



Comhairle Cathrach Chorcaí

Cork City Council

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

FMP Architects
Granary Hall
Ruthland Street
Cork

06/10/2020

RE: Section 5 Declaration R596/20 22 The Monor, Model
Farm Road, Cork

A Chara,

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

Having regard to the fact that the alterations were made *during* the course of the construction of a permitted development the applicant could not have availed of any exemptions available to completed dwellings. Notwithstanding this the extension to the gym area breaches condition and limitation 2(a) of Class 1 of Part 1 of Schedule 2 of the Planning and Development as the 40 sq.m is a cumulative floor area which has already been exceeded. The alterations to the roof profile and glazing to rear and sides do not come within the scope of Section 4(1) (h) of the Planning and Development Act 2000 (as amended).

It is therefore recommended that the applicants be advised that:

As the alterations were made *during* the course of the construction of a permitted development, the applicant could not have availed of any exemptions which are only available to *completed* dwellings. The development breaches condition 1 of T.P. 07/31622 and de-exempts such development having regard to Article 9(1)(i) of the Planning and Development Regulation 2001 (as amended). Notwithstanding this, the extension to the gym area breaches condition and limitation 2(a) attached to Class 1 of Part 1 of Schedule 2 of the Planning and Development as the 40 sq.m. limit is a *cumulative* floor area limit which includes extensions already granted permission. It is also noted that there appears to be other alterations not noted on the submitted drawings including an increase to the width of the drawing room from that permitted under T.P. 07/31622 which would de-exempt other development by virtue of restriction on exemptions outlined under Article 9(1)(viii) of the Planning and



We are Cork.

Development Regulations 2001 (as amended). Furthermore, the alterations to the roof profile and glazing to rear and sides do not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended). It is therefore concluded that the alterations (1-4) referred to in the application form which were made during the construction of permitted development under 07/31622 at 22, The Manor, Model Farm Road are 'development' and are not 'exempted development'.

Is misa le meas,



Kerry Bergin
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



PLANNER'S REPORT
Ref. R 596/20

Cork City Council
Development
Management
Strategic Planning
and Economic
Development

Application type **SECTION 5 DECLARATION**
Question *Whether the alterations made during construction of the development permitted under T.P. 07/31622 are development and if so whether they are exempted development.*
Location *22 The Manor, Model Farm Road.*
Applicant Finbarr and Laura O Callaghan

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.

1. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the Planning Authority is reworded as follows:

'Whether the following alterations made during construction of Planning ref 07/31622 are development and if so are or area note exempted development:

- 1) change of design of single storey roofs at sides of dwelling;*
- 2) Increasing gym at rear to match width of garage;*
- 3) Velux roof lights;*
- 4) Additional chimney on south elevation.'*

2. SITE DESCRIPTION

The subject property comprises a two storey detached dwelling house located in 'The Manor'— a housing estate located off the western end of Model Farm Road opposite the Melbourn Business Park.

The question relates to extensions and alterations made it is stated during the constructed of a development permitted under T.P. 07/31622.

3. PLANNING HISTORY

T.P. 07/31622: Permission granted for:

- o the demolition of the existing conservatory to the rear of the existing dwelling;
- o the construction of a single-storey side and rear 'wrap-around' extension and associated interior alterations to the existing dwelling;
- o the conversion of the existing car garage (to a home gym and boiler room) to link with main dwelling; and
- o the construction of a side extension to the existing car garage (for use as a car garage) and associated site development work.

(estate was originally developed in early 1990s by O'Flynn developments).

4. CURRENT LEGISLATIVE PROVISIONS

4.1 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(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.

4.2 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"...*

(viii) *'consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,'*

Classes 1-8 of Part 1 of schedule 2 relate to development within the curtilage of a house. 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
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 1 <i>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.</i></p>	<p>1. (a) <i>Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</i></p> <p>(b) <i>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.</i></p> <p>(c) <i>Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</i></p> <p>2. (a) <i>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.</i></p> <p>(b) <i>Subject to paragraph (a), where the house is terraced or semi-detached and has been</i></p>

Column 1 Description of Development	Column 2 Conditions and Limitations
	<p>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.</p> <p>(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.</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>

Column 1 Description of Development	Column 2 Conditions and Limitations
	<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>

CLASS 2 relates to:

(a) 'The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure'.

5. ASSESSMENT

5.1 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'. 'Works' are defined in section 3(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.

CONCLUSION — *is development*

5.2 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). In my opinion the proposed extension does not come within the scope of section 4(1). The proposed extension comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word 'or' in section 4(3).

