



Comhairle Cathrach Chorcaí Cork City Council

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

Jim Luby & Tom Rodgers
C/O Tom Halley
6 Joyce Huse
Barrack Square
Ballincollig
Co. Cork

15/09/2020

**RE: Section 5 Declaration R584/20 Ardrositig/Garranedarragh,
Bishopstown, Cork**

A Chara,

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

The Planning Authority had regard particularly to: -

- (a) the definition of 'house' as set out in section 2 of the Planning and Development Act, 2000, as amended, and
- (b) Class 50 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as substituted by Class 50 of the Planning and Development Regulations 2008:

The Planning Authority has concluded that: -

- (a) the structure on site is a house and its demolition constitutes works within the meaning of section 2 (1) of the Planning and Development Act, 2000, as amended,
- (b) the said works constitutes development within the meaning of section 3 of the said Act, and
- (c) the proposed demolition of the house is development and is not exempted development as it does not satisfy the Conditions and Limitations Class 50 of Part 1 of Schedule 2 set out at number 2 (a) thereof of Class 50 of the Planning and Development Regulations, 2001, as substituted by Class 50 of the Planning and Development Regulations, 2008.



We are Cork.

The Planning Authority decides that the works specified constitutes development and that this development does not constitute exempted development.

Is misa le meas,



Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference:	R 584.20
Description:	Whether the demolition and removal of a derelict house is or is not exempted development?
Applicant:	Jim Luby and Tom Rogers, John Statutory Receivers over certain assets of John and Elaine Barry
Location:	Ardrositig/Garranedarragh, Bishopstown

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 and Description

The site is located at Ardrositig/Garranedarragh townlands, approximately 500m south of the Bandon Road Roundabout and east of the N71. On the site there is a detached single storey dwelling in a poor condition (see photographs in Engineer’s Inspection Report). The access to the site is via a poorly surfaced track off the N71, south of the Citroen car dealership. The report outlines that the dwelling was damaged by fire.

3. The Question before the Planning Authority

Whether the demolition and removal of a derelict house is or is not exempted development?

4. Planning history

Cork County Council ref 78/237

5. Planning legislation

5.1 Planning and Development Act, 2000 as amended

Section 2(1),

‘exempted development’ has the meaning specified in section 4.

“habitable house” means a house which – (a) Is used as a dwelling, (b) Is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or (c) Was provided for use as a dwelling but has not been occupied.

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

“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 5(1) In this Part –

"house" does not, as regards development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

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.

(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,

(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.....'

Column 1	Column 2
Description of Development	Conditions and Limitations
CLASS 50	

<p>(a) The demolition of a building, or buildings, within the curtilage of—</p> <ul style="list-style-type: none"> (i) a house, (ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex. <p>(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.</p>	<ol style="list-style-type: none"> 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: <ul style="list-style-type: none"> (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.
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Note: Substituted by article 5 of S.I. No. 235/2008 – Planning and Development Regulations 2008

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 PDA 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 demolition 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 'demolition', it is 'works', and it is clearly therefore 'development' within the meaning of the Act.

CONCLUSION — is development

6.2 Exempted Development

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

The relevant class is Class 50 as set above and of note is that this was substituted by article 5 of S.I. No. 235/2008. There are two scenarios set out in this Class – (a) and (b). Class 50(b) does not apply.

Regarding Class 50(a) the description of development is *demolition of a building or buildings within the curtilage of a house, industrial building, business premises or farmyard complex.* This is subject to a number of conditions and limitations.

The house was damaged in a fire, as a result is in a poor state of repair and accordingly it is not deemed to be a habitable house.

The house would seem to be the only structure on the site and there is associated ground around it, as outlined in red on the map submitted.

The definition of a 'house' in the Act states that it is a building. The notion of curtilage is not defined by legislation, but can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure (ref: Architectural Heritage Protection, Guidelines for Planning Authorities 2011).

