



Comhairle Cathrach Chorcaí Cork City Council

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

Camila Botto Poala
DL Group Consulting Engineers
1 Hodders Villas
Ballincollig
Cork

28th September 2020

RE: *Section 5 Declaration R595/20
No 15 Foxwood Drive, Rochestown, Cork*

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, 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
- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the change of use from a garage to residential use and replacement of garage door with window at 15 Foxwood Drive, Rochestown, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Yours Faithfully,

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



We are Cork.

Application type	SECTION 5 DECLARATION
Question	<i>Whether the change of use from a garage to residential use and replacement of garage door with window, is development or is exempted development.</i>
Location	15 Foxwood Drive, Rochestown, Cork
Applicant	Declan Mullins (owner) c/o Camilla Botto Poala of DL Consulting Engineers (agent)
Date	24/09/2020
Recommendation	Is development and is exempted development

INTERPRETATION

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 APPLICATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the planning authority is framed using the phrasing of section 5. The applicant states in the request, *"Is the conversion of an existing attached domestic garage to domestic accommodation, i.e. a ground floor family room with access from existing internal door to include alterations to front elevation (from existing roller shutter door to new proposed window and new pebble dash finish), development and, if so, is it exempted development?"*.

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

Whether the change of use from a garage to residential use and replacement of garage door with window, is development or is exempted development.

3. SITE DESCRIPTION

The subject property is a single storey detached dwelling in the Existing Built-Up Area zoning area. The area is predominantly residential in nature.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the change of use from a garage to residential use, replacement of garage door with window, altering the finish of the front elevation of the garage to pebble dash and the replacement of a rear window with sliding doors.

5. RELEVANT PLANNING HISTORY

None

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
 - (i) the interior of the structure,*
 - (ii) the land lying within the curtilage of the structure,*
 - (iii) any other structures lying within that curtilage and their interiors, and*
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1)(h)

4.(1) The following shall be exempted developments for the purposes of this Act—

...

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2)

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

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 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 1 <i>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</i></p>	<p>1. (a) <i>Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</i></p> <p>(b) <i>Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed</i></p>

<p style="text-align: center;"><i>Column 1</i> <i>Description of Development</i></p>	<p style="text-align: center;"><i>Column 2</i> <i>Conditions and Limitations</i></p>
<p><i>the rear or to the side of the house.</i></p>	<p><i>12 square metres.</i></p> <p><i>(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.</i></p> <p><i>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.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</i></p> <p><i>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.</i></p> <p><i>(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.</i></p> <p><i>(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</i></p>

Column 1 <i>Description of Development</i>	Column 2 <i>Conditions and Limitations</i>
	<p><i>part of the roof of the dwelling.</i></p> <p>5. <i>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.</i></p> <p>6. (a) <i>Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p>(b) <i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p>(c) <i>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.</i></p> <p>7. <i>The roof of any extension shall not be used as a balcony or roof garden.</i></p>

7. ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’.

In relation to change of use, the existing use is as a domestic garage, and the proposed use is to be as part of the main dwelling house as habitable accommodation. ‘Works’ is defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. I consider that the proposed development constitutes ‘works’ as it comprises alteration and change of use of the garage into residential accommodation associated with the main dwelling house. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION **Is development**

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that elements of the proposal come within **both subsections (1) and (2) of section 4.**

Section 4(1)

In my opinion a minor component of this proposal comes within the scope of section 4(1), being the minor works proposed to the existing front garage door to replace it with a window of similar style and finish to that of the existing ground floor windows, altering the finish of the front elevation of the garage to pebble dash and the replacement of a rear window with sliding doors. I consider that this would come under the scope of section 4(1)(h) when carried out in conjunction with a proposed change of use, however this is a minor component of the proposal.

Section 4(2)

It is therefore necessary to consider whether the proposed change of use comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word ‘or’ in section 4(3).

I consider that article 6 and **Class 1** applies, as it is an extension of a house by the conversion of an existing garage to residential use.

Having assessed the proposed extension against Class 1 and its conditions and limitations I find as follows:

Condition / Limitation 1

The house has not been previously extended, therefore this condition and limitation do not apply.

Condition / Limitation 2

The floor area of the garage to which the change of use is being considered has a total floor area of approximately 27.5m². Therefore part (a) of this condition and limitation are satisfied (parts (b) and (c) do not apply).

Condition / Limitation 3

The proposed works are ground floor only therefore this condition/limitation does not apply.

Condition / Limitation 4

The height of the proposed development does not exceed the height of the side walls of the house.

Condition / Limitation 5

More than 25m² of open space will remain to the rear of the dwelling.

