

AG35/21

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

Strategic Planning & Economic Development Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

Comhairle Cathrach Chorcaí
Cork City Council

10 FEB 2021

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

Fón/Tel: 021-4924564/4321

Líonra/Web: www.corkcity.ie

Strategic Planning & Economic
Development Directorate

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

NO 6 ST. JOSEPH'S TERRACE
BALLYHOOLY 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.

GROUND FLOOR REAR EXTENSION 26.51m²
AND FIRST FLOOR REAR EXTENSION 5.94m²

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

BOTH EXTENSIONS WERE BUILT IN 2013
THEY ARE BOTH UNDER THE REQUIRED
EXEMPTED FLOOR AREA

THE FIRST FLOOR EXTENSION WAS BUILT
ONLY 700mm FROM THE SIDE BOUNDARY

3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M) Ex. GROUND FLOOR AREA = 27.09m²

GROUND FLOOR EXTENSION = 26.51m²
 Ex. FIRST FLOOR AREA = 27.09m²
 FIRST FLOOR AREA = 5.91m²

(a) Floor area of existing/proposed structure/s	
(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	N/A

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		GEORGE O'BRIEN	
Applicants Address		No. 6 ST. JOSEPH'S TERRACE BALYHOOBY ROAD, CORK.	
Person/Agent acting on behalf of the Applicant (if any):	Name:	DENNIS HENNINGAN	
	Address:	GREEN BANKS BALYVOLANE, CORK.	
	Telephone:	[REDACTED]	
	Fax:	[REDACTED]	
	E-mail address:	[REDACTED]	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

5. LEGAL INTEREST

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

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

Signature: George O'Brien

Date: 9th February 2021

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, Strategic Planning & Economic Development
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



Comhairle Cathrach Chorcaí Cork City Council

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

Dennis Hennigan

Green Banks

Ballyvolane

Cork

24/02/2021

RE: R635/21 – Section 5 Declaration
Property: 6 St Joseph's Terrace, Ballyhooley Road

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended)

It is considered that the –

Ground floor rear extension 26.51m² and first floor rear extension 5.94m²

Is development and is not exempted development

Yours faithfully,

Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.

PLANNER'S REPORT Ref. R635/21		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>Ground floor rear extension 26.51m² and first floor rear extension 5.94m²</i>	
Location	6 St. Joseph's Terrace, Ballyhooly Road	
Applicant	George O'Brien	
Date	24/02/2021	
Recommendation	<i>Is development and is not exempted development</i>	

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

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

In response to Q2 on the application for the applicant does not frame a question. Rather the following description is written:

Ground floor rear extension 26.51m² and first floor rear extension 5.94m²

In response to Q3 the following detail is provided:

Both extensions were built in 2013

They are both under the required exempted floor area

The first floor extension was built only 700m from the side boundary

3. Site Description

The property in question is a two storey terraced house on the south eastern side of the Ballyhooly Road in St. Lukes. It is a mid-terraced property with rear garden. The site is sloped with the garden at a higher level than the house. The terrace in which the property sits it also on sloping land and steps up with the topography. The adjoining property to the south west (No. 7) is slightly lower than the subject dwelling.

The dwelling is not a Protected Structure, it is not in an Architectural Conservation Area nor does it form part of the National Inventory of Architectural Heritage.

4. Planning History

There are no recent planning applications associated with the site. Permission was granted in 2014 for a two storey rear extension at 5 Joseph’s Terrace under 14/35913.

5. Legislative Provisions

5.1 The Act

Section 2(1),

“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),

The following shall be exempted developments for the purposes of this Act-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 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

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.

5.2 The Regulations

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.

SCHEDULE 2, ARTICLE 6, PART 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</p> <p>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</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(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.</p> <p>(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.</p>

<p>other similar structure attached to the rear or to the side of the house.</p>	<p>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.</p> <p>(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.</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> <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>
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6. ASSESSMENT

6.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘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’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘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.’.

I consider that the erection of the rear extension constitutes the carrying out of works and as such constitutes development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development.

The rear extension as constructed may be exempt if it accords with the exemption set out in Class 1 in Schedule 2 of the *Planning and Development Regulations 2001* (as amended). The following is a review of the proposal against the conditions / limitations set out in Class 1.

