

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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

R-Phost/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924762
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

ELM VALE, POULAUONE, CARRIGROHANE, BALLINCOLLIG, CO 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.
PLEASE SEE ATTACHED COVER LETTER

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).
PLEASE SEE ATTACHED COVER LETTER

Comhairle Cathrach Chorcaí
Cork City Council
24-03-2021
Strategic Planning & Economic
Development Directorate

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

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:

File Number 185576

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	
(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 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)
_____	_____
_____	_____
_____	_____

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: **Arthur Lucas**

Date: **18/3/2021**

CONTACT DETAILS

10. Applicant:

Name(s)	Crothur Locey
Address	<div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 5px;"></div>

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

Name(s):	
Address:	<div style="border-bottom: 1px dashed black; height: 1.2em; margin-bottom: 5px;"></div> <div style="border-bottom: 1px dashed black; height: 1.2em; margin-bottom: 5px;"></div> <div style="border-bottom: 1px dashed black; height: 1.2em;"></div>
Telephone:	
E-mail address:	
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 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:

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

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

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

The application should be sent to the following address:

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

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

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

DATA PROTECTION

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protection policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>.

We request that you read these as they contain important information about how we process personal data.

Dear Sir/Madam,

Subsequent to Planning Authority Section 5 declaration R598/20 planners report, further searches for planning history on this property have been carried out. Planning history relating to the property has been located with copy of a 1977 declaration certificate from Cork County Planning Authority attached.

On the 8th March 1977 the Cork County Council Planning Authority provided a declaration by way of certificate to the previous property owner, Mr D. O'Luasaigh stating that it had no objection to a 120 sqft rear extension at Elm Vale, Ballincollig, Co Cork. The declaration provided was as a result of request for exemption for the build of 120 sqft extension to pre-existing pantry at rear of dwelling.

It can be confirmed that the "remodelling" of original dwelling as visible in the historical photo was in place prior to 8th March 1977. The adjacent dwelling (Eircode P31F579) owned by Mr F.Geary would otherwise be visible in the historical photograph of "original" dwelling were it taken after 8th March 1977. (Please see land registry Folio 54780 line item 161 relating to dwelling at Eircode P31F579 showing the date of transfer of same dwelling to Mr Geary from the development company prior to 1977 as was updated on the folio on the 14th June 1976. Note that dwelling at Eircode P31F579 appears to have been part of the Inniscarra View Estate development in Ballincollig.) A recent photograph of "Elm Vale" taken from a similar aspect as the historical photograph shows dwelling Eircode P31F579 now clearly visible in the same space that was vacant to the left of "Elm Vale" the historical photograph.

The "remodelling" of "original" structure being confirmed as having take place prior to Planning Authority declaration of exemption for extension relating to "Elm Vale" on 8th March 1977 is of importance. I understand that development exemptions for extensions granted by the Planning Authority apply to extension of authorised structures only.

Subsequent to 120 sq ft ground floor extension to pantry at rear of dwelling in 1977 a first floor extension over both was constructed in 1982. Planning history relating to this first storey extension to rear of dwelling in 1982 has not been located. However a contract signed between the property owner and the building contractor for same have been located in terms of validating the later date of build for the 1st floor extension to rear of dwelling in 1982.

The brick extension to side of dwelling was in place from 1971 as outlined by grant documentation from department of housing provided in previous submission R598/20. Whilst the grant from department of housing was clarified in R598/20 planners response as not proving the bona fides of planning status for the side extension it is does provide knowledge that this extension was in place in advance of 8th March 1977 planning authority declaration for the dwelling.

QUESTION/DECLARATION DETAILS

Specific questions for which a declaration is sought:

- [1] Replacement of Single Glazed Window units with new double glazed units on the "Original" structure
 - [2] Replacement of Single Glazed Window unit with new double glazed unit on the "Side Brick Extension" structure
 - [3] Replacement of front porch canopy with new canopy (Floor size less than 2 sqm) on the "Original" structure
 - [4] Replacement of front door as shown on the "Original" structure.
 - [5] Replacement of garage door as shown
 - [6] Replacement of roof slates with new slates on the "Original" structure
 - [7] Replacement of 1st floor cladding boards with new siberian larch timber boards on the "Original" structure
 - [8] If retention planning permission is required for 1st floor extension to rear of dwelling built in 1982? Planning history for same cannot be located by current owner.
 - [9] If replacement of flat roof on brick side extension with continuance of pitched slate roof from original dwelling is considered exempt development in terms of improvement to the "unsightly" extension profile from 1971 as outlined in planners response to R598/20 or if planning permission is required for same?
-

ADDITIONAL DETAILS REGARDING QUESTION/WORKS/DEVELOPMENT :

The following documentation is now submitted in addition to that available under submission R598/20 (Note that the further information details provided in relation to replacement materials as outlined in R598/20 are still as proposed)

[1] Historical Photo of original dwelling outlined above which is dated as being prior to 1977 by virtue of other surrounding properties not being in place at this time.

[2] Recent photo taken with same aspect as original historical photo showing Inniscarra view Estate Houses now in place

[3] Copy of Property Registration Folio 54780 (relating to transfer of ownership of Inniscarra view estate houses from developer to subsequent owners) showing transfer of ownership date for adjacent bungalow (line item 161) owned by Mr F.Geary to front of Inniscarra View Housing Estate as seen in [2] above, which then confirms dating of historical photograph of Elm Vale in [1] above.

[4] Planning History File documents exchanged between previous property owner and Cork County Council Planning Authority in 1977 prior to build of rear kitchen extension. Including photo of 8th March 1977 Cork County Council Planning Authority declaration certificate.

[5] See drawing of elements being replaced on front elevation - "Existing Front Elevation"

[7] See drawing of proposed elements for which a declaration is sought on front elevation - "Front Elevation - Section 5"

[8] See drawing of elements being replaced on East Side Elevation - "East Side Elevation"

[9] Contract document and associated plan view drawings of 1982 1st floor extension to rear of dwelling signed by both the property owner and builder of same on 26th June 1982.

[10] Site Location Map with boundary outlined in Red

[11] Proposed Pitch roof to side brick extension of 1971.

[12] See drawing of proposed elements on East Side Elevation - "East Side Elevation – Section 5"

Document [1]



Document [2]



Document [3]

Land Registry

County Cork

Folio 54780

	S 5300/75	his and their licensees at all times and for all purposes on foot and with or without animals or vehicles to pass and repass over the property herein by the way shown coloured yellow on the Plan thereof
160	14-JUN-1976 S 3923/76	Lease dated the 20-NOV-1975 from Henry Hunt Limited to Brendan Daly of the part of the property edged GREEN and numbered 103 on the plan thereof on the Registry Map. Term: 999 years from 01-MAY-1975 rent 20 Note: The title to this Lease is registered on Folio CK7803L.
161	14-JUN-1976 S 3923/76	Lease dated the 11-MAR-1976 from Henry Hunt Limited to Francis G Geary of the part of the property edged GREEN and numbered 161 on the plan thereof on the Registry Map. (O.S 6381/16) together with the right of way specified therein Term: 999 years from 1-MAY-1975 rent 15 Note: The title to this Lease is registered on Folio CK8179L.
162	07-JAN-1976 S 287/76	Lease dated the 24-OCT-1975 from Henry Hunt Limited to Sameul Alfred Mansfield of the part of the property edged GREEN and numbered 158 on the plan thereof on the Registry Map. (O.S 6381/16) together with the right of way specified therein Term: 999 years from 25-MAR-1969 rent 0.05p Note: The title to this Lease is registered on Folio CK7519L.