Restrictions on exemption

I note from case law and practise that exemptions do not apply during the construction of development but can only be applied once the development is complete – this is true for example in housing estates where alterations such as rear extensions cannot be constructed on foot of Class 1 exemptions. In short, a planning permission must be implemented in its entirety, or not at all. Where a developer seeks to carry out alterations or to add extensions in reliance on the exempted development regulations, he or she will first need to ensure that the house is fully complete in accordance with the planning permission and plans on foot of which the planning permission issued, and only then can the extension or additional work be carried out. In this instance the applicant advises that the changes were made during the construction of the permitted development.

Given the above and the restriction on exemptions outlined in Articles 9 of the Planning Regulations 2001 (see above) – the development as such would have contravened Condition 1 of T.P. 07/at the time.

- | | |
|---|---|
| 1. The development shall be carried out in accordance with the drawings and specifications submitted to the Planning Authority on 02/02/2007, except where otherwise altered or amended by the conditions contained in this Schedule. | 1. To define the scope of the permission, and to enable the Planning Authority to check the proposed development when completed, in the interests of proper planning and sustainable development. |
|---|---|

It is clear that the development was not carried out in accordance with this condition.

Notwithstanding the above, if the development is assessed against the Exempted Development Regulations – Second Schedule, Part 1, Class 1 Conditions and Limitation 2(a) has been breached. The limit of 40sq.m. is a cumulative one therefore the limit has already been exceeded in this instance by the extended area (total floor area of permitted extension was stated on the 2007 application and the current form to be 135.55 sq.m.).

In addition I note also that several other alterations have been made to the permitted development which have not been shown on the drawings or referred to in the question – the full extent of the alterations from the permitted drawings are outlined below:

On the northern elevation:

- Alteration to roof profile;
- Different window ope at first floor level;
- Alteration to roof profile;
- Addition of a velux to roof area.

On the western elevation:

- The alteration of a window to a door;
- The insertion of large glazing in lieu of a window (to kitchen area);
- Alteration to extent and location of permitted glazing/door to gym area (and an extension to this room);
- Alterations to side roof profiles;
- 3 velux windows to roof.

On the southern elevation:

- Additional chimney;
- Alterations to side roof profiles;
- Additional window to first floor.

On the east elevation

- Alteration to roof profile to either side and additional velux to attic area – this velux is shown on the drawings but appears not to have been constructed.

On the floor plans:

- An increase in width of the drawing room from 4.3m to 5.5m;

- Window to first floor en-suite not shown;
- No floor plans of attic area provided – sales brochure online shows its use as a bedroom and ensuite.

The velux windows and the chimney could ordinarily be considered to be exempted development (under Section 4 1(h) of the Act and Class 2 of Part 1 of Schedule 2 of the Regulations) however aside from the fact that these alteration occurred *during* construction given the alterations made from the permitted development including the extended drawing room area there is a question as to whether the alterations render the dwelling house unauthorised, thereby de-exempting these alterations under Article 9(viii).

The alterations to the roof profile and glazing opes/pattern/location are material alterations to the permitted development and cannot be said to come within the scope of Section 4(1)(h) of the Planning and Development Act 2000.

6. ENVIRONMENTAL ASSESSMENT

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

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.

6.1 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.

6.2 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.

7. CONCLUSION & RECOMMENDATION

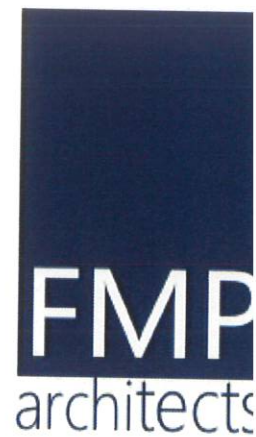
Having regard to the fact that the alterations were made *during* the course of the construction of a permitted development the applicant could not have availed of any exemptions available to completed dwellings. Notwithstanding this the extension to the gym area breaches condition and limitation 2(a) of Class 1 of Part 1 of Schedule 2 of the Planning and Development as the 40 sq.m is a cumulative floor area which has already been exceeded. The alterations to the roof profile and glazing to rear and sides do not come within the scope of Section 4(1) (h) of the Planning and Development Act 2000 (as amended).

It is therefore recommended that the applicants be advised that:

As the alterations were made *during* the course of the construction of a permitted development, the applicant could not have availed of any exemptions which are only available to *completed* dwellings. The development breaches condition 1 of T.P. 07/31622 and de-exempts such development having regard to Article 9(1)(i) of the Planning and Development Regulation 2001 (as amended). Notwithstanding this, the extension to the gym area breaches condition and limitation 2(a) attached to Class 1 of Part 1 of Schedule 2 of the Planning and Development as the 40 sq.m. limit is a *cumulative* floor area limit which includes extensions already granted permission. It is also noted that there appears to be other alterations not noted on the submitted drawings including an increase to the width of the drawing room from that permitted under T.P. 07/31622 which would de-exempt other development by virtue of restriction on exemptions outlined under Article 9(1)(viii) of the Planning and Development Regulations 2001 (as amended). Furthermore, the alterations to the roof profile and glazing to rear and sides do not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended). It is therefore concluded that the alterations (1-4) referred to in the application form which were made during the construction of permitted development under 07/31622 at 22, The Manor, Model Farm Road are **'development'** and are **not 'exempted development'**.

