

# Comhairle Cathrach Chorcaí Cork City Council

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

Alan Long
7 Greenmount Crescent
Greenmount
Cork

28th September 2020

RE:

Section 5 Declaration R582/20 15 Sandown Crescent, Togher, Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise as follows:

In considering this referral the Planning Authority had regard particularly to -

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000
- (b) articles 6 and 6 of the Planning and Development Regulations 2001
- (c) class 1 and class 50 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001

The Planning Authority has concluded that -

- (a) the works constitute development which come within the scope of Section 3(1) of the Planning and Development Act 2000
- (b) the demolition of the shed as the southwest corner of the site comes within the scope of Class 50 of Part 1 of Schedule 2 to the Planning and Development Regulations and complies the conditions and limitations attached to that Class
- (c) the single storey structure to the rear of the dwelling is considered to be an extension, comes within the scope of Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations and complies with the conditions and limitations attached to that Class



## The Planning Authority decides that -

- (a) the demolition of the shed at the south west corner is development and is exempted development
- (b) the single storey extension to the rear of the dwelling is development and is exempted development subject to the demolition of the aforementioned shed. all at 15 Sandown Crescent, Togher, Cork.

Yours Faithfully,

Kerry Bergin

Assistant Staff Officer

Development Management Section

Community, Culture and Placemaking Directorate

Cork City Council

PLANNER'S REPO	DRT	Cork City Council
Ref. R582/20		Development Management Communities Culture and Placemaking
Application type	Section 5 Declaration	
Description	Whether the construction of a rear extension exempted development.	on is development and if so is it
Location	15 Sandown Crescent, Togher, Cork	
Applicant	Elizabeth Meaney	
Date	23.09.2020	
Recommendation	Is development and is exempted development	ent

Response to Request for Further Information received on the 09.09.2020. this should be read in conjunction with my initial report dated 18<sup>th</sup> August 2020.

## 1. Further Information Requested

a) Information on the building as the south west corner of the site.

## 2. Further Information Provided

The response outlines that the building at the south west corner is a shed and it is to be demolished.

## 3. Assessment

The subject matter of the referral has expanded to include the demolition of the structure at the south west corner of the site. The response outlines that this is a shed and used for storage.

Class 50 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 refer: -

- (a) The demolition of a building, or buildings, within the curtilage of—
- (i) a house,
- (ii) an industrial building,
- (iii) a business premises, or
- (iv) a farmyard complex.
- (b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.
- 1. No such building or buildings shall abut on another building in separate ownership.
- 2. The cumulative floor area of any such building, or buildings, shall not exceed:
  (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres.
- 3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

The shed is a building within the curtilage of a house. The response outlines that the shed is solely contained within the applicant's property and does not abut another building in separate ownership. The floor area of the shed is 7m2. Condition no 3 is not relevant.

The demolition of the shed comes within the scope of Class 50 and complies with the relevant conditions and limitations.

The demolition of the shed will result in 25m2 of private open space, and therefore the proposal satisfies condition no 5 of Class 1.

## Restrictions on exemption

None of the restrictions set out in the legislation apply.

### 4. RECOMMENDATION

It is recommended that the applicant is advised as follows -

In considering this referral the Planning Authority had regard particularly to -

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000
- (b) articles 6 and 6 of the Planning and Development Regulations 2001
- (c) class 1 and class 50 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001

The Planning Authority has concluded that -

- (a) the works constitute development which come within the scope of Section 3(1) of the Planning and Development Act 2000
- (b) the demolition of the shed as the southwest corner of the site comes within the scope of Class 50 of Part 1 of Schedule 2 to the Planning and Development Regulations and complies the conditions and limitations attached to that Class
- (c) the single storey structure to the rear of the dwelling is considered to be an extension, comes within the scope of Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations and complies with the conditions and limitations attached to that Class

The Planning Authority decides that -

- (a) the demolition of the shed at the south west corner is development and is exempted development
- (b) the single storey extension to the rear of the dwelling is development and is exempted development subject to the demolition of the aforementioned shed.

all at 15 Sandown Crescent, Togher, Cork.

