



Comhairle Cathrach Chorcaí Cork City Council

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

Paula Kelleher
26 Old Avenue
Riverstown
Cork
T45 EE00

28th July 2020

**RE: Section 5 Declaration R589/20 – 26 Old Avenue,
Riverstown, Glanmire, Cork**

Dear Ms Kelleher,

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

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the Planning Authority considers that —

- The attic level window in the Western gable,
and
- The rear, single storey extension,

At: No. 26 Old Avenue, Riverstown, Glanmire, Cork City, **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Yours sincerely

Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT
Ref. R 589/20

Cork City Council
Development
Management
Community, Culture
and Placemaking

Application type	SECTION 5 DECLARATION
Question	<i>Whether a window at attic level on the West facing gable of the dwelling is exempted development?</i>
	<i>And</i>
	<i>Whether the rear extension is exempted development?</i>
Location	No. 26 Old Avenue, Riverstown, Glanmire, Cork City. T45EE00
Applicant	Paula Kelleher (owner)
Date	28/07/2020
Recommendation	Is development and is exempted development

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 applicant has two questions to the Planning Authority as follows:

- *Whether a window at attic level on the West facing gable of the dwelling is exempted development?*
- *and*
- *Whether the rear extension is exempted development?*

3. SITE DESCRIPTION

The subject property is a two storey detached dwelling, and is an end house in a cul-de-sac And turning head, within a residential estate. It is within the development boundary of Glanmire, under the Cork County Municipal Development Plan, 2017.

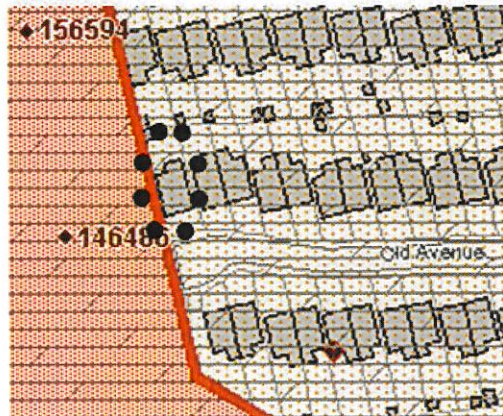
4. DESCRIPTION OF THE DEVELOPMENT

The development that has been constructed relates to two areas as follows:

- There exists an as-constructed window in the attic level of the Western gable of the dwelling. It should be noted, that the application does not relate to the use of the attic level, and accordingly the scope of this question within the Report relates to the confines of the question i.e. the as-constructed window.
- There exists an as-constructed single storey, rear extension measuring 2.7 m. x 2.3 m. internally.

5. RELEVANT PLANNING HISTORY

There is no relevant, recent site history attached to the subject site.



6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

“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, and
- (b) in relation to a protected structure or proposed protected structure, includes—
 - (i) the interior of the structure,
 - (ii) the land lying within the curtilage of the structure,
 - (iii) any other structures lying within that curtilage and their interiors, and
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).

“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(1)(h)

4.(1) The following shall be exempted developments for the purposes of this Act—

...

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

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.*

6.2 Planning and Development Regulations 2001 to 2018 as amended

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

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

(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 Description of Development	Column 2 Conditions and Limitations
<i>Development within the curtilage of a house</i>	

<p style="text-align: center;">Column 1 Description of Development</p>	<p style="text-align: center;">Column 2 Conditions and Limitations</p>
<p>CLASS 1 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.</p>	<ol style="list-style-type: none"> 1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres. (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 not exceed 20 square metres. 2. (a) 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 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. (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

Column 1 <i>Description of Development</i>	Column 2 <i>Conditions and Limitations</i>
	<p>walls of the house.</p> <p>(c) <i>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.</i></p> <p>5. <i>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.</i></p> <p>6. (a) <i>Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p>(b) <i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p>(c) <i>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.</i></p> <p>7. <i>The roof of any extension shall not be used as a balcony or roof garden.</i></p>

7. ASSESSMENT

7.1 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’.