Condition / Limitation 6

Ground floor windows proposed are more than 1 metre from the boundaries they face.

Condition / Limitation 7

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

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is exempted development

8. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.

Section 177U(9)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

8.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that **environmental impact assessment is not required.**

8.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required.**

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, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the change of use from a garage to residential use and replacement of garage door with window at 15 Foxwood Drive, Rochestown, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.



Eoin Cullinane
Assistant Planner
18/09/2020

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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



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

No. 15 Foxwood Drive, Rochestown, 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 the conversion of an existing attached domestic garage to domestic accommodation i.e. a ground floor family room with access from existing internal door to include alterations to front elevation (from existing roller shutter door to new proposed window and new pebble dash finish), development and if so, it is exempt development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The existing bungalow shows an attached garage to the south. Total floor area of dwelling + garage = 234 m². An existing door links internally the garage and the dwelling. An existing roller shutter door is located to the front of the garage; an existing window is located to the rear elevation of subject garage. It is proposed to convert the use of the garage to domestic accommodation (i.e. family room). It is proposed to remove front roller shutter door and to replace in its location new window to match existing windows to the front of the dwelling. It is proposed to remove existing window to rear elevation of garage, and replace it with new sliding door set. The existing dwelling is clad partially to the front with a red brick cladding. This material is not longer available on the market for this reason it is proposed to finish the front of the garage (sides) with a pebble dash finish, matching the sides, rear and gables of the existing dwelling.

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?

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

5. Was there previous relevant planning application/s on this site?

If so please supply details: No recent planning history

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	Existing & proposed floor area inclusive of attached garage = 234 m 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 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)	
<u>NA - domestic use existing or proposed</u>	_____	
_____	_____	
_____	_____	

8. LEGAL INTEREST

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

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

Signature: CAMILLA BOTTO POALA (agent) DL GROUP CONSULTING ENGINEERS

Date: 31/07/2020

OSi PLACE Map

CENTRE COORDINATES:
ITM 572410,568673

PUBLISHED: 31/07/2020
ORDER NO.: 50133060_1

MAP SERIES: 1:2,500
MAP SHEETS: 6429-A



COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

Unauthorised reproduction
infringes Ordnance Survey Ireland
and Government of Ireland
copyright.

All rights reserved.
No part of this publication may
be copied, reproduced
or transmitted in any form
or by any means without the prior
written permission of
the copyright owners.

The representation on this map
of a road, track or footpath
is not evidence of the existence
of a right of way.

Ordnance Survey maps
never show legal property
boundaries, nor do they
show ownership of
physical features.

© Suirbhreacht Ordanáis Éireann,
2020
© Ordnance Survey Ireland, 2020
www.osi.ie/copyright