Yvonne Hogan

23.09.2020

Evelyn Mitchell. 24.09.2020

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# **Comhairle Cathrach Chorcaí Cork City Council**

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

Alan Long 7 Greenmount Crescent Greenmount Cork

24/08/2020

RE: R582/20 15 Sanddown Cresent, Togher

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I am advised to request further Information

## FI Request:

- a) Submit a revised site layout plan showing the building at the south west corner of the site and clarify its use.
- b) You are requested to clarify the intentions regarding this building whether this to remain on the site or be demolished?
- c) If this building is to be demolished, clarify if this building abuts another building in separate ownership and submit details on the floor area of this building.

Yours faithfully,

Assistant Staff Officer

Community, Culture and Placemaking

Cork City Council



## SECTION 5 DECLARATION - PLANNER'S REPORT

File Reference:

R 582.20

Description:

Whether the construction of an extension to the rear of a dwelling is or

is not exempted development?

Applicant:

Elizabeth Meaney

Location:

15 Sandown Crescent, Togher

Site inspection:

10.08.2020

## 1. Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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.

## 2. Site Location

The site is located at 15 Sandown Crescent, Togher. The site is a near the end of a cul de sac road, and on the site there is a semi-detached two storey dwelling.

## 3. The Question before the Planning Authority

Whether the construction of an extension to the rear of a dwelling is or is not exempted development?

## 4. Planning history

None

## 5. Planning legislation

## 5.1 Planning and Development Act, 2000 as amended

Section 2(1),

"exempted development" has the meaning specified in section 4.

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

## Section 3(1),

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

### Section 4(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.

## 5.2 Planning and Development Regulations, 2001 as amended

Article 6(1),

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

## Article 9,

Article 9 sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including (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"...

## (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".

# Schedule 2, Part 1, Class 1 Exempted Development — General

Column 1	Columi	n 2
Description of Development	Conditi	ions and Limitations
Development within the curtilage of a		- La
house	ni bed	
CLASS 1 The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of	1. (a)	Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.
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.	(b)	Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.
	(c)	Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall
	2. (a)	not exceed 20 square metres.  Where the house has been extended previously, the floor area of any such extension, taken together with the

Column 1	Column 2
Description of Development	Conditions and Limitations
bescription of Development	floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.  (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been
	obtained, shall not exceed 12 square metres.  (c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.
	3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.
	4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.
	<ul> <li>(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.</li> <li>(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</li> </ul>

Column 1	Column 2
Description of Development	Conditions and Limitations
	any other case, shall not exceed the height of the highest part of the roof of the dwelling.
	5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.
	<ul> <li>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</li> <li>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary</li> </ul>
	it faces.  (c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.
	7. The roof of any extension shall not be used
Law In the Paragraph (Mark)	as a balcony or roof garden.

## CLASS 50

- (a) The demolition of a building, or buildings, within the curtilage of-(i) a house,
- (ii) an industrial building,
- (iii) a business premises, or
- (iv) a farmyard complex.
- (b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.
- 1. No such building or buildings shall abut on another building in separate ownership.
- 2. The cumulative floor area of any such building, or buildings, shall not exceed: (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres.
- 3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

## 6. Assessment

## 6.1 Development

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

As noted above Section 3 (1) of the Planning and Development Act states that: 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.

The extension clearly constitutes 'works', which is defined in section 2(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'.

As the proposal comprises 'works', it is clearly therefore 'development' within the meaning of the Act.

## <u>CONCLUSION</u> — is development

## 6.2 Exempted Development

The next issue for consideration is whether or not the proposal is exempted development.

The relevant class in the Regulations is Class 1 and the description of the development is 'The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house....'

The proposal is a single storey extension to a semi-detached dwelling at 15 Sandown Crescent, Togher. It comprises of a living room, 2 no bedrooms a shower/toilet and a corridor. The extension is approximately 50% connected to the rear elevation of the house, with the remainder being a 1.2m passageway between the existing rear elevation and the proposed extension. There is rear access to the dwelling and extension from this passageway. This passageway would allow light into the existing ground floor kitchen window. The application states that the extra space is required due to increase in family unit. The extension does not extend beyond the side elevation of the house. I am of the view that the proposal is the construction of an extension to the rear of the house.