In relation to the as-constructed window in the Western gable end of the dwelling at attic level, it is clear that an opening as such constitutes ‘works’, which is defined in Section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’, and is it is clearly therefore ‘development’ within the meaning of the Act.

In relation to the rear extension, which provides for an extended kitchen area, I consider that the latter development constitutes development as it comprises of an extension to the main dwelling house.

CONCLUSION:

Window in Western gable at attic level: Is development,

and

Rear extension: Is development.

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that elements of the proposal come within **both subsections (1) and (2) of section 4.**

Gable window at attic level:

Section 4(1)(h)

As noted earlier in this Report, this question is confined to the question i.e. the as-constructed window, and in my opinion, the gable window at attic level component of this proposal (which fronts onto a public car-park, and thus, does not overlook any private amenity area) comes within the scope of section 4(1)(h), being of a minor nature, which does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

CONCLUSION

Is exempted development

Rear extension

I consider that Article 6 and **Class 1** applies, as it is an extension of an existing dwelling.

Having assessed the proposed extension against Class 1 and its conditions and limitations, I find as follows:

Condition / Limitation 1

The house has not been previously extended.

Condition / Limitation 2

The floor area of the rear extension has a total combined floor area of 6.2 sq, m² approximately. Therefore part (a) of this condition and limitation are satisfied (parts (b) and (c) do not apply).

Condition / Limitation 3

The proposed works are Ground Floor only, therefore, this condition/limitation does not apply.

Condition / Limitation 4

The height of the proposed extension does not exceed the height of the side walls of the house.

Condition / Limitation 5

More than 25m² of open space will remain to the rear of the dwelling.

Condition / Limitation 6

Ground floor window / glass patio doors are more than 1 metre from the boundaries they face.

Condition / Limitation 7

The roof is not proposed to be used as a balcony or roof terrace.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is exempted development

8. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
- (b) as respects which an environmental impact assessment or an appropriate assessment is required,*

to be exempted development.

Section 177U(9)

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

8.1 Screening for Environmental Impact Assessment

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.**

8.2 Screening for Appropriate Assessment

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**.

9. RECOMMENDATION


In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the Planning Authority considers that —

- The attic level window in the Western gable,
and
- The rear, single storey extension,

At: No. 26 Old Avenue, Riverstown, Glanmire, Cork City, **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.



Helen O' Sullivan
Assistant Planner
28/07/2020.

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

23 JUL 2020

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

RECEIVED R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021 4924762

Líonra/Web: 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

26 OLD AVENUE, RIVERSTOWN
GLANMIRE, COUNTY CORK. T45 EE00

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.

IS THE WINDOW AT ATTIC LEVEL ON THE
WEST FACING GABLE END EXEMPT?

IS THE KITCHEN EXTENSION TO THE REAR
OF THE HOUSE EXEMPT?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

SEE ATTACHED PHOTOGRAPHS.

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?

5. Was there previous relevant planning application/s on this site?

If so please supply details:

S/96/4676

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	6.65sq metres 72sq feet approx (kitchen ext. area)
(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:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
_____	_____
_____	_____
_____	_____
N/A	

8. 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		

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

Signature: _____

Date: 20 JULY 2020

Community Culture & Placemaking

23 JUL 2020

PHONE





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LOCATION OF ATTIC WINDOW ON GABLE END



