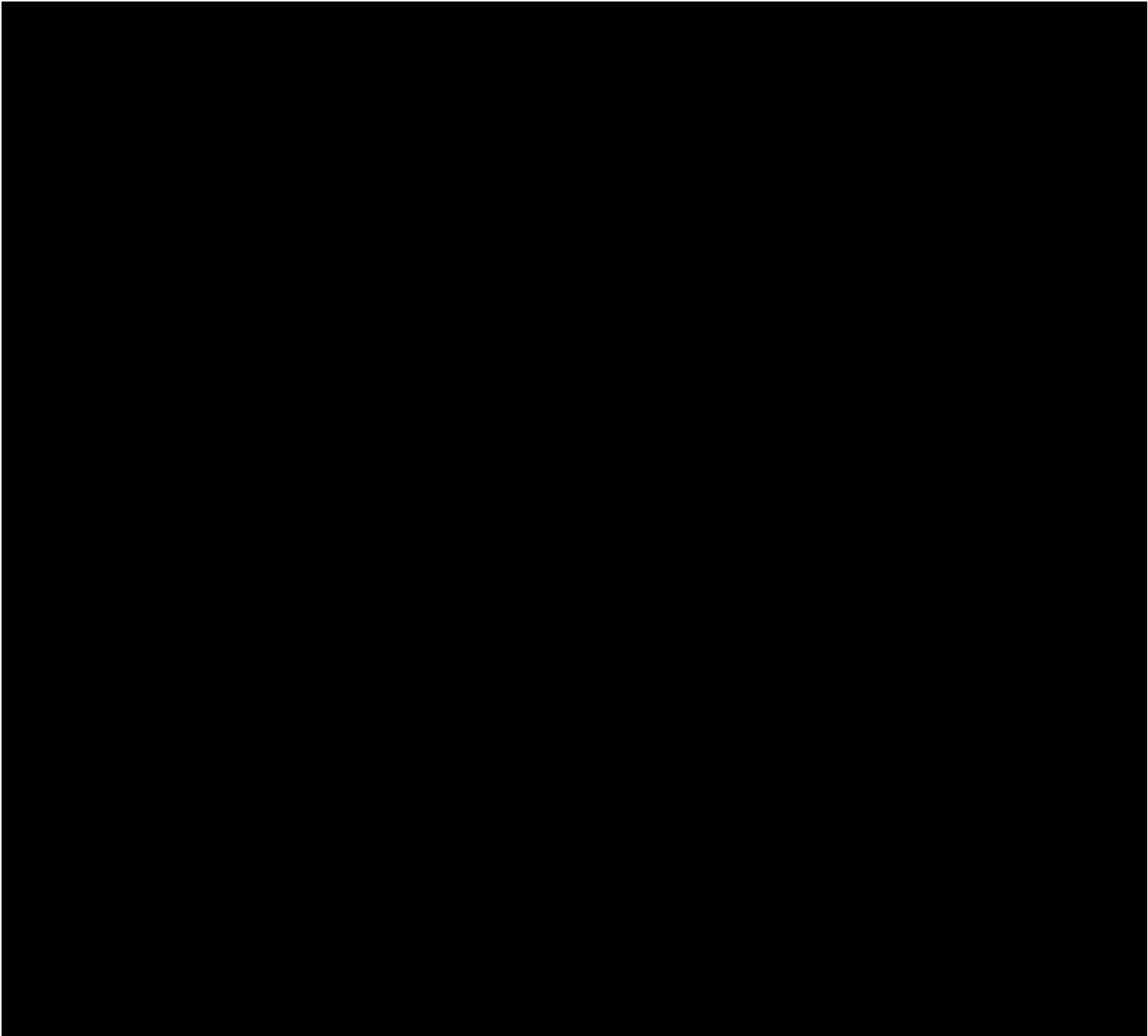
<b>Is the development a Protected Structure or within the curtilage of a Protected Structure?</b>	<b>Yes</b>	<b>No</b>
<b>Has a declaration under Section 57 of the Planning and Development Act 2000 (as amended) been requested or issued in respect of the property.</b>	<b>Yes</b>	<b>No</b>
<b>Applicant(s) Interest in the site:</b>		
<b>If not the Owner of the site, please provide the name of the Landowner:</b>		
<b>Please list types of plans, drawings etc. submitted with this application:</b>		
<b>Planning History</b> - list any relevant planning application reference numbers:		
<b>Are you aware of any enforcement proceedings connected to the site? If so, please supply details:</b>		