LEGEND:
<http://www.osi.ie>



*15 Foxwood Drive
Rochestown, Cork
site boundary
marked in red*

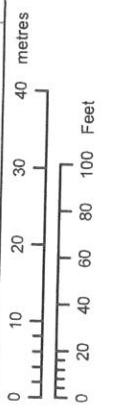
Community Culture & Placemaking

RECEIVED
14 AUG 2020
Corcaigh

RECEIVED
Foxwood

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

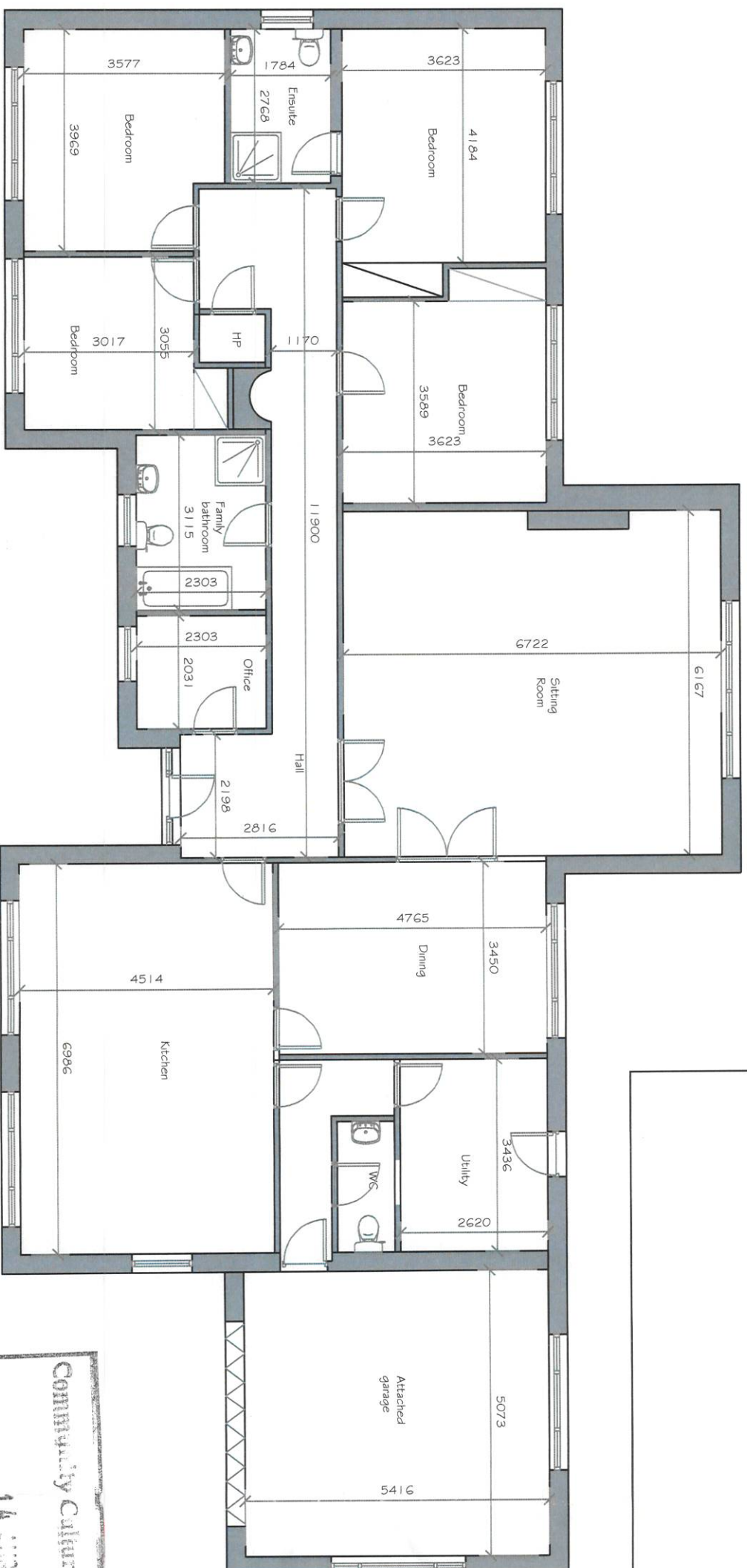
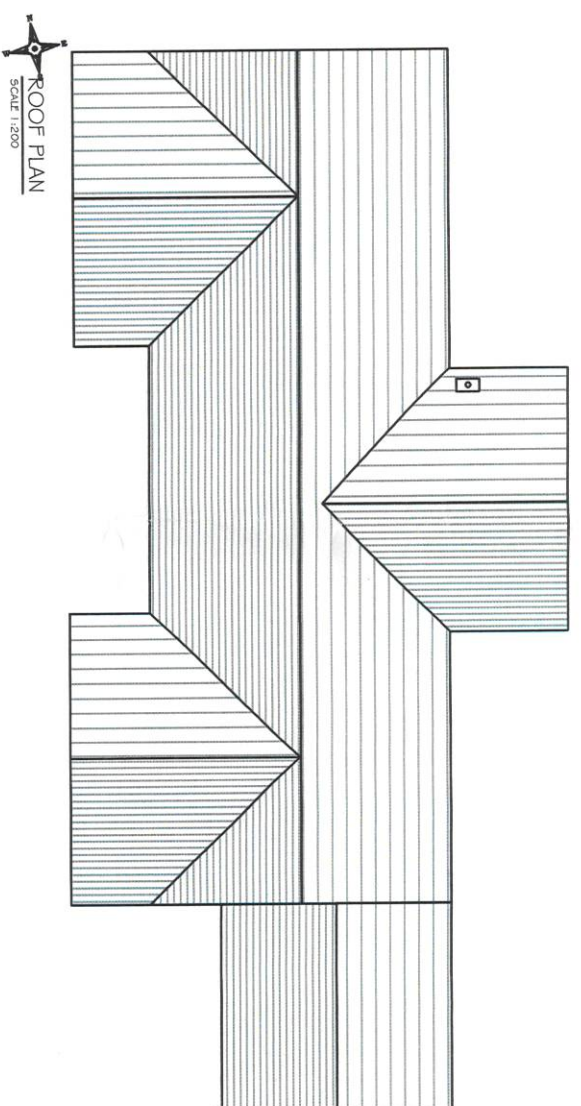


572526

568759

572293

568759



Community Culture & Placemaking
14 AUG 2020
PREPARED

Revision	Issue	Date	By
For Approval	A	31.7.20	CBP

The copyright of this drawing is vested in the Engineer and it must not be copied or reproduced without their written consent. All Contractors must note the date and must be responsible for taking the drawing as dimensioned when issued for the work.