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Google

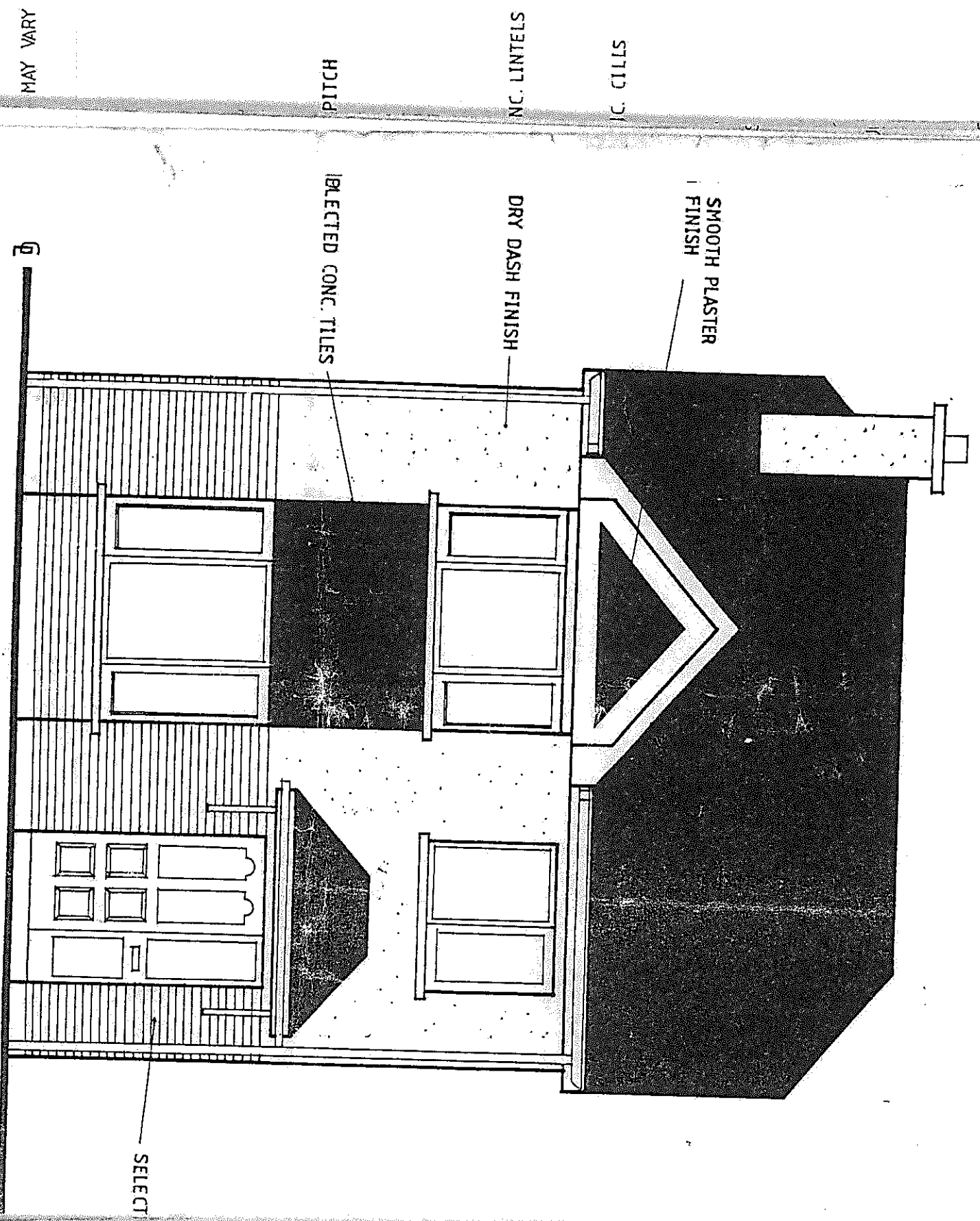


REMAINING GARDEN AREA = 5kg metres approx. SHEO IS 4m²

Viewing 28 of 29 photos
26 Old Avenue, Riverstown, Glanmire, Co. Cork

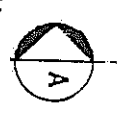


not to be scaled.
 check all dimensions and conditions on site before work.
 be informed of any discrepancies before work proceeds drawings take preference over smaller drawings.
 is copyright and for identification purposes only.
 be read in conjunction with 1991 Building Regulations.
 and details used in construction, to comply with 1991 Regulations.
 MAY VARY ON SITE



