

Comhairle Cathrach Chorcaí Cork City Council

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

Margaret Harrington,
c/o Breeda O'Leary,
All Aspects of Design,
Bridestown,
Kildinan,
Co. Cork.

26/01/2024

**RE: Section 5 Declaration R822/24 No. 1 Brookvale, Banduff,
Ballyvolane, Cork T23 A3C1**

A. Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 17th January 2024, I wish to advise as follows:

In view of the above and having regard to:

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

The Planning Authority considers that –

The single storey rear extension at No. 1 Brookvale, Ballyvolane, Banduff **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 26th January 2024.



We are Cork.

Is mise le meas,



Kate Magner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



PLANNER'S REPORT Ref. R882 /24		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>Is the single storey rear extension constructed at the above address considered exempted development</i>	
Location	1 Brookvale, Ballyvolane, Banduff	
Applicant	Margaret Harrington	
Date	26/01/2024	
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 framing the question to the planning authority, the applicant states in Q3 of the application form:

Is the single storey rear extension constructed at the above address considered exempted development

3. Site Description

The property in question is a two storey semi-detached dwelling with a single storey bay window extension to the front. The rear garden is surrounded by private open spaces associated with adjoining residences on all sides.

4. Recent Relevant Planning History

On site

04/4337 Bay window extension to dwelling

Outcome Granted 13/09/2004

In vicinity – none

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

	for which planning permission has been obtained, shall not exceed 20 square metres.
	3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.
	4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house. (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house. (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.
	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.
	6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces. (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.
	7. The roof of any extension shall not be used as a balcony or roof garden.

Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act

-
- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
(a) (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,

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

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 construction of a rear extension constitutes development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The question to be answered is as follows:

Is the existing single storey extension to the rear of the property classified as 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.

The following is a review of the development 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) Total extension will be less than 40sq.m (b) n/a (c) n/a This condition / limitation is met</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>(a) cumulative extensions are less than 40sqm (b) n/a (c) n/a This condition / limitation is met</p>
<p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p>	<p>N/a</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 single storey extension will not exceed the height of the rear wall of the house (b) n/a (c) The height does not exceed the height of the eaves or parapet This condition / limitation is met.</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>A site plan has been provided. It is not dimensioned. Recent aerial photography, indicates that there is another structure in addition to the shed shown on the site plan. It is unclear whether or not there is more than 25m² remaining open space to the rear of the dwelling.</p>

	Further information would be required to confirm that the remaining site area is more than 25m ² .
6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces. (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.	(a) The Plan & Elevation drawing, provided with the application, indicates that there are two windows on the eastern façade of the extension that are less than 1 metre from the site boundary. (b) n/a (c) n/a This condition / limitation is not met.
7. The roof of any extension shall not be used as a balcony or roof garden.	The roof is pitched. This condition / limitation is met.

I consider that the existing extension, as shown in the plans provided, does not accord with the exempted development provisions set out in the Regulations. As the extension does not accord with this class of development no review of the limitations thereto as set out in Article 9 have been undertaken.

I recommend that a declaration be issued to stated that the proposed development is development and is not exempted development.

If this recommendation is not accepted I consider it appropriate that further information is requested to confirm that the remaining site area is more than 25m².

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 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 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 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 the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. Conclusion

The question has been asked whether

Is the single storey rear extension constructed at the above address considered exempted development

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered the construction of the rear extension is development and is not exempted development.

9. RECOMMENDATION

In view of the above and having regard to —

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

It is considered that the *single storey rear extension* at No. 1 Brookvale, Ballyvolane, Banduff Is Development and is **Not Exempted Development**.



Martina Foley
Executive Planner

RE: Section 5 application



Melissa Walsh
To: Martina Foley
Cc: Kate Magner

Agreed

Thanks

From: Martina Foley
Sent: Wednesday, January 24, 2024 3:24 PM
To: Melissa Walsh
Cc: Kate Magner
Subject: FW: Section 5 application

Hi Melissa

Please see attached my report for this Section 5 application. You can find the details via the link in Kate's email below. For ease of review I attach the Plan & Elevations drawing to which I refer in my report.

