



Comhairle Cathrach Chorcaí Cork City Council

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

Kevin Coffey
2 Woodbrook Road
Bishopstown
Cork

23/12/2020

**RE: Section 5 Declaration R618/20 7 Highfield Lawn, Model Farm
Road**

A Chara,

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

In considering this referral the Planning Authority had regard to the fact it was assessing legislation dating back to the 1970s and 1980s.

It has also had regard to:

- (a) Sections 2, 3 and 4 of the Local Government (Planning and Development Act), 1963
- (b) Articles 9-12 of the Local Government (Planning and Development) Regulations, 1997 with particular reference to Class 1 of Part I of the Third Schedule

The Planning Authority has concluded that –

- (a) the works constitute development which come within the scope of Section 3(1) of the Local Government (Planning and Development Act), 1963;
- (b) the single storey extensions to the rear comes within the scope of Class 1 of Part I of Third Schedule of the Local Government (Planning and Development) Regulations, 1977

Therefore, the Planning Authority decides that –

- (a) the single extensions to the rear of the dwelling is development and is exempted development and

all at 7 Highfield Lawn, Model Farm Road, Cork.

Is misa le meas,

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



We are Cork.

SECTION 5 DECLARATION – PLANNER'S REPORT

File Reference: R618.20

Description: Whether planning permission is required to retain 2 no extensions constructed to the rear of 7 Highfield Lawn, Model Farm Road

Applicant: Kevin Coffey / Estate of Judith Coffey

Location: 7 Highfield Lawn, Model Farm Road

1. REQUEST FOR FURTHER INFORMATION

This report should be read in conjunction with my previous report which recommended that Further Information be sought. A request for Further Information was made in respect of this application on 24.11.2020 as per the following:

- 1. The letter from Niall Keely & Associates dated 15th April 2020 makes reference to correspondence from Cork Corporation regarding the two no extensions to the rear of the house. Please submit a copy of the correspondence.*
- 2. Submit details as to the year of construction of the house, together with details of a planning permission reference number.*

2. FURTHER ENVIRONMENTAL ASSESSMENT

Pursuant to article 103(1) of the Planning and Development Regulations 2001 as amended, having regard to the nature and scale of the proposed development and following a preliminary examination of, at the least, the nature, size or location of the proposed development, it is considered that there is no real likelihood of significant effects on the environment and it is consequently concluded that E.I.A. is not required.

It is not considered that the response to the F.I. gives rise to a significant change or modification to the proposed development so that it would now have a significant impact on a European Site, or that it would require environmental impact assessment. Consequently, it is considered that appropriate assessment and environment impact assessment are not required.

3. FURTHER PLANNING ASSESSMENT

The response to the FI request was received on the 07.12.2020.

Regarding Item 1, a copy of the letter dated 16th July 1980 from Cork Corporation has been submitted. The letter refers to 'building bye-laws' and set out that two no conditions would need to be complied with i.e. internal traps and manholes are double-sealed and the door between the garage and utility is fire resisting and self closing.

Regarding the planning history, it is stated that the house was constructed in 1955 and was built by a developer. No planning permission reference number is available. The house would predate the Local Government (Planning and Development) Act, 1963.

The letter from Cork Corporation does not refer to the planning legislation in place at the time and the letter came from the Chief Building Surveyor.

The wording of the Class 1 in the Local Government (Planning and Development) Regulations, 1977 contains 'original floor area of the dwellinghouse' and the limit is 18m². There is no definition on 'original floor area of the house'. The house was extended in the 1970s and the total area of the extensions exceeds 18m².

It is my view that the 'original floor area of the dwellinghouse' could be interpreted as being the floor area of the dwellinghouse prior to the construction of the extensions of the house to the rear. This takes on board that the extension to the side was granted planning permission and is authorised, that there was a ten year timeframe between the granting of the permitted side extension and the extensions to the rear, and in that time the side extension would have been in residential use and functioned as part of the house. If that is the case, the extensions to the rear being 16.8m² would come within the scope of Class 1.

It is acknowledged that the wording of the Class for this type of development was amended in 1994 to include 'has not been extended previously' which suggests that there could have been ambiguity as to the interpretation of the wording of the Class? It is noted that the extensions to the rear were constructed in the early 1980s, three years post the 1977 Regulations and the revised wording was enacted in 1994. Therefore the extension was constructed in the early timeframe of the 1977 Regulations.