Evelyn Mitchell,
Senior Executive Planner,
06.10.2020

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25th August 2020

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



Dear Sirs,

Re: Section 5 Declaration for alterations carried out during construction to extensions granted under planning Ref. no. 0731622 at No. 22 The Manor, Model Farm Road, Cork

On behalf of our clients, we hereby enclose the following documents in support of their application for the above

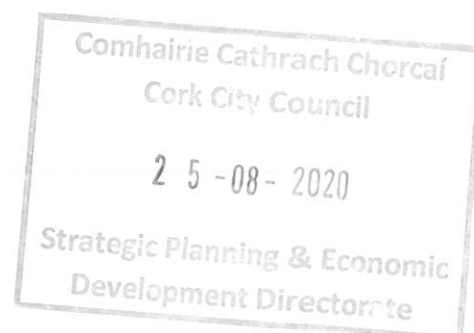
1. Completed application form
2. Copy of OS map with site outlined in red
3. Copies of our drawings P1-P7
4. Fee in the sum of €80.00

Should you have any further queries, please do not hesitate to contact the undersigned.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'C O'Sullivan'.

Con O' Sullivan
For
FMP Architects



Cc Finbarr & Laura O' Callaghan

3S720/COS

Design Planning Conservation Project Management

Directors: Peter Murphy Dip Arch FRIAI RIBA / Brian McKeown MRAI
Associates: Con O'Sullivan
FMP Architect Ltd T/A FMP Architects Registered in Dublin No. 599889 VAT Registration No. IE 3461843HH



**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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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

22 THE MANOR
MODEL FARM 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.

THE FOLLOWING ALTERATIONS WERE MADE DURING
CONSTRUCTION TO THAT SHOWN ON PLANNING
REF NO - 0731622
① CHANGE OF DESIGN OF SINGLE STOREY ROOFS AT SIDES
OF DWELLING
② INCREASING GYM AT REAR TO MATCH WIDTH
OF GARAGE

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

③ Velux roof lights
④ Additional chimney on south elevation

Community Culture & Placemaking

25 AUG 2020

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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?

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:

REF. NO 0731622

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	418.0 sq.m.
(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 checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) <u>135.55 sq.m</u>
(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)
-----	-----
-----	-----
-----	-----

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: Ca O Sullivan pp Finbar & Laura O'Callaghan

Date: 25/08/2020

Planning Pack Map



OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:

The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Further information is available at: <http://www.osi.ie/search/CaptureResolution>