COMHAIRLE CONTAE CHORCAI

CORK COUNTY COUNCIL
COUNTY HALL CORK
TELEPHONE 26881

Please Address Reply to Room No. 1001.

31st January, 1977.

Mr. D. O'Luasaigh,
"Elm Vale",
Ballincollig,
Co. Cork.

Dear Sir,

Re;- Alterations to rear of dwellinghouse

I refer to yours of 20/1/77 regarding the above.

The matter is receiving attention. Please inform me whether an extension is involved in the proposed work and if so please give the measurements.

Yours faithfully,



for County Secretary

AO'S/MC.

Elm Vale
Ballinacraig,
Co Cork

23-2-77

Dear Mr Keane,

The planning section of the County Hall here referred me to you for an exemption to carry out the proposed alterations at above address, details of which are on enclosed sheet.


I would be grateful if you would give me a call at your earliest convenience as I wish to start work very soon and am negotiating with a builder. I am here most evenings after 4 p.m.

I called to your office yesterday when I explained the situation to your representative.

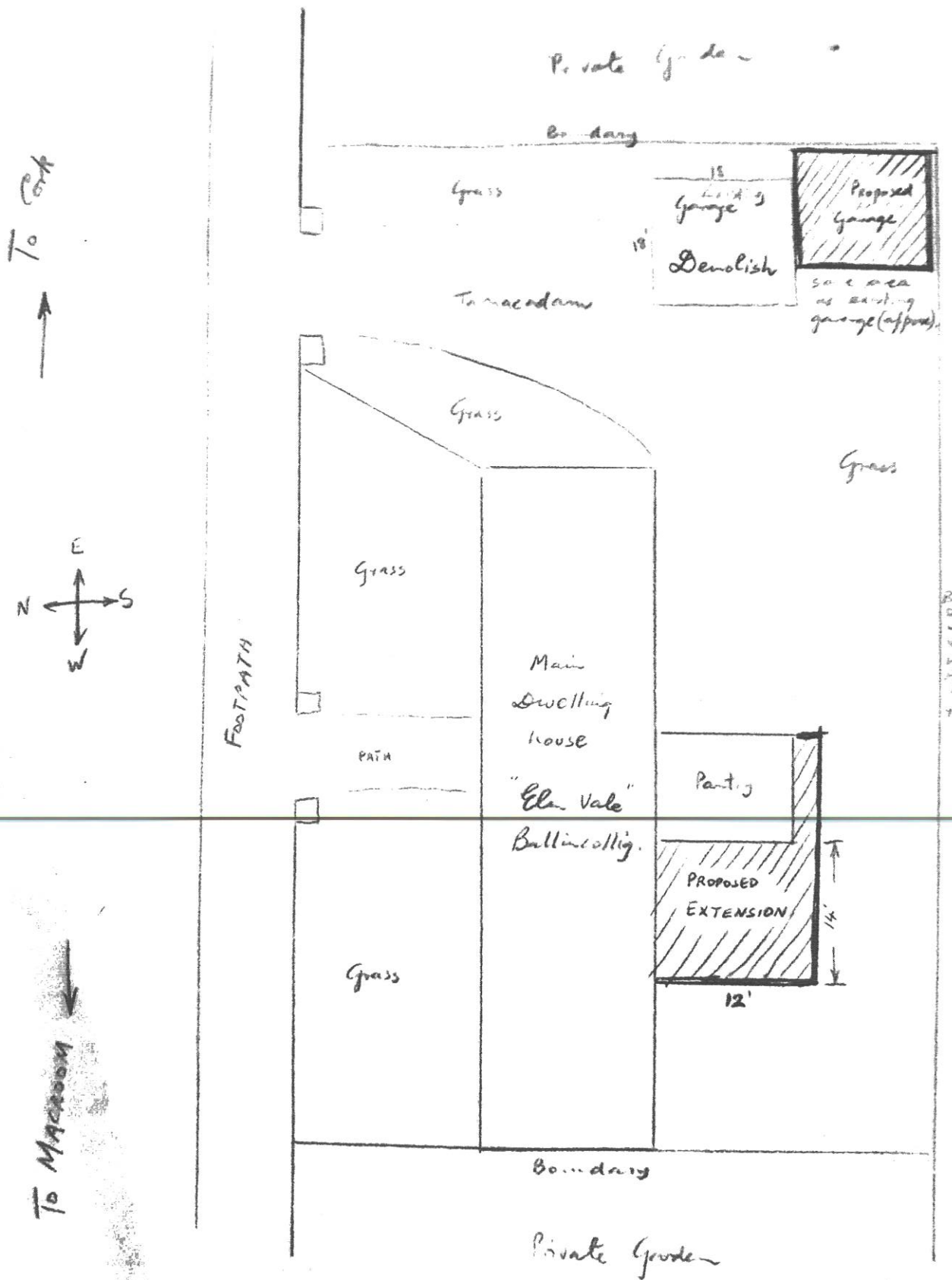
Thanking you,

Yours sincerely,
Seamus,

Donchadh Ó Súasaigh.

Existing Building in Pencil
 alterations are in Biro. and shaded 

DOCUMENT(4) 3&5



23.2.77

Copy

DOCUMENT [4] 4 of 5

Elm Vale
Ballinacorney,
Co. Cork.

26 - 2 - 77

Mrs. P. Keane, Engineer,
Machinery Yard, Cork Co. Council,
Wilton Road,
Cork.

Dear Sir,

Further to my telephone conversation yesterday to your office in connection with exemption from planning permission, I would be grateful for exemption for an extension of 12' x 10' in lieu of 14' x 12' as outlined on sketch already submitted, extension to be in same position as original.

Please also send on relevant document for exemption for garage as shown on sketch.

Thanking you.

Yours sincerely,

L. Keane,

Donchadh o Luasairh.

CORK COUNTY COUNCIL

Assistant Co. Engineer's Office,

Machinery Yard,
Victoria X, Cork.

8th March 77.

To/ Mr. D. O'Sullivan
"Elm Vale",
Ballincollig,
Co. Cork.

Dear Sir,

I refer to your enquiry regarding proposed

extension at "Elm Vale", B'Collig.