<b>I hereby certify that the information provided is true and accurate</b>	
<b>Signature of Applicant/Agent:</b>	<i>Jan Spivakson</i>
<b>Date:</b>	



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**Dhún na nGall**  
Donegal County Council

## Additional Contact Information



### **Advice to Applicant**

- (a) **Prescribed Fee** - €80.00 - You may wish to pay the fee by card by ringing the cash office on 074 9153900. Please note the receipt number in your cover email with the form.
- (b) Application must be accompanied by:
- **Site location map** with site clearly outlined in red (to a scale of not less than 1:1000 in built up areas and 1:2500 in all other areas).
  - **Site layout plan** (Site or layout plans shall be drawn to a scale (which shall be indicated thereon) of not less than 1:500 or such other scale as may be agreed with the planning authority prior to the submission of the application, the site boundary shall be clearly delineated in red).
  - **Elevations** (if applicable) – (plans, elevations and sections drawn to a scale of not less than **1:200**).
  - **Other details** (e.g. landowner consent (if applicable), photographs as appropriate).
- (c) Completed application form & supporting documentation to be returned to the Planning Authority **by email** to [planning@donegalcoco.ie](mailto:planning@donegalcoco.ie)
- (d) More information on exempted development can be found on the OPR planning leaflets available at <https://www.opr.ie/planning-leaflets/>



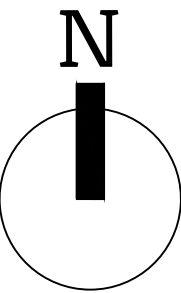
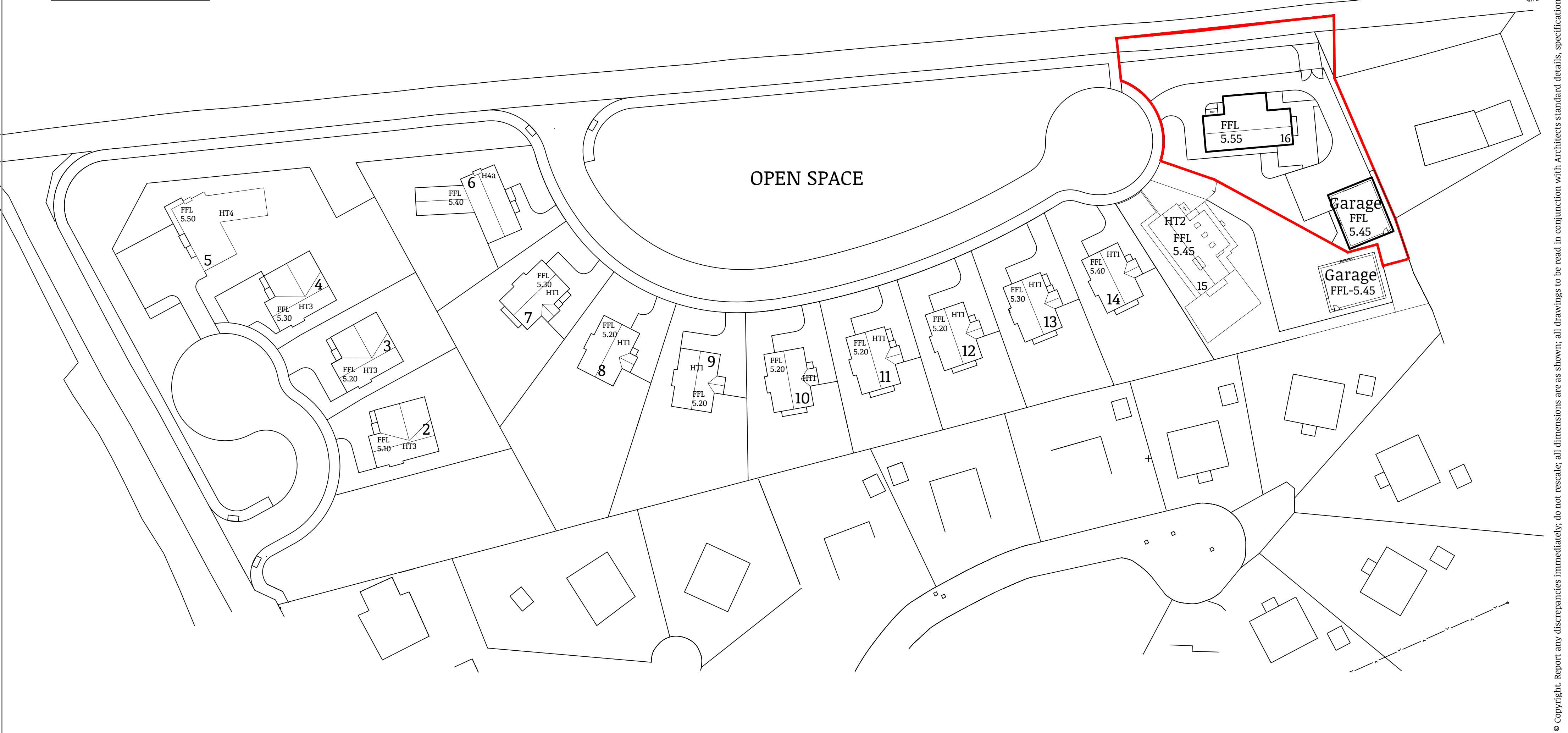
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Planning drawing