The following table will examine whether the proposal complies with the conditions and limitations associated with this class of development:

1a	Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.	There have been no previous extensions. The floor area is 26m2 This is satisfactory.
1b	Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.	N/A – extension is ground floor only
1c	Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.	N/A – house is not detached
2 <u>a</u>	Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which	N/A – house has not been extended previously.

	planning permission has been obtained, shall not exceed 40 square metres.	ansingolavsti
2b	Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning	N/A – house has not been extended previously.
	permission has been obtained, shall not exceed 12 square metres.	In a case w solution of toleral in the
2c	Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.	N/A – house is not detached and has not been extended previously.
3	Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.	N/A – extension is ground floor only
4a	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.	The height of the walls of the extension does not exceed the height of the rear wall of the house. This is satisfactory.
4b	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	N/A – house does not include a gable.
4c	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.	The height of the highest part of the roof does not exceed the height of the highest part of the dwelling. This is satisfactory.
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.	The site layout plan shows 25m2 of open space. However, there is an existing building (a shed?) at the south west corner which has not been shown on the plans which would reduce this area and this condition would not be complied with.
6a	Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.	All 3 windows proposed are not less than 1 metre from the boundaries they face.
6b	Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.	N/A – extension is ground floor only.

6c	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.	N/A – house is not detached.
7	The roof of any extension shall not be used as a balcony or roof garden.	The roof is pitch

There is uncertainty as to whether condition is no 5 can be complied with. The applicant shall be requested to submit a revised layout showing the building at the south west corner, clarify its use and clarify whether this is to be demolished from the site. If it is to be demolished, it will need to comply with Class 50.

## 6.3 Environmental Assessment & Restrictions on Exemption

A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 9 of the Regulations.

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

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

None of the restrictions in Article 9 apply.

## 7. Recommendation

It is recommended that a request for further information issues: -

## FI Request:

- a) Submit a revised site layout plan showing the building at the south west corner of the site and clarify its use.
- b) You are requested to clarify the intentions regarding this building whether this to remain on the site or be demolished?
- c) If this building is to be demolished, clarify if this building abuts another building in separate ownership and submit details on the floor area of this building.

grome defe

Yvonne Hogan, A/SEP, 18.08.2020



Building at south west corner of site

# COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork. R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924564/4321 Líonra/Web: <u>www.corkcity.ie</u>

## **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 SOU	GHT

15 SANDOWN CREST TOGHER TIL AYDS

## 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.
15 THE CONSTRUCTION OF A SINGE STURRY
Extension TO THE ROTAL OF DWOTLING AT
NO 15 SAMBOUN CREST, TOUMEN, CORK A
DEVELOPMENT AND IF SO, IS IT AN EXEMPTED
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(Use additional sheets if required).  EXTRA BEDROOMS   LIVING SPACE IS REQUIRED)  DUE TO INCREMSE IN FAMORY UNIT.
Comhairle Cathrach Chorcaí
Cork City Council
2 5 -06 - 2020 1 of 3
trategic Planning & Economic
Development Directorate

3. Are you aware of a	•	ceedings coni	nected to this site:	
4. Is this a Protected S	Structure or within t	he curtilage o	f a Protected Stru	cture? 🗌 🎺 .
	ation under Section i I for the property by			ent Act 2000 been
5. Was there previous If so please supply	· ·	pplication/s	on this site? 🔲 /	Jo·
6. APPLICATION DETA				
swer the following if applica ould be indicated in square r		s are measurea	from the inside of th	ne external walls and
(a) Floor area of existi	A STATE OF THE STA	ire/s	26 WZ	
location after 140	nsion, have any prev ires been erected at ctober, 1964, (includ permission has bee	this ling those	Yes N	o
(c) If concerning a cha	ange of use of land a	nd / or buildir	ng(s), please state	he following:
xisting/ previous use (ple			existing use (please	
		***		
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7. APPLICANT/ CONT	ACT DETAILS	1		
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Applicants Address				
			7	<b>a</b> .
erson/Agent acting on	Name:		A Paragraphy paths	<b>)</b>
ehalf of the Applicant	Address:	1.+1.	AN LONG.	
if any):	Auuless.	7	AREEN 1400	NT CRUSCEN
		GR	een mount	
	Telephone:		OKIL.	
	Fax:			
	281	1		