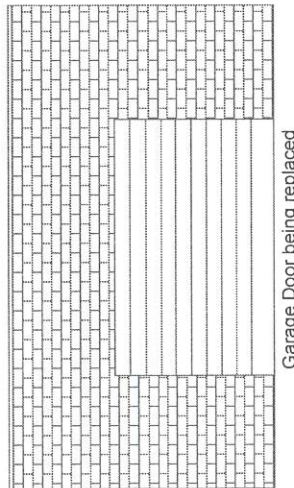
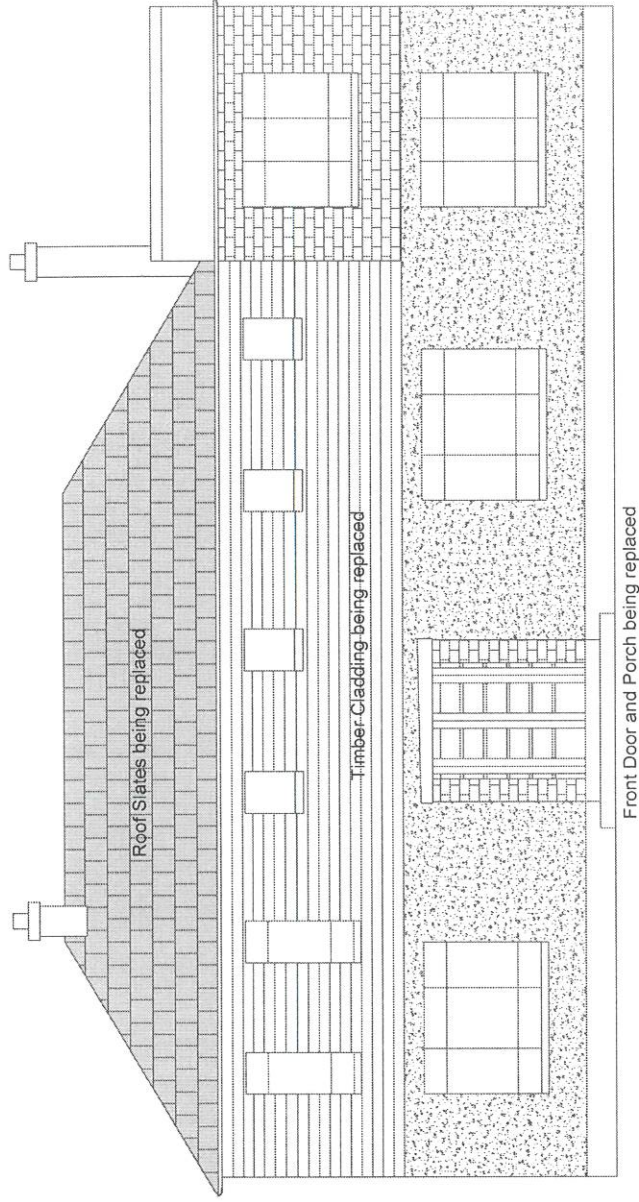
The Planning Authority have no objection provided that

- (i) There is no local objection to the structure
- (ii) Floor area not to be greater than 120 sq. ft.
- (iii) Work to be carried out to the satisfaction of the Co. Council

yours faithfully,

Bernard Parkes N.A. Lease

Assistant Co. Engineer



Note: Any aspect of the pre-existing building can be reviewed on planning application file number 185576 documentation, drawings and photos held on file by Cork City Council.

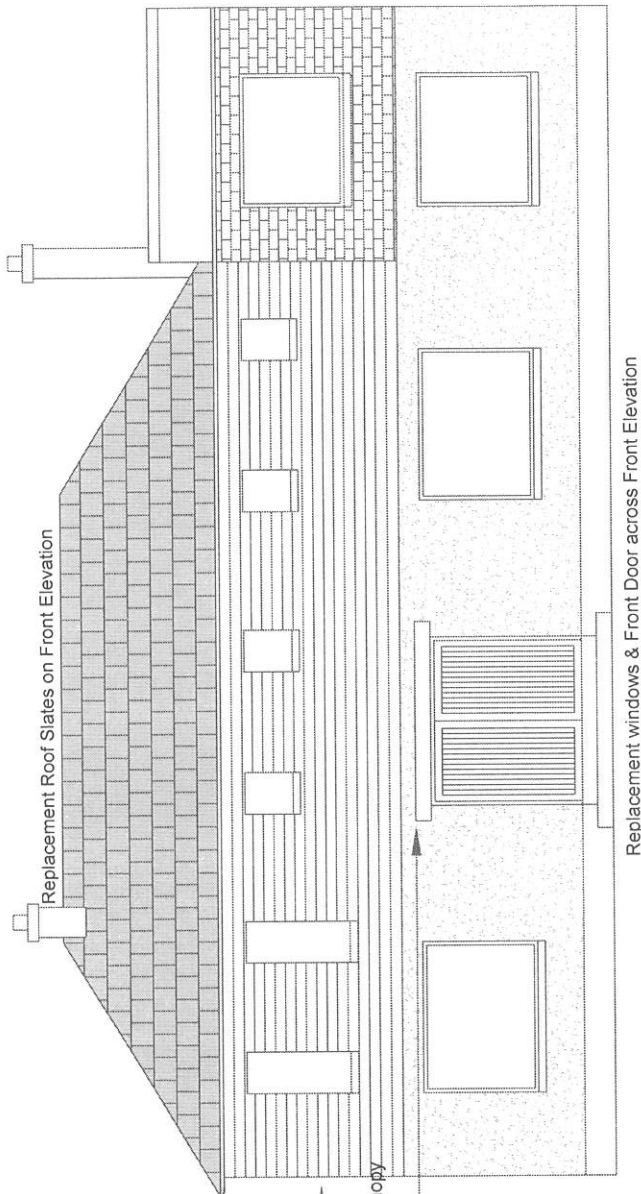
Site: Elm Vale, Poulavone, Ballincollig, Co Cork

Drawing : Existing Front Elevation

Drawn By :
Crothur Lucey
Elm Vale, Poulavone,
Ballincollig, Co.Cork

Scale 1:100

Document [7]

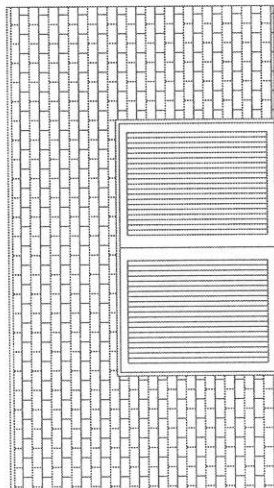


Replacement Roof Slates on Front Elevation

Replacement windows & Front Door across Front Elevation

Replacement Timber Cladding on Front Elevation

Front elevation replacement porch canopy (floor area less than 2 sqm)



Replacement garage door

1. Replacement window units to be fitted into existing window openings with grey frames and double glazing.
2. Flat roofed porch canopy to front door removed for repair and maintenance reasons. New replacement flat roofed porch canopy (with floor area also of less than 2 sqm) to be reinstated in its place. No front or side enclosures on new porch as per previous porch. Porch fascia to front and sides is the only visible element of the porch in elevation. The fascia is of pre-formed flat aluminium with a grey finish.
3. Replacement front door to be fitted into existing front door opening. Hardwood door with painted grey finish.
4. Replacement Garage door to be fitted into existing front door opening. Hardwood door with painted grey finish.
5. Replacement of roof slates with matching black slates of the same size and orientation as existing.
6. Replacement of all timber cladding to 1st floor of existing dwelling to replicate boards removed for repair and maintenance reasons. Replacement with Siberian Larch to best match cladding boards which are required to be replaced.