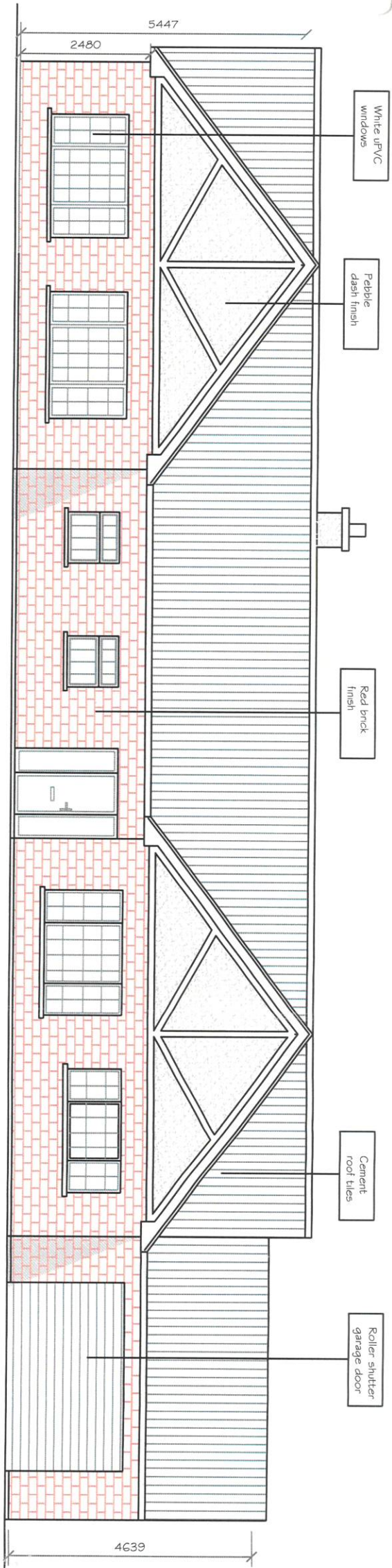
DPL GROUP
DRAWING NUMBER: 15/2020
1 Hodders Villas
Baltimore
Co. Cork
Phone: 0214876550
Fax: 0214876551
e-mail: dplgroup@eircom.net

Client:
DECLAN MULLINS

Project:
15, Foxwood Drive,
Rochestown, Cork

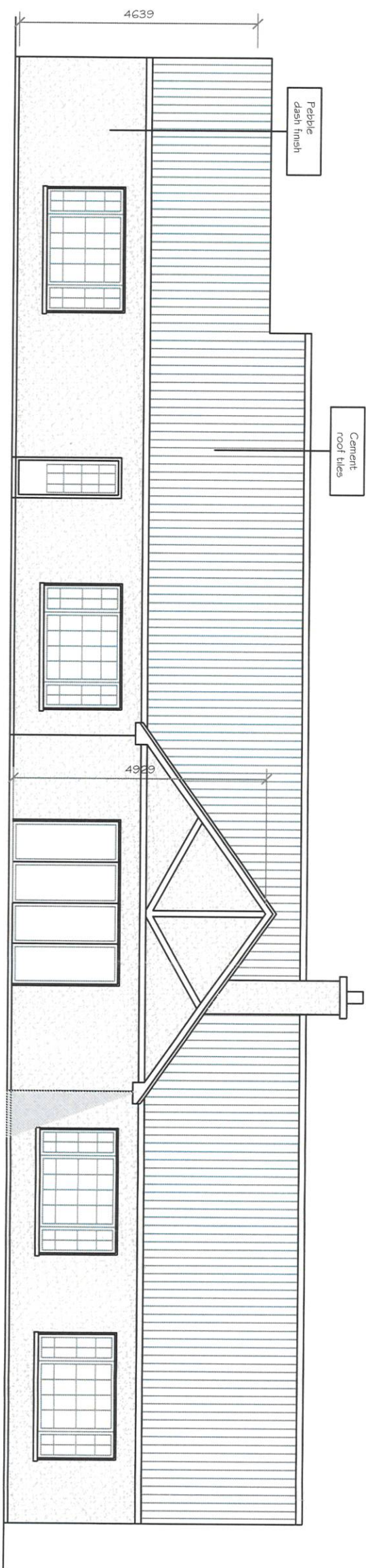
Drawing:
Existing Floor Plan

job no.	drawing no.	date	
41120 H	01	31.7.20	
scale	drawn by	checked by	drawing type
1:100	CBP	SOR	A3