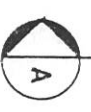
GROUND FLOOR PLAN SCALE 1/4" = 1ft

FRONT ELEVATION SCALE 1/4" = 1ft

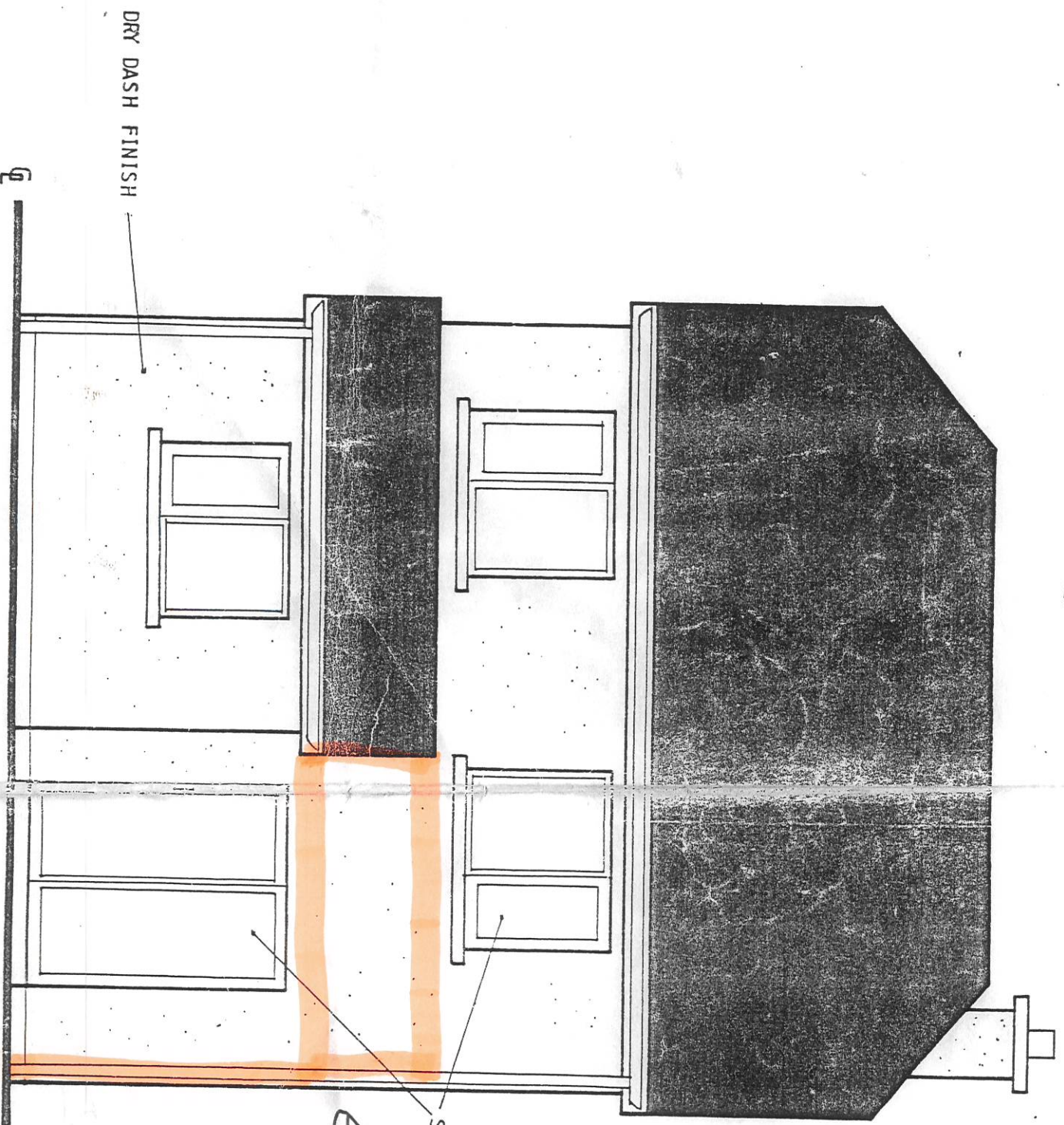


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FIRST FLOOR PLAN SCALE 1/4" = 1'-0"



SECTION A.A.