Regarding the restrictions on exemption, the house was constructed in 1955 and predates the 1963 Act. There is no planning permission reference number available. The restrictions set out at Article 11(1) and (viii) do not apply.

Regarding Article 11(iv) (i.e. *contravene any building regulation made under section 86 of the Act of 1963 or any byelaw in force under section 41 of the Public Health (Ireland) Act, 1878, in the area in which the land to which the development relates is situated*), it is noted that the letter from Cork Corporation refers to building bye-laws. Prior to the Building Control Act 1990 and the regulations made under it, some but not all part of the country had building bye-laws. The building bye-laws would appear to have been in force at the time – rather than building regulations. It is considered that this restriction would not apply.

4. CONCLUSION

In considering this referral the Planning Authority had regard to the fact it was assessing legislation dating back to the 1970s and 1980s.

It has also had regard to:

- (a) Sections 2, 3 and 4 of the Local Government (Planning and Development Act), 1963
- (b) Articles 9-12 of the Local Government (Planning and Development) Regulations, 1997 with particular reference to Class 1 of Part I of the Third Schedule

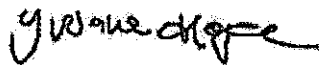
The Planning Authority has concluded that –

- (a) the works constitute development which come within the scope of Section 3(1) of the Local Government (Planning and Development Act), 1963;
- (b) the single storey extensions to the rear comes within the scope of Class 1 of Part I of Third Schedule of the Local Government (Planning and Development) Regulations, 1977

Therefore, the Planning Authority decides that –

- (a) the single extensions to the rear of the dwelling is development and is exempted development and

all at 7 Highfield Lawn, Model Farm Road, Cork.



Yvonne Hogan
Area Planner
16.12.2020

Kerry Bergin
Assistant Staff Officer
Development Management Section
Community, Culture & Placemaking Directorate
Cork City Council
Cork

2nd November 2020

Section 5 Declaration R618/20
7, Highfield Lawn,
Model Farm Road,
Cork

Dear Kerry,


Thanks for your response to my Section 5 Declaration application.

In response to your two requests for further information...

1. Please find attached a copy of the correspondence from Cork City Council, dated 16th July 1980. The two conditions mentioned were both complied with.
2. The year of construction of the house was 1955. I don't have the Planning Permission reference number for the original construction. It was a developer project, so our family wouldn't have lodged a planning application

I hope this addresses your requests.

Kind regards


Kevin Coffey

2 Woodbrook Road,
Bishopstown,
Cork

07-12-2020

07-12-2020

07-12-2020

07-12-2020



BARDAS CHORCAI

CORK CORPORATION
Abbeycourt Hse, Georges Quay,
~~CORK~~ CORK

Please Address Reply to

ROOM NO. 9
JM/MK

TELEPHONE 021-56611
21731

16th July, 1980

Mr. James Coffey,
7 Highfield Lawn,
Model Farm Road,
Cork.


Re: Extension at No. 7 Highfield Lawn, Model Farm Road, Cork.
Building Bye-Law No. 11282/80.

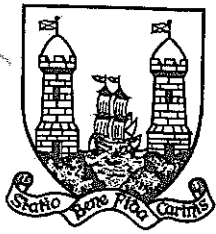
Dear Sir,

Since work on the above proposal had already commenced before inspection was made under the relevant Building Bye-Laws, no formal approval will be issued under that heading but you may take it that no further objection will be raised provided the following conditions are complied with:-

1. Internal traps and manholes be made double-sealed.
2. Door between garage and utility is fire resisting and self-closing.

Yours faithfully,


A | _____
Chief Building Surveyor



Comhairle Cathrach Chorcaí Cork City Council

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

Kevin Coffey
2 Woodbrook Road
Bishopstown
Cork

24th November 2020

RE:*Section 5 Declaration R618/20
7 Highfield Lawn, Model Farm Road, Cork*

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise that a request for further information issues:

1. The letter from Niall Keely & Associates dated 15th April 2020 makes reference to correspondence from Cork Corporation regarding the two no extensions to the rear of the house. Please submit a copy of the correspondence.
2. Submit details as to the year of construction of the house, together with details of a planning permission reference number.

