

# Comhairle Cathrach Chorcaí Cork City Council

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

Ghada Taisir Ahmad Barakat, Ballyshea, Kilnamona, Ennis, Co. Clare, V95 XV7R.

12/06/2024

RE: Section 5 Declaration R851/24 4 Leeview Terrace, Blaney St, Sunday's Well, Cork.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 17/05/2024, I wish to advise as follows:

The Planning Authority 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 and Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended)

The Planning Authority considers that –

The construction of a single storey rear extension at 4 Leeview Terrace, Blarney Street, Cork 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.



Is mise le meas,

David or Regon

David O'Regan, Assistant Staff Officer, Community, Culture & Placemaking Directorate

PLANNER'S REPORTED Ref. R851/24	ORT Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration
Description	Whether the construction of a single storey rear extension is exempted development.
Location	4 Leeview Terrace, Blarney St, Sunday's Well, Cork T23 X8NR
Applicant	Ghada Taisir Ahmad Barakat
Date	12/06/2024
Recommendation	Is Development and Is Not Exempted Development

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:

The renovation plans included closing the back outdoor area (1.27x2.76m) and converting it into a full bathroom as the current house does not include a shower area, and this outdoor space is quite small and not spacious enough to use it as an outdoor space.

Could you please confirm if this proposed extension would be classed as exempted development.

#### 3. SITE DESCRIPTION

The subject site is located off Blarney Street and forms part of a gated terrace of properties known as Leeview Terrace. The site comprises a mid-terrace, two-storey property with a small rear yard which the applicant is seeking to incorporate into the main dwelling and which is the subject of this section 5.

# 4. PLANNING HISTORY

#### Subject Site

No recent planning applications.

#### 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, except where the context otherwise requires, "development" means, -

- a) The carrying out of any works in, on, over or under land <u>or</u> the making of any material change in the use of any land or structures situated on land, or
- b) Development within the meaning of Part XXI.

# 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)(a),

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or
- ii) The development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

# Section 4(2)(b)

Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

#### Section 4(2)(c)

Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

# Section 5(1),

(See section 1 of this report)

#### Section 57(1)

Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—
(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

# 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 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose "ground level" means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

# Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

#### Article 9

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

(Article 6) Schedule 2, Part 1, Class 1

Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to "the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house."

### Schedule 2, Part 1, Class 1

# Exempted Development — General

Column 2 Conditions and Limitations			
the house has not been extended previously, the ea of any such extension shall not exceed 40 square			
to paragraph (a), where the house is terraced or tached, the floor area of any extension above level shall not exceed 12 square metres. To paragraph (a), where the house is detached, the ea of any extension above ground level shall not 20 square metres.			
the house has been extended previously, the floor any such extension, taken together with the floor any previous extension or extensions constructed			

Column 1 Description of Development	Column 2 Conditions and Limitations
Description of Development	planning permission has been obtained, shall not exceed 40 square metres.  (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.  (c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.  3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.  4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house 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 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.

Column 1 Description of Development	Column 2 Conditions and Limitations
	(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.

#### 6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether its fall within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

#### 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: '(a) the carrying out of any works in, on, over or under land or the making of any material change in the use of any land or structures situated on land, or (b) Development within the meaning of Part XXI.'

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' as defined in section 2(1) of the Act '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.'

The construction of an extension is an act of construction and falls within the definition of 'works'. Therefore, the proposal constitutes development within the meaning of the Act.

# **CONCLUSION: Is development**

# 6.2 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 4(1)(a) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposal comes within subsection (2) of section 4.

#### Section 4(2)

I consider that Class 1 of Part 1, Schedule 2 of the Regulations applies, as the proposal relates to the construction of a rear extension. The proposal is assessed below against the exemption criteria (conditions/limitations).

#### Condition / Limitation 1

- a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres
- b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.
- c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

#### Assessment

- a) The dwelling does not appear to have been extended previously. The extension at c. 3.5sq.m is within the 40sq.m limit.
- b) No element of the proposal relates to an extension above ground level.
- c) This limitation does not apply.

# Condition / Limitation 2

- a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.
- b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.
- c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

# **Assessment**

- a) The dwelling does not appear to have been extended previously.
- b) The dwelling does not appear to have been extended previously and no element of the proposal relates to an extension above ground level.
- c) This limitation does not apply

# **Condition / Limitation 3**

Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

#### Assessment

No element of the proposal is above ground floor level.