REAR ELEVATION SCALE 1/4" = 1'-0"

DRY BRICK FINISH

DRY DASH FINISH

SELECTED WINDOWS AND DOOR

← Rear

Kitchen

Extension

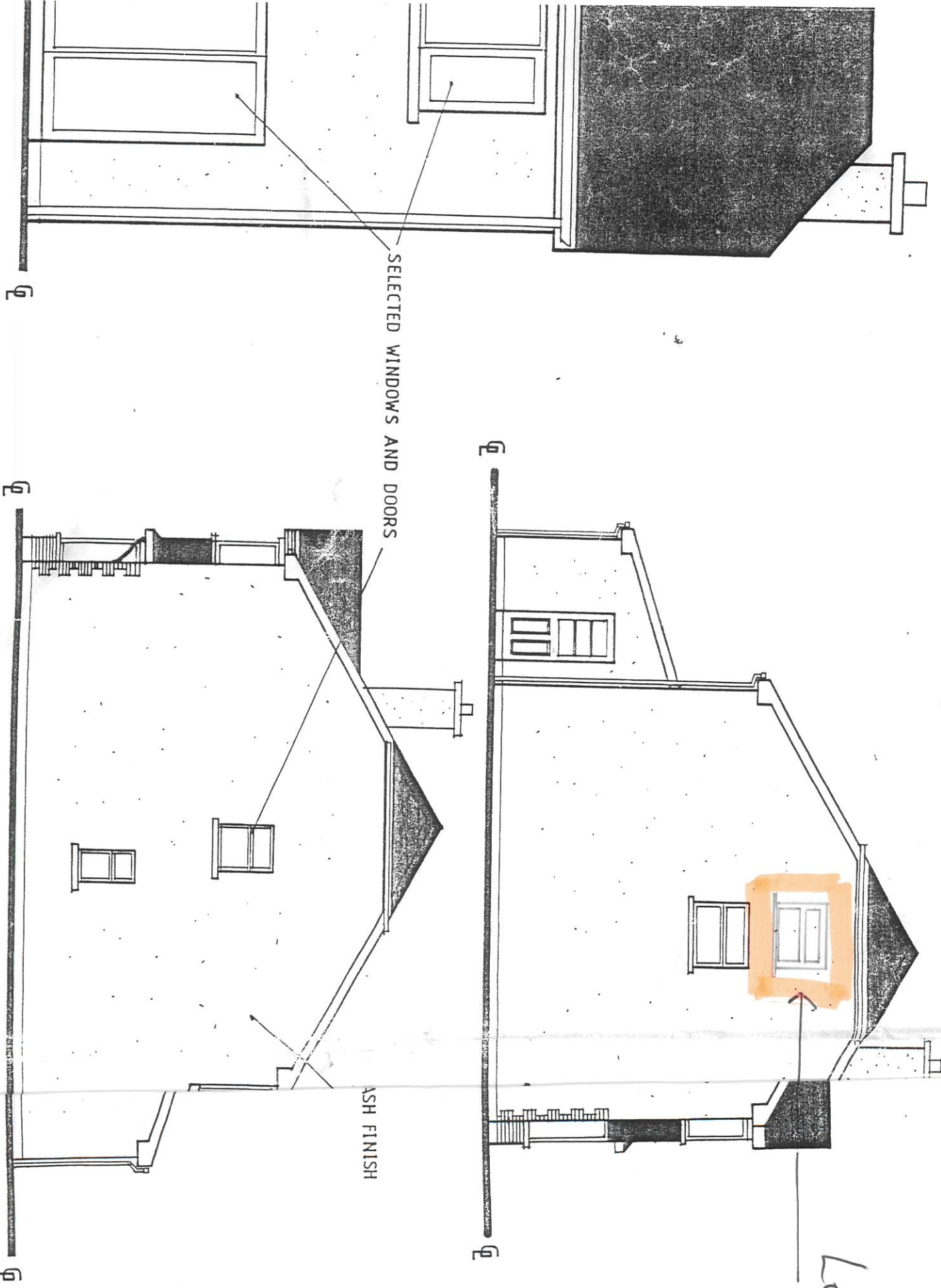
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SECTION A.A. SCALE 1/4 in = 1ft

2" I ON
100EN ON
SAING ON
6" ACTED HARDCORE.