Kind Regards,

Kerry Bergin
*Assistant Staff Officer
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council*



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference:	R618.20
Description:	Whether planning permission is required to retain 2 no extensions constructed to the rear of 7 Highfield Lawn, Model Farm Road
Applicant:	Kevin Coffey / Estate of Judith Coffey
Location:	7 Highfield Lawn, Model Farm Road
Site inspection:	23.11.2020

1. Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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.

2. Site Location

The site is located at 7 Highfield Lawn and established residential area. On the site there is a semi-detached dwelling with the public road to the north.

3. Subject Development

Whether planning permission is required to retain 2 no extensions constructed to the rear of 7 Highfield Lawn, Model Farm Road?

4. Sub-threshold EIAR

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) 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 EIAR is not required to be submitted.

5. Appropriate Assessment

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly, it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

6. Planning history

On subject site:

70/24050 – permission granted for bedroom extension

The extensions were constructed in or about 1980. The relevant legislation is the Planning and Development Act 1963 and the Local Government (Planning and Development) Regulations, 1977.

Is or is not development?

The extension of the house constitute development under the above provisions of the Planning and Development Act 1963.

Is or is not exempted development?

Extension to dwelling

Class 1 the Local Government (Planning and Development) Regulations, 1977 relates to extensions to dwellings.

The description of the development is:

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.

There were no conditions attached to this Class.

The house was extended under planning permission reference 70/2405 by 15.4m² for an additional bedroom. There are indications that a single storey garage to the side was demolished to accommodate a new garage and first floor bedroom. A condition was attached re finishes. This was constructed. The garage to the side remains as a garage (it has a garage door) and its floor area is not taken into account.

Around 1980 two additional extensions to the rear of the house were constructed. These are single storey with a flat roof. Photographs are attached. The stated floor area of these extensions is 16.8m². A letter with the referral from Niall Keely & Associates described one extension as an utility (behind the garage and 10.9m²) and a living room extension (5.9m²).

These extensions are to the rear and the heights do not exceed that of the dwelling house.

The final aspect of the Class to be considered is whether the floor area has been exceeded. With all the extensions the floor area of the house has been extended by a total floor area of 32.2m².

The wording of the Class contains '*original floor area of the dwellinghouse*' and the limit is 18m². It is unclear as to whether '*original floor area*' is the original floor as when originally constructed or whether it is the original floor area prior to the construction of the new extensions? It is noted that the owners at the time obtained planning permission in the 1970s and that side/bedroom extension has planning permission. Considerable time has passed since the 1977 Regulations and so therefore it is unknown to me as to the interpretation at that time. The subsequent regulations e.g. Local Government (Planning and Development) Regulations, 1994 Class 1 was amended with conditions and limitations to include '*has not been extended previously*'.

The letter from Niall Keely & Associates refers to correspondence from Cork Corporation regarding the rear extensions and it states that the following:

While not clearly stated, the inference of the letter from Cork Corporation seems to be that the development was not permitted development but that there would be no enforcement proceedings, notwithstanding the imposition of two conditions.

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Comhairle Cathrach Chorcaí
Cork City Council

0 2 -11- 2020

Strategic Planning & Economic

Community, Culture & Placemaking Directorate, Development 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

7 Highfield Lawn, Model farm Rd. 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.

Is Planning Permission required to RETAIN two small extensions constructed to the rear of 7, Highfield Lawn, Model farm Road?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Per attached letter from our engineering consultant NIALL KEELY & Assoc a first floor extension was built over garage with Planning Permission TP2405.70 in 1970.

In circa 1980, two smaller single storey extensions were built to the rear. Both extensions are infill and neither extends beyond the line of the rear elevation. Most houses in the area, including both neighbouring houses, have subsequently built much larger two storey extensions, extending beyond the line of the rear elevations of those houses.

Please see attached letter from consulting engineers for reference.

3. Are you aware of any enforcement proceedings connected to this site?

If so please supply details: No.

4. Is this a Protected Structure or within the curtilage of a Protected Structure? 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? YES

If so please supply details:

TP2405.70 FIRST FLOOR - OVER GARAGE

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	<u>c. 150m² existing / 16.8m² extension</u>
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) <u>15.4m²</u>
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
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8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	<u>The house belongs to my mother who died in 2020. I am one of 5 siblings to inherit the estate.</u>	
If you are not the legal owner, please state the name and address of the owner if available	<u>Judith Coffey (deceased)</u>	

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

Signature: J. Coffey

Date: 28 Oct 2020.

