

<b>PLANNER'S REPORT</b> <b>Ref. R 492/18</b>	Cork City Council Development Management Strategic Planning and Economic Development
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<b>Application type</b> <b>Question</b>  <b>Location</b> <b>Applicant</b> <b>Recommendation</b>	SECTION 5 DECLARATION <i>Whether the construction of a single storey extension (less than 40 sq.m.) is development or is exempted development.</i>  <i>St. Lachtan's, 10 Fairy Lawn, Lough Road, Cork</i> Rodney and Grainne Herlihy <i>Is development and is not exempted development</i>
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**INTERPRETATION**

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

**1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION**

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

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

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

**2. THE QUESTION BEFORE THE PLANNING AUTHORITY**

The question to the planning authority is whether 'the construction of a single storey rear extension (less than 40 sq.m.) is exempt from planning as allowed under Schedule 2, Part 1 of the Planning and Development Regulations 2001'. This is interpreted to mean 'whether the extension is development or is exempted development.'

**3. SITE DESCRIPTION**

The subject property comprises a two-storey, detached dwelling house located on the Lough Road. The site slopes up to the rear boundary with part of the rear garden located at a higher level than the ground floor level of the house and its patio area (see photos taken at the time of assessment of planning application T.P. 18/37878).

**4. DESCRIPTION OF THE DEVELOPMENT**

The proposed development comprises an extension to the rear of the existing house. The extension is shown consisting of an internal link corridor, a living room, bathroom and store. The extension could also be accessed via external patio doors into the link corridor. The link corridor (located between the existing house and the proposed extension) would be located off the half landing of the stairs located in the existing house.

*Section 4(2),*

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

*Section 4(3),*

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

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

*Section 5(1),*

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

**6.2 THE REGULATIONS**

*Article 5(2):*

*In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.*

*Article 6(1):*

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

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

*Schedule 2, Part 1, Class 1*

*Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to “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”:*

Column 1 Description of Development	Column 2 Conditions and Limitations
	<p>permission has been obtained, shall not exceed 20 square metres.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>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.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(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.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>

above the existing level (in response to Question 2)). The level of the patio to the rear of the existing house is shown at 102.40 (approx).

When viewed from the rear and side elevations, the proposed extension level is located mid way between ground and first floor.

As per Article 5(2) of the Regulations "*ground level*" means the level of the ground immediately adjacent to the structure,... or where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

I do not consider that the proposed extension could reasonably be considered to be situated at 'ground floor level' given that it is located mid-way between ground and first floor levels of the existing house. In the context of Article 5(2) of the Regulations the definition of 'ground level' is the lowest level of the house and is generally at the same level (allowing for typical differences between floor level and ground level) as the ground immediately adjacent to it. In this instance one could not directly access the proposed extension via the ground floor of the main house but would have to enter off the half landing of the stairs via a link corridor located at a point 1.21m above the ground floor where the stairs begins. External access to the extension would be via external steps linking the lower patio and side access passageway with the upper garden area.

It would be a reasonable interpretation of the legislation that in this instance the proposed extension, while single storey, be defined as being 'above ground floor' in the context of Class 1, having regard to its position and level relative to the ground and finished floor levels immediately adjacent to it. This interpretation would appear to be consistent with the intention of the legislation to provide for exemptions with respect to limited 'first-floor' development but to have built in safeguards to protect the residential amenity of the occupiers of adjoining residential dwellings.

If the extension is considered to be located at 'above ground floor level' in the context of Class 1, then it would not constitute 'exempted development' as it does not satisfy several of the conditions/limitations of this class including:

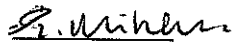
- Condition/limitation 1(c) - being 38.74 sq.m. rather than the 20m maximum;
- Condition/limitation 3 - being located within 2m of the party boundaries to the north-west and south-west;
- Condition/limitation 4(c) - being just higher than eaves line of the existing house;
- Condition/limitations 6 (c) - having windows within 11m of the boundary they face.

It should be noted that it is stated on the drawings that the rear garden remaining following the works would 19 sq.m - below the limit of 25 sq.m. however I measure it at approx. 30 sq.m. with the existing patio in addition to this.

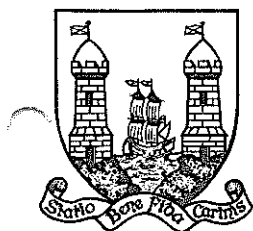
I note too Schedule 2, Part 1, Class 6(a) relating to landscaping works and that the level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground. The construction of the proposed extension would result in the lowering of the adjoining garden level to approx 102.6 m O.D. (There appears to be some discrepancy in the drawings in that the existing site layout drawing provided shows the upper garden level having levels of 103.5 while the 'proposed elevation' drawing references a level of 102.73 m. O.D.) It

and therefore the Planning Authority considers that —

the construction of a rear extension at *St. Lachtan’s, No. 10 Fairy Lawn, Lough Road , Cork* IS **DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.