ENG'S SPEC AND DESIGN AND
SUBJECT TO GROUND CONDITIONS.



SIDE ELEVATIONS SCALE 1/8 in = 1ft

Location of Arnie window
ON Gable End

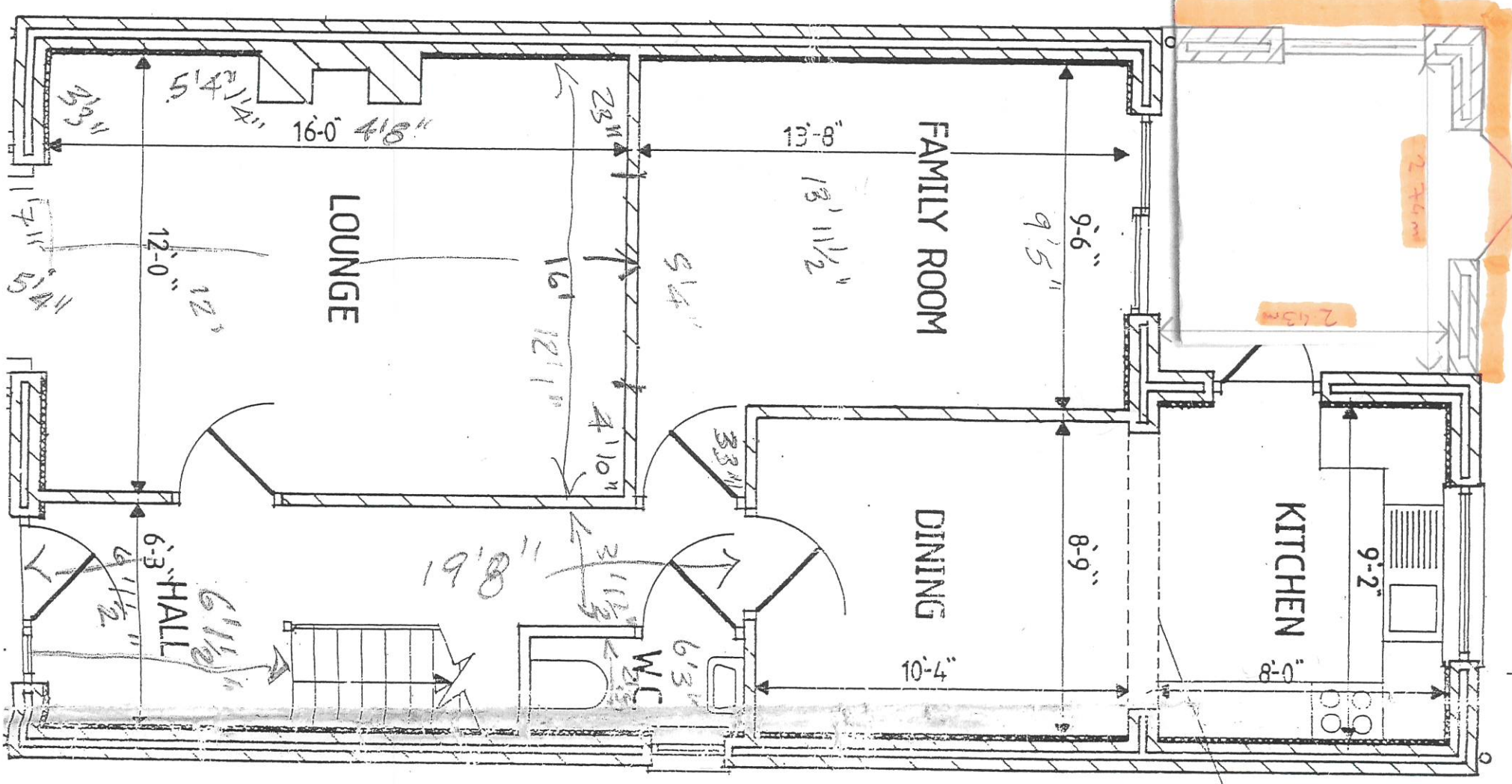
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Prindom
Date