<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(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.</p> <p>(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.</p>	<p>(a) The ground floor extension is less than 40m²</p> <p>(b) The above ground extension is less than 12m²</p> <p>(c) n/a</p>
<p>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.</p> <p>(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.</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>House does not appear to have been previously extended</p>
<p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p>	<p>The first floor extension is stated to be 700mm from the party boundary. This element of the development therefore does not accord with the exemption.</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>(a) The height of the wall does not exceed the existing height of the rear wall of the dwelling.</p> <p>(b) n/a</p> <p>(c) The height does not exceed the height of the eaves / parapet</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>The rear garden is over 25m² in size.</p>
<p>6. (a) Any window proposed at ground level in any such</p>	<p>(a) No window is within 1m of a party boundary</p>

<p>extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</p>	<p>(b) The first floor window is over 11 metres from the rear boundary.</p> <p>(c) n/a</p>
<p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>	<p>The flat roof of the ground floor does not appear to be accessible.</p>

The rear extension therefore does not comply with Condition 3. The extension is therefore not exempt from the requirement for planning permission as it does not comply with conditions / limitations set out for Class 1 type development.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the 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 an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. 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 development site relative to these European sites and related watercourses and to the nature and scale of the development it is considered that the development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

8. RECOMMENDATION

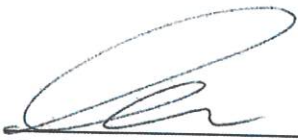
In view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended)

It is considered that the —

Ground floor rear extension 26.51m² and first floor rear extension 5.94m²

Is development and is not exempted development



Martina Foley
Executive Planner



DENNIS HENNIGAN
& Associates Ltd.

Green Banks, Ballyvolane, Cork. - Mob. 087 6166291 –
E-mail - dennishennigan@gmail.com

**SECTION 5 DECLARATION APPLICATION FORM – GEORGE O' BRIEN – NO.6
ST. JOSEPH'S TERRACE, BALLYHOOLY ROAD, CORK.**

Date 8th February, 2021

Dear Sir or Madam,

Please find attached herewith a list of the drawings and documentation accompanying this application is detailed below.

Architectural Documents

TITLE:	SCALE:	DRG. NO.:	Copies
Section 5 Declaration Application Form	n/a	n/a	2 no.
Cheque / Cash	n/a	n/a	€80.00

Architectural Drawings

TITLE:	SCALE:	DRG. NO.:	Copies
Site Location Map	1: 1000	21001-PA-01	2 no.
Site layout	1: 250	21001-PA-02	2 no.
Ground & First Floor layouts	1: 100	21001-PA-03	2 no.
Front & Rear Elevations	1: 50	21001-PA-04	2 no.
Section A - A	1: 50	21001-PA-05	2 no.