Regards,

Martina

From: Kate Magner
Sent: Wednesday, January 24, 2024 12:28 PM
To: Martina Foley
Subject: Section 5 application

Hi Martina,

This Section 5 is available under

The decision due date is 13/02/2024.

Kind regards,
Kate

All Aspects of Design



Planning & Design Consultants

The Planning Dept.,
Cork Co. Council,
Co Hall,
Cork

16th January 2024

Re: Application for Section 5 Declaration of exempted development
for a single storey rear extension at No.1 Brookval, Bannduff, Ballyvolane

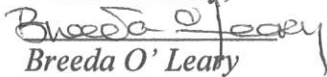
Dear Sir /Madam

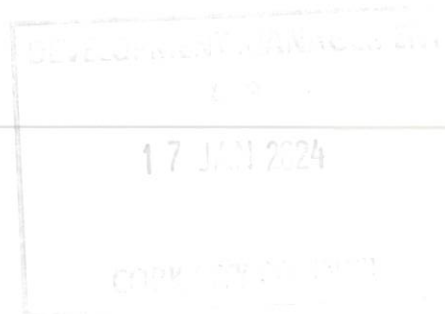
Please find the following documentation enclosed

2 no. copies of application form
2 no. site location maps 1:10560
2 no. copies of site location 1:2500
2 no. copies of site plan 1:500
2 no. copies of rear extension - floor plan, elevations, scale as shown
Fee €80 paid by card over phone to Rob Keating of you dept., on the 15/1/24

Please contact my office should you have any queries

Yours sincerely,


Breeda O'Leary
All Aspects of Design



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: 021-4924709
Líonra/Web: www.corkcity.ie

1. NAME OF PERSON MAKING THE REQUEST

MARGARET HARRINGTON

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

NO. 1 BROOKVALE, BALLYVOLANE
BANDUFF
EIRCODE T23A3C1

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

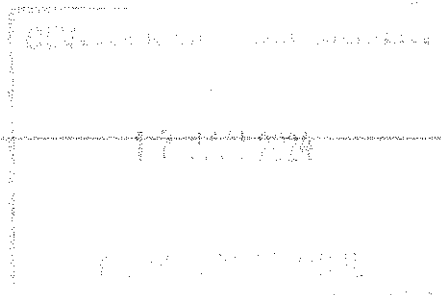
Sample Question: *Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?*

Note: only works listed and described under this section will be assessed under the section 5 declaration.

IS THE SINGLE STOREY REAR EXTENSION
CONSTRUCTED AT THE ABOVE ADDRESS
CONSIDERED EXEMPTED DEVELOPMENT

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).



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

5. 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?

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

04/4337 - BAY WINDOW EXTENSION TO FRONT

7. **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	EXISTING DWELLING = 124.2M ² REAR EXTENSION = 19.6M ²
(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) FRONT BAY WINDOW = 3.5 M ² PL. REF 04/4337
(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)