Revision:	Date:	Amendments:			Drawn:	Checked:
Drawn:	GL	Drawing no:	Rev:	Title:		
Scale:	1:500@A2	PD02		Site Plan		
Checked:	RA	Project reference:	Contract:			
Date:	20.01.2025	202028	Gated Entrance at House No.16 Breezy Point, Rossnowlagh			

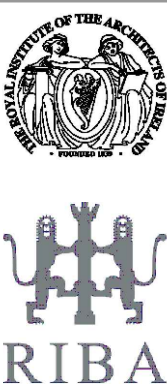
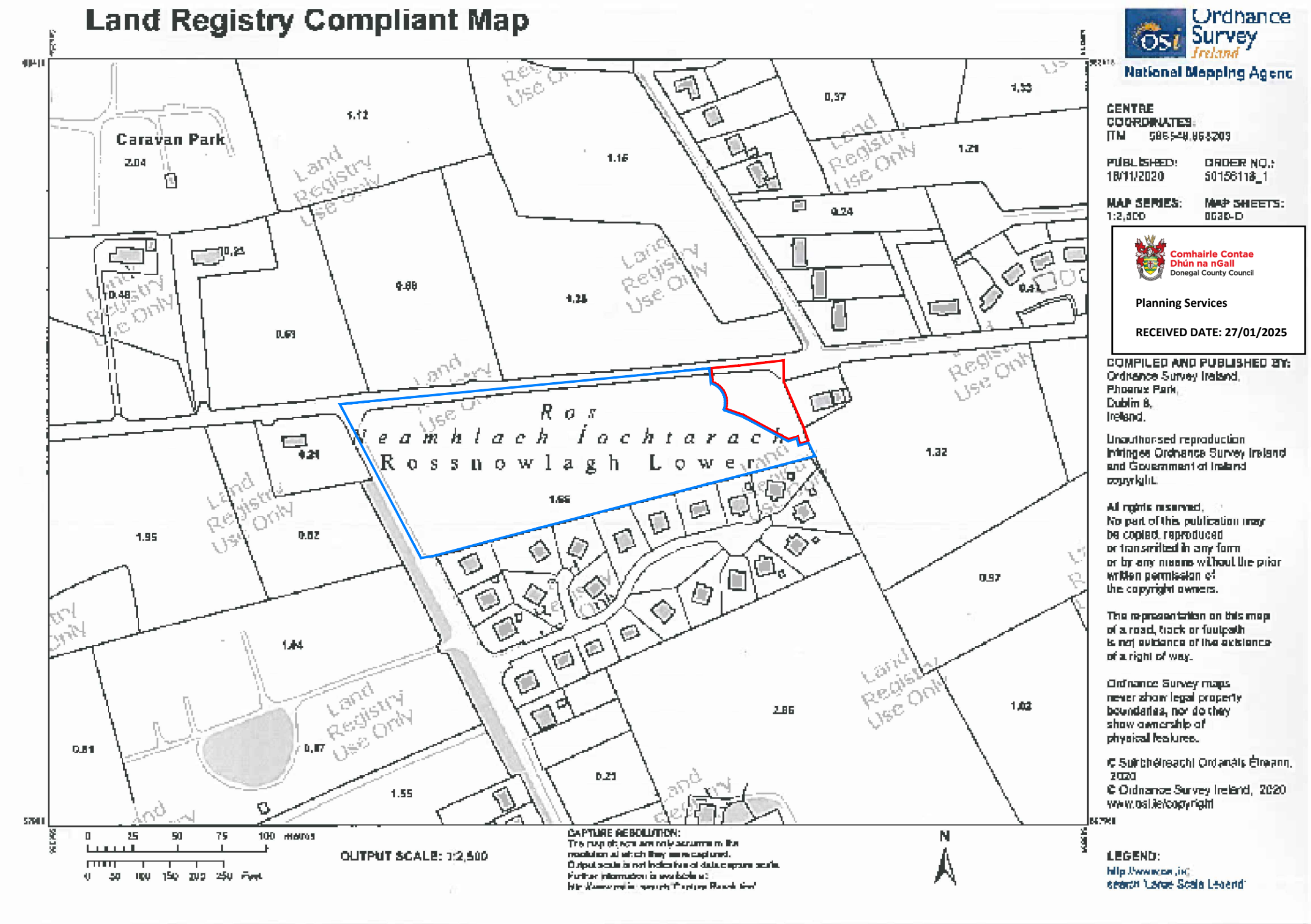
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55 Tempo Road, Enniskillen, Co. Fermanagh BT74 6HR. tel: (028) 66323500 email: enniskillen@allanarc.com  
3 Mill Row, Donegal Town, Co. Donegal. tel: (074) 9722233 email: donegal@allanarc.com  
Drumaboden, Ramelton, Co. Donegal. tel: (074) 9722233 email: donegal@allanarc.com