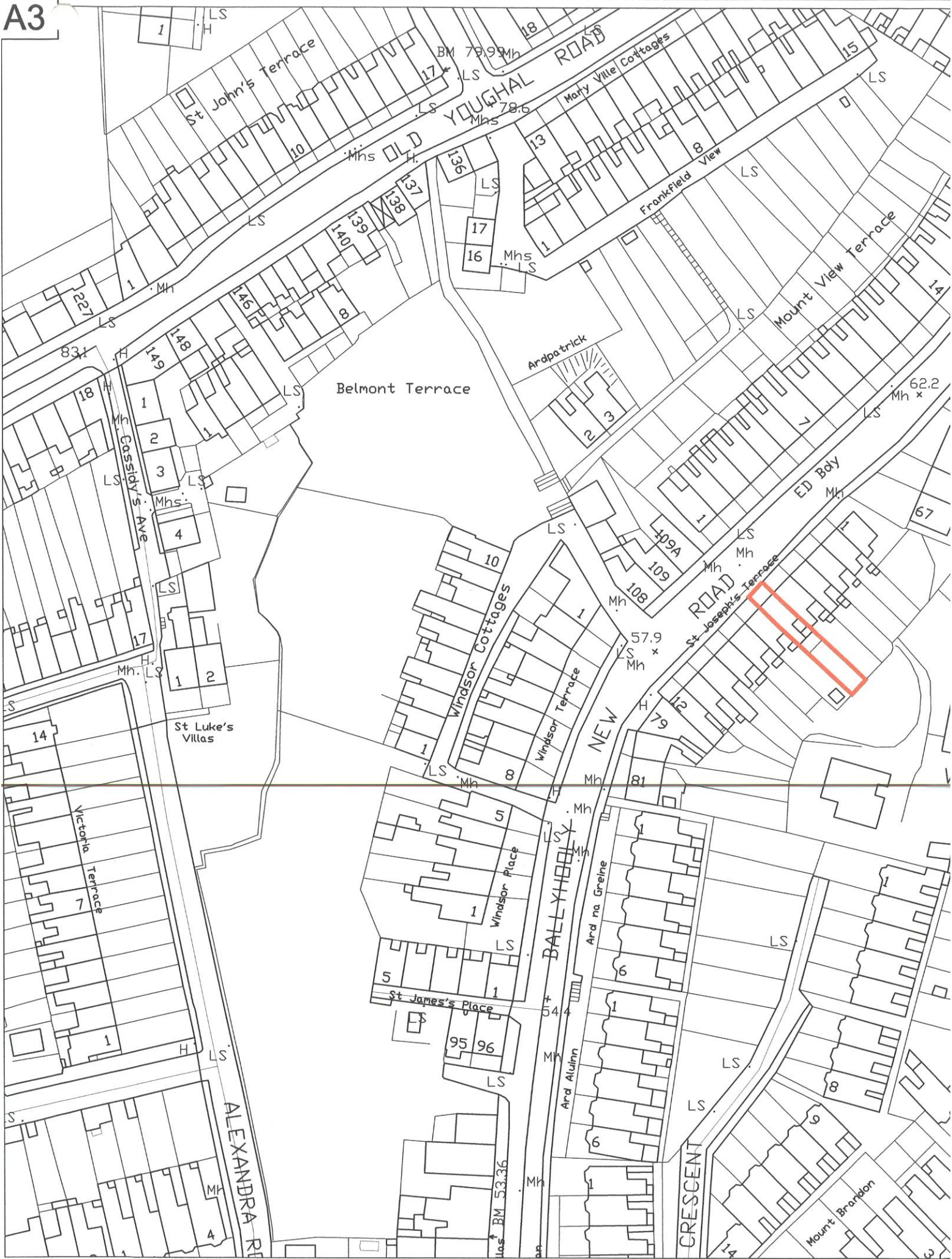
Yours Sincerely,

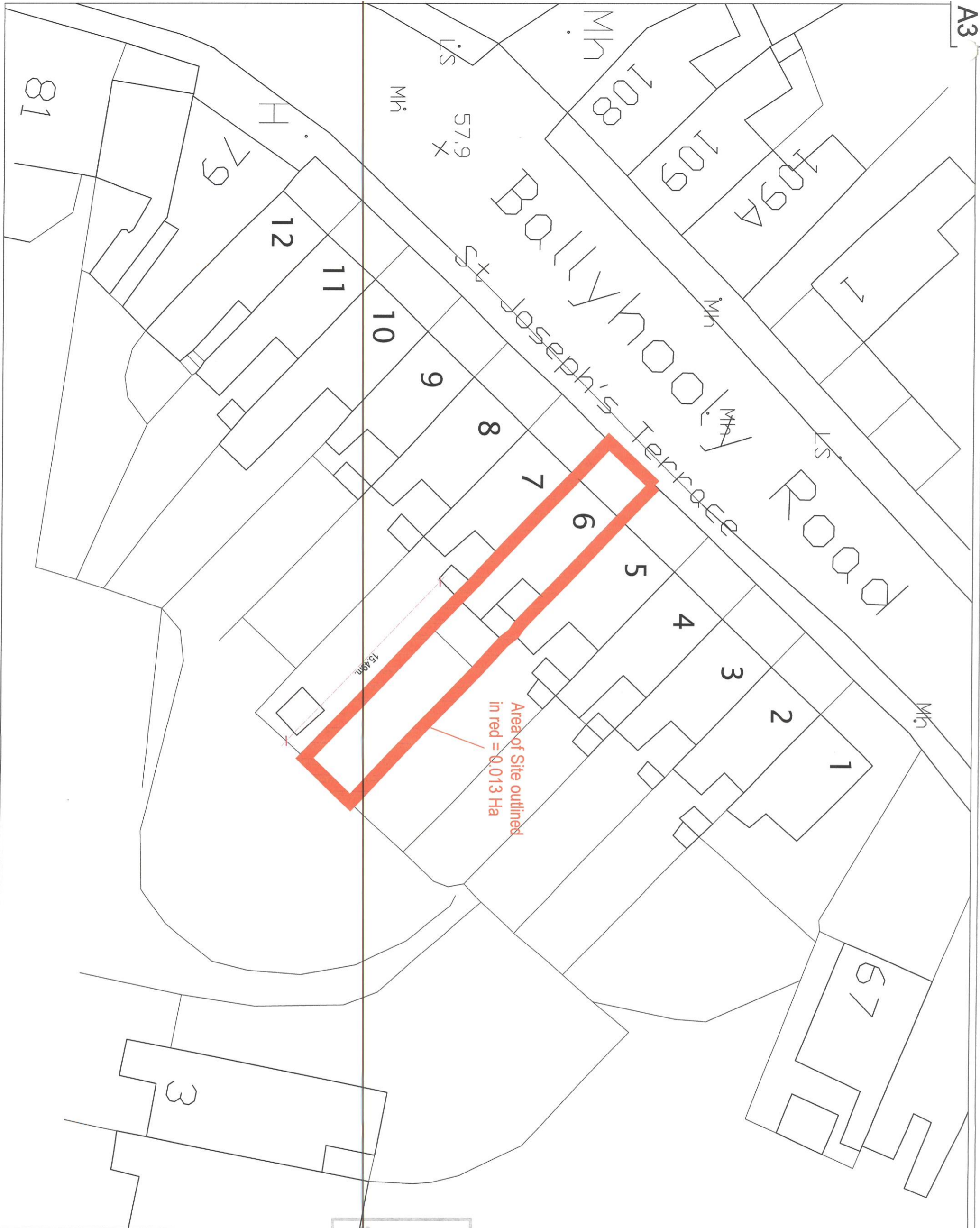

Dennis Hennigan
Dennis Hennigan & Assoc. Ltd.
Green Banks,
Ballyvolane,
Cork, T23 AV6W,
Ireland.
Tel: +353 876166291

Comhairle Cathrach Choreail
Cork City Council

10 FEB 2021

Strategic Planning & Economic
Development Directorate





Area of Site outlined
in red = 0.013 Ha

IMPORTANT TO BE READ

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STAGE ABBREVIATIONS:

CD- Concept Design, PP-Pre-Planning, PA-Planning Application, FI-Further Information, AP-Appeal, RC-Response To Conditions, TE-Tender, FC-Fire Cert./ LE-Contract / Legal, CO-Construction, AB-As Built.



NORTH POINT
Cork City Council

10 FEB 2021

Strategic Planning & Economic
Development Directorate

NO.	ISSUED FOR	SECTION	DATE	BY
1	ISSUED FOR SECTIONS			
	REV	DETAIL	DATE	BY

DH DENNIS HENIGAN & ASSOCIATES LTD.