CENTRE COORDINATES:
ITM 563021,570941

PUBLISHED: 19/08/2020
ORDER NO.: 50136055_1

MAP SERIES: 6981-D
MAP SHEETS: 1:2,500

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LEGEND:
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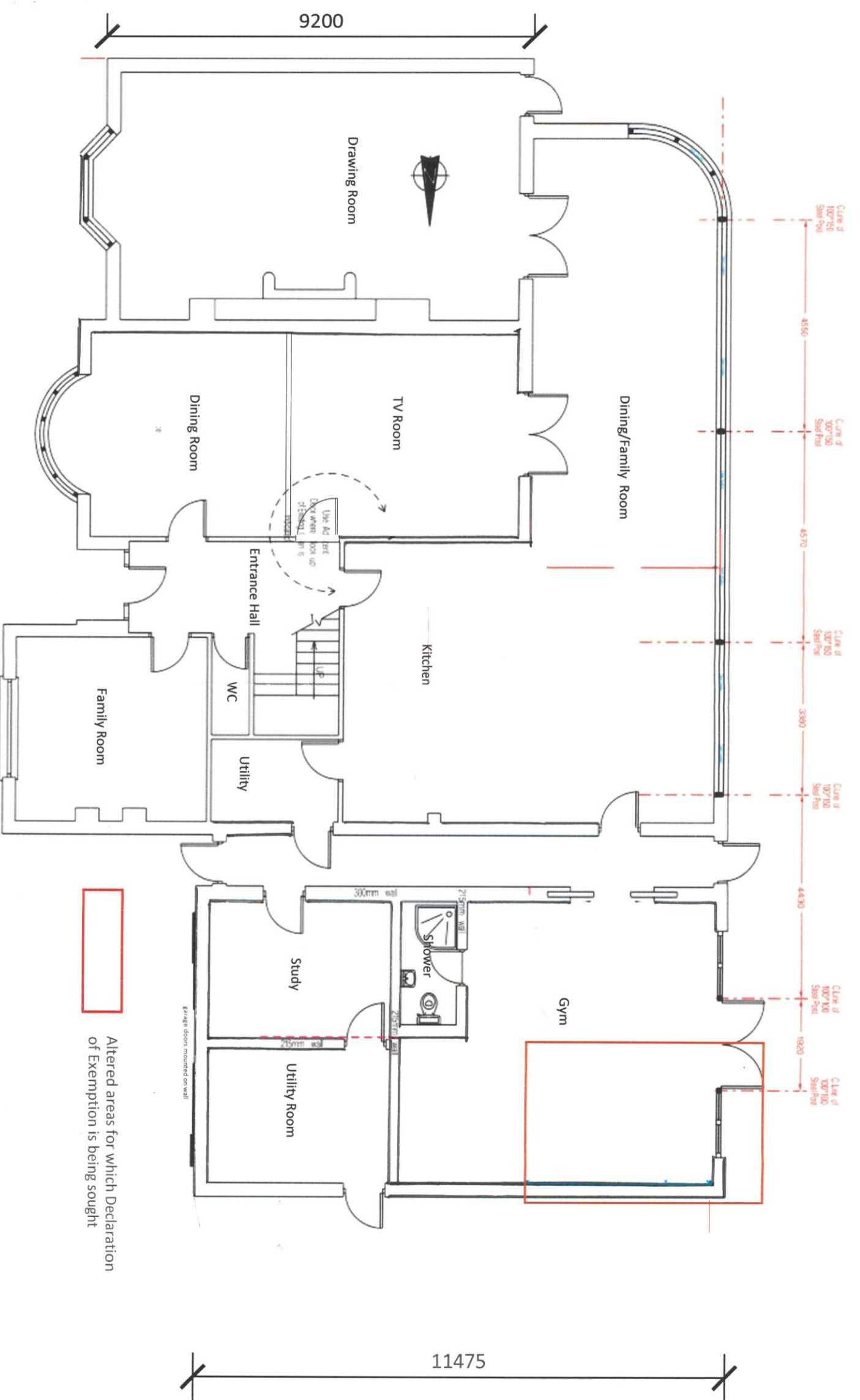
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Ground Floor Plan

24645

11475

9200

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Notes

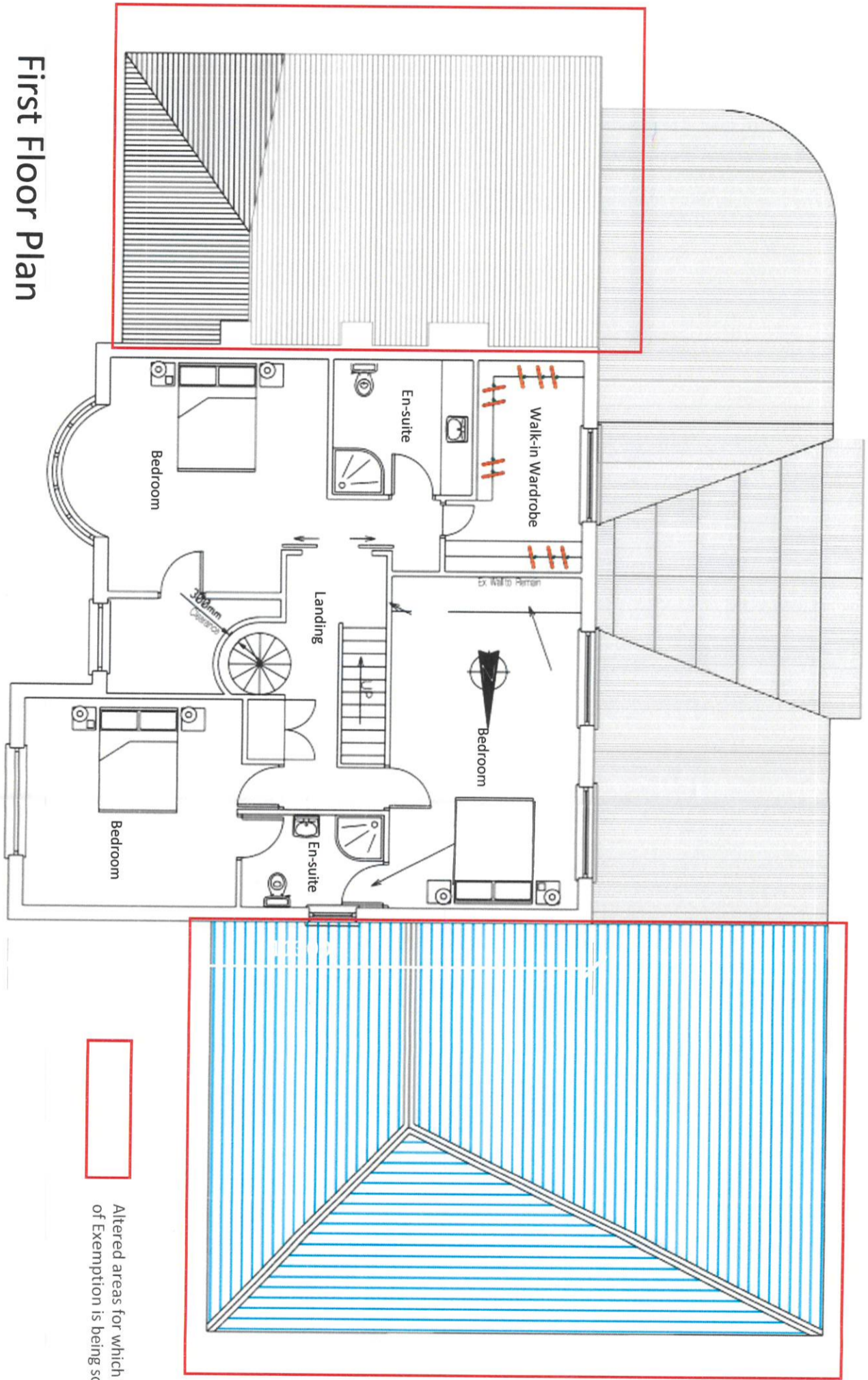
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Project: S720
 Dwelling at 22 The Manor,
 Model Farm, Road, Cork
 Stage: Planning
 Scale: 1/100@A3
 Drawn: COS
 Date: 12.08.20