Donal J. O'Donovan
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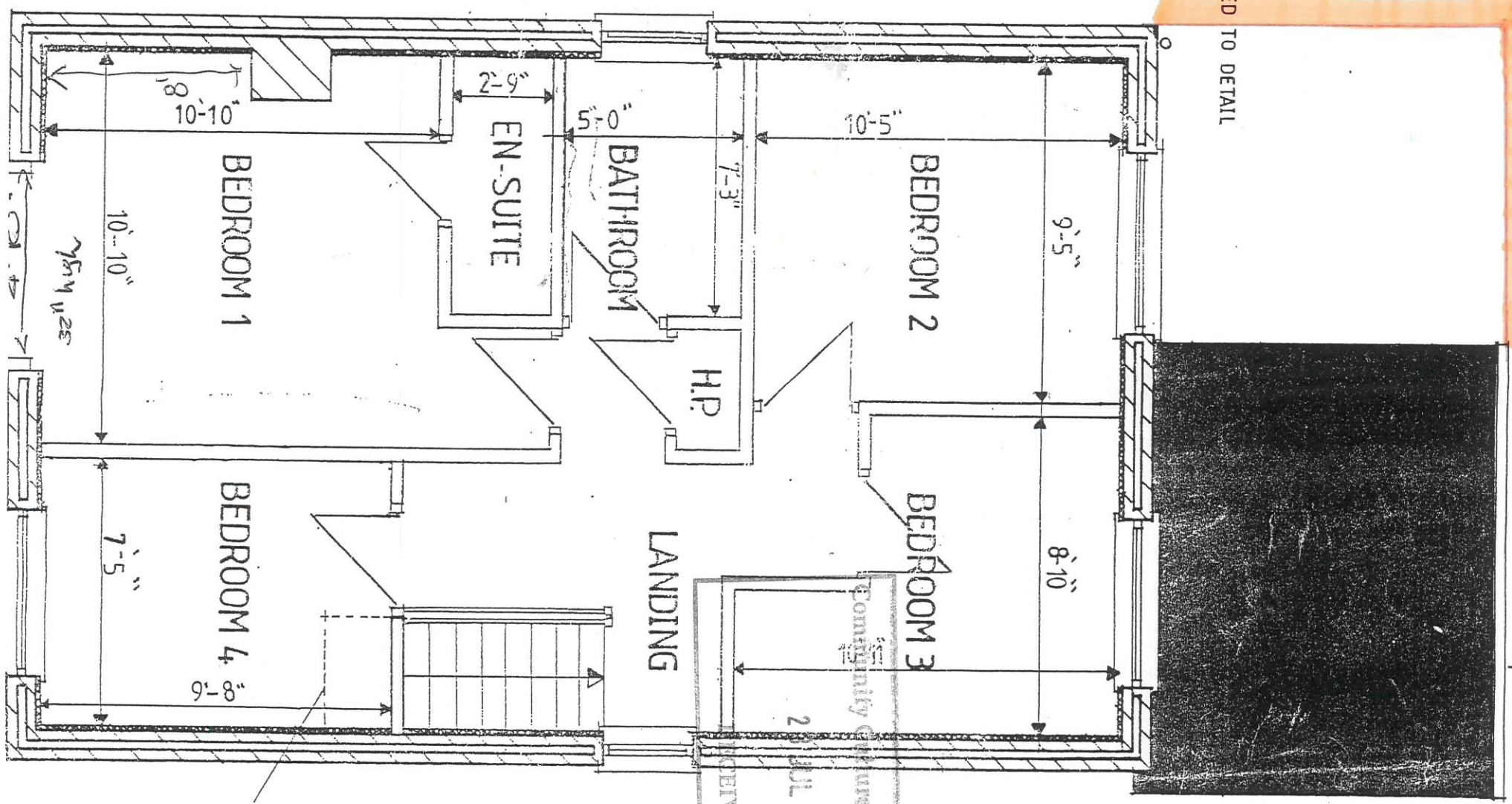
Title