Evelyn Mitchell,  
Senior Executive Planner.



# Comhairle Cathrach Chorcaí Cork City Council

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

Kieran Murphy  
JHK Consultants Ltd  
Clyde House  
Brian Boru St  
Cork

12/11/18

## **RE: R492/18 Section 5 Declaration 10 Fairy Lawn, Lough Road.**

Dear Sir/Madam,

I am asked by Mr. Patrick Ledwidge, Director of Services, Strategic Planning & Economic Development to refer to your request for a section 5 Declaration at the above named property.

Having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 5(2) and 6(1) and Class 1 and Class 6(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended,

the Planning Authority has concluded that —

- (1) the proposed extension constitutes an above ground floor extension in the context of Article 5(2) and Class 1 and Class 6(a) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 as amended, and as*
- (a) its floor area exceeds 20 sq.m.;*
  - (b) it would be located closer than 2 metres from a party boundary ;*
  - (c) the height of the highest part of the roof of the extension would exceed the height of the existing eaves;*
  - (d) the windows proposed in the elevations would be closer than 11 metres from the boundary it faces,*
  - (e) the development would result in the alteration of the ground by more than 1 metre above or below the level of the adjoining ground*



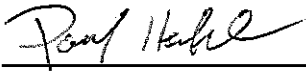
**We are Cork.**

*it would not satisfy conditions and limitations 1(c), 3, 4(c), and 6(c) of Class 1 respectively, and would not satisfy the condition and limitation of Class 6(a)*

and therefore the Planning Authority considers that —

the construction of a rear extension at *St. Lachtan's, No. 10 Fairy Lawn, Lough Road, Cork*  
**IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

Yours Faithfully,



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**Paul Hartnett**

Assistant Staff Officer  
Strategic Planning & Economic  
Development  
Cork City Council



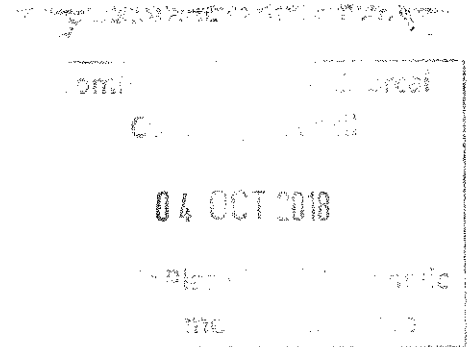
Clyde House, Brian Boru St., Cork, Ireland

T. 021 4554840 M. 086 2570508  
F. 021 4526007 E. info@jhk.ie

Our Ref: KM/168.  
Your Ref:

03rd September 2018.

**PLANNING DEPARTMENT,**  
Cork City Council,  
City Hall,  
Anglesea Street,  
CORK



Dear Sir/Madam,

**RE: RODNEY & GRAINNE HERLIHY - SECTION 05 DECLARATION FOR THE CONSTRUCTION OF A SINGLE STOREY EXTENSION TO THE REAR OF OUR PROPERTY AND ALL ANCILLARY SITE WORKS AT NO.10, ST LACHTANS, FAIRY LAWN, LOUGH ROAD, CORK**

Please find enclosed herewith 2 No. copies of all relevant drawings and documentation with respect to the above section 05 Declaration application, for your information.

Also find herewith cheque for €80.00 being applicable fee which you might please receipt at your earliest convenience.

Should you have any queries, or should you require any further information, please do not hesitate to contact this office.

Yours sincerely,

KIERAN MURPHY.

Encls.

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**CORK CITY COUNCIL**

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R-Phost/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)

Fón/Tel: 021-4924564/4321

Líonra/Web: [www.corkcity.ie](http://www.corkcity.ie)

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

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

10, ST LACTANS, FAIRY LAWN,  
LOUGH ROAD, CORK.

**2. QUESTION/ DECLARATION DETAILS**

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

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

We would like an opinion from Cork City Council as to whether the construction of a single storey extension (less than 40m<sup>2</sup>) for residential purposes is exempt from planning as allowed under Schedule 2 Part 1 of the Planning & Development Regulations 2001.

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

(Use additional sheets if required).

We propose to construct a single storey ~~shed~~ extension containing a living room and toilet to the rear of the property. The extension floor level is to be 1.37m above the finished floor level of the ex house but shall be 0.8m below the back garden level which is at a higher level. ~~comigrate~~ with the adjoining properties. The existing house was granted permission in 02/06/09. The new extension will be lower than the ~~the~~ back garden level and the existing boundary fencing will be 2.2m above the finished floor level of the extension.