Site Location Map  
Scale: 1:2500  
O.S. Ref. no. Donegal 103 / 06 & 10  
O.S. Licence no.: CYAL 50389924  
Copyright Ordnance Survey Ireland  
and Government of Ireland

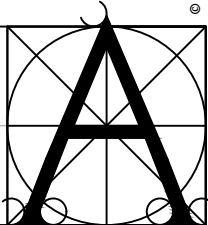


Planning drawing

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						1:2500	PD01		Site Location Map
						RA	Project reference:		Contract:
						20.01.2024	202028		Gated Entrance at House No.16, Breezy Point, Rossnowlagh

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55 Tempo Road, Enniskillen, Co. Fermanagh BT74 6HR. tel: (028) 66323500 email: enniskillen@allanarc.com  
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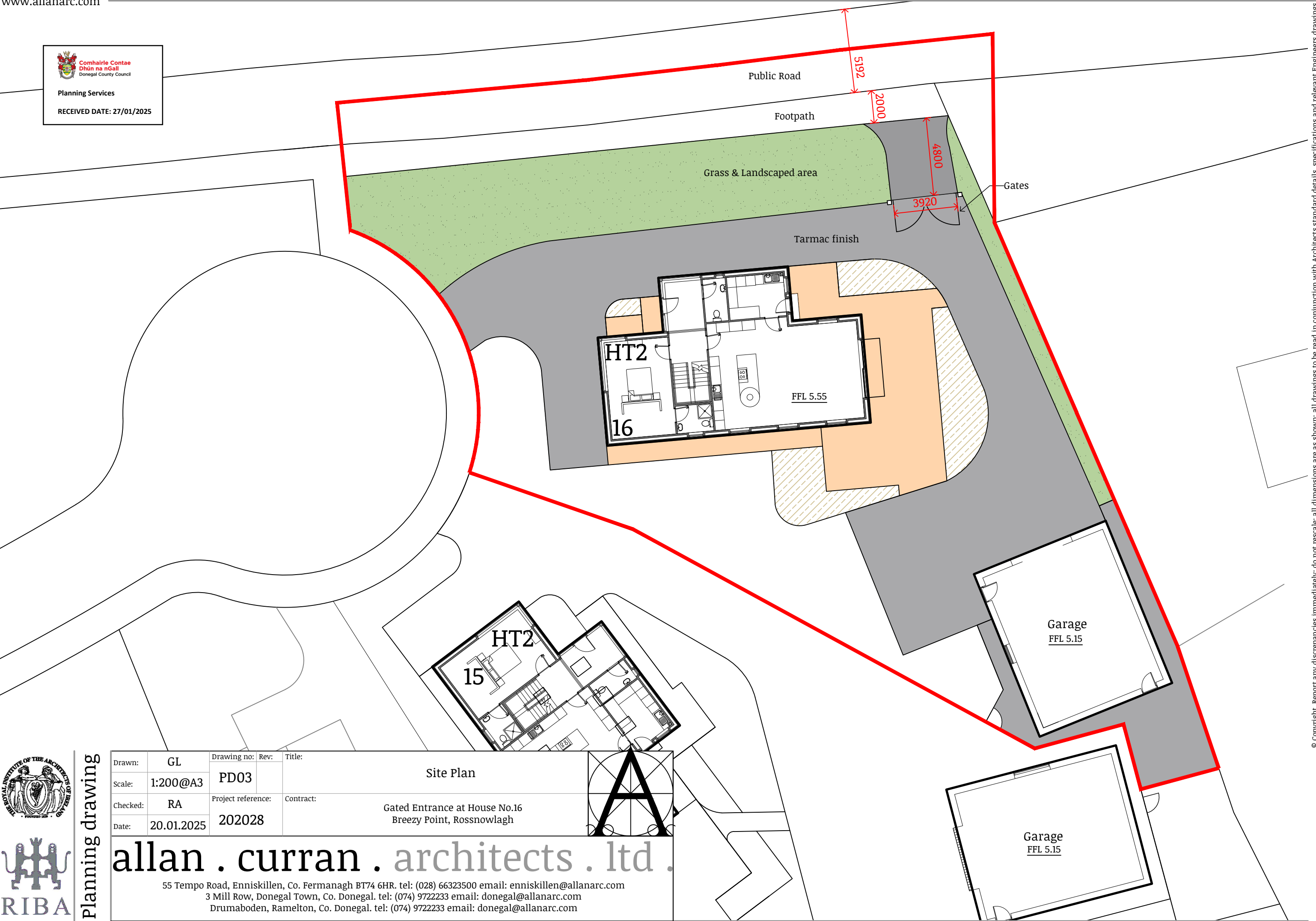