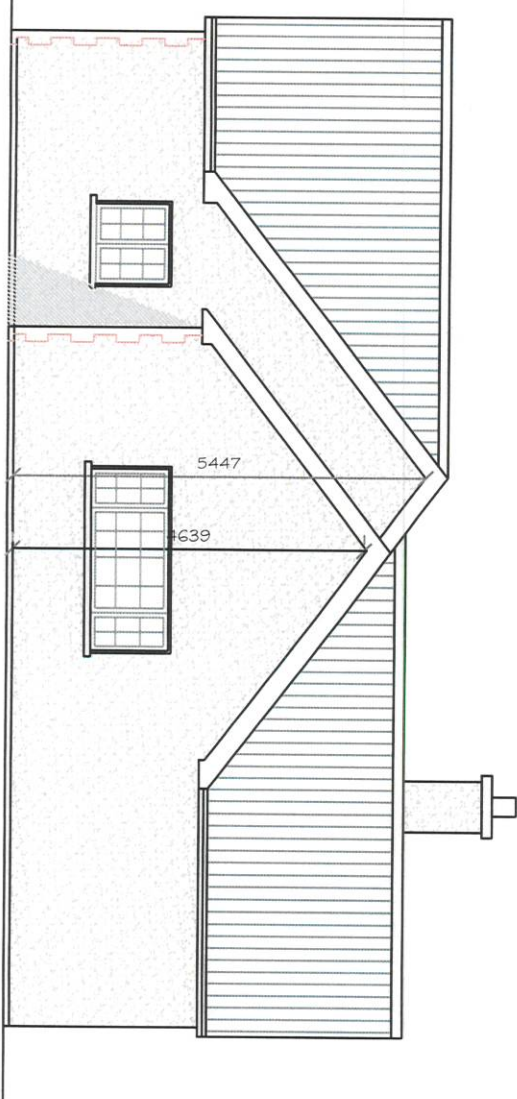


EXISTING FRONT ELEVATION (WEST)
SCALE 1 : 100

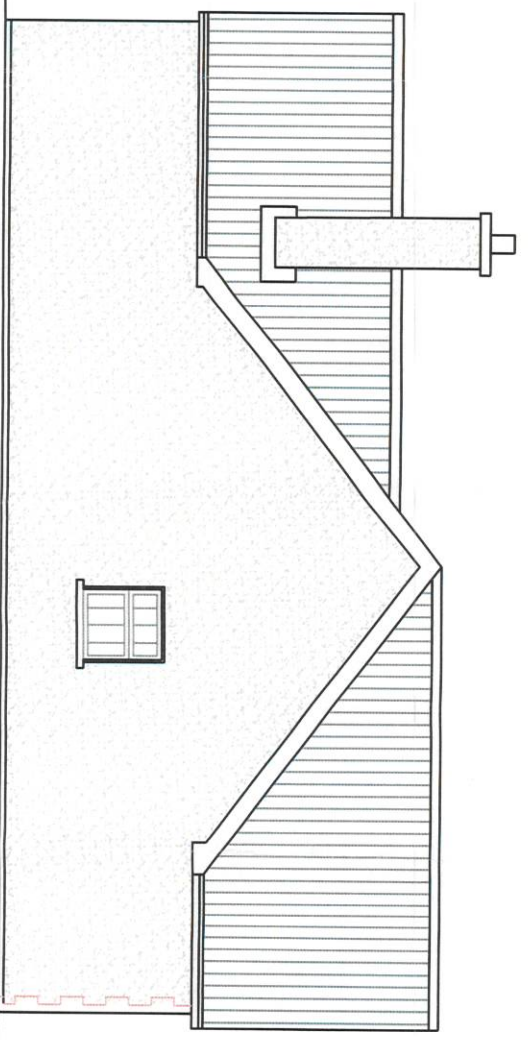
Community Culture & Placemaking
14 AUG 2023
RECEIVED



EXISTING REAR ELEVATION (EAST)
SCALE 1 : 100



EXISTING SIDE ELEVATION (SOUTH)
SCALE 1 : 100



EXISTING SIDE ELEVATION (NORTH)
SCALE 1 : 100

For Approval		A	31.7.20	CBP
Revision	Issue	Date	By	
<small>The copyright of this drawing is vested in the Engineers and it must not be copied or reproduced without their written consent. All Contractors must visit the site and must be responsible for taking and checking all dimensions that relate to this work.</small>				