Green Banks, Ballyvolane, Cork

T-087 6166291 E: dennis@henigan@gmail.com

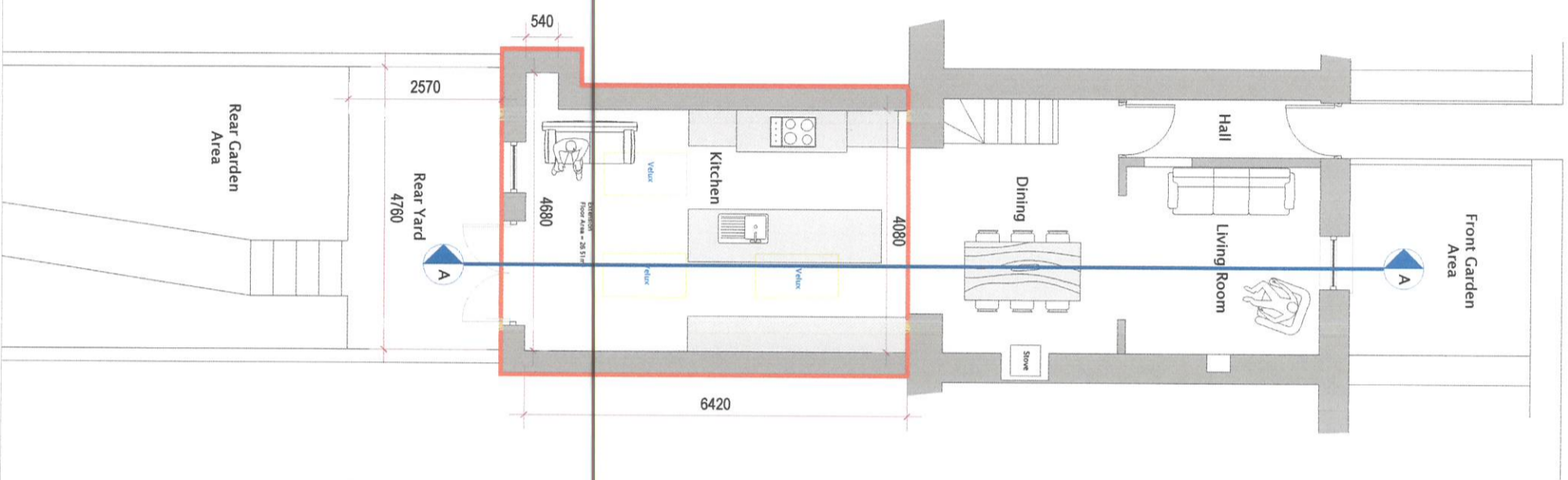
CLIENT: George O'Brien

PROJECT: Section 5 application at
No.6 St. Joseph's Terrace,
Ballyhooley Road,
Cork

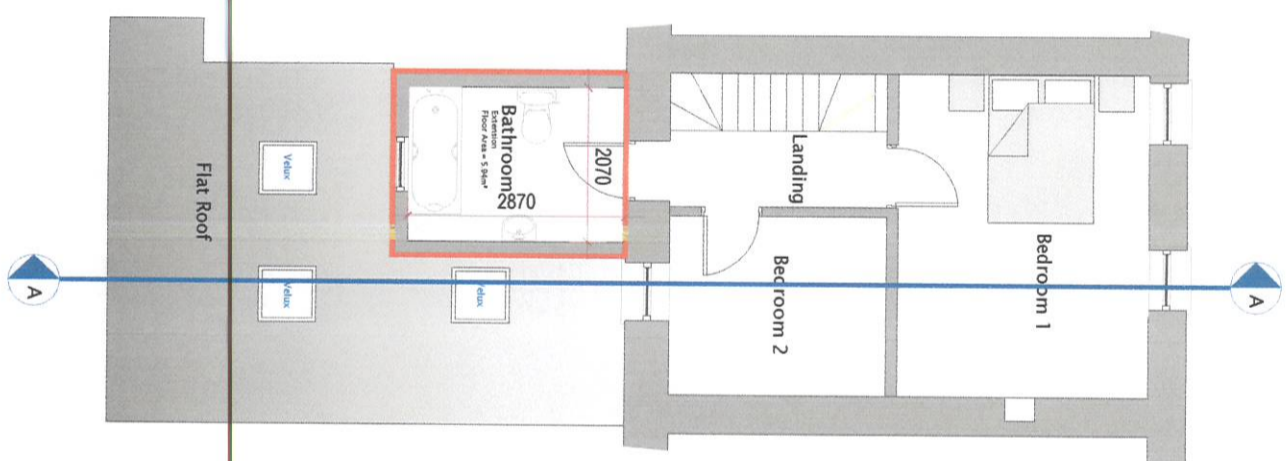
DRG: Site layout

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DH	DH	21001	CO-02	1
1:250 on A3				

Ground Floor Layout



First Floor Layout

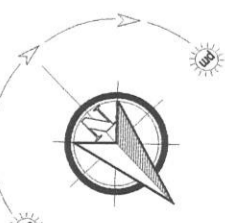


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NORTH POINT

Cathairle Ceilidh Chorcaí
Cork City Council

10 FEB 2021

NO.	REVISION	DATE	BY
1	ISSUED FOR SECTIONS	02/02/21	DH
	REV. DETAIL		BN

DH DENNIS HENIGAN & ASSOCIATES LTD.