Original Planning Ref: 09/33779

### 3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s		38.74 m <sup>2</sup>
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide floor areas. (sq m) /
(c) If concerning a change of use of land and / or building(s), please state the following:		
Existing/ previous use (please circle)	Proposed/existing use (please circle)	
/	/	

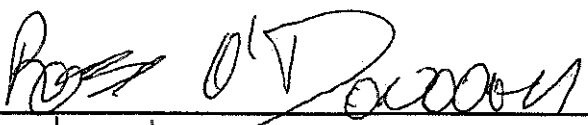
### 4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		RodNEY + GRAINOS Horlily	
Applicants Address		10, St. Lachtans, FAIRY LAWN, LOUGH ROAD, CORK	
Person/Agent acting on behalf of the Applicant (if any):	Name:	ROSS O' DOUGUAD	
	Address:	JHK CONSULTANTS Clyde House, BRID BOEN STREET CORK.	
	Telephone:	/	
	Fax:	/	
	E-mail address:	/	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

### 5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	/	
If you are not the legal owner, please state the name and address of the owner if available	/	

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

Signature: 

Date: 03/10/19

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# Record PLACE Map



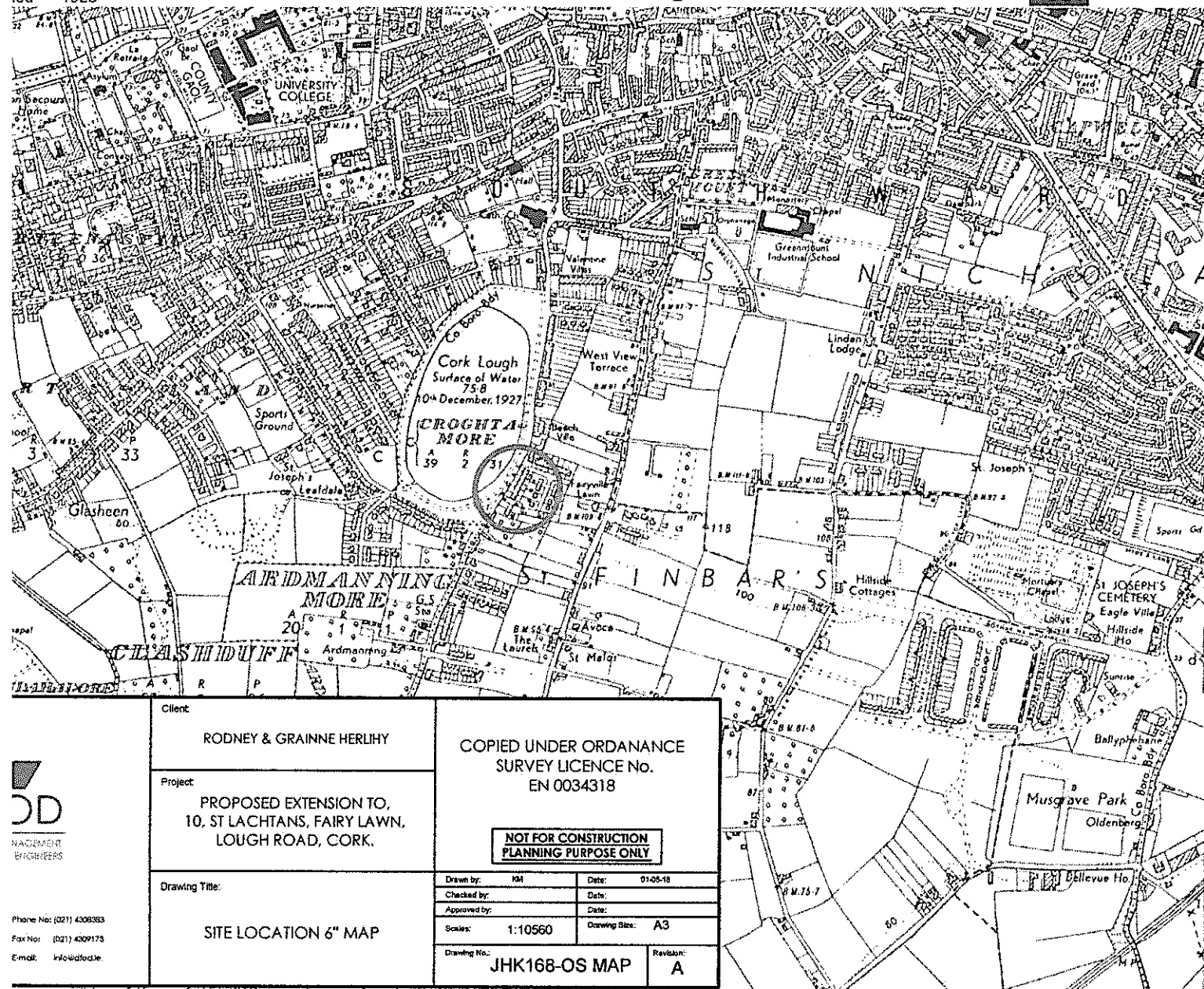
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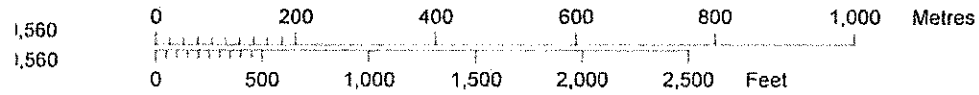
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Client:	RODNEY & GRAINNE HERLIHY	COPIED UNDER ORDANANCE SURVEY LICENCE No. EN 0034318	
Project:	PROPOSED EXTENSION TO, 10, ST LACTANS, FAIRY LAWN, LOUGH ROAD, CORK.		
Drawing Title:	SITE LOCATION 6" MAP	<b>NOT FOR CONSTRUCTION          PLANNING PURPOSE ONLY</b>	
		Drawn by: KM Checked by: Approved by: Scales: 1:10560 Drawing No.: JHK168-OS MAP	Date: 01-05-18 Date: Date: Drawing Size: A3 Revision: A