Drawing Title: Ground Floor Plan
 Drawing No. P1
 Rev No. 0

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First Floor Plan

Altered areas for which Declaration of Exemption is being sought



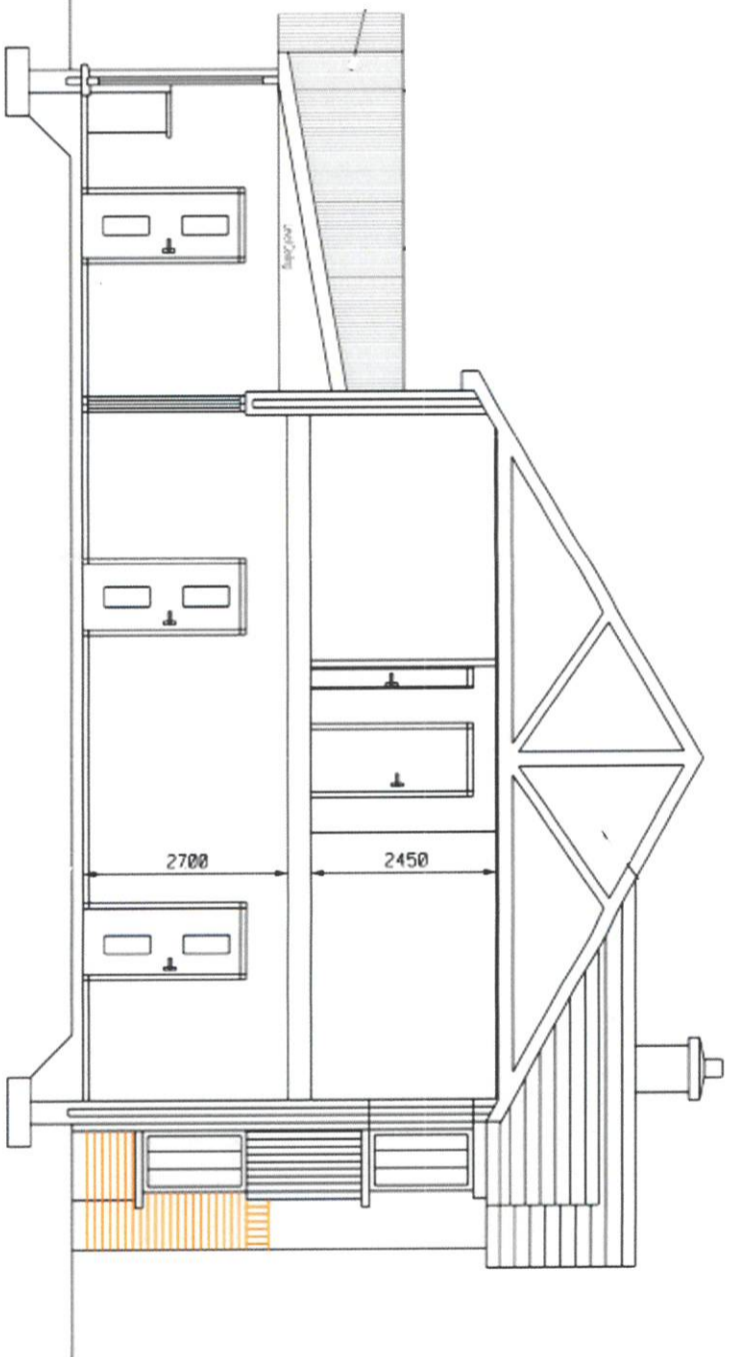
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W www.fmp.ie