7. LEGAL INTEREST

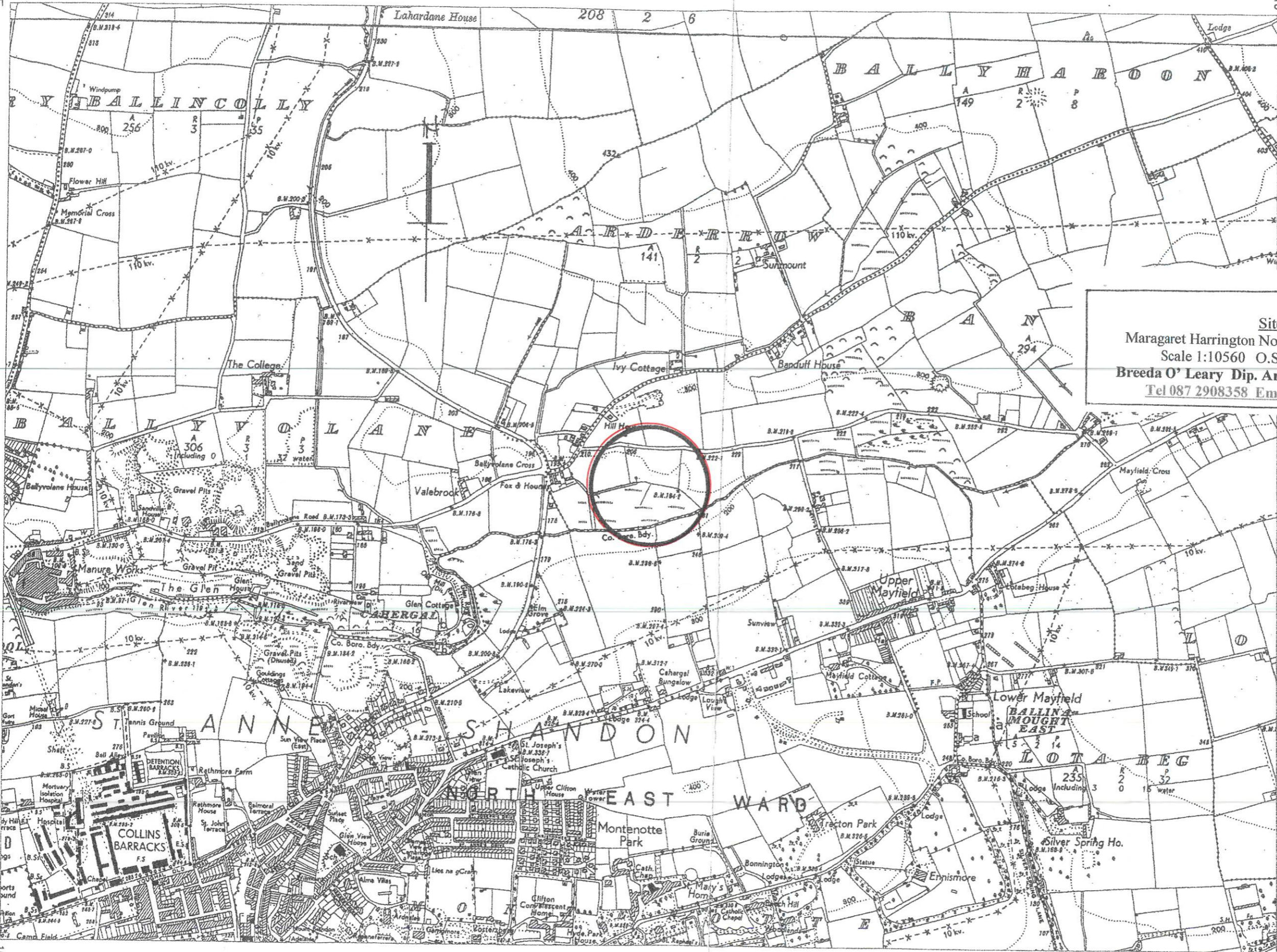
Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please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

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

Signature: Margaret Harrington
 Date: 15/1/2024

Surveyed 1841 - 1842
 Revised 1931 - 1950
 Levelled 1928 - 1932

Record PLACE Map



171318

75181

DESCRIPTION



MAP SCALES

6inch
 CK063 CK074

Site Location Map
 Maragaret Harrington No. 1 Brookvale, Ballyvolane, Co.Cork
 Scale 1:10560 O.S.S. (as shown) Date: Jan 2024
 Breeda O' Leary Dip. Arch. Bridestown, Kildinan, Co. Cork.
 Tel 087 2908358 Email: bolearyallaspects@gmail.com



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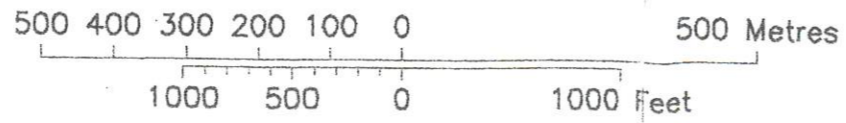
Gach cead ar cosnamh. Ní ceadmhach aon chuid
 den fhóilseachán seo a chóipeáil, a atáirgeadh nó
 a tharchur in aon fhorm ná ar aon bhealach gan
 cead i scríbhinn roimh ré ó úinéirí an chóipchirt.
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72604