Plot Ref. No. 25325453\_1  
 Plot Date 11-APR-2018

Phone No: (021) 4308383  
 Fax No: (021) 4309175  
 E-mail: info@od.ie



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# Urban PLACE Map



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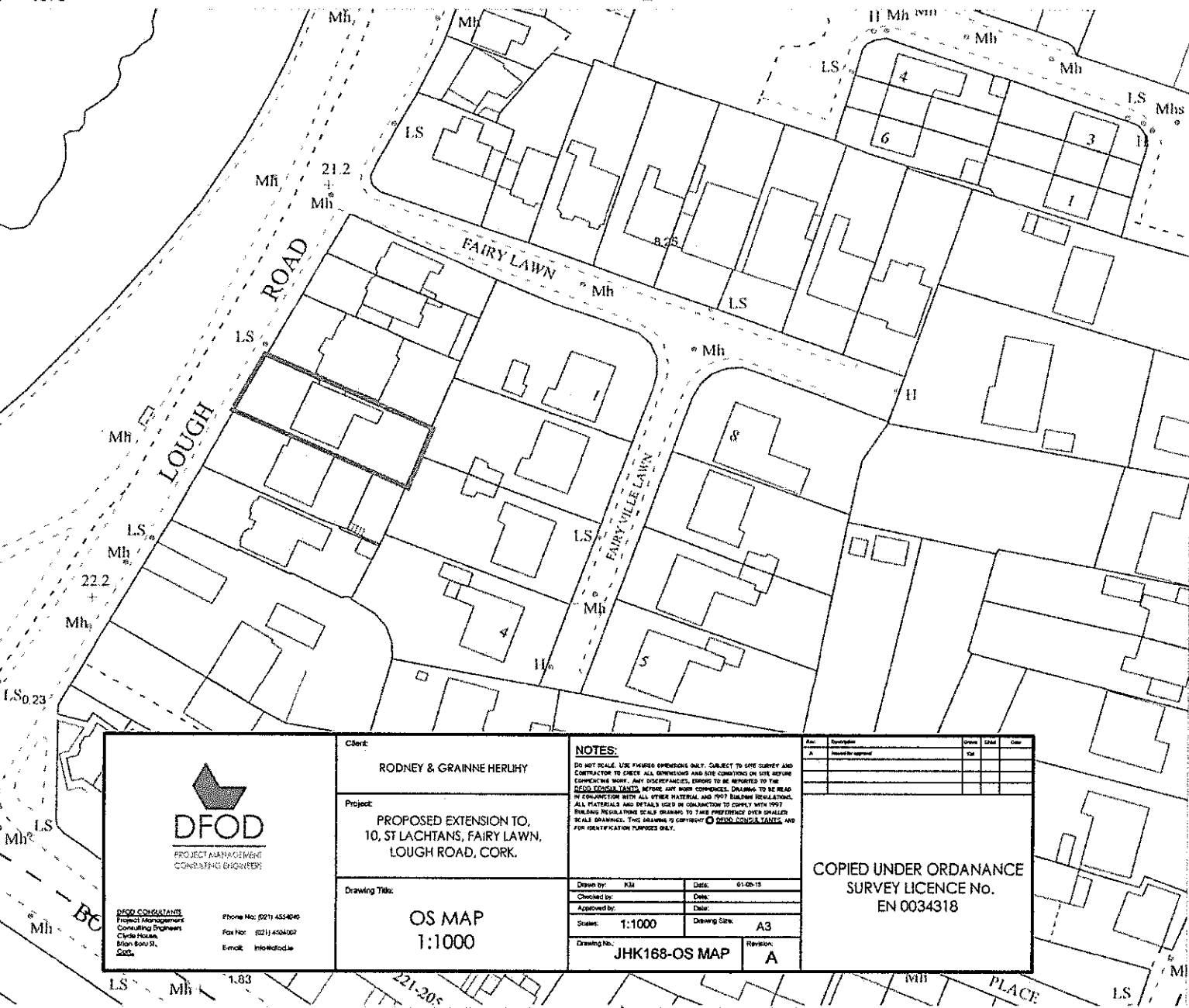
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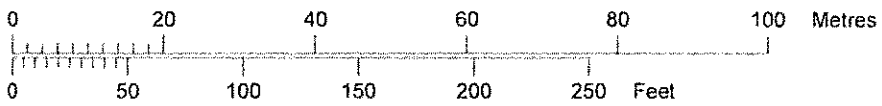
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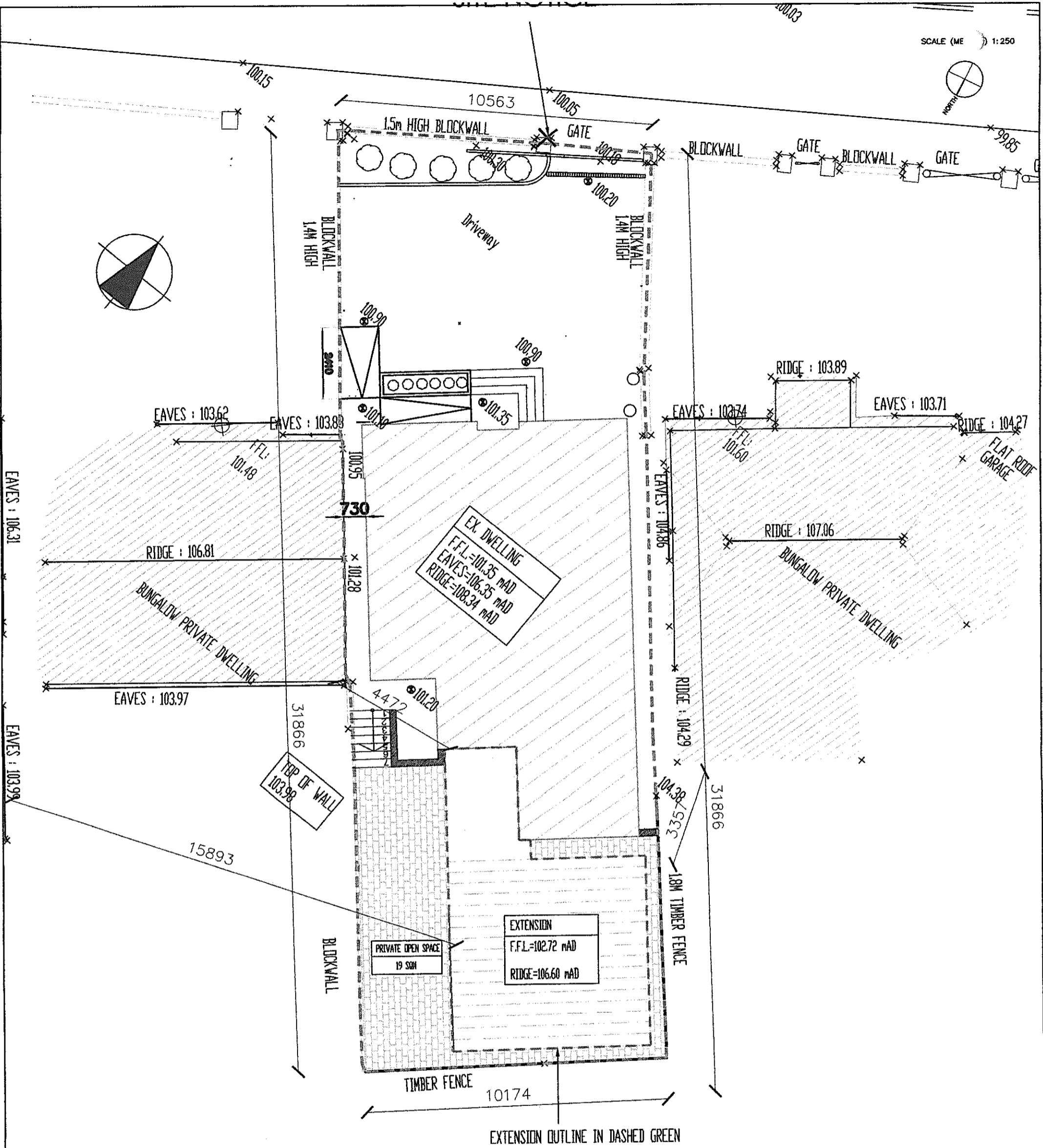