Planning drawing

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Date:	20.01.2025	202028		Gated Entrance at House No.16 Breezy Point, Rossnowlagh

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55 Tempo Road, Enniskillen, Co. Fermanagh BT74 6HR. tel: (028) 66323500 email: enniskillen@allanarc.com  
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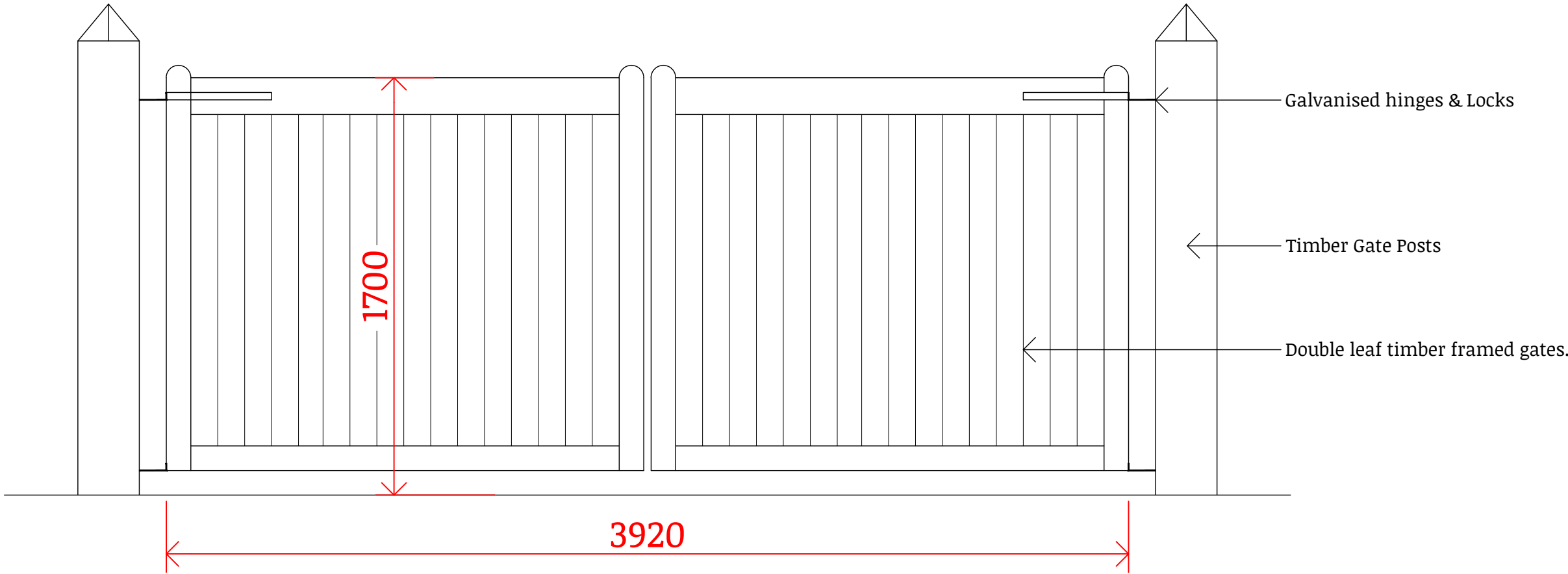