I refer the Inspector's Report for RL3013 – *whether the demolition of a derelict structure, formerly occupied as a private dwelling, now non-habitable, is or is not development or is or is not exempted development*. In that situation the Inspector took the view that the condition of the property not could reasonably be described as structurally unsound and derelict as described by the referrer. The Inspector's opinion was that the issue as to whether the house is habitable or not is not a relevant consideration in assessing whether proposed demolition comes within the scope of Class 50(a) as amended.

The Inspector's view was that the wording of Class 50(a) was slightly ambiguous and that it was not completely clear whether it can be interpreted only as relating to structures other than the main house that are within the curtilage of the main house or to the house itself. The Inspector's interpretation was that the provisions of Class 50(a) are intended to relate to either the main dwelling / structure on the site or to any ancillary buildings.

The circumstances of and assessment for RL3013 are noted. It is noted that the Board Order referred to the Condition and Limitation 2(a) in deeming RL3013 as development and not exempted development.

The next step is to check the proposal against the Conditions and Limitations. Condition and Limitations 1 and 2(b) do not apply.

Regarding Condition and Limitation 2(a) in the case of a building, or buildings within the curtilage of a house, the cumulative floor area shall not exceed 40 square metres. The stated floor area of the house is c.90m². If it is deemed that the proposed works would come within the scope of Class 50(a), it would not satisfy condition and limitation 2(a).

Regarding Condition and Limitation 3, it is noted that the site is part of a larger landholding. There is no indication if the demolition is required to facilitate development of any class prescribed for the purposes of Section 176 of the Act. It is not possible to determine whether the proposed demolition would be for a purpose that would or would not be consistent with Condition and Limitation 3.

I have read the precedent referral referenced in the cover letter, RL2929. This case is not comparable to the current situation. Even though RL2929 is dated December 2011 it was considered under Class 50, Column 1 of Part 1 of Schedule 2, of the Planning and Development Regulations 2001. The Inspector had considered the referral under Part 1, Schedule 2, Class 50, Column 1 and Column 2 of the Planning and Development Regulations 2008 and it was deemed development and not exempted development.

CONCLUSION – is not exempted development

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). The Glasheen River is in close proximity to the site. It is unclear if the works affect the integrity of these European sites.

There is insufficient information to determine if any of the relevant restrictions in Article 9 apply.

7. Other issues

The cover letter requests that in the event of the Planning Authority considering the development is not exempted development, requests a notice is given under Section 3(1) of the Local Government 1694 (Dangerous Building Notice) or Section 46 of the Planning and Development Act 2000 for the removal of the house. These are outside the scope of a Section 5 referral.

8. Recommendation

It is recommended that the applicants are advised as follows: -

The Planning Authority had regard particularly to: -

- (a) the definition of 'house' as set out in section 2 of the Planning and Development Act, 2000, as amended, and
- (b) Class 50 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as substituted by Class 50 of the Planning and Development Regulations 2008:

The Planning Authority has concluded that: -

- (a) the structure on site is a house and its demolition constitutes works within the meaning of section 2 (1) of the Planning and Development Act, 2000, as amended,
- (b) the said works constitutes development within the meaning of section 3 of the said Act, and
- (c) the proposed demolition of the house is development and is not exempted development as it does not satisfy the Conditions and Limitations Class 50 of Part 1 of Schedule 2 set out at number 2(a) thereof of Class 50 of the Planning and Development Regulations, 2001, as substituted by Class 50 of the Planning and Development Regulations, 2008.

The Planning Authority decides that the works specified constitutes development and that this development does not constitute exempted development.

Yvonne Hogan

Yvonne Hogan
04.09.2020

*Agreed & notified A/S.P.
10.09.2020.*

Please do not hesitate to contact us should you require any further information.