CONTACT DETAILS

10. Applicant:

Name(s)	KEVIN COFFEY
Address	2 WOODBROOK ROAD ----- BISHOPSTOWN ----- CORIK -----

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

Name(s):	
Address:	----- ----- -----
Telephone:	
E-mail address:	
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	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.

[REDACTED PHONE NUMBER]

[REDACTED EMAIL ADDRESS]

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: The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution.



Our Ref: NK/14234

Tel: 021-4536590

Date: 15/04/2020

E-mail: info@kce.ie

F.A.O. Mr Colm Coffey

(By email)

Dear Colm,

Re: 7 Highfield Lawn, Model Farm Road, Cork (Eircode: T12 XHR2)

Further to the dwelling house at the above address please note the following.

Our research leads us to understand that the property has been the subject of only one valid Planning Permission Application, Planning Reference TP2405.70 dating from 1970 for the "Construction of Bedroom over Garage" (proposed floor area 166.5 sq fl \approx 15.4 sqm), which was granted with one condition: "External finish of the extension must match that of the existing dwelling".

Please note that this conclusion is based on verbal discussions with Cork City Council Planning Department and information provided by yourself. It is not based on a formal planning search. However, given the information to hand, we are reasonably satisfied that there are no other Planning Permission Applications that relate to the property.

We attended Cork City Hall on 03/03/2020 where we inspected the file for Planning Reference TP2405.70. based on the information on the planning file, in conjunction with a site attendance on 11/03/2020, it is our view that the first storey bedroom over the garage (on the western side of the dwelling house) was constructed on foot of this permission and has been constructed broadly in line with the extension as described in the Planning Permission Application. (see attached, for illustrative purposes, photographs of the proposed arrangements taken on the day of the inspection of the file in City Hall).

On the day of our attendance at 7 Highfield Lawn you also advised us that the property had been the subject of two additional "infill" single storey extensions. Based on measurements taken on the day we estimate these extensions to extend to approximately 10.9 sq m (utility room behind the garage) and 5.9 sq m (living room extension). Therefore, the property has been extended by a combined floor area of approximately 32.2 sq m.

Based on the information subsequently provided by your good self, it seems that the two additional extensions were constructed in or about 1980. Moreover, correspondence circulated indicates that the works came to the attention of Cork City Council at the time of construction. While not clearly stated, the inference of the letter from Cork Corporation seems to be that the development was not permitted development but that there would be no enforcement proceedings, notwithstanding the imposition of two conditions. We make no comment as to whether the conditions imposed were complied with.

The Planning Regulations that would have pertained at the time were S.I. No. 65/1977 - Local Government (Planning and Development) Regulations, 1977. Class 1 of these Regulations allowed for "Exempted Development" for Development within the curtilage of a dwelling house in S.I. No. 65/1977 under the following conditions:

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

Based on the conditions of this exemption, and given that the house was increased by a combined floor area of 32.2 sq m by 1980 the combined extensions would seem to constitute Unauthorised Development.

Notwithstanding the foregoing it is our view, considering the length of time that has elapsed since construction of the two additional extensions, that the likelihood of any enforcement proceedings by the Council would be very remote.

Nonetheless, as the works constituted Unauthorised Development in 1980 and Retention Planning Permission has not been obtained in the interim, the only way to properly regularise the situation would be to obtain Retention Planning Permission.