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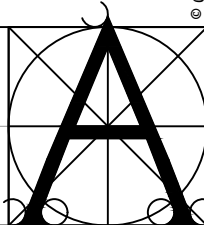
RECEIVED DATE: 27/01/2025



Planning drawing

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Checked:	RA	Project reference:	Contract:	Gated Entrance at House No.16 Breezy Point, Rosstownlough
Date:	20.01.2025	202028		
allan . curran . architects . ltd .				
55 Tempo Road, Enniskillen, Co. Fermanagh BT74 6HR. tel: (028) 66323500 email: enniskillen@allanarc.com 3 Mill Row, Donegal Town, Co. Donegal. tel: (074) 9722233 email: donegal@allanarc.com Drumaboden, Ramelton, Co. Donegal. tel: (074) 9722233 email: donegal@allanarc.com				



## **SECTION 5 REFERRAL REPORT – Ref.No: 25/07**

### **Donegal County Council**

#### **1.0 COMMENTS**

The subject site is adjacent to an existing residential development at Rossnowlagh known as Breezy Point and specifically, no. 16. The proposed works are as follows:

1. Installation of a gate fronting onto Rossnowlagh Lower Road adjacent to no. 16 Breezy Point – the gate is 1.7m in height and 3.9m in width.



Site layout & photograph taken from submitted cover letter

The site is located in an area designated as High Scenic Amenity and is within the village framework of Rossnowlagh, a defined village in the County Donegal Development Plan 2024 -2030.

## **2.0 EVALUATION**

In preparing the assessment for this reference, regard has been had to the following statutory provisions:

### **3.0 Planning and Development Act, 2000 (as amended)**

#### **Section 2(1)**

In this Act, except where the context otherwise requires –

**"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 ...

**"works"** includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...

#### **Section 3(1)**

**"Development"** in this Act 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 177U(9)**

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

### **4.0 Planning and Development Regulations, 2001 (as amended)**

#### **CLASS 5**

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

**ARTICLE 9 RESTRICTIONS ON EXEMPTION**

9. (1) 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—
    - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
    - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
    - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
    - (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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,

comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,
- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological



interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),

- (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,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (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,

(xii) further to the provisions of  
section 82 of the Act, consist of  
or comprise the carrying out of  
works to the exterior of a  
structure, where the structure  
concerned is located within an  
architectural conservation area  
or an area specified as an  
architectural conservation area  
in a development plan for the  
area or, pending the variation of  
a development plan or the  
making of a new development  
plan, in the draft variation of the  
development plan or the draft  
development plan and the  
development would materially  
affect the character of the area,

(b) in an area to  
which a special  
amenity area  
order relates, if  
such  
development  
would be  
development:—

(i) of class 1, 3, 11,  
16, 21, 22, 27,  
28, 29, 31,  
(other than  
paragraph (a)  
thereof), 33 (c)  
(including the  
laying out and  
use of land for  
golf or pitch  
and putt or  
sports  
involving the  
use of motor  
vehicles,  
aircraft or

firearms), 39,  
44 or 50(a)  
specified in  
column 1 of  
Part 1 of  
Schedule 2, or

- (ii) consisting of  
the use of a  
structure or  
other land for  
the exhibition  
of  
advertisements  
of class 1, 4, 6,  
11, 16 or 17  
specified in  
column 1 of  
Part 2 of the  
said Schedule  
or the erection  
of an  
advertisement  
structure for  
the exhibition  
of any  
advertisement  
of any of the  
said classes, or
- (iii) of class 3, 5, 6,  
7, 8, 9, 10, 11,  
12 or 13  
specified in  
column 1 of  
Part 3 of the  
said Schedule,  
or
- (iv) of any class of  
Parts 1, 2 or 3  
of Schedule 2  
not referred to  
in  
subparagraphs  
(i), (ii) and (iii)  
where it is  
stated in the  
order made  
under section

202 of the Act that such development shall be prevented or limited,

- (c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,
- (d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

## **5.0 PLANNING HISTORY**

There is planning history recorded for this site.