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other
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		

## **ADVISORY NOTES:**

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

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

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

The application should be sent to the following address:

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

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

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

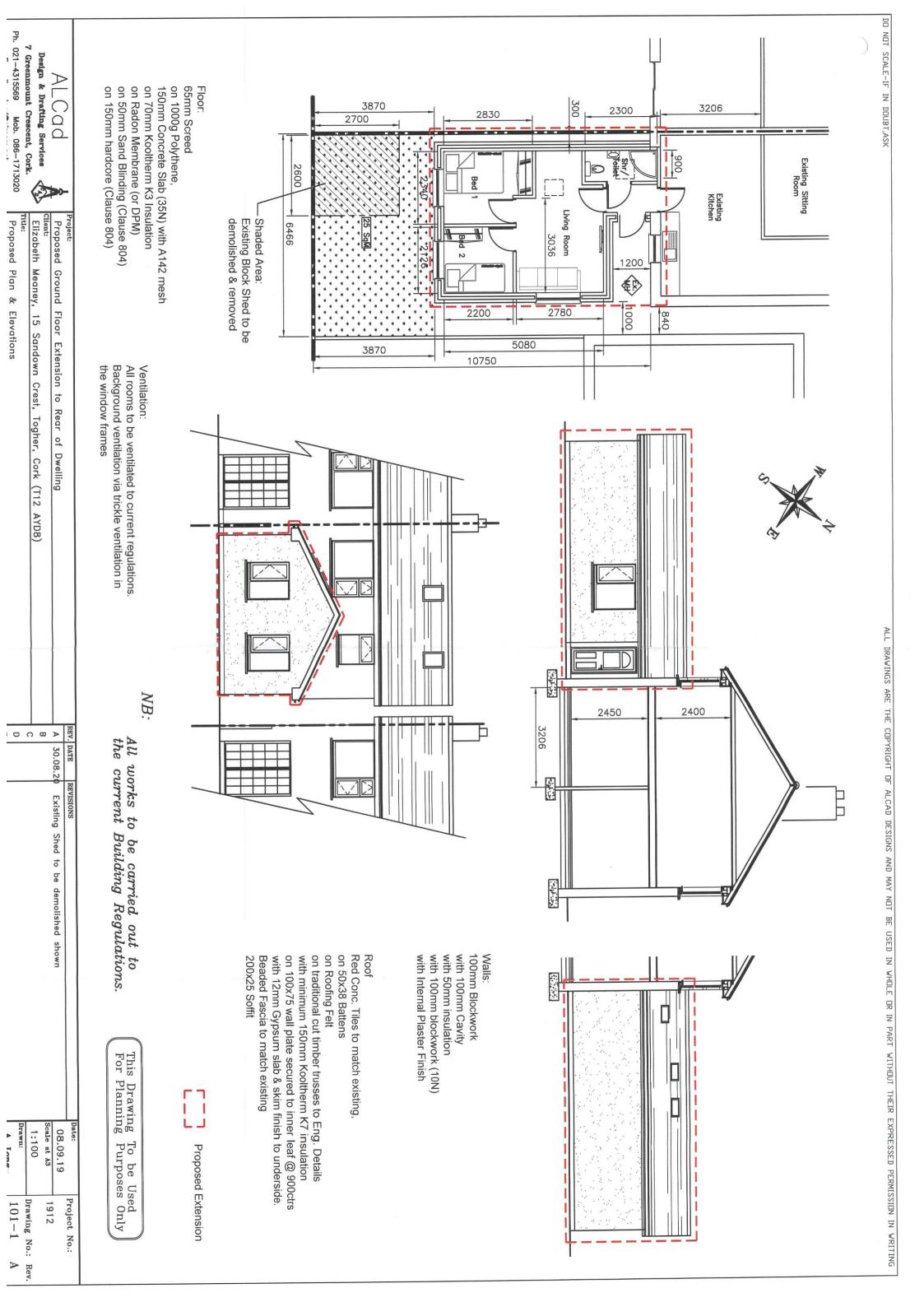
**DATA PROTECTION:** The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution.