<p><b>DFOD</b> PROJECT MANAGEMENT CONSULTING ENGINEERS</p> <p><small>DFOD CONSULTANTS Project Management Consulting Engineers Clyde House, Brien Boru St., Cork.</small></p> <p>Phone No: 021 4534040        Fax No: 021 4504002        Email: info@dfod.ie</p>	<p>Client: <b>RODNEY &amp; GRAINNE HERLIHY</b></p>	<p><b>NOTES:</b></p> <p>DO NOT SCALE. USE DIMENSIONS ONLY. CHECK TO SITE SURVEY AND CONTRACTOR TO CHECK ALL DIMENSIONS AND SEE CONDITIONS ON SITE BEFORE COMMENCING WORK. ANY DISCREPANCIES, ERRORS TO BE REPORTED TO THE DESIGN CONSULTANT BEFORE ANY WORK COMMENCES. DRAWINGS TO BE READ IN CONJUNCTION WITH ALL SPECIFICATIONS AND 1997 BUILDING REGULATIONS. ALL MATERIALS AND DETAILS USED IN CONSTRUCTION TO COMPLY WITH 1997 BUILDING REGULATIONS SHALL DRAWINGS TO TAKE PRECEDENCE OVER UNLAWFUL SCALE DRAWINGS. THE DRAWING IS CONFIDENTIAL TO DESIGN CONSULTANTS, AND FOR IDENTIFICATION PURPOSES ONLY.</p>	<table border="1"> <thead> <tr> <th>Rev.</th> <th>Description</th> <th>Drawn</th> <th>Checkd</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>Issued for approval</td> <td>KJM</td> <td></td> <td></td> </tr> </tbody> </table>	Rev.	Description	Drawn	Checkd	Date	A	Issued for approval	KJM											
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Plot Ref. No. 25325453\_1\_1  
 Plot Date 11-APR-2018





EXTENSION OUTLINE IN DASHED GREEN

## Mr Rodney Herlihy, The lough, CORK



JHK CONSULTANTS Ltd.  
Project Management  
Consulting Engineers  
Clyde House,  
Brian Boru St,  
Cork.  
Phone No: (021) 4554040  
Fax No: (021) 4506007  
E-mail: info@jhk.ie

Client:  
**Mr Rodney Herlihy**

Project:  
**PROPOSED EXTENSION AT,  
THE LOUGH, CORK.**

Drawing Title:  
**PROSED SITE LAYOUT**

**NOTES:**

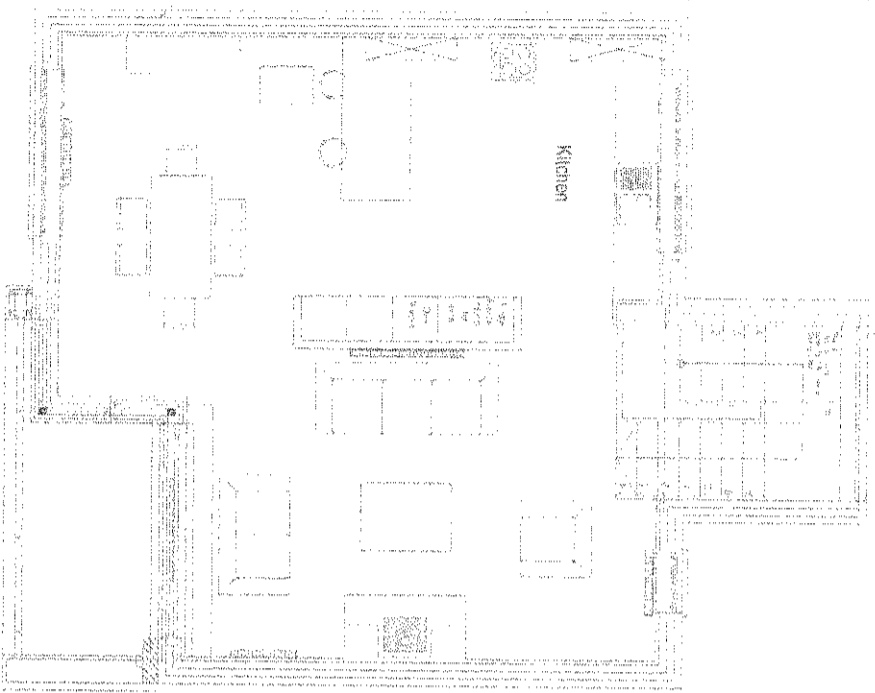
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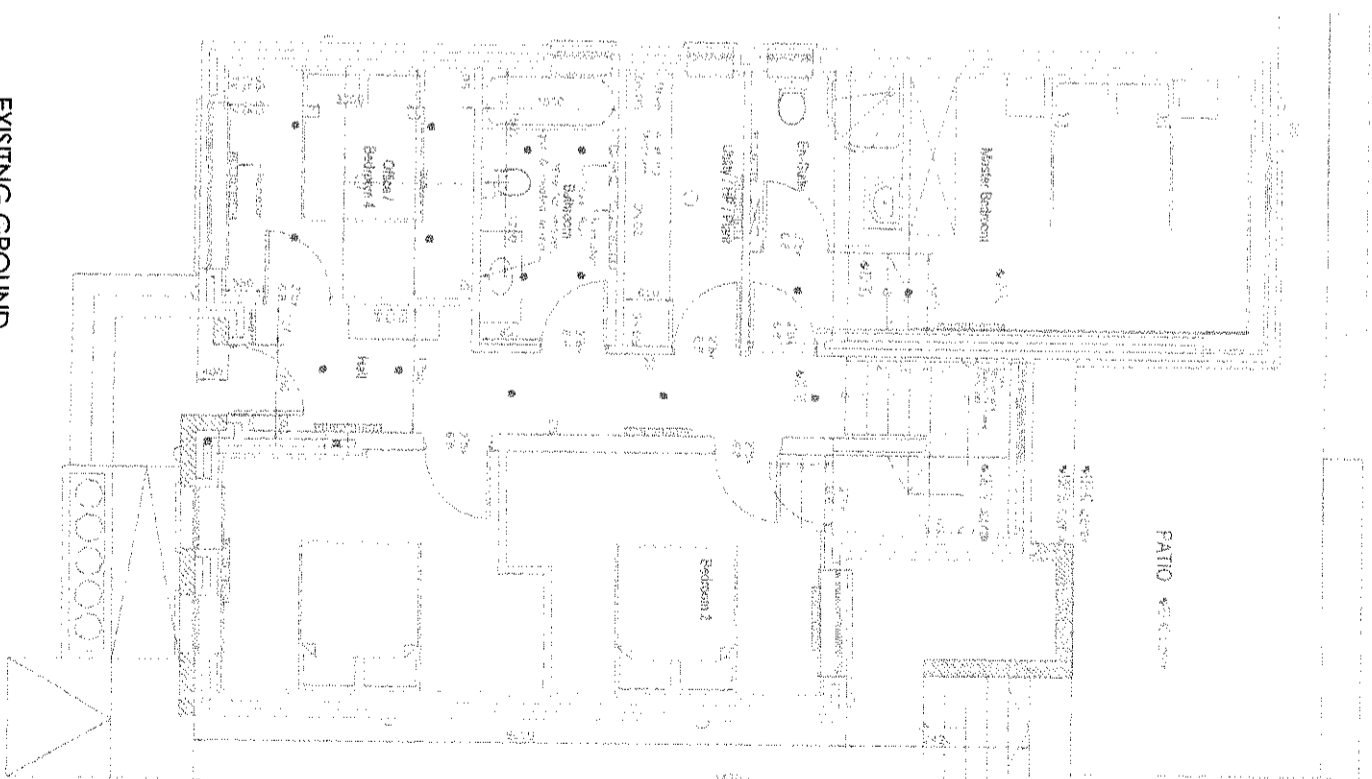
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**LEGEND**