<a href="#">22</a>	<a href="#">50967</a>	Application Finalised	Conditional		BREEZY POINT CAPITAL LTD	ROSSNOWLAGH LOWER ROSSNOWLAGH DONEGAL PO CO. DONEGAL	COMPLETION OF 15 NO. DWELLING HOUSES AND ALL ASSOCIATED SITE DEVELOPMENT WORKS
<a href="#">22</a>	<a href="#">51591</a>	Application Finalised	Conditional		BREEZY POINT CAPITAL LTD	ROSSNOWLAGH LOWER ROSSNOWLAGH DONEGAL PO CO. DONEGAL	ERECTION OF TWO NUMBER DOMESTIC GARAGES ASSOCIATED WITH DWELLING NUMBERS 15 AND 16 AND ALL ASSOCIATED SITE WORKS GRANTED PERMISSION UNDER

							PLANNING PERMISSION REFERENCE NO. 10/20469, EXTENSION OF DURATION REFERENCE NO. 17/50192, PLANNING PERMISSION 21/51900 AND 22/50967
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## 6.0 ASSESSMENT

### 6.1 Consideration of Proposed Development:

- (i) The existing development requires to be assessed against the relevant provisions of the Planning and Development Regulations 2001 (as amended).
- (ii) The development falls under the description of works assessed under Schedule 2 Part 1 Class 5 "Construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other than concrete blocks or mass concrete."

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.

2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.

3. No such structure shall be a metal palisade or other security fence.

#### Assessment

It is noted that (1) the gate is 1.7m high; (2) the gate is constructed of timber and matches the boundary fencing around the subject site; (3) the gate is not a metal palisade or security type fence. The gate can therefore be considered as exempted development under Class 5 of the Regulations.

- (iii) Consideration under Article 9 of the Regulations is also necessary -

9 (1) 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 –

- (i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

#### Assessment

It is stated that the gate does not contravene any previous planning conditions or uses. This is accepted.

- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

#### Assessment

It is set out in the Section 5 application that as the gate itself is less than 4m wide and as it enables an access way of 3.9m width, the gate is exempted. However it is clearly stated that the exemption only applies to an access to a public road **the surfaced carriageway of which does not exceed 4 metres in width** (my emphasis). The public road onto which the access is enabled by the gate is in excess of 7m in width and for that reason, the gate is **NOT** exempted development.

- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

#### Assessment

It is stated in the application that the gate is not the primary means of entry into the house and will not cause traffic hazard for that reason and that further there are no means of obstruction to road users.



The width of the access beyond the public footpath is found to be adequate such that any vehicle using the entrance would not cause a traffic hazard.

- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

**Assessment**

No building or porch is provided for in the application.

- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

**Assessment**

No works are proposed that are under a public road.

- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

**Assessment**

This is a built environment, and the development does not interfere with any views of special interest.

- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),

**Assessment**

The development does not impact on any of the above referenced features.

- (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,

**Assessment**

There is no extension, alteration, repair or renewal of an unauthorised structure as part of the development or a structure the use of which is unauthorised.

- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

**Assessment**

There is no demolition or alteration of any building proposed.

- (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,

**Assessment**

The overall site was previously in private use for agricultural purposes and therefore was not habitually open or used by the public.

- (xi) obstruct any public right of way,

**Assessment**

The gate does not block any public right of way.

- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

**Assessment**

The site is not within an architectural conservation area.

- (b) in an area to which a special amenity area order relates, if such development would be development:—

(

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

#### Assessment

Parts (b) (c) and (d) above are not applicable to the development in question.

### **7.1 Conclusion:**

It is considered that:

The proposed change of use constitutes “development” within the meaning of the Act, being works, but is not exempted development coming within the scope of Article 9 (1) (ii) of the Planning & Development Regulations 2001 (as amended).

It should also be noted that in determining the subject section 5 referral regard was had to recent Section 5 referrals to An Bord Pleanala for determination.

### **8.0 RECOMMENDATION**

IT IS HEREBY RECOMMENDED THAT A DECLARATION BE MADE THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE -



**IS Development  
&  
IS NOT Exempted Development**

**WITHIN THE MEANING OF THE ABOVE ACT**

**The proposal for:**

- (i) Installation of a gate

**The Planning Authority, in considering this referral, had regard particularly to:**

- (a) Sections, 2, 3, 4 and 177U of the Planning and Development Act, 2000 (as amended) and Article 9 (1) (ii) and Class 5 of Schedule 2 Part 1 the Planning & Development Regulations 2001 (as amended).

**And concluded that:**

The proposal is development and is **NOT** exempted development on the basis that Article 9 (1) (ii) of the Planning & Development Regulations 2001 (as amended) as this Article de-exempts development as the receiving road from the vehicular access onto a public carriageway is in excess of 4m in width.