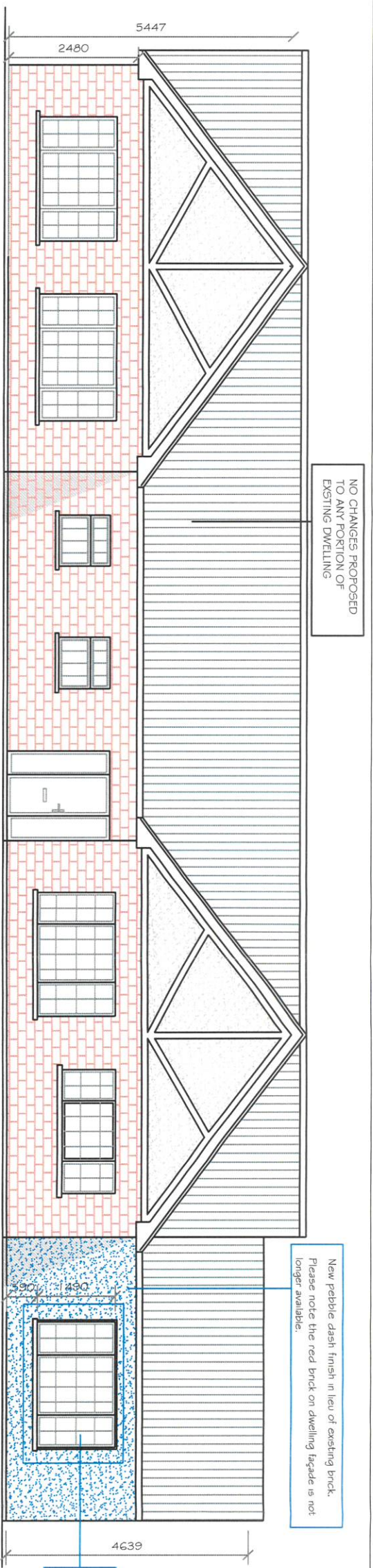
DPL GROUP
Construction Services

1 Hodders Villas
Ballincollig
Co. Cork
phone: (021) 4876650
fax: (021) 4876651
e-mail: dplgroup@eircom.net

Client: **DECLAN MULLINS**

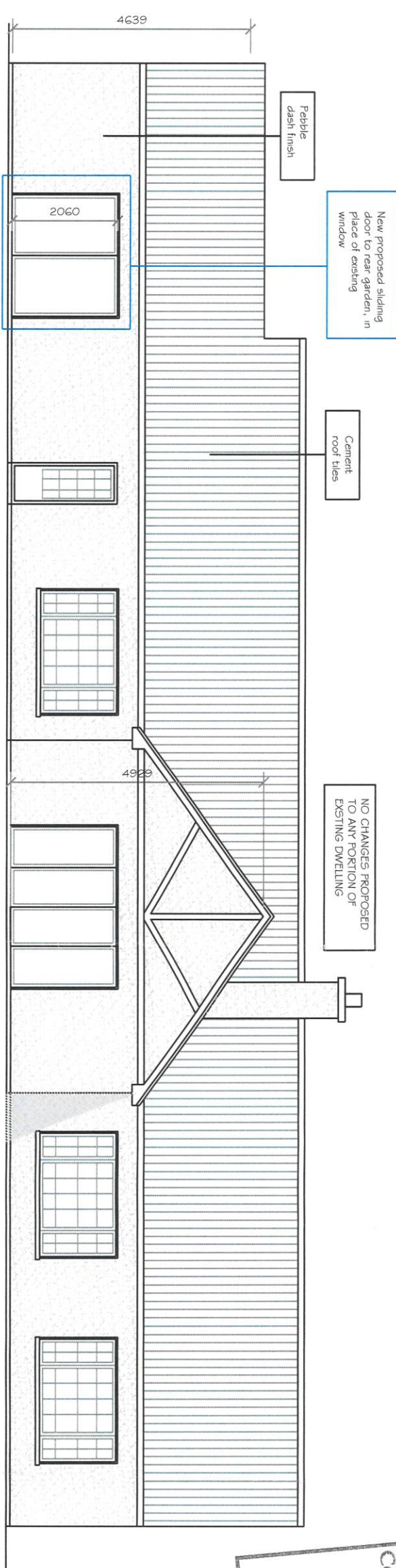
Project: **15, Foxwood Drive, Rochestown, Cork**

job no.	drawing no.	date
41120 H	02	31.7.20
scale	drawn by	checked by
1 : 100	CBP	SOR
Drawing: Existing Elevations		drawing type
		A3