Yours sincerely,



Tom Halley
McCutcheon Halley

3. Are you aware of any enforcement proceedings connected to this site?
 If so please supply details: NO

4. Is this a Protected Structure or within the curtilage of a Protected Structure? NO

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? NO

5. Was there previous relevant planning application/s on this site? YES
 If so please supply details:

Cork County Council Ref. 78/237

6. 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	c.90 sq metres
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st 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: N/A	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
_____	_____
_____	_____
_____	_____

8. LEGAL INTEREST

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

9.1 / We confirm that the information contained in the application is true and accurate:

Shirley Halley

Signature: _____

Date: 21st June 2020

CONTACT DETAILS

10. Applicant:

Name(s)	Jim Luby and Tom Rogers, Joint Statutory Receivers over certain assets of John and Elaine Barry
Address	Dargan House, 21-23 Fenian Street, Dublin 2, Ireland, D02 HC63 ----- ----- -----

11. Person/Agent acting on behalf of the Applicant (if any):

Name(s):	Tom Halley	
Address:	6 Joyce House, Barrack Square Ballincollig, Co. Cork P31 YX97----- -----	
Telephone:	(021) 420 8710	
E-mail address:	thalley@mhplanning.ie	
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"/>

12. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

ADVISORY NOTES:

<p>The application must be accompanied by the required fee of €80</p> <p>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.</p> <p>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.</p> <p><i>The application should be sent to the following address:</i></p> <p style="text-align: center;">The Development Management Section, Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.</p>
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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.

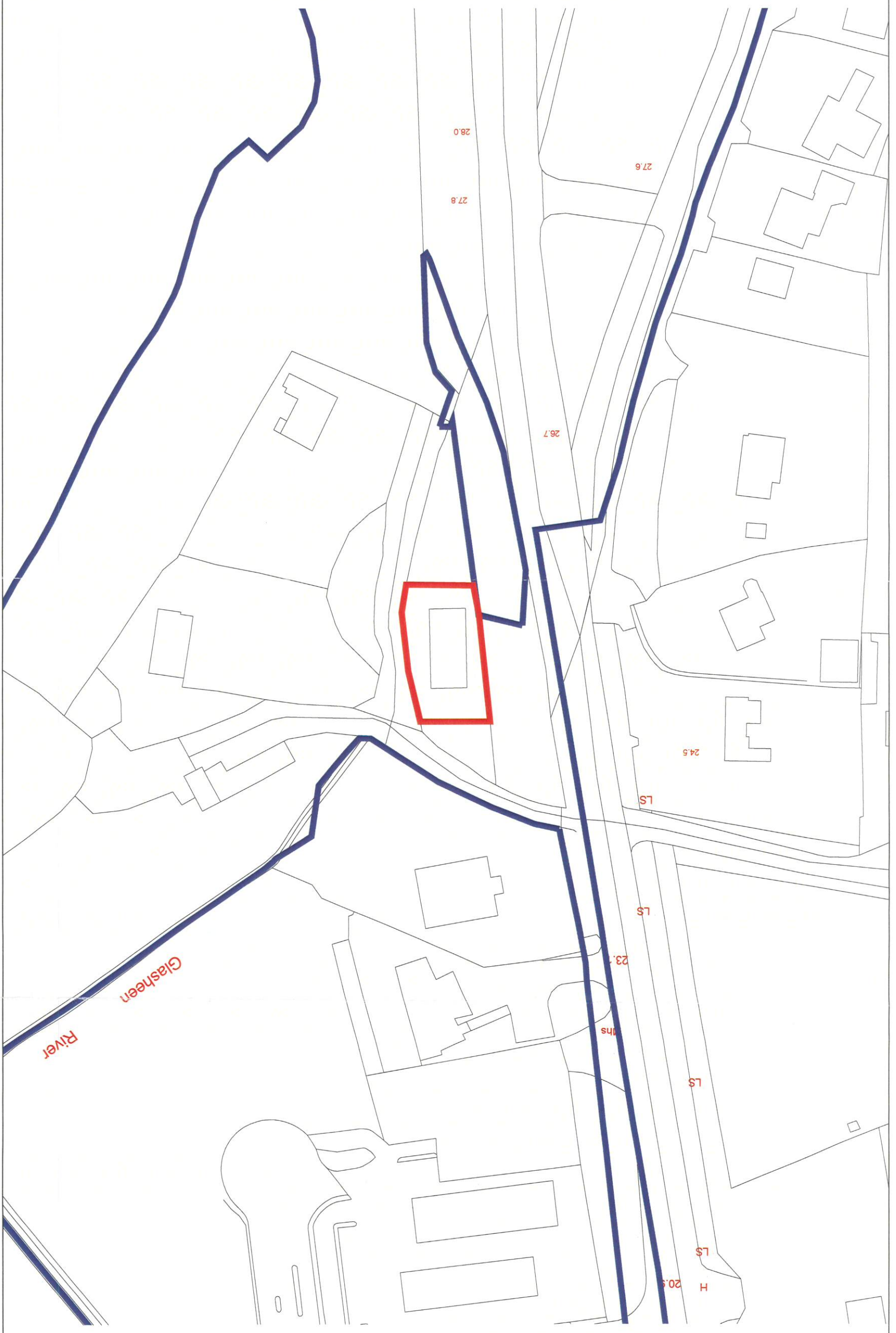
DATA PROTECTION: The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution.