#### Condition / Limitation 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.

# **Assessment**

- a) The height of the extension does not exceed the height of the rear wall of the house.
- b) This limitation does not apply.
- c) The height of the highest part of the roof of the extension does not exceed the height of the roof of the dwelling.

# Condition / Limitation 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.

#### Assessment

The area of private open space for the property is less than 25sq.m. The proposed extension would reduce the rear yard in its entirety. **This condition/limitation is not met.** 

# Condition / Limitation 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 m

#### Assessment

- a) The extension is served by a roof light. No ground floor windows are proposed.
- b) This condition/limitation does not apply.
- c) This condition/limitation does not apply.

# **Condition / Limitation 7**

The roof of any extension shall not be used as a balcony or roof garden.

# **Assessment**

It does not appear that the roof is proposed to be used as a balcony of roof terrace.

### Restrictions on exemption

I do not consider that any apply in this instance.

**CONCLUSION:** Is not exempted 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 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. RECOMMENDATION

It 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 and Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended)

The Planning Authority considers that -

The construction of a single storey rear extension at 4 Leeview Terrace, Blarney Street, Cork IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.

Jan Oosterhof

A/ Executive Planner

STa Osterfor

12/06/2024

DEVELOPMENT MANAGEMENT

# COMHAIRLE CATHRACH CHORCAL CORK CITY COUNCIL

1.7 MAY 2024

Community, Culture & Placemaking Directorate, CORK CITY C R-Phost/E-Mail planning@corkcity.ie

Cork City Council, City Hall, Anglesea Street, Cork. Fén/Tel: 021-4924029

Líonra/Web: www.corkcity.ie

# **SECTION 5 DECLARATION APPLICATION FORM**

under Section 5 of the Planning & Development Acts 2000 (as amended)

#### 1. NAME OF PERSON MAKING THE REQUEST

Ghada Taisir Ahmad Barakat

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

4 Leeview Terrace, Blarney St, Sunday's Well, Cork, T23 X8NR, Ireland

# 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.

I purchased this property recently and applied for a Vacant Property grant in order to renovate as needed to put it in the market next year for rental.

The renovation plans included closing the back outdoor small area (1,27x2.76m) and converting it into a full bathroom as the current house does not include a shower area, and this outdoor space is quite small and not spacious enough to use it as an outdoor space.

The Vacant Property Grant got back to me with an approval of 50,000 EUR grant to start the renovation works over the next 13 months, provided that I apply for a Section 5 Declaration for closing this outdoors space at the back of the house should the extension be classed as exempted development.

I drew the plans and sections myself and to the best of my knowledge, however I will seek the confirmation of a registered builder in Cork as soon as I plan to start with the extension upon your approval, hopefully in early June 2024.

You will find in the set of drawings the existing and proposed plan and sections. Could you please confirm if this proposed extension would be classed as exempted development?

ADDITIONAL DETAILS REGARDING QUESTION (Use additional sheets if required).	/ WORKS/ DI	EVELOPMENT:		
4. Are you aware of any enforcement proc If so please supply details: No	eedings conr	nected to this si	te?	
5. Is this a Protected Structure or within the				
<ul> <li>requested or issued for the property by</li> <li>6. Was there previous relevant planning apulif so please supply details:</li> </ul> N/A	pplication/s	on this site?		
7. <u>APPLICATION DETAILS</u> Answer the following if applicable. Note: Floor a walls and should be indicated in square meters (s		asured from the	inside of the external	
(a) Floor area of existing/proposed structu		existing area: 47 sqm, proposed area including roofing of outdoor space: 50 sqm.		
(b) If a domestic extension, have any prevextensions/structures been erected at location after 1 <sup>st</sup> October, 1964, (include for which planning permission has been obtained)?	Yes If yes, please p m)	No 🔀 provide floor areas. (sq		
(c) If concerning a change of use of land a	ınd / or build	ing(s), please sta	ate the following:	
Existing/ previous use (please circle)  N/A	Proposed	existing use (pl	ease circle)	
7. LEGAL INTEREST				
Please tick appropriate box to show applicant' legal interest in the land or structure	s A. Owi	ner 🔀	B. Other	

Where legal interest is 'Other', please state your interest in the land/structure in question	N/A
If you are not the legal owner, please state the name of the owner if available	N/A

Signature:	25.0	BARAKAT Ghada Taisir Ahmad		
			<b>₽</b>	

#### **ADVISORY NOTES:**

The application must be accompanied by the required fee of €80. Payment may be made at the Cork City Council cash desk, by cheque, by telephone with a credit/debit card, or by electronic fund transfer.

