



Comhairle Cathrach Chorcaí Cork City Council

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

Zbigniew Lukasinski,
75 Mangerton Close,
The Glen,
Cork City T23 A6W8.

05/04/2023

RE: Section 5 Declaration R769/23, 75 Mangerton Close, The Glen,
Cork.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 13th March 2023, I wish to advise as follows:

The Planning Authority, having regard to:

- The particulars received by the Planning Authority on 13/03/2023
- The provisions of Section 3 (1) of the Planning and Development Act (as amended),
- The provisions of Section 4 (1)(h) of the Planning and Development Act (as amended),

It is considered that *the internal and external demolition of the existing chimney stack* at No. 75 Mangerton Close, The Glen, Cork City **IS DEVELOPMENT** and **IS 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, 05th April 2023.

Is mise le meas,

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



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference:	R769/23
Description:	Whether the demolition of a chimney stack in a dwelling is or is not exempted development?
Applicant:	Zbigniew Lukasinski
Location:	75 Mangerton Close, The Glen., Cork
Site inspection:	No inspection carried out

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.

Site Location

The site is located at 75 Mangerton Close, The Glen., Cork. The site is located in a long established residential estate located to the south of the northern ring road in what is a predominantly residential area. The site and dwelling is located in a row of 6 No. terraced two storey dwellings. The site, dwelling and terrace is not a protected structure or on the NIAH protected buildings list. The site is also not located within an ACA.

The Question before the Planning Authority

Whether the the demolition of a chimney stack in a dwelling is or is not exempted development.

Land Use Zoning

Cork City Development Plan 2022-2028

Land-Use Zoning

The site is situated in an area zoned as **ZO 01 Sustainable Residential Neighbourhoods** with the objective to *protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.*

Planning History

No recent planning applications on site

Planning legislation

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(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.

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 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:-

*9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—
(a) if the carrying out of such development would—*

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

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'.

As noted above Section 3 (1) of the Planning and Development Act states that: 'development' means, *except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.*

The demolition/removal of a chimney stack both internally and on the roof of an existing dwelling clearly constitutes 'works', which is defined in section 2(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

Assessment of Exempted Development

The next issue for consideration is whether or not the proposal is exempted development.

The applicant has submitted details including photographs of the existing dwelling taken from different angles showing the existing chimney stack and the roof as well as the adjacent third party terraced dwellings located on both sides of the subject site. As stated above it is noted that the building is not a protected structure, is not located within an Architectural Conservation Area (ACA) or is not set out on the NIAH Buildings Survey list. Therefore, there is no protection status afforded to either the building, the terrace of buildings or the chimney stack in question.

The applicant proposes to remove the external chimney stack as well as the entire chimney stack internally it is noted. I would consider that the proposed works are not material changes to the overall building structure as they will be both a) internal changes to the building and also b) external changes that will not materially affect the external appearance of the structure. The relevant Section in the Act is set out as follows:

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;

Environmental Assessment & Restrictions on Exemption

A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 9 of the Regulations.

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.

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.

Recommendation

From the details submitted it is considered that the works proposed namely the internal and external removal of the chimney stack on site are considered to be exempt under Section 4 (1)(h) of the Act. Therefore, the works proposed are considered to be exempt development.

Having regard to:

- The particulars received by the Planning Authority on 13/03/23
- The provisions of Section 3 (1), of the Planning and Development Act (as amended)
- The provisions of Section 4 (1)(h), of the Planning and Development Act (as amended)

the Planning Authority considers that –

the internal and external demolition of the existing chimney stack at No. 75 Mangerton Close, The Glen, Cork City – **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

 04/04/23

Tadhg Hartnett
Acting Executive Planner
Planning Department
Community Culture & Placemaking Directorate
4th April 2023

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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

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

Fón/Tel: 021-4924564/4321

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

75 MANGERTON CLOSE,
THE GLEN,
CORK CITY, T23A6W8

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 THE DEMOLITION OF A CHIMNEY STACK AT 75 MANGERTON CLOSE,
THE GLEN, CORK CITY EXEMPTED? OR IS THERE ANY ADDITIONAL
DOCUMENTATION REQUIRED FOR THIS WORK TO BE CARRIED OUT?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

I WANT TO DEMOLISH THE CHIMNEY STACK ALL THE WAY FROM THE ROOF
TO THE GROUND FLOOR.
AFTER THE WORKS THE ROOF OPE WILL BE RESEALED AND COVERED UP
WITH EXISTING TILES THAT WILL MATCH VISUALLY WITH ALL OF THE
NEIGHBOURING ROOFS.