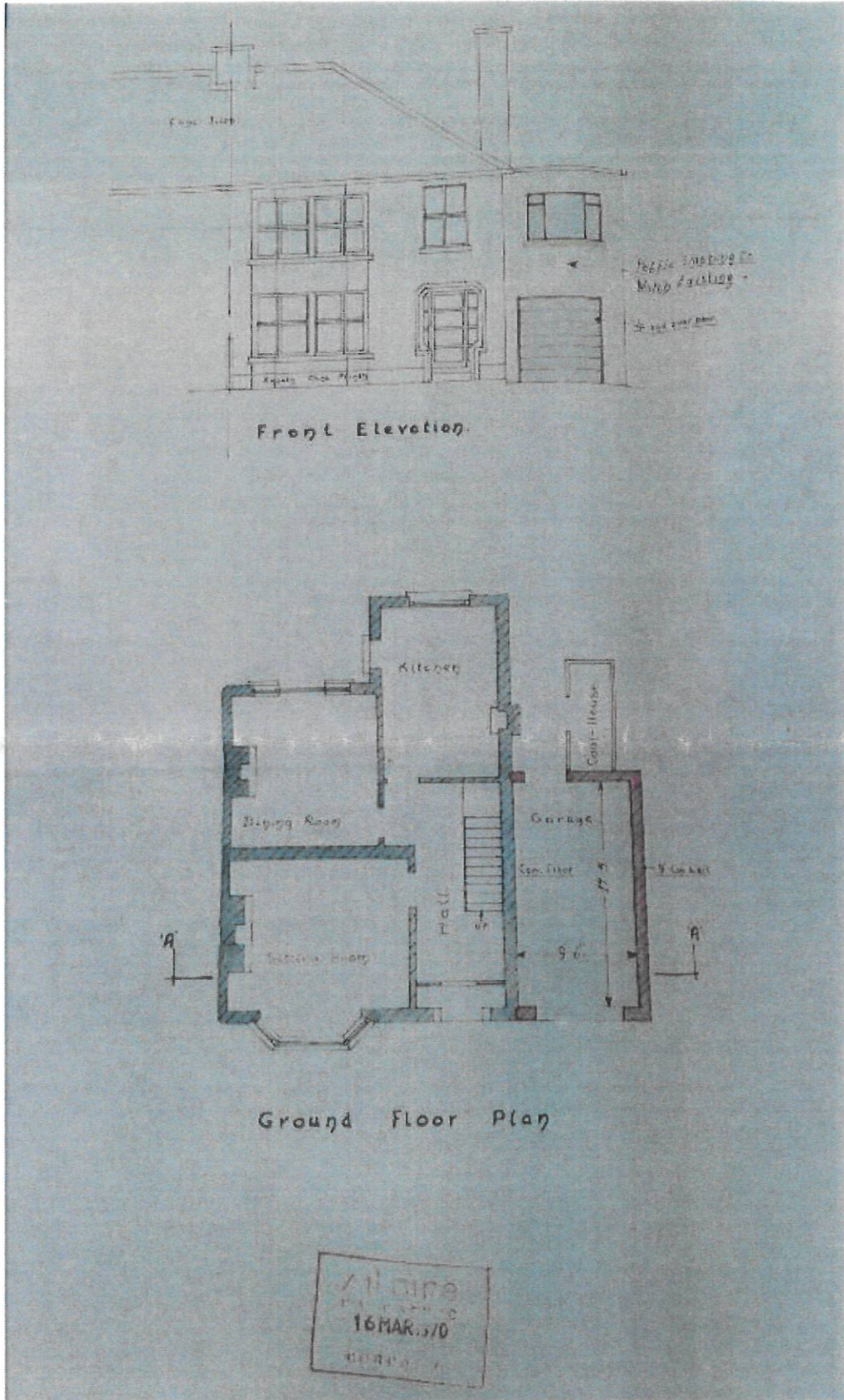
In the context of any intention to put the house up for sale it must be noted that any potential purchaser would be highly likely to carry out their own due diligence. If, at that point, it emerges that the two infill extensions do not have planning permission it is conceivable that this could delay or prevent any sale.

We trust the foregoing clarifies. Do not hesitate to contact me if you have any questions arising from the above information.