Green Banks, Ballyvolane, Cork
T-087 6166291 E: dennis@henigan@gmail.com

CLIENT: George O' Brien

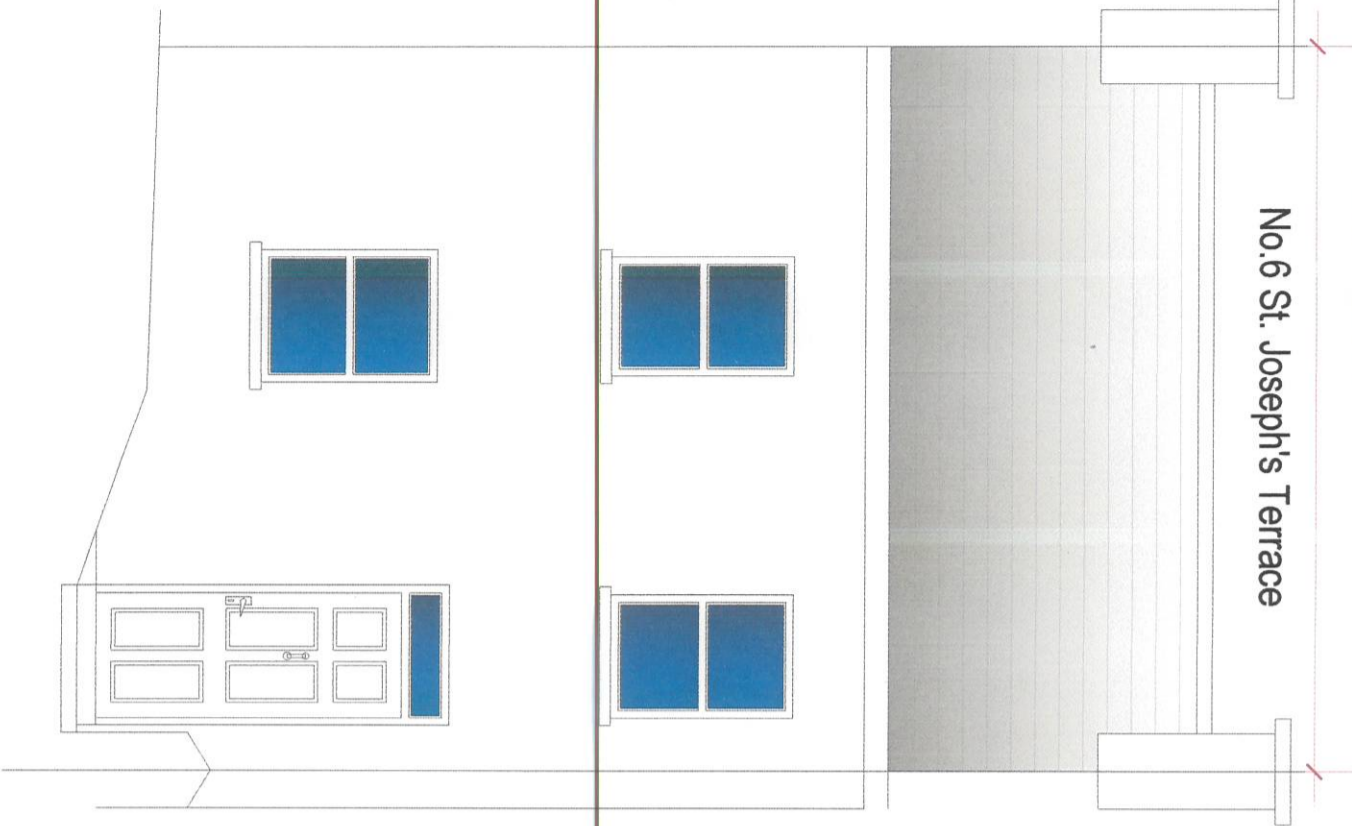
PROJECT: Section 5 application at
No. 6 St. Joseph's Terrace,
Ballynooly Road,
Cork

DRG: Ground & First Floor Layout

Drawn By	Checked By	Date	Drawn Number	Revision	Scale
DH	DH	21/001	CO-03	1	1:100 on A3