DEVELOPMENT MANAGEMENT
CCP

13 MAR 2023

CORK CITY COUNCIL

3. APPLICATION DETAILS

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

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

Name of applicant (principal, not agent):		ZBIGNIEW LUKASINSKI	
Applicants Address	75 MANGERTON CLOSE, THE GLEN, CORK CITY, T23A6W8		
Person/Agent acting on behalf of the Applicant (if any):	Name:		
	Address:		
	Telephone:	[REDACTED]	
	Fax:		
	E-mail address:	[REDACTED]	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

5. LEGAL INTEREST

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

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

Signature: Zbigniew Luchayewicz

Date: 10 MAR 2023

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ADVISORY NOTES:

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

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

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

The application should be sent to the following address:

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

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

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

DATA PROTECTION

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

Site Location Map

CENTRE COORDINATES:
ITM 567858,573330

PUBLISHED:
08/03/2023

ORDER NO.:
50322115_1

MAP SERIES:
6 Inch Raster

MAP SHEETS:
CK074

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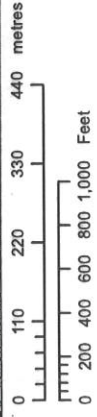
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LEGEND:
<http://www.osi.ie>;
search 'Large Scale Legend'



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.
Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'

OUTPUT SCALE: 1:10,560



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57421

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566627

CENTRE COORDINATES:
 ITM 567858.573330

PUBLISHED:
 08/03/2023

ORDER NO.:
 50322115_1

MAP SERIES:
 1:1,000
 1:1,000

MAP SHEETS:
 6337-25
 6338-21

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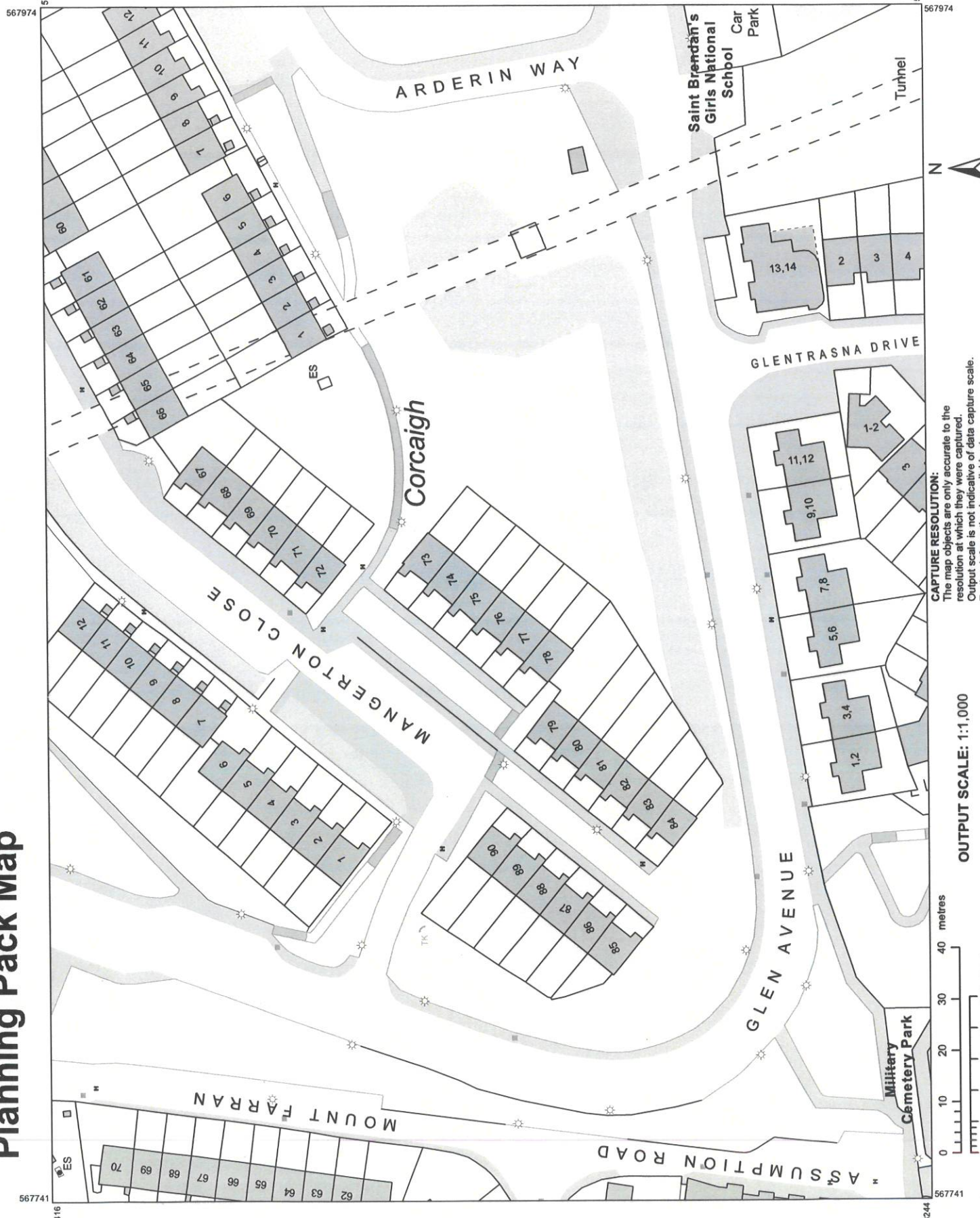
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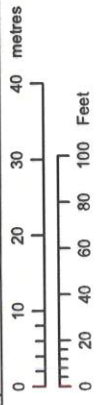
LEGEND:
<http://www.osi.ie>;
 search 'Large Scale Legend'