Project: S720
Drawing Title: Dwelling at 22 The Manor, Model Farm, Road, Cork
Stage: Planning
Scale: 1/100@A3
Drawn: COS
Date: 12.08.20
Drawing No.: P2
Rev No.: 0

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Cross-Section

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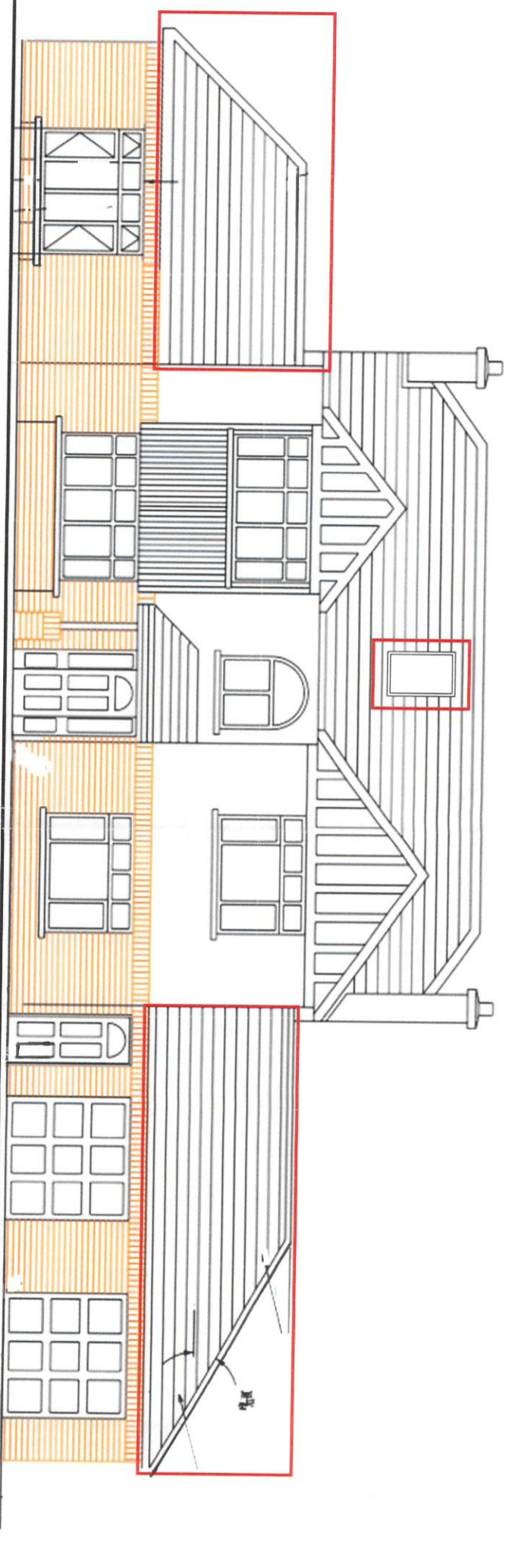
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Project: S720
**Dwelling at 22 The Manor,
 Model Farm, Road, Cork**
 Stage: Planning
 Scale: 1/100@A3
 Drawn: COS
 Date: 12.08.20