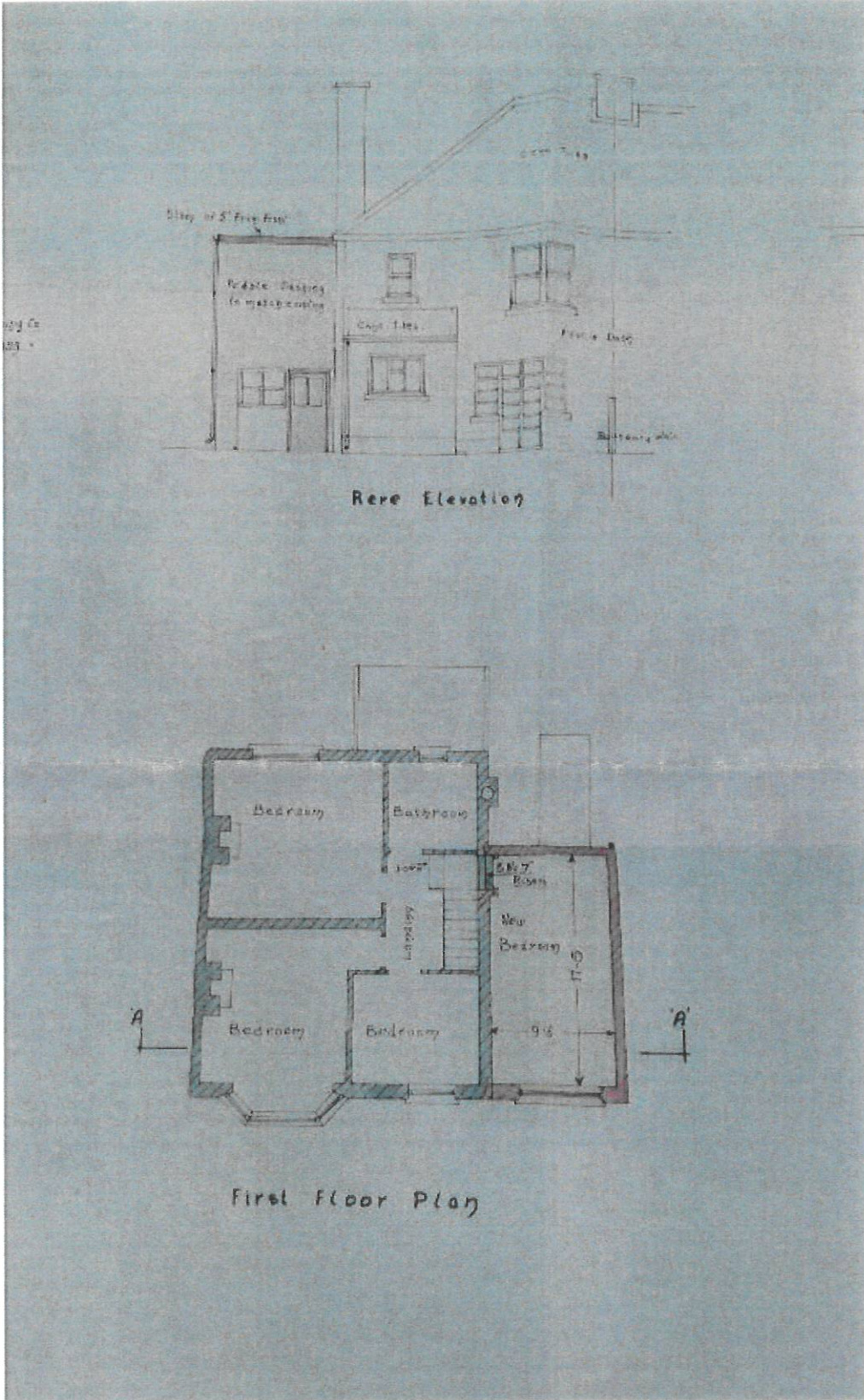
Yours sincerely,



Justin Donnellan
NIALL KEELY & ASSOCIATES LTD



Proposed Front Elevation and Ground Floor Plan (Planning Reference TP2405.70)



Proposed Rear Elevation and First Floor Plan (Planning Reference TP2405.70)