Planning Pack Map



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.
 Further information is available at:
<http://www.osi.ie>, search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



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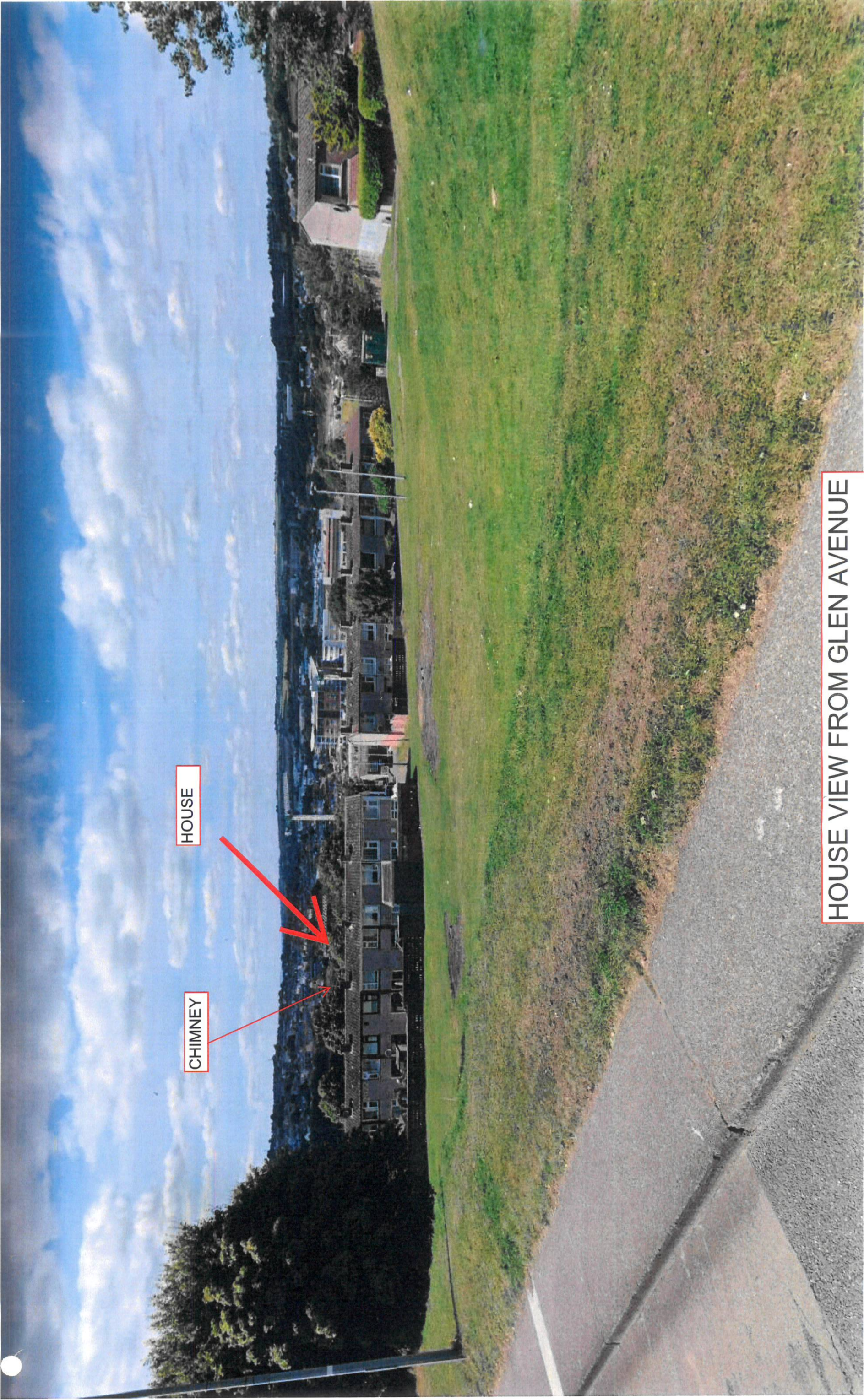
HOUSE VIEW FROM FOOTPATH