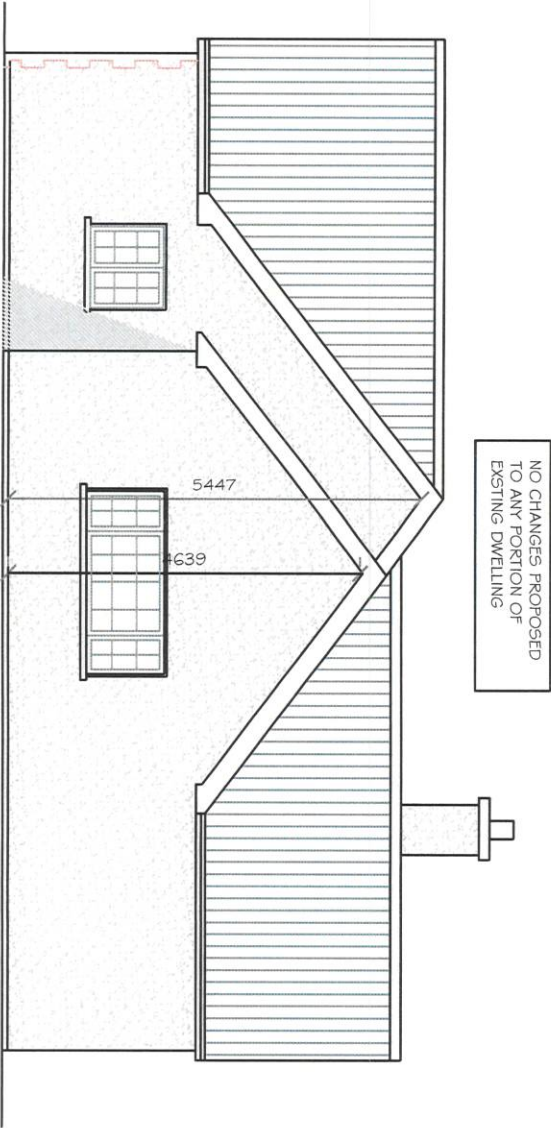
PROPOSED FRONT ELEVATION (WEST)

SCALE 1:100



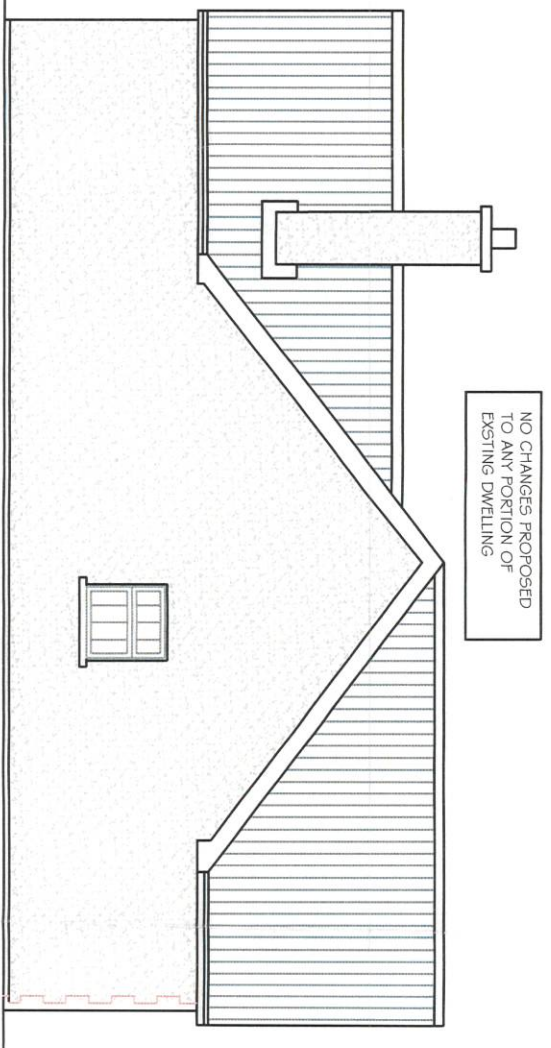
PROPOSED REAR ELEVATION (EAST)

SCALE 1:100



PROPOSED SIDE ELEVATION (SOUTH)