Drawing Title:
Cross-Section
 Drawing No.: **P3**
 Rev No.: **0**

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East Elevation



Altered areas for which Declaration of Exemption is being sought

Notes



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Project: S720

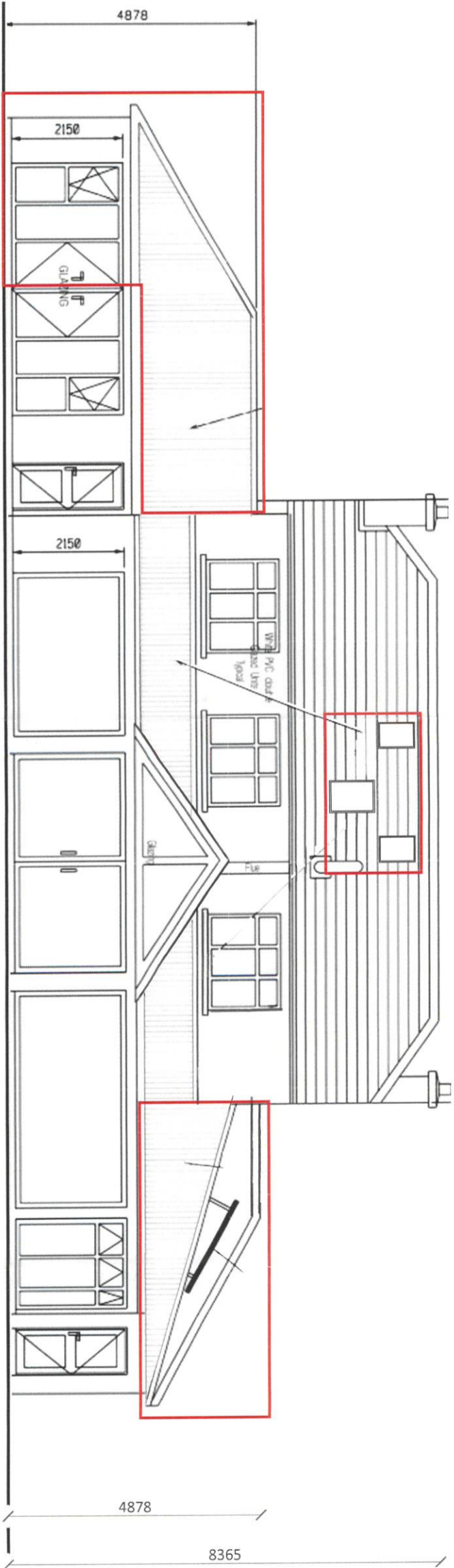
Dwelling at 22 The Manor,
 Model Farm, Road, Cork

Stage: Planning
 Scale: 1/100@A3
 Drawn: COS
 Date: 12.08.20

Drawing Title:
East Elevation

Drawing No.
P4

Rev No.
0



West Elevation



Altered areas for which Declaration of Exemption is being sought

NOTES

No.	REVISION	DATE
0	Issued for Section 5 Declaration of Exemption	25.08.20

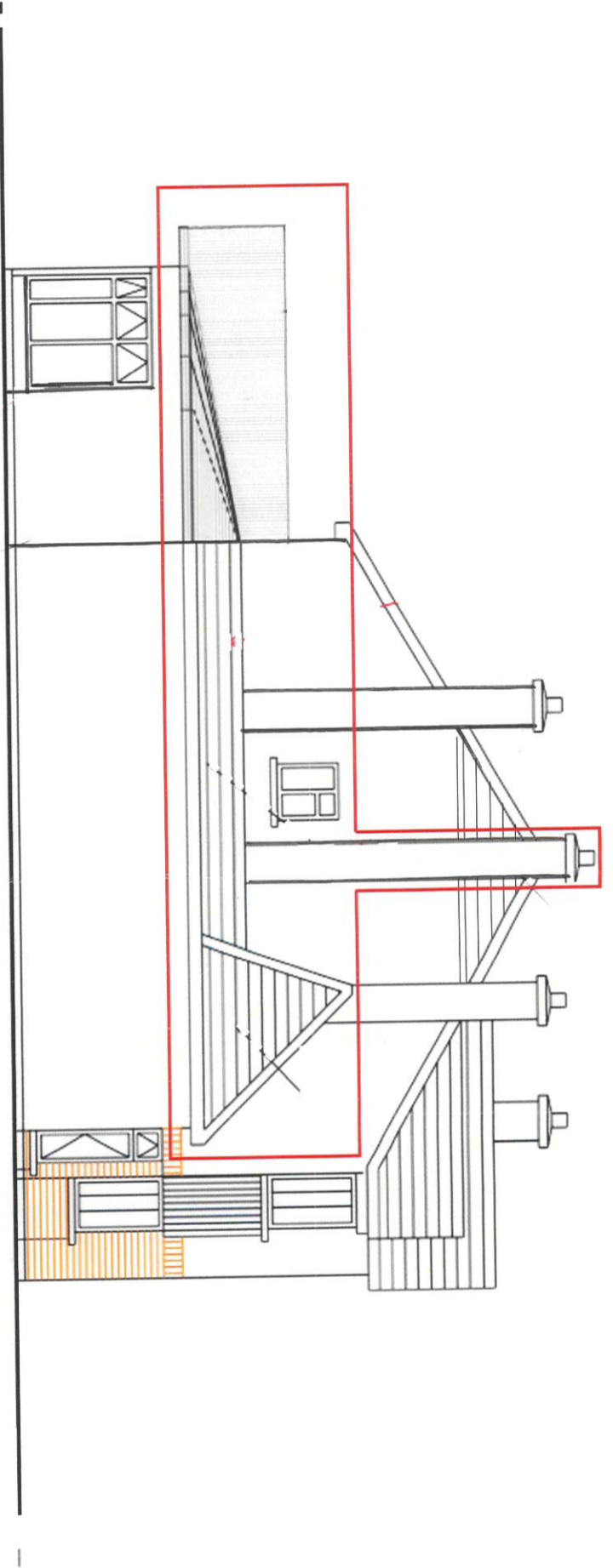
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Project S720
**Dwelling at 22 The Manor,
 Model Farm, Road, Cork**
 Stage Planning
 Scale 1/100@A3
 Drawn COS
 Date 12.08.20