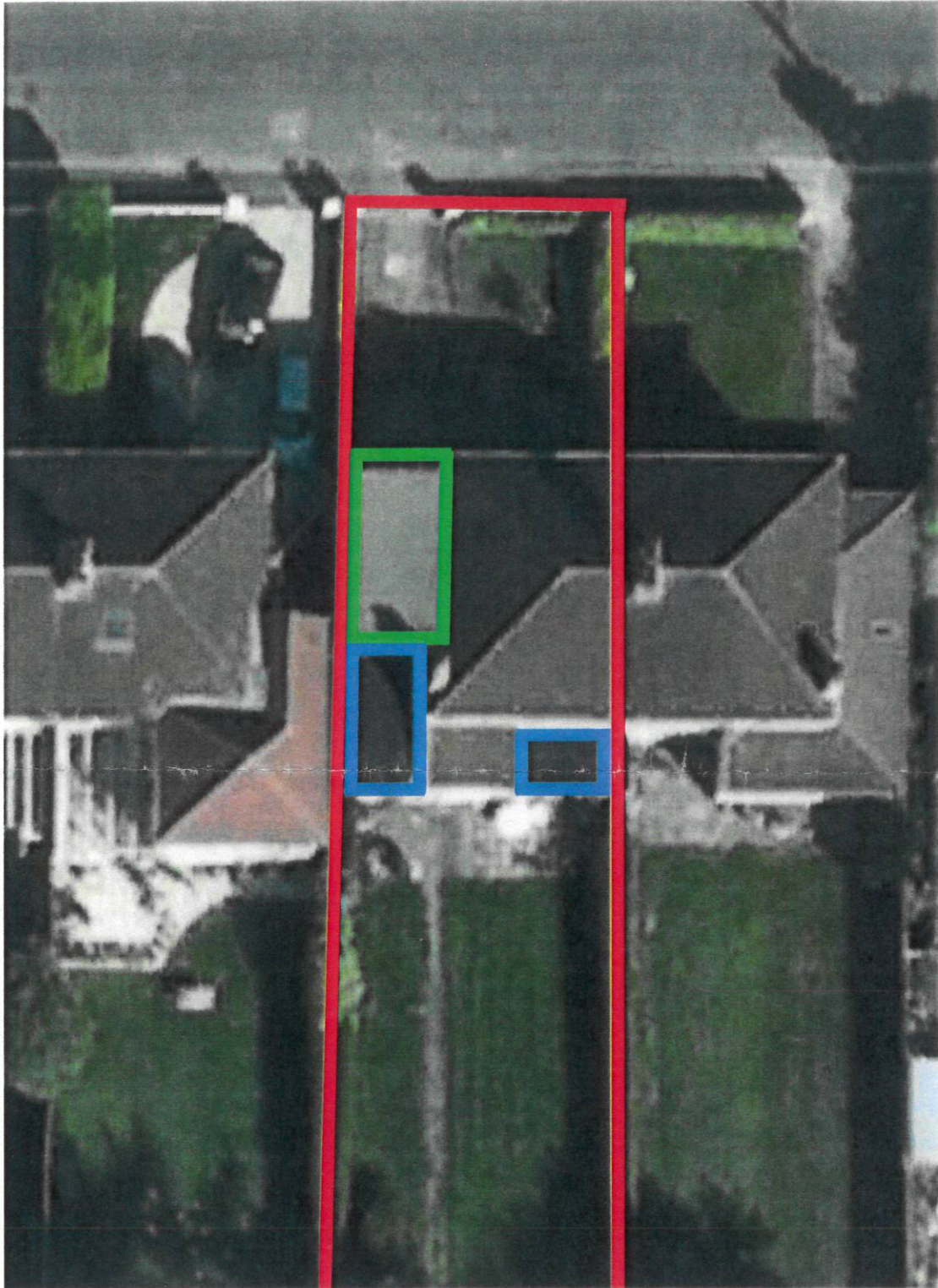


Image taken from Google Maps
Site indicatively outlined in **RED**
1970 extension indicatively outlined in **GREEN**
1980 extensions indicatively outlined in **BLUE**

Site Location Map



National Mapping Agency

CENTRE COORDINATES:
 17M 564376 570694
ORDER NO.:
 50053616_1
PUBLISHED:
 13/11/2019
MAP SERIES:
 6 Inch Plester
MAP SHEETS:
 CK074