Appendix 1 - Location Map by McCutcheon Halley

SITE LOCATION MAP

SCALE 1:1000

— DENOTES LAND WITHIN APPLICANTS OWNERSHIP
— DENOTES SITE BOUNDARY
— EDGED RED



Drawing Title	SITE LOCATION MAP	Date	23.06.20
Drawing No.	LM	Drawn	LM
Sheet No.	1612/P/002	Scale	1:1000 @ A3
1 OF 1			

Project Name and Address
 PROPOSED RESIDENTIAL DEVELOPMENT
 AT GARRANE DARRAGH, CO. CORK
 EMAIL: INFO@DGAARCHITECTS.IE
 T: 021 455016 WWW.DGAARCHITECTS.IE



No.	Revision/Issue	Date
P1	ISSUE FOR PLANNING	23.06.20

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 IRELAND



MAP DETAILS
 Description: Digital Cartographic Model (DEM)
 Publisher / Source: Ordnance Survey Ireland (OSI)
 Data Source / Reference: PRIME2
 File Format: Autodesk AutoCAD (DWG, R2013)
 File Name: v_5001516_1.dwg
 Clip Extent / Area of Interest (AOI):
 LXL.LY= 563909.2708, 568500.3749
 LXL.LR= 564354.2708, 568300.3749
 LXL.LT= 563909.2708, 563300.3749
 LXL.UR= 564354.2708, 569300.3749
 Projection / Spatial Reference: IRENET95 Irish Transverse Mercator
 Proj. Code: IRENET95 Irish Transverse Mercator
 Centre Point Coordinates: X,Y= 564216.7708, 568915.3749
 Data Extraction Date: 13-Jun-2018
 Version / Release: Version 1.0
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SITE LOCATION MAP

SCALE 1:2500

— DENOTES SITE BOUNDARY
— DENOTES LAND WITHIN APPLICANTS OWNERSHIP



Scale	1:2500 @ A3
Sheet No.	1 OF 1
Drawing No.	LM
Date	23.06.20

Drawing Title
 SITE LOCATION MAP
 Project Name and Address
 PROPOSED RESIDENTIAL DEVELOPMENT
 AT GARRANE DARRAGH, CO. CORK

Firm Name and Address
DD ARCHITECTS
 DEADY GAHAN ARCHITECTS
 EASTGATE VILLAGE, LITTLE ISLAND, CORK
 T: 021 4355018 W: WWW.DDARCHITECTS.IE
 EMAIL: INFO@DDARCHITECTS.IE

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MAP DETAILS
 Description
 Digital Cartographic Model (DCH)
 Publisher / Source
 Ordnance Survey Ireland (OSI)
 Data Source / Reference
 R21M22
 File Format
 Autodesk AutoCAD (DWG, R2013)
 File Name
 V_50011516_1.dwg
 Clip Extent / Area of Interest (AQI)
 LTX.LY= 563909.2708,568500.3749
 LYX.LY= 563909.2708,568500.3749
 LTX.LX= 564524.2708,569330.3749
 LYX.LX= 564524.2708,569330.3749
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 Centre Point Coordinates
 X.Y= 564216.7708,568915.3749
 Data Extraction Date
 Date= 13-Jun-2018
 Version / Release
 Version= 1.0
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