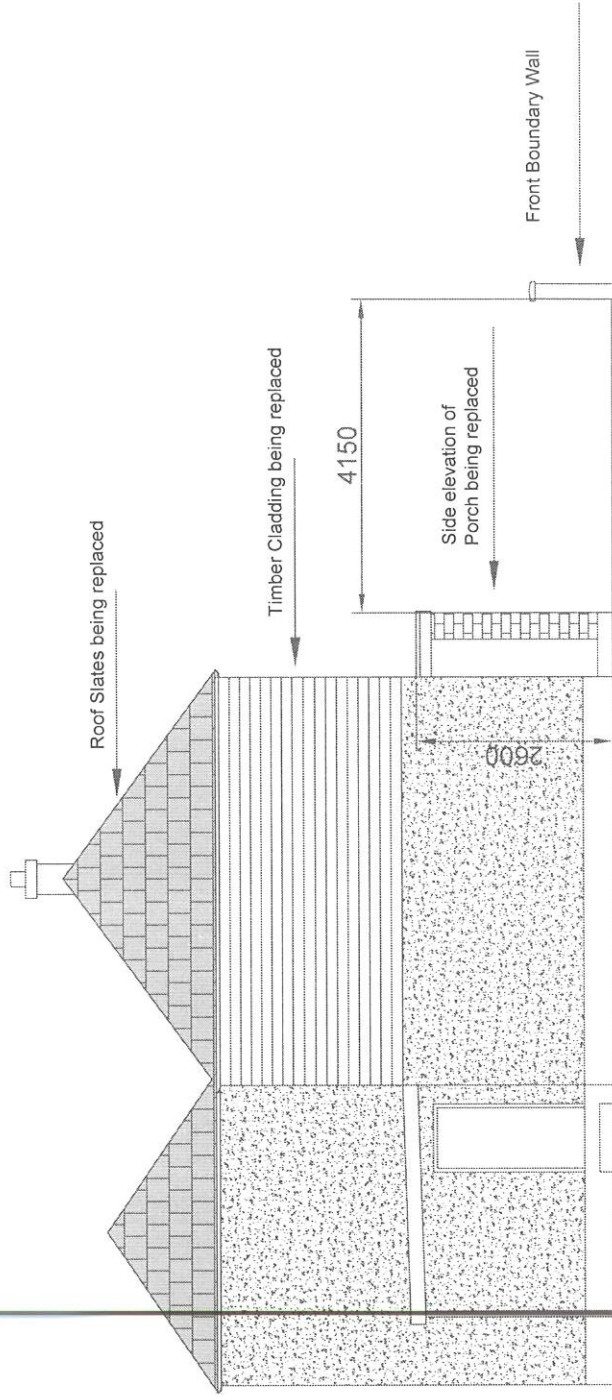
Site: Elm Vale, Poulavone, Ballincollig, Co Cork

Drawing : Front Elevation - Section 5

Drawn By :
Crothur Lucey
Elm Vale, Poulavone,
Ballincollig, Co.Cork

Scale 1:100

Document [8]



Site: Elm Vale, Poulavone, Ballincollig, Co Cork

Drawing : East Side Elevation

Drawn By :
Crothur Lucey
Elm Vale, Poulavone,
Ballincollig, Co.Cork

Scale 1:100

AGREEMENT MADE the 26th day of June 1982 between Donnchadh O'Luasaigh of "Elm Vale", Poulavone, Ballincollig in the County of Cork (hereinafter called the "Employer") of the one part and *JAMES FEHILTY of KERRY ROAD, TOWER, BLARNEY, CO. CORK* (hereinafter called the "contractor") of the other part whereas the Employer is desirous of building an extension to his dwelling house in accordance with the agreed specifications and whereas the Contractor has agreed to execute and carry out the said works in accordance with the specifications for the sum of ~~£ 4,500~~ (*Four thousand and ~~five hundred~~ Pounds*) *£ 4,750* *Seven hundred and fifty Pounds*)

NOW IT IS HEREBY AGREED as follows:-

1. The Contractor shall at his own cost erect, build and completely finish in a good substantial and workmanlike manner an extension in accordance with the specifications which are all signed by the parties hereto and which are incorporated into this agreement.
2. The Contractors shall complete the said extension not later than *31st July* ~~weeks from the date hereof.~~ 1982
3. The said sum of *£ 4,750* which shall include all costs shall be paid as follows: *£ 2000 when roofed, Balance on completion of work.*
4. The Contractor will insure himself and his employees and anyone for whom he is responsible and will indemnify the Employer against any claim which may be made against him *(the employer)* from any cause whatsoever occasioned by the execution of the said works.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first herein WRITTEN.

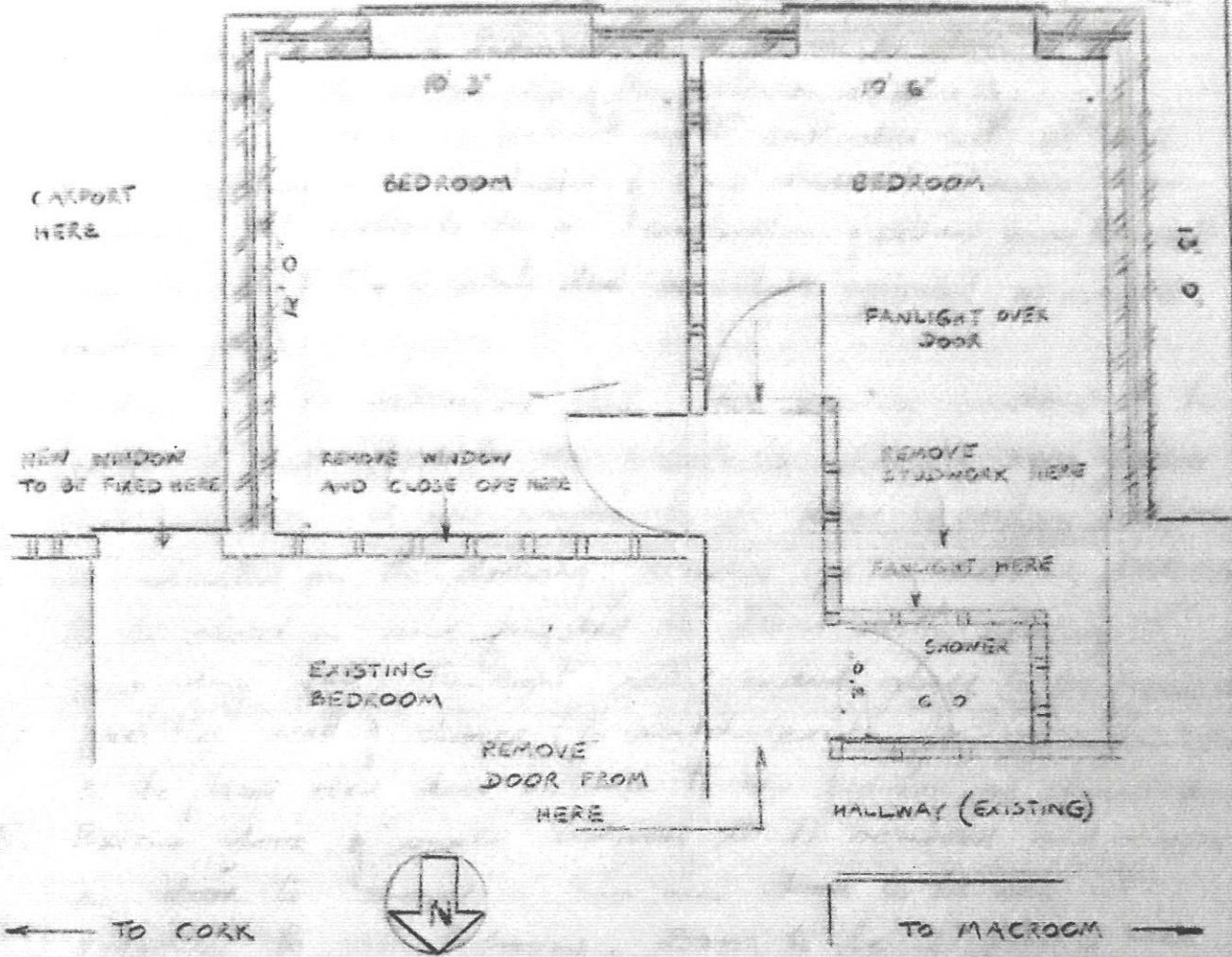
Signed by the Employer in the presence of:

Donnchadh O'Luasaigh

Signed by the Contractor in the presence of:

Jim Fehilty

23 0



FIRST FLOOR PLAN OF EXTENSION AT REAR OF DWELLINGHOUSE AT 'ELM VALE' BALLINCOLLIG

31-5-1982

NEW PARTITIONS ARE SHOWN SHADED
 SCALE : 1/4" TO 1' 0" APPROX.
 BEDROOMS TO BE 8' 0" FROM FLOOR TO CEILING

Signed : *Jim Leahy*
Downhatch Drawings

Building extension at rear of house - see drawing on page 1.

of work to be done in the first floor extension at the rear of
'Elm Vale' Poulavone, Ballinacilly.

1. The extension comprises 2 bedrooms and a shower as shown in the attached drawing. The external size of the extension is 23' x 13'.
2. Walls to be 11" cavity, i.e. external walls, constructed with 4½" solid blocks. Partitions to be constructed of 3" x 2" studs at 16" centres. No foundations but walls to be a continuation of external ground floor walls.
3. Floors to be 1" T. & G. white deal or suitable equivalent secured to existing joists.
4. Windows to be galvanised steel. Two existing windows to be transferred and fixed to rear of extension directly over ground floor windows. A new window to be fitted to existing bedroom as indicated on the drawing. Window open in existing bedroom to be closed in and finished to blend with existing surrounding wall. Fanlight with reeded glass to be fixed at partition wall of shower (to match existing fanlight). Fanlight to be placed over door entrance to new bedroom as shown in drawing.
5. Existing door of small bedroom to be removed and re-used as door to shower. Two new doors to be used at entrances to new bedrooms. Doors to be 2" flush. all doors to be fitted with saddles. (Existing saddle may be re-used).
6. Skirting to be 4" x ¾" and architraves to match existing architraves in house.
7. Generally all internal walls and partitions to be ~~rendered and finished~~ ^{slabbed} and ~~finished~~ ^{skipped} ~~in-line mortar with 10% cement and finished~~ with Gypbath plaster smooth finished. Stud partitions to be covered with Gypbath plaster boards and finished smooth with Gypweld plaster.
8. all external walls to be conventionally plastered down to lower line of bottom weatherboard. Plastering to be lined (as at rear of existing extension) to match weatherboarding.
9. Roof to be ~~flat~~ ^{hipped and slated} and adequately flashed with lead. Roof timbers to be strong enough to counteract sagging.

- ... ceiling to be plastered with Gypweld Plaster on Gyplath plasterboards.
11. All necessary openings to be made for waterpipes of plumbing and closed in after plumbing is complete. All outlet pipes to be fixed for plumbing suitably connected to sewer and finished off in a workmanlike manner. Fittings include 2 washhand basins on pedestals and 1 shower unit.
 12. Gutters and downpipes to be fixed as necessary.
 13. Each bedroom to be fitted with a ceiling light and a twin plug. Shower light is already in position but replace with strip-light.
 14. One sheet of corrugated aluminium or equivalent to be fixed on roof of carport along eastern wall of extension.
 15. Mineral felt not to be taken from existing roof until ~~asphalt~~^{roof} is ~~down~~^{on}. Existing windows not to be removed until they can be re-fixed.
 16. All material to be serviced from the rear through window opening; and stairway or back door not to be used (to protect carpet etc).
 17. All work to be fully finished and to blend in with existing structure so as to form one unit. Any necessary amendments must be made to achieve this.
 18. All ^{external} decoration to suit employer's colour scheme.
 19. Any breakages occasioned during the construction must be repaired or made good by the contractor. The same applies to any type of damage.
 20. The lawn and shrubs must be protected as far as possible.
 21. At the conclusion of the work all rubble and rubbish must be removed.