- SITE OUTLINED
- EXTENSION OUTLINED



EXISTING FIRST  
FLOOR PLAN



EXISTING GROUND  
FLOOR PLAN

Mr. RODNEY HERLIHY, THE LOUGH, CORK

**NOTES:**  
DO NOT SCALE. USE FIGURED DIMENSIONS ONLY. SUBJECT TO SITE SURVEY AND CONTRACTOR TO CHECK ALL DIMENSIONS AND SITE CONDITIONS ON SITE BEFORE COMMENCING WORK. ANY DISCREPANCIES, ERRORS TO BE REPORTED TO THE DECD CONSULTANTS BEFORE ANY WORK COMMENCES. DRAWINGS TO BE READ IN CONJUNCTION WITH ALL OTHER MATERIAL AND 1997 BUILDING REGULATIONS. ALL MATERIALS AND DETAILS USED IN CONSTRUCTION TO COMPLY WITH 1997 BUILDING REGULATIONS SCALE DRAWING TO TAKE PREFERENCE OVER SMALLER SCALE DRAWINGS. THIS DRAWING IS COPYRIGHT © DECD CONSULTANTS AND FOR IDENTIFICATION PURPOSES ONLY.

Rev.	Description	Drawn	Checkd	Date
A	ISSUED FOR SECTIONS	KM	ROD	27-09-18

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Drawing No.:	168-S5-03	Revision:	A
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Client:  
Mr Rodney Herlihy

Project:  
PROPOSED EXTENSION AT,  
THE LOUGH, CORK.