167831

Scale: - 1:10560
 Scála: - 1:10560



Plot Ref. No. 33508_1_12
 Plot Date 26-MAY-2004

72604

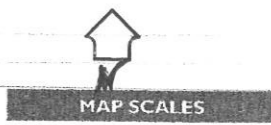
171318

Surveyed 1974
 Revised 2003 - 2004
 Levelled 1973 - 1983

Urban PLACE Map



DESCRIPTION
 SITE LOCATION MAP.



MAP SCALES
 1:1000
 6338-18 6338-17

Site Location Map
 Maragaret Harrington No. 1 Brookvale, Ballyvolane, Co.Cork
 Scale 1:2500 O.S.S. (as shown) Date: Jan 2024
 Breeda O' Leary Dip. Arch. Bridestown, Kildinan, Co. Cork.
 Tel 087 2908358 Email: bolearyallaspects@gmail.com

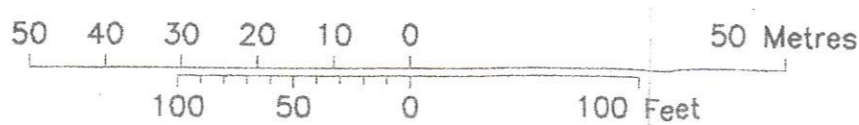


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 cead i scríbhinn roimh rá ó úinéirí an chóipchirt.
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Scale: - 1:1000
 Scála: - 1:1000