Signed : Jim Leahy
Donchada Shussigh

Surveyed 1990
Revised 2016
Levelled 1986

Urban PLACE Map



560609
571094

ITM CENTRE PT. COORDS

560492.571008

DESCRIPTION

MAP SHEETS

1:1000
6381-16



**Authorised
Internet Map**

Ana tionsú agus amháin de ghrúpa Stairbhreacht Ordánais Éireann, Páirc an Fhionntaice, Balc Ána Cléirg 8, Éire.
Compiled and published by Ordnance Survey
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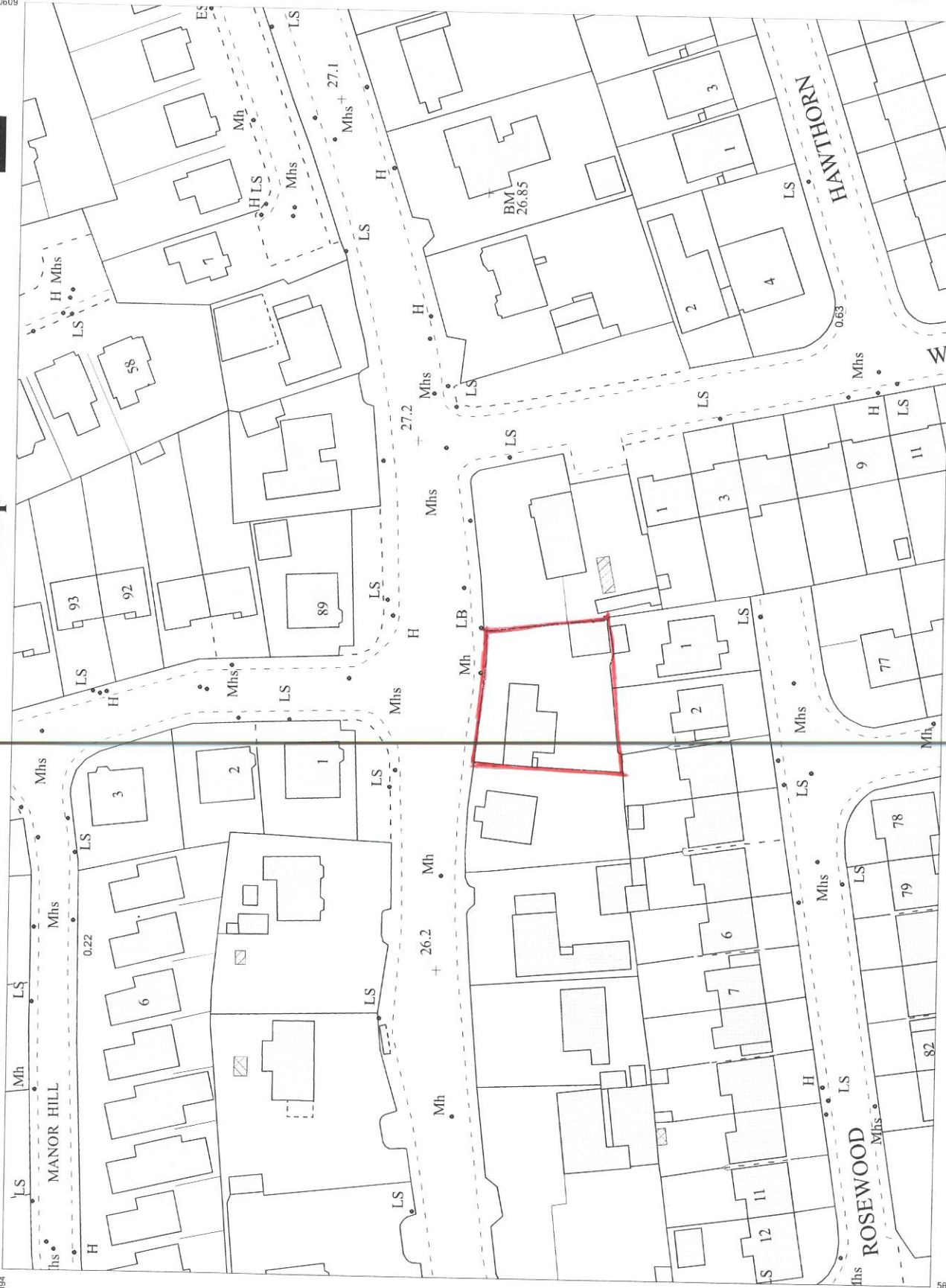
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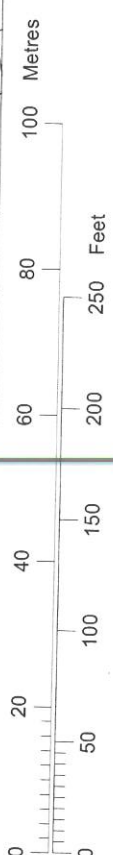
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© Ordnance Survey Ireland, 2018



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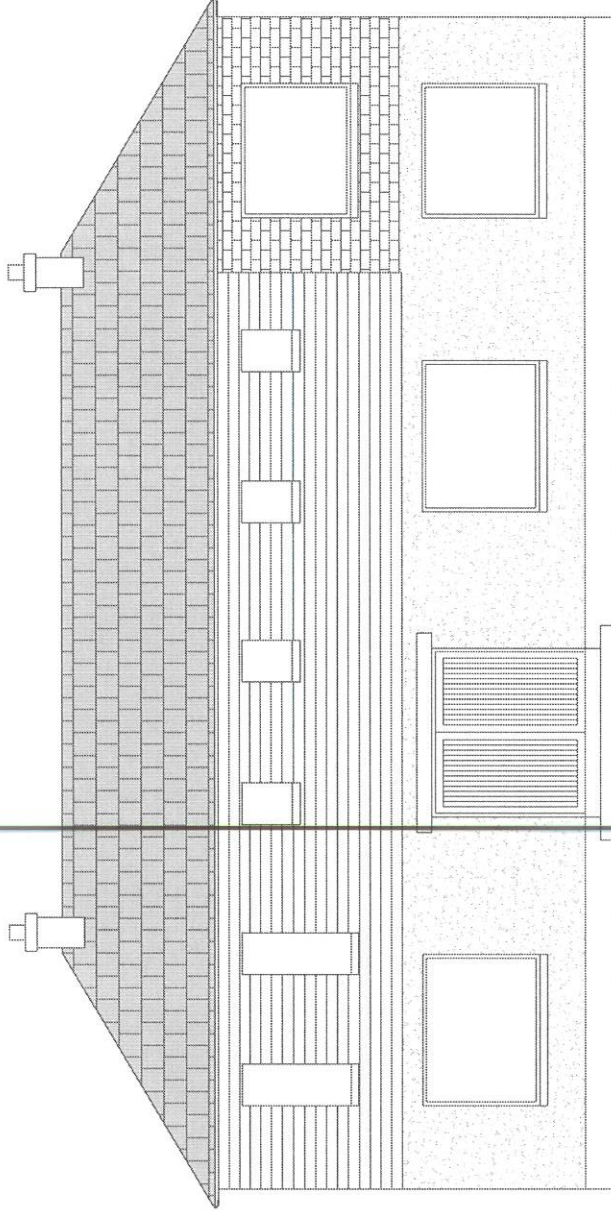
Plot Ref. No. 19772404_1_1
Plot Date 15-FEB-2018



Scale:- 1:1,000
Scála:- 1:1,000

570922
560376

Document [11]



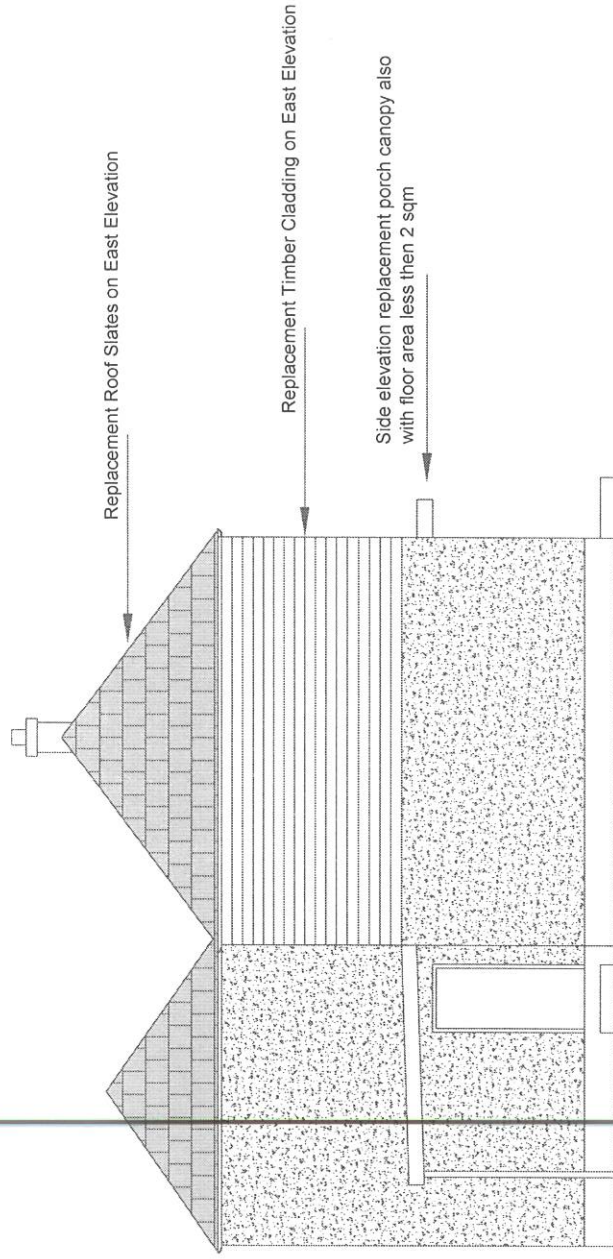
Site: Elm Vale, Poulavone, Ballincollig, Co Cork