HOUSE IN QUESTION

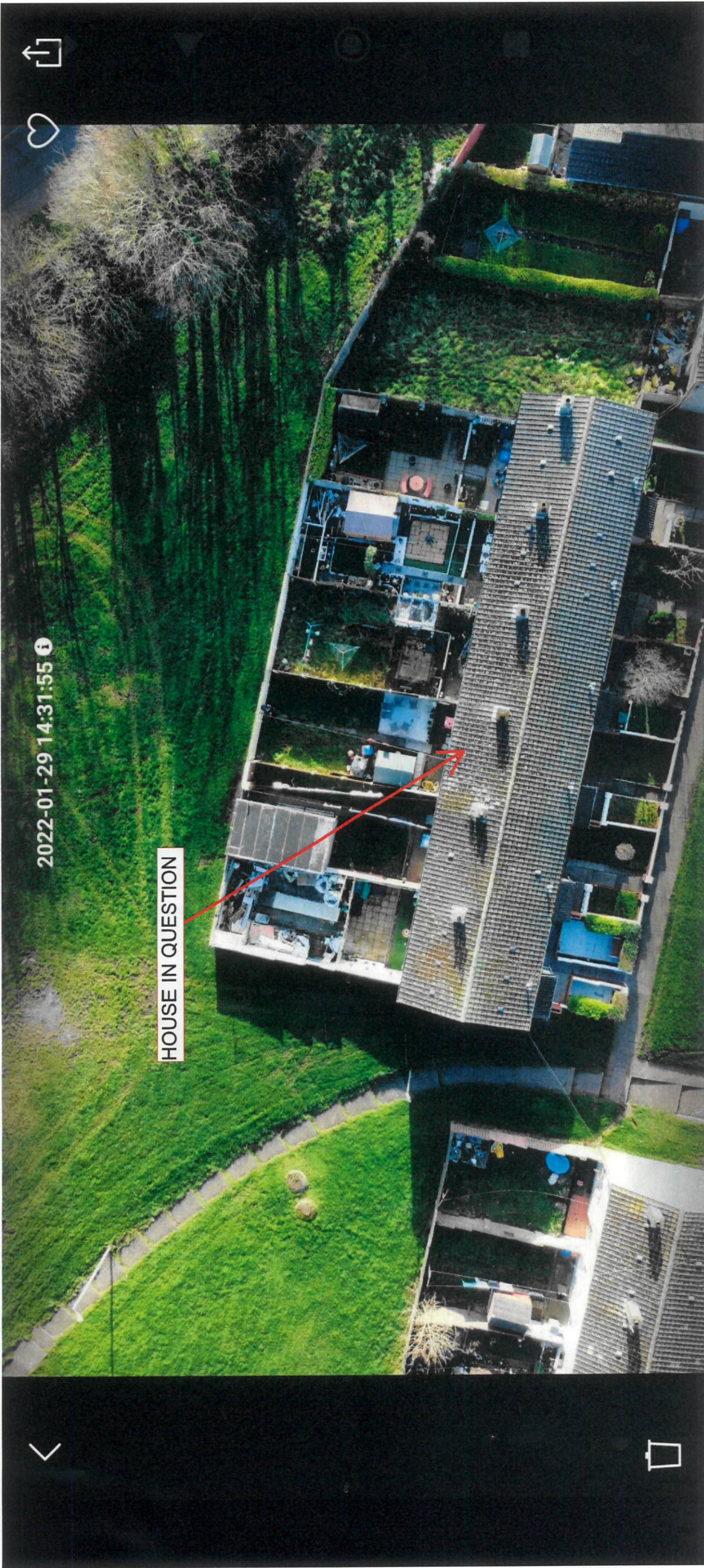
HOUSE FROM STREAT VIEW



HOUSE

CHIMNEY

HOUSE VIEW FROM GLEN AVENUE



2022-01-29 14:31:55

HOUSE IN QUESTION