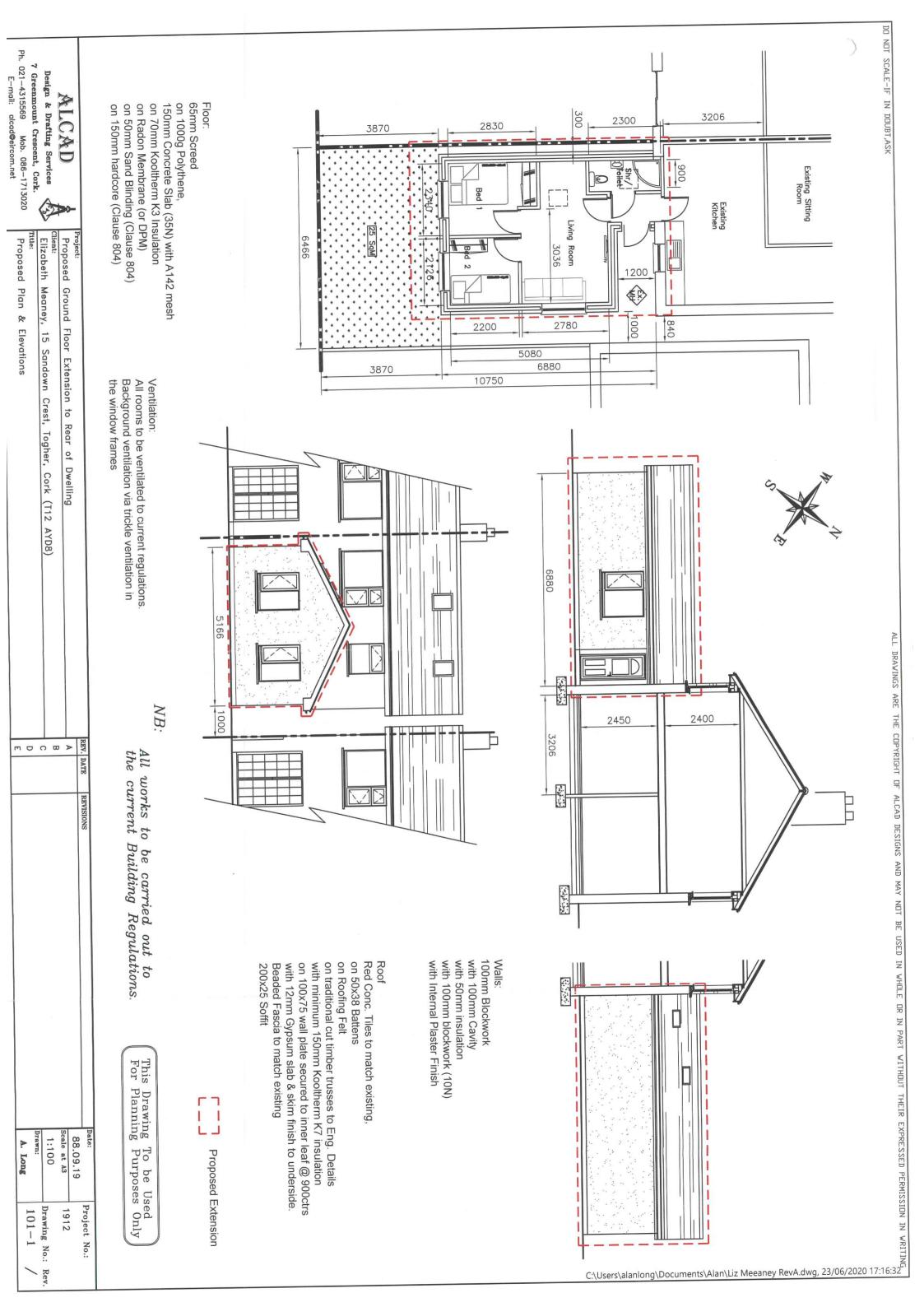


Figure 1 - Plan



Figure 2 - Rear Elevation





**Planning Pack Map** 