Drawing : Pitch Roof Side Extension

Drawn By :
Crothur Lucey
Elm Vale, Poulavone,
Ballincollig, Co.Cork

Scale 1:100

Document [12]

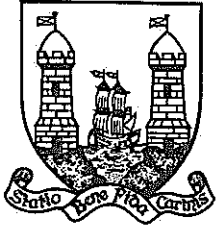


Site: Elm Vale, Poulavone, Ballincollig, Co Cork

Drawing : East Side Elevation - Section 5

Drawn By :
Crothur Lucey
Elm Vale, Poulavone,
Ballincollig, Co.Cork

Scale 1:100



Comhairle Cathrach Chorcaí Cork City Council

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

Crothur Lucey
18 Garville Road,
Rathgar
Dublin 6

22nd April 2021

RE: R649/21 – Section 5 Declaration
Property: Elm Vale, Poulavone, Carrigrohane, Ballincollig, Co. Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise that in considering this referral the Planning Authority had regard to the planning history on site and the lack of evidence of a planning permission for the side extension, and the rear first floor extension to the property and the remodelling of its front elevation.

It has also had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000;
- (b) Articles 6 and 9(viii) of the Planning and Development Regulations 2001;

- (c) Class 7 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001 and
- (d) Class 1 of Part 1 of the Planning and Development Regulations 1967;
- (e) Class 1 of Part 1 of Schedule 3 of the Planning and Development Regulations 1977;
- (f) Section 4 (1)(h) of the Planning and Development Act 2000 (as amended)

It would appear therefore that the structure as it currently exists is therefore unauthorised in which case the proposed works, being works to an unauthorised premises, would not be able to avail of exemptions having regard to exclusions under Article 9(viii) of the Regulations. Planning permission would therefore be required to regularise the planning status of the rear first floor extension and the side extension and front elevational changes and to carry out the desired works.

Therefore, the Planning Authority decides that the works proposed at 'Elmvale', Poulavone, Carrigrohane, Ballincollig, Cork as described below (Items 1-9) are development and are not exempted development.

1. *Replacement of single glazed window units with new double glazed units on the original structure;*



We are Cork.

PLANNER'S REPORT
Ref. R 649/20

Cork City Council
Development
Management
Strategic Planning
and Economic
Development

Application type **SECTION 5 DECLARATION**
Location *Elmvale Poulavone, Carrigrohane, Cork.*
Applicant Crothur Lucey

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:

- 1. Replacement of single glazed window units with new double glazed units on the original structure;*
- 2. Replacement of single glazed window units with new double glazed units on the side brick extension structure;*
- 3. Replacement of front porch canopy with new canopy (floor size less than 2m) on the original structure;*
- 4. Replacement of front door on the original structure;*
- 5. Replacement of garage door;*
- 6. Replacement of roof slates with new slates on the original structure;*
- ~~*7. Replacement of all first floor cladding boards with new Siberian larch timber boards;*~~
- 8. Retention of the construction of rear first floor extension;*
- 9. Replacement of flat roof structure on brick side extension with the continuance of the pitched roof over same;*

is development and if so is or is not exempted development.'

2. SITE DESCRIPTION

The subject property comprises a two storey detached dwelling house located on the main entrance road into Ballincollig village.

3. PLANNING HISTORY

2178/73: Permission refused for the development of petrol pumps or a shop on the grounds of traffic hazard. The application stated it was intended to retain the house. No elevations were included with the application.

18/5576: Permission initially sought for the demolition of the house and construction of 2 detached houses on site. Permission subsequently granted for the refurbishment and extension and alteration of the existing house on site.

R598/20: Section 5 submitted in 2020 on whether the—

- Replacement of single glazed window units with new double glazed units;
- Replacement of front porch canopy with new canopy (floor size less than 2m);
- Replacement of front door;
- Replacement of garage door;
- Replacement of roof slates with new black slates;
- Replacement of all first floor cladding boards with new timber boards at @Elm Vale, Poulavone, Carrigrohane, Ballincollig

is or is not development and if so whether it is exempted development

The Planning Authority concluded that as no planning permission appeared to exist for the extensions/remodelling of the original property, as such the structure was considered to be an unauthorised structure to which exemptions did not apply. Therefore, the Planning Authority decided that the works proposed at 'Elmvale', Poulavone, Carrigrohane, Ballincollig, Cork as described in the application were development and were not exempted development.

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 3 relates to the construction of an awning however there is a restriction on this that it cannot be forward of the front wall of the house.

Class 7 relates to 'the construction or erection of a porch outside any external door of a house':

Schedule 2, Part 1, Class 1

~~Exempted Development — General~~

Column 1 Description of Development	Column 2 Conditions and Limitations
Development within the curtilage of a house CLASS 7 The construction or erection of a porch outside any external door of a house.	1. Any such structure shall be situated not less than 2 metres from any road. 2. The floor area of any such structure shall not exceed 2 square metres. 3. The height of any such structure shall not exceed, in the case of a structure with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.

5. ASSESSMENT

The following works are proposed:

1. *Replacement of single glazed window units with new double glazed units on the original structure;*
2. *Replacement of single glazed window units with new double glazed units on the side brick extension structure;*
3. *Replacement of front porch canopy with new canopy (floor size less than 2m) on the original structure;*
4. *Replacement of front door on the original structure;*
5. *Replacement of garage door;*
6. *Replacement of roof slates with new slates on the original structure;*
7. *Replacement of all first floor cladding boards with new Siberian larch timber boards;*
8. *Retention of the construction of rear first floor extension;*
9. *Replacement of flat roof structure on brick side extension with the continuance of the pitched roof over same;*

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 works come within the scope of both sections which is further outlined below.