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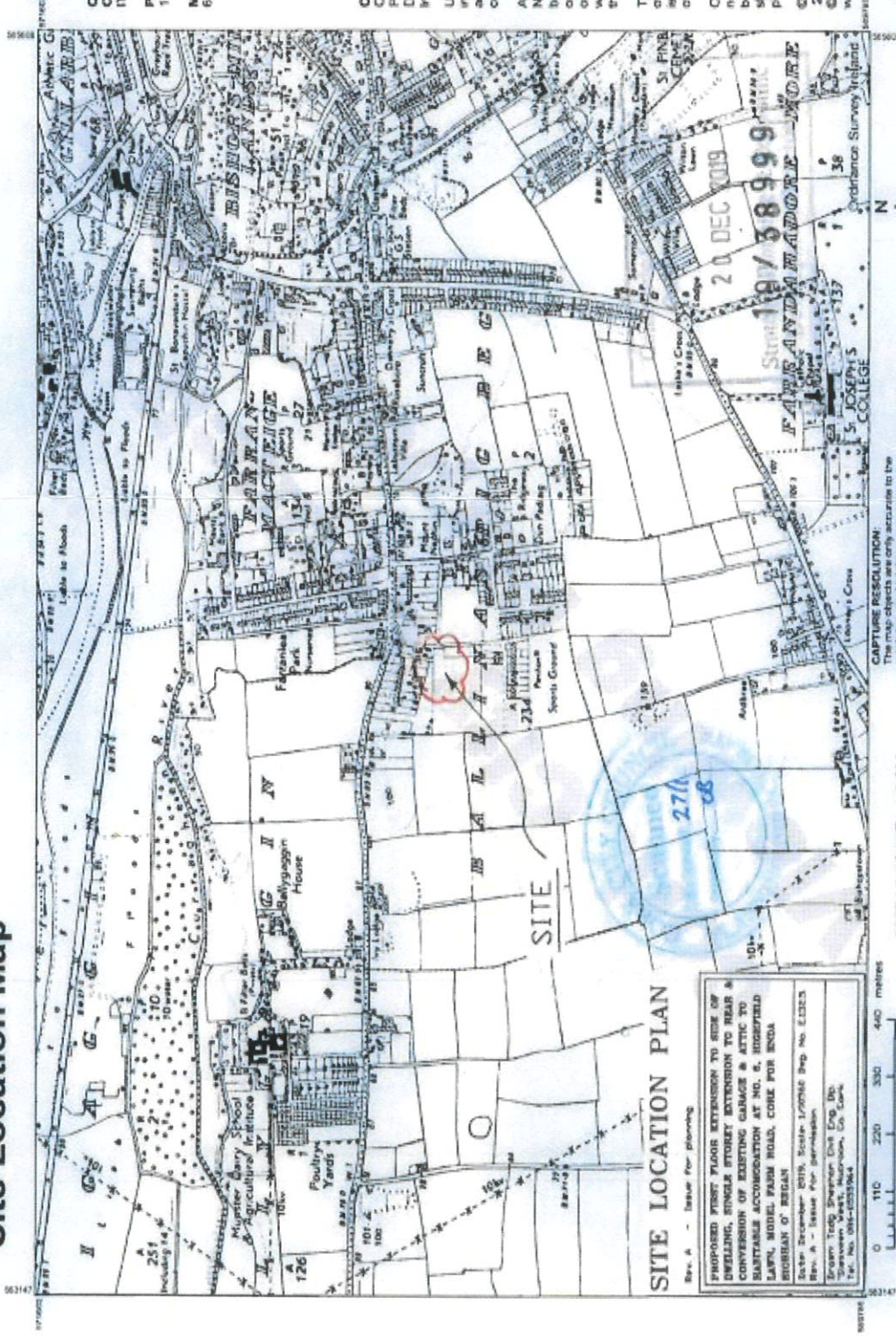
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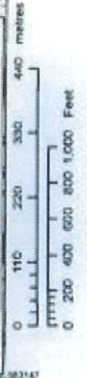


SITE LOCATION PLAN

Rev. A - Issue for planning

PROPOSED FIRST FLOOR EXTENSION TO REAR OF DWELLING, SINGLE STOREY EXTENSION TO REAR & CONVERSION OF EXISTING GARAGE & ATTIC TO SUITABLE ACCOMMODATION AT NO. 6, BIRSEFIELD LANE, BIRSEFIELD FARM HOLD, CO. FORBES, BIRSEFIELD

Scale: December 2019, Scale: 1:10000 Imp. No. E1223
 Rev. A - Issue for permission
 Brian Teag, Director, Civil Eng. Div.
 Ordnance Survey, Phoenix Park, Dublin 8, Ireland
 Tel. No. 01-454-2255/4



OUTPUT SCALE: 1:10,560

CAPTURE RESOLUTION:
 The map objects are only accurate to the resolution at which they were captured.
 Output scale is not indicative of data capture scale.
<http://www.osi.ie>, search: Capture Resolution