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.

Please email planning@corkcity.ie with any queries.

- 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 protections policy is available at <a href="https://www.corkcity.ee/en/council-services/public-info/ador/">https://www.corkcity.ee/en/council-services/public-info/ador/</a>

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

- 1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-
- NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED
- (a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,
- (b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,
- (c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,
- (d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,
- (e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,
- (f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,
- (g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,
- (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,
- (i) plans and drawings shall indicate the name and address of the person by whom they were prepared.
- 2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.
- 3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.

Site Map - Google maps

North

Site Layout

North



House space to be roofed

Key:

Proposed area to be roofed and converted to bathroom

Address: 4 Leeview Terrace, Blarney St, Sunday's Well, Cork, T23 X8NR, Ireland

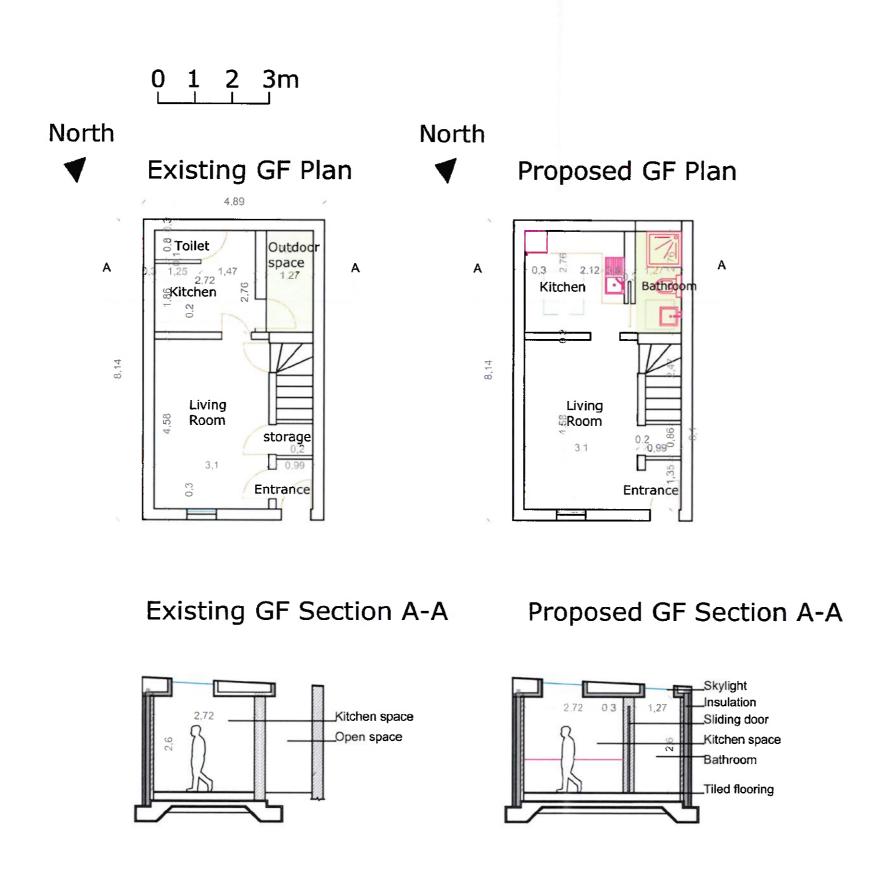
Owner: Ghada Barakat

Drawing Title: Site Layout

Scale (metric): 0 10 20 30m

Drawn by: Ghada Barakat

Paper size: A3



Key:

Proposed area to be roofed and converted to bathroom

Address: 4 Leeview Terrace, Blarney St, Sunday's Well, Cork, T23 X8NR, Ireland

Owner: Ghada Barakat

Drawing title:
GF Plan
GF Section A-A
Scale Ruler (metric):
0 1 2 3m

Drawn by: Ghada Barakat

Papersize: A3