For ease of reference the works are outlined and numbered as follows:

1. *Replacement of single glazed window units with new double glazed units on the original structure;*
2. *Replacement of single glazed window units with new double glazed units on the side brick extension structure;*
3. *Replacement of front porch canopy with new canopy (floor size less than 2m) on the original structure;*
4. *Replacement of front door on the original structure;*
5. *Replacement of garage door;*
6. *Replacement of roof slates with new slates on the original structure;*
7. *Replacement of all first floor cladding boards with new Siberian larch timber boards;*
8. *Retention of the construction of rear first floor extension;*
9. *Replacement of flat roof structure on brick side extension with the continuance of the pitched roof over same;*

Items 1, 2, 4, 5 and 6: Generally speaking the alterations to the windows and doors (replacement with hardwood doors and double framed windows) and replacement slates could be considered to be works which come under the scope of Section 4(1) (h) of the Planning Act 2000 as amended i.e.

'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;

Item 3: The porch works appear to come under the scope of Class 7 of Part 1 of Schedule 2 the Planning and Development Regulations, 2001 as amended being less than 2m sq.m. and less than 3m in height and further distant than the minimum required distance from the public road.

Item 7: The replacement of authorised timber cladding could be construed as works which come under the scope of Section 4(1) (h) of the Planning Act 2000 as amended i.e.

'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;

As per the F.I. response on R598/20 it is stated that the original timber was stained black – the un-weathered and weathered finish of the proposed replacement timber have been submitted – therefore the replacement timber would not render the appearance inconsistent with the character of the structure or of neighbouring structures. However if the timber cladding was unauthorised and the original elevation was plaster/render finish for example – new cladding would not be considered exempted development under Section 4(1) (h). Given the age of the property it is likely that the property was a farmhouse traditional dwelling – and that the front elevation that was remodelled during the 1960s/1970s. No evidence of planning permission for any elevational changes is available – a historical photo of the house has been submitted and it is argued that it dates from a time prior to 1977 when houses to the rear were constructed. It is argued that the remodelled exterior was in place when the County Council issued their decision in relation to the rear extension. I consider that notwithstanding this the elevational remodelling if carried out post introduction of the Planning Act may have required planning permission and replacement of unauthorised cladding would require planning permission.

Item 8: The question seeks to ascertain whether planning permission was/is required for the rear first floor extension. The applicant states he cannot find evidence of any planning history for same but that it was constructed in 1982. At that time exempted development in relation to rear extensions was covered by the 1977 Planning and Development Regulations. Class 1 related to works within the curtilage of a house and stated as follows:

'Any works for the provision of an extension to the rear of a dwellinghouse or the conversion for use as part of a dwellinghouse of any garage, store, shed or other similar structure attached to the rear or to the side of the dwellinghouse, where the height of any structural addition does not exceed that of the dwellinghouse and the original floor area of the dwellinghouse is not increased by more than 18 square metres.'

The first floor extension is stated as per the submitted building contractors letter to be 23 ft x 13 ft = 299 sq.ft in area or 27.78 sq.m. on its own and taken in conjunction with the previous extension (see below Item 9) (12 ft x 10 ft – 120 sq.ft or 11.15 sq.m.) the total additional floor space added to the original floor area to the rear is 38.93 sq.m. – well in excess of 18 sq.m. therefore planning permission would have been required for the first floor extension constructed in 1982.

Item 9: I consider that the proposed '*replacement of flat roof structure on brick side extension with the continuance of the pitched roof over same*' could normally be considered exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as it would not render the appearance inconsistent with the character of the structure or of neighbouring structures;

However, notwithstanding the above, there remains the issue as to whether the existing dwelling in its current form (elevation and side extension) ever received planning permission i.e. is it an authorised structure to which exemptions would not apply?

No details/record of a planning application/permission was initially provided (under R598/20) in relation to the rear extension however further detail has now been supplied including correspondence between the former owner and the County Council in relation to a rear extension. A drawing is attached showing an extension of 12ft x 14 ft (168 sq.ft.) – this was revised to 12 ft by 10 ft at the request of the Local Authority presumably given the exemption limitations then in place (120 sq.ft). A letter from Cork County Council dated 08.03.1977 has been supplied in the current application which states that the Planning Authority has no objection to the proposed development provided that there is no local objection to the structure, that it is not larger than 120 sq.ft. and that the work is carried out to its satisfaction.

It should be noted the Planning Regulations in place at the time were the 1967 Regulations which outlined the exemption as follows:

'The extension of a dwellinghouse by any addition to the rear thereof where the height of the extension does not exceed that of the dwellinghouse and the original floor area is not increased by more than 120 square feet or, in the case of a two-storey extension, 90 square feet on each floor.'

However the first floor extension is noted to be unauthorised (Item 8 above).

In addition I cannot locate a planning application on the planning register for the brick flat roofed side extension. I note from responses to the F.I request on R590/20 that the original dwelling was in place before 1964 (Cassini 6 inch map submitted pre 1930) and that the side extension was completed in 1971. Photocopies of a grant for the work were submitted as part of the original Section 5 application made (stated to be from 'Department of Housing' which appears to refer to the side flat roof extension. On this it is stated that '*all planning and work to comply with Depts and local requirements.*'

The applicant states that the side extension would have been in place when the County Council issued their letter in relation to the rear extension in 1977 and as such considers it to be a de facto authorised structure. However it is not clear from the map submitted to the County Council in 1977 (not to scale) whether this was a ground floor structure only or a two storey structure given that the map does not distinguish between levels. I note the porch brick structure was not in place in the photo stated to be pre 1977 and appears to contain the same brick type on the side extension which is stated to date from 1971. It may be the case that a first floor extension was constructed to the side over a ground floor element at some stage. The planning status of this element of the structure therefore remains unclear.

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

In considering this referral the Planning Authority had regard to the planning history on site and the lack of evidence of a planning permission for the side extension, and the rear first floor extension to the property and the remodelling of its front elevation. It has also had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000;
- (b) Articles 6 and 9(viii) of the Planning and Development Regulations 2001;
- (c) Class 7 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001 and
- (d) Class 1 of Part 1 of the Planning and Development Regulations 1967;
- (e) Class 1 of Part 1 of Schedule 3 of the Planning and Development Regulations 1977;
- (f) Section 4 (1)(h) of the Planning and Development Act 2000 (as amended)

It would appear therefore that the structure as it currently exists is therefore unauthorised in which case the proposed works, being works to an unauthorised premises, would not be able to avail of exemptions having regard to exclusions under Article 9(viii) of the Regulations. Planning permission would therefore be required to regularise the planning status of the rear first floor extension and the side extension and front elevational changes and to carry out the desired works.

Therefore, the Planning Authority decides that the works proposed at 'Elmvale', Poulavone, Carrigrohane, Ballincollig, Cork as described below (Items 1-9) are development and are not exempted development.

1. *Replacement of single glazed window units with new double glazed units on the original structure;*
2. *Replacement of single glazed window units with new double glazed units on the side brick extension structure;*
3. *Replacement of front porch canopy with new canopy (floor size less than 2m) on the original structure;*
4. *Replacement of front door on the original structure;*
5. *Replacement of garage door;*
6. *Replacement of roof slates with new slates on the original structure;*
7. *Replacement of all first floor cladding boards with new Siberian larch timber boards;*
8. *Retention of construction of rear first floor extension;*
9. *Replacement of flat roof structure on brick side extension with the continuance of the pitched roof over same.*

Evelyn Mitchell,
Senior Executive Planner,
21.04.2021