Plot Ref. No. 33508_1_2
 Plot Date 26-MAY-2004



7.04M

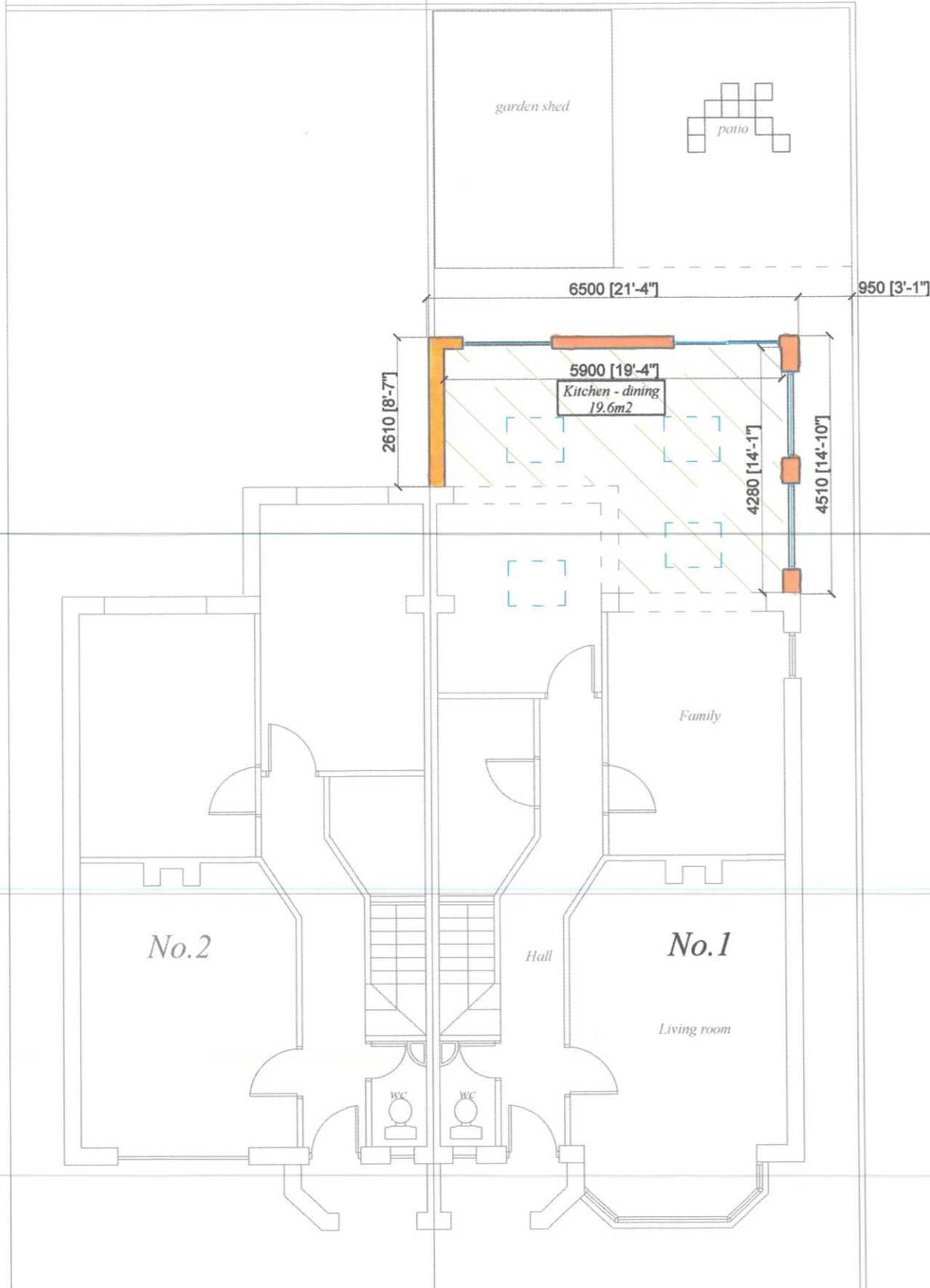
EXTENSION

1.40M

R O A D

SITE PLAN
SCALE: 1:250
DATE: JAN 2024

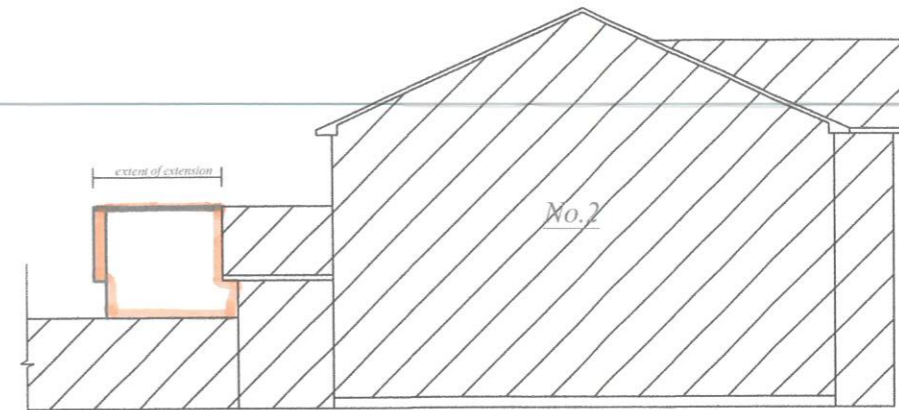
Site Layout plan
Maragaret Harrington No. 1 Brookvale, Ballyvolane, Co.Cork
Scale 1:250 Date: Jan 2024
Breeda O' Leary Dip. Arch. Bridestown, Kildinan, Co. Cork.
Tel 087 2908358 Email: bolearyallaspects@gmail.com



Existing Ground Floor plan
scale 1:100



Rear North Elevation - scale 1:150



West Elevation - scale 1:150



East Side Elevation - scale 1:150

<p>ALL ASPECTS of DESIGN BREEDA O' LEARY BRIDESTOWN, KILDINAN, CO. CORK. Tel : 087 2908358 E: bolearyallaspects@gmail.com</p>	<p>CLIENT: MARGARET HARRINGTON LOCATION: NO. 1 BROOKVALE, BALLYVOLANE</p>	<p>TITLE: PLAN & ELEVATIONS SCALE: 1:100 1:150</p>	<p>DATE: 15-01-2024 DRG.NO. 0</p>	<p>COMMENTS:</p>
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