SCALE 1:100



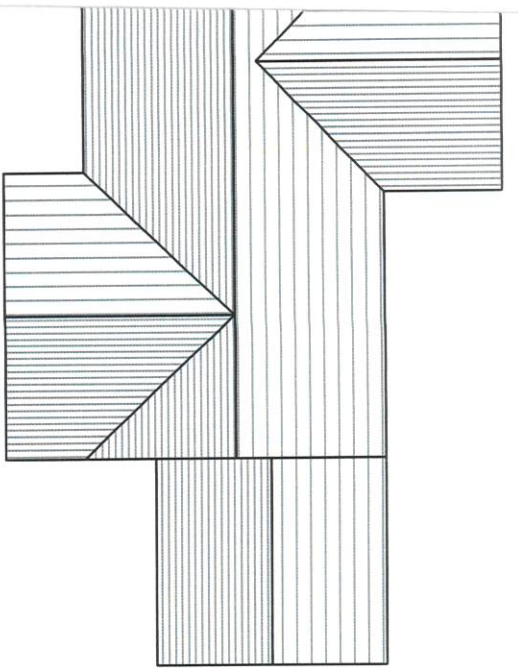
EXISTING SIDE ELEVATION (NORTH)

SCALE 1:100

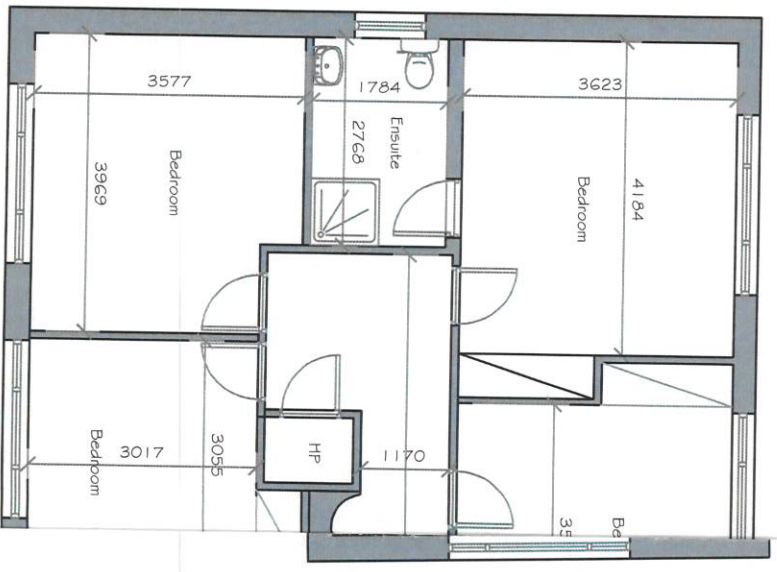
Community Culture & Placemaking
 14 AUG 2020
 RECEIVED

<p>The copyright of this drawing is vested in the Engineers and Architects and shall remain their property. It is not to be copied or reproduced without their written consent. All Contractors must visit the site and must be responsible for taking and checking all dimensions that refer to this work.</p>		<p>Revision</p>	<p>Issue</p>	<p>Date</p>	<p>By</p>
<p>For Approval</p>	<p>A</p>	<p>31.7.20</p>	<p>CBP</p>		
<p>Client: DECLAN MULLINS</p>					
<p>Project: 15, Foxwood Drive, Rochestown, Cork</p>					
<p>Drawing: Proposed Elevations</p>					
<p>job no.</p>	<p>drawing no.</p>	<p>date</p>			
<p>41120 H</p>	<p>04</p>	<p>31.7.20</p>			
<p>scale</p>	<p>drawn by</p>	<p>checked by</p>	<p>drawing type</p>		
<p>1:100</p>	<p>CBP</p>	<p>SOR</p>	<p>A3</p>		

1 Hodders Villas
 Ballincollig
 Co. Cork
 phone: (021) 4676650
 fax: (021) 4676651
 e-mail: dlgroup@eircom.net



Community Culture & Placemaking
14 AUG 2020
RECEIVED



PROPOSED GROUND FLOOR
SCALE 1:100
Floor area = 234 m² / 2518 Sq.ft (including at

The copyright of this drawing is vested in the Engineer and it must not be copied or reproduced without their written consent. All Contractors must note the size and mod be responsible for taking the drawing as dimensioned and checked by the client.

Revision	Issue	Date	By
For Approval	A	31.7.20	CBP

DIG GROUP
CONSULTING ENGINEERS
1 Hodders Villas
Ballincollig
Co. Cork
Phone: (021) 4976550
Fax: (021) 4976551
e-mail: digroup@eircom.net

Client:
DECLAN MULLINS
Project:
15, Foxwood Drive,
Rochestown, Cork

Drawing:
Proposed Floor Plan

job no.	drawing no.	date
41120 H	03	31.7.20
scale	drawn by	checked by
1:100	CBP	SOR
		drawing type
		A3