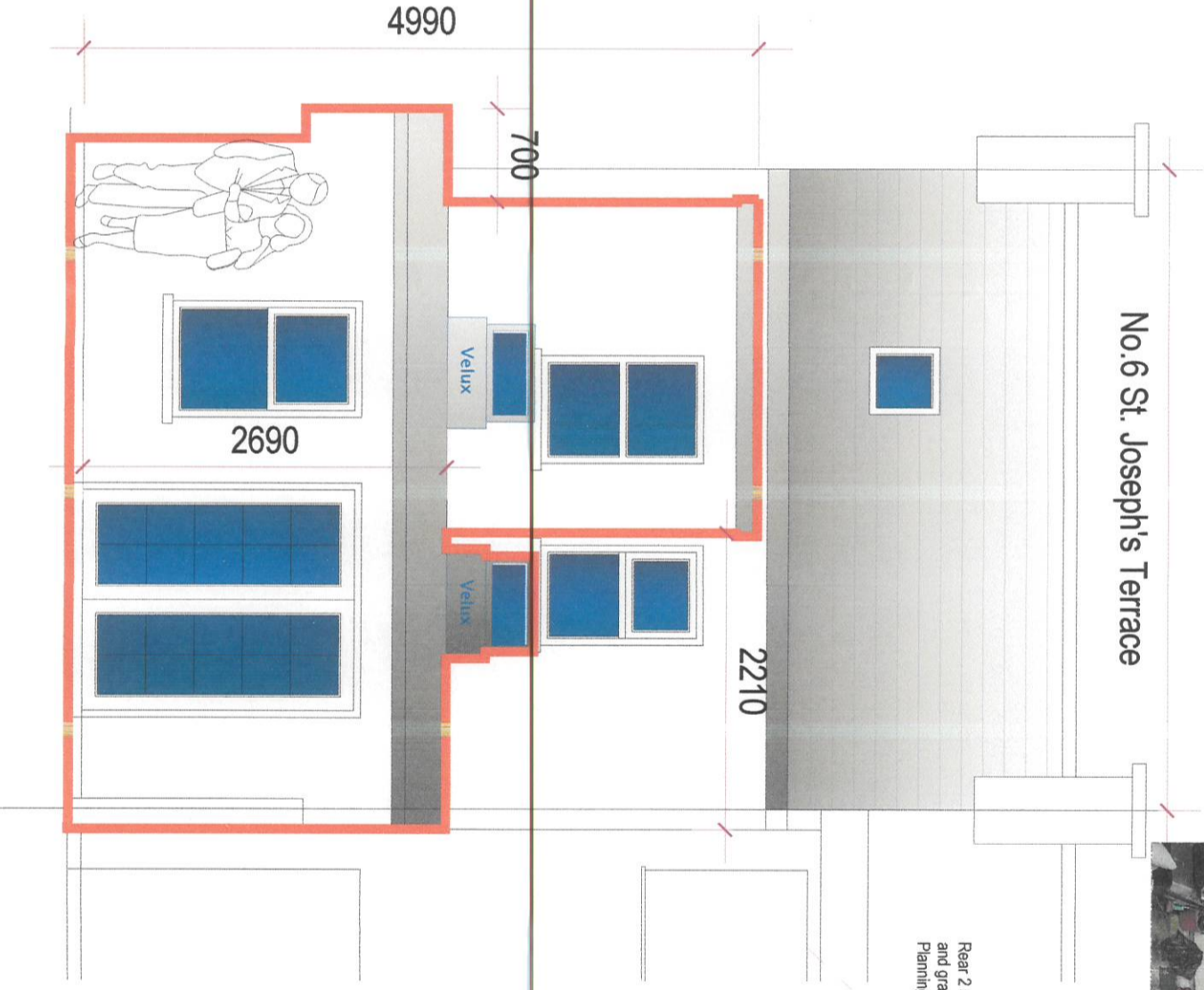
No.6 St. Joseph's Terrace



Front Elevation



No.6 St. Joseph's Terrace



Rear Elevation

Rear 2 storey extension built in 2015 and granted Planning permission under Planning Ref. no. 14-35913

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Comhaltas Ceithreach Chorcaí
Cork City Council

1 0 FEB 2021

Strategic Planning & Economic
Development Directorate

NO.	ISSUED FOR REVISIONS	DATE	BY
1	ISSUED FOR REVISIONS		
Raw	DATE		

DH
DENNIS HENNIGAN & ASSOCIATES LTD.

Green Banks, Ballyvolane, Cork
T-087 6166291 E: dennis@hennigan@gmail.com

CLIENT: George O' Brien

PROJECT: Section 5 application at
No. 6 St. Joseph's Terrace,
Ballyhoo Road,
Cork

DRG: Front & Rear Elevation

Drawn By	Checked By	Scale	Drawing Number	Revision
DH	DH	21001	CO-04	1
1:100 on A3				