Drawing Title:
West Elevation
 Drawing No. **P5**
 Rev No. **0**

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South Elevation



Altered areas for which Declaration of Exemption is being sought

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Drawing Title:
South Elevation
 Drawing No.: **P6**
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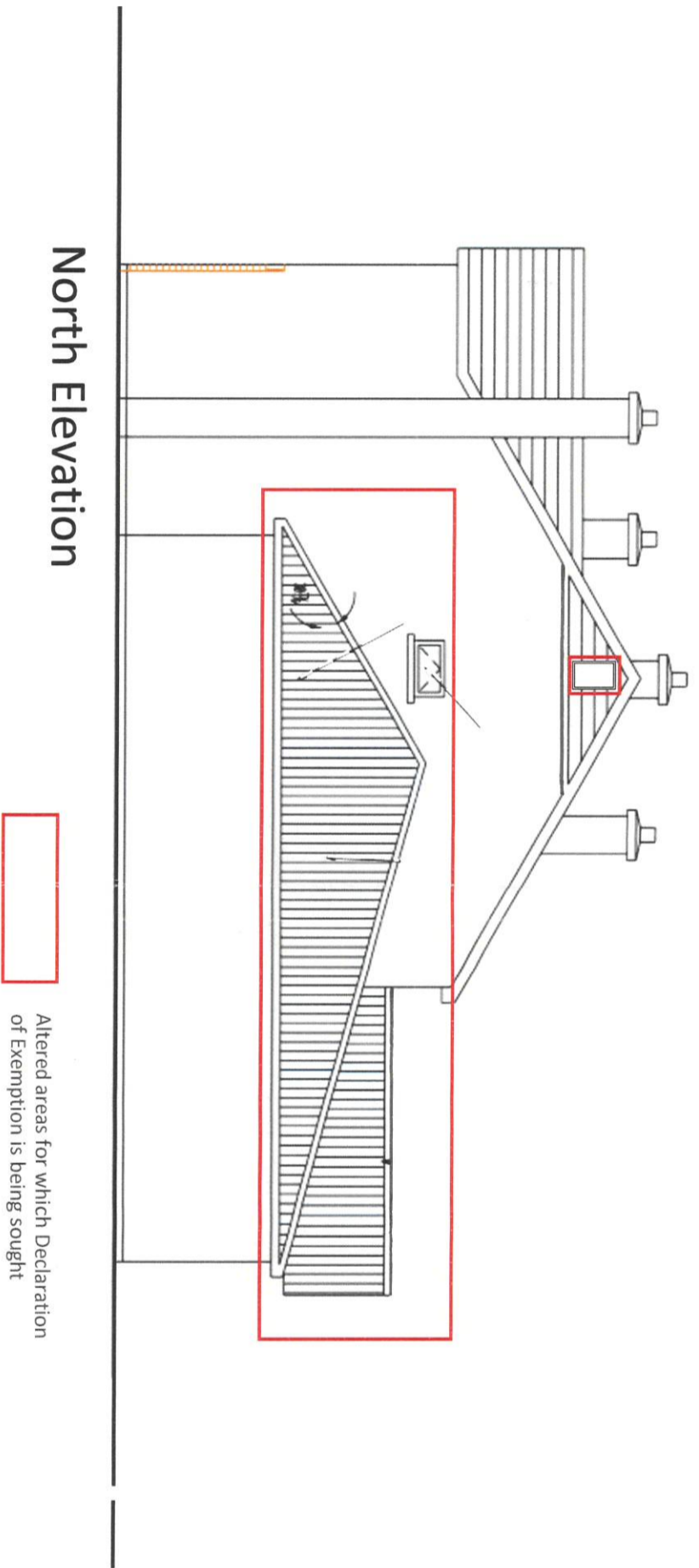
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 Model Farm, Road, Cork**
 Stage: Planning
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Drawing Title:
North Elevation
 Drawing No. **P7**
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