Drawing Title:  
EXISTING PLANS

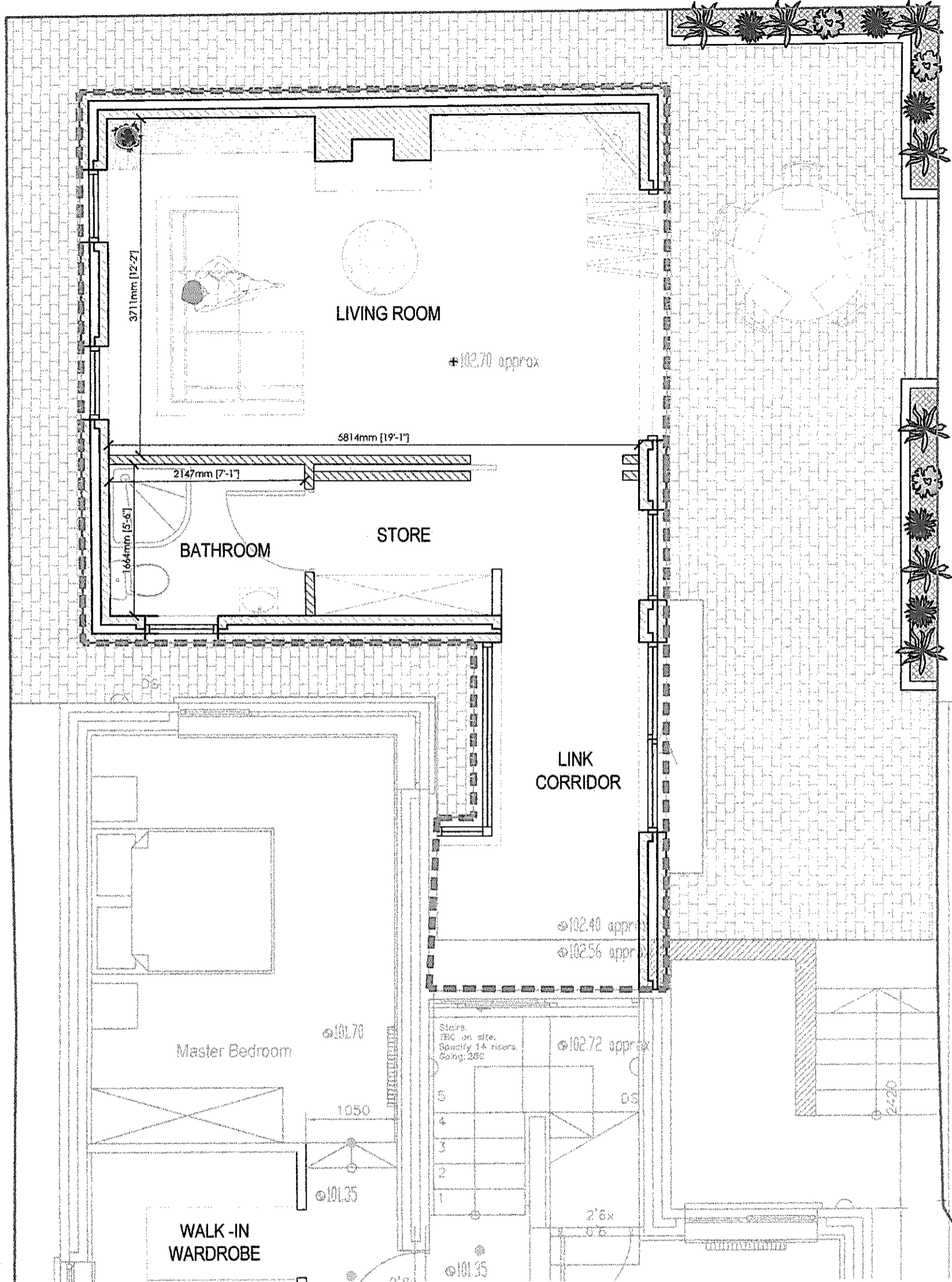


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E-mail: info@jhk.ie







## Mr Rodney Herlihy, The lough, CORK



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Client:  
**Mr Rodney Herlihy**

Project:  
**PROPOSED EXTENSION AT,  
THE LOUGH, CORK.**

Drawing Title:  
**PROPOSED GROUND  
FLOOR PLANS**

**NOTES:**

DO NOT SCALE. USE FIGURED DIMENSIONS ONLY. SUBJECT TO SITE SURVEY AND CONTRACTOR TO CHECK ALL DIMENSIONS AND SITE CONDITIONS ON SITE BEFORE COMMENCING WORK. ANY DISCREPANCIES, ERRORS TO BE REPORTED TO THE DFOD CONSULTANTS BEFORE ANY WORK COMMENCES. DRAWING TO BE READ IN CONJUNCTION WITH ALL OTHER MATERIAL AND 1997 BUILDING REGULATIONS. ALL MATERIALS AND DETAILS USED IN CONJUNCTION TO COMPLY WITH 1997 BUILDING REGULATIONS SCALE DRAWING TO TAKE PREFERENCE OVER SMALLER SCALE DRAWINGS. THIS DRAWING IS COPYRIGHT © DFOD CONSULTANTS AND FOR IDENTIFICATION PURPOSES ONLY.

Drawn by:	KM	Date:	01-05-18
Checked by:		Date:	
Approved by:		Date:	
Scales:	1/50	Drawing Size:	A3
Drawing No.:	168-PA1-05	Revision:	A

Rev.	Description	Drawn	Chkd	Date
A	Issued For Section 5	KM		27-09-18

**LEGEND**



PROPOSED EXTENSION  
OUTLINED