Client

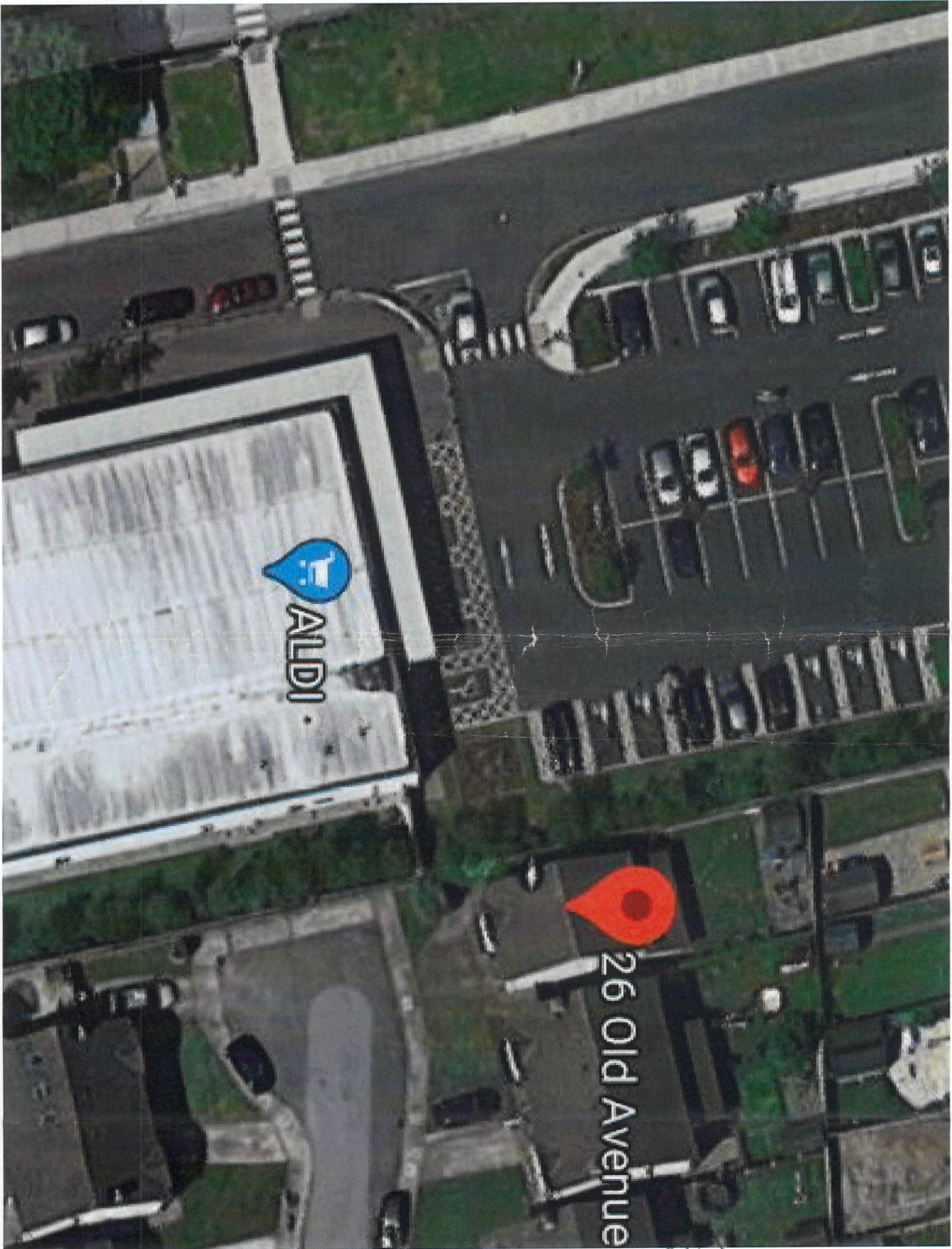
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BEAMS OVER SHOWN DOTTED TO DETAIL



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