**Signed:** 

**Position: Executive Planner**

**Date:** 20/02/2025.



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Frank Sweeney  
Senior Executive Planner  
Community Development & Planning Services  
21/02/2025



**Chief Executive's Order No: 2025PH0504**

**Planning and Development Acts 2000 (as amended)**

**SECTION 5:-**

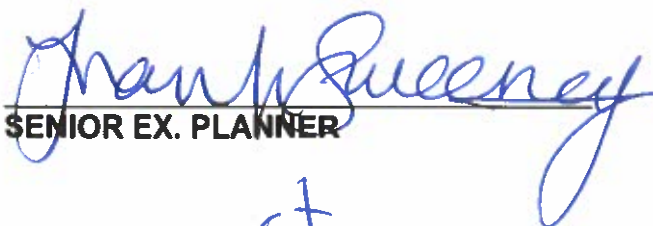
Request received 27<sup>th</sup> January 2025 from Breezy Point Capital Ltd C/o John Spain Associates, 39 Fitzwilliam Place, Dublin 2 in relation to the installation of a gate fronting at Unit No. 16 Breezy Point, Rosstown, Co. Donegal

**SUBMITTED:-**

Written request received 27<sup>th</sup> January 2025 as above and report dated 20<sup>th</sup> February 2025 from the Executive Planner (Ref. No: S525/07 refers).

**ORDER:-**

Having considered the said request, the report of the Executive Planner, and the record forwarded to the Council by An Bord Pleanála in compliance with Sub-Section 6(c) of the said Section I have concluded that a declaration on the questions in the said request should be made in the terms of that in the Schedule to this Order, the main reasons and considerations therefore being detailed therein. I therefore Order that the declaration issue to the said requester and the owners/occupiers of the land concerned and, further, that it be entered in the Council's Planning Register in compliance with Sub-Section (5) of the said Section.

  
SENIOR EX. PLANNER

DATED THIS 21<sup>st</sup> DAY OF FEBRUARY 2025

CME

**Chief Executive's Order No: 2025PH0504**

**Ref.No: S525/07**

**SCHEDULE**

**IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE -**

**IS    Development**

**IS    NOT Exempted Development**

**WITHIN THE MEANING OF THE ABOVE ACT**

**The Planning Authority, in considering this referral, had regard particularly to:**

- Sections, 2, 3, and 177U of the Planning and Development Act, 2000 (as amended) and
- Article 9 (1) (ii), the Planning & Development Regulations 2001 (as amended).

**And concluded that:**

The proposal **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT** on the basis that Article 9 (1) (ii) of the Planning & Development Regulations 2001 (as amended) as this Article de-exempts development as the receiving road from the vehicular access onto a public carriageway is in excess of 4m in width.

JS 21/02

***Planning and Development Acts, 2000 (as amended)***  
***(Declaration and Referral on Development and Exempted Development)***

**DECLARATION**

**Chief Executive's Order No:** 2025PH0504  
**Reference No:** S525/07  
**Name of Requester:** Breezy Point Capital Ltd  
C/o John Spain Associates.  
39 Fitzwilliam Place,  
Dublin 2

**Summarised Description of development the subject matter of request:**

Installation of a gate

**Location:** Unit No. 16 Breezy Point, Rossnowlagh, Co. Donegal

**IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE**

**IS** Development

**IS NOT** Exempted Development

**WITHIN THE MEANING OF THE ABOVE ACT**

**The Planning Authority, in considering this referral, had regard particularly to:**

- Sections, 2, 3, and 177U of the Planning and Development Act, 2000 (as amended) and
- Article 9 (1) (ii), the Planning & Development Regulations 2001 (as amended).

**And concluded that:**

The proposal **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT** on the basis that Article 9 (1) (ii) of the Planning & Development Regulations 2001 (as amended) as this Article de-exempts development as the receiving road from the vehicular access onto a public carriageway is in excess of 4m in width.

  
**For Senior Ex. Planner**  
**Planning Services**

**Dated this 21<sup>st</sup> day of February 2025**



**Comhairle Contae  
Dhún na nGall**  
Donegal County Council

Áras an Chontae,  
Leifear,  
Contae Dhún na nGall, F93 Y622

County House,  
Lifford,  
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**Ref. No: S525/07**

21<sup>st</sup> February 2025

Breezy Point Capital Ltd  
C/o John Spain Associates.  
39 Fitzwilliam Place,  
Dublin 2

**Re: Installation of a gate at Unit No. 16 Breezy Point, Rosstown, Co. Donegal**

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A Chara,

I refer to your request received on 27<sup>th</sup> January 2025 under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,

**For Senior Ex. Planner  
Planning Services**

/jrmcc