

PLANNER'S REPORT  
Ref. R 528/19

Cork City Council  
Development  
Management  
Strategic Planning  
and Economic  
Development

Application type    **SECTION 5 DECLARATION**  
Question            *Whether the construction of a rear extension is development or is exempted development.*  
Location            *12, The Heathers, Classes Lake, Ballincollig.*  
Applicant            Alan Carey

### 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

*"Whether the construction of a rear extension to the rear of a semi-detached house No. 12, The Heathers' is development or is exempted development."*

### 3. SITE DESCRIPTION

The subject property comprises a two storey semi-detached dwelling house with a single storey rear extension located in 'The Heathers' – a cul-dec-sac located in the northern section of Classes Lake housing estate.

The question relates to a single-storey extension which has been constructed to the rear of the dwelling house (see photos attached).

### 4. PLANNING HISTORY

There is no record of a recent planning application on this particular site on the P.E.S. system. From a perusal of taking in charge files which are available for the Classes Lake development it appears that this section of the estate was constructed under Cork County Council planning application Ref: 98/2278. I requested the return of this file from Cork County Council however was advised that it was unavailable and presumed lost in the flood of 2009 (which destroyed files stored in the basement of County Hall).

## 5. CURRENT LEGISLATIVE PROVISIONS

### 5.1 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.*

### 5.2 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,

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:-

*(i) "Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act"...*

#### *(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><b>CLASS 1</b></p> <p><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 the rear or to the side of the house.</i></p>	<ol style="list-style-type: none"> <li>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></li> <li>(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 12 square metres.</i></li> <li>(c) <i>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></li> <li>2. (a) <i>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></li> <li>(b) <i>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></li> <li>(c) <i>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,</i></li> </ol>

Column 1 Description of Development	Column 2 Conditions and Limitations
	<p>including those for which planning permission has been obtained, shall not exceed 20 square metres.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</p> <p>(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</p> <p>(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</p> <p>5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(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.</p>

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
	<i>7. The roof of any extension shall not be used as a balcony or roof garden.</i>

The following is an extract from the 1994 Exempted Development Regulations:

Development within the curtilage of a dwellinghouse

**CLASS 1**

The extension of a dwellinghouse, by the construction or erection of an extension (including a conservatory) to the rear of the dwellinghouse or by the conversion for use as part of the dwellinghouse of any garage, store, shed or other similar structure attached to the rear or to the side of the dwellinghouse.

1. ( a ) Where the dwellinghouse has not been extended previously, the floor area of any such extension shall not exceed 23 square metres.

( b ) Where the dwellinghouse has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions, shall not exceed 23 square metres.

2. The height of any such extension shall not exceed the height of the eaves or parapet, as may be appropriate, of the dwellinghouse.

3. The construction or erection of any such extension to the rear of the dwellinghouse shall not reduce the area of private open space of the dwellinghouse to the rear of the dwellinghouse to less than 25 square metres.

**6. ASSESSMENT**

**6.1 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’. It is clear that an extension to a dwelling house comprises ‘works’, which is defined in section 3(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**

## **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 development which is exempted development having regard to any regulations under section 4(2). In my opinion the proposed extension does not come within the scope of section 4(1). The proposed extension 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).

It is not clear when the rear extension was constructed however the estate history refers to the year 1998 therefore it is therefore assumed that it was sometime thereafter. I note the relevant exemptions that applied in the ‘1994 exemptions’ applied from 16.05.1994 until the 2001 Regulations were introduced in January and March 2002. It is therefore unclear as to which are the applicable exemptions.

### **Restrictions on exemption**

As the history file for the overall housing estate is unavailable I cannot state categorically that a condition limiting the construction of rear extensions was not placed on the governing estate planning permission file de-exempting the construction of rear extensions.

### **Exempted Development Regulations – Second Schedule, Part 1, Class 1.**

#### **Class 1 Description of development**

*Class 1 primary parameters refer to the description of development in the 1994 Regulations as ‘Development within the curtilage of a dwelling house’ and in the 2001 Regulations as ‘Development within the curtilage of a house’.*

It would appear from the drawings submitted and a site inspection that the extension has been constructed fully over the intervening rear boundary wall which is shared with No. 11 ‘The Heathers’ and overhangs that property beyond this boundary line. This is shown on the drawings and can be seen in the attached photographs. As such the development does not lie within the curtilage of No. 12 The Heathers i.e. the dwelling house and the development cannot therefore avail of any available exemptions.

#### **Class 1 Conditions and Limitations**

Notwithstanding the above if no restrictive condition were placed on the governing planning permission and if it did lie fully within the curtilage of the house it would meet the limitations of Class 1 of Part 1 of the Second Schedule of the 1994 Regulations (limitations 1 2 and 3). If it were constructed post the introduction of the 2001 Regulations it could be assessed in the following manner against the Class 1 exemptions conditions and limitations:

##### *Condition / Limitation 1(a)*

The house does not appear to have been previously extended. The proposed ground floor is stated in the application form to measure 19.33m<sup>2</sup>.

##### *Condition / Limitation 1(b) and (c)*

N/A.

##### *Condition / Limitation 2*

The house does not appear to have been previously extended.

*Condition / Limitation 3*

N/A.

*Condition / Limitation 4(a)*

The height of the walls of the extension does not exceed the height of the rear wall of the house.

*Condition / Limitation 4(b)*

N/A/

*Condition / Limitation 4(c)*

The height of the highest part of the roof does not exceed the highest part of the roof of the dwelling.

*Condition / Limitation 5*

More than 25m<sup>2</sup> of open space remains to the rear of the dwelling.

*Condition / Limitation 6*

The ground floor windows are more than 1m from the boundaries they face (measured on site to be in excess of the dimension shown on the submitted drawing).

*Condition / Limitation 6(b) and (c)*

N/A

*Condition / Limitation 7*

The roof is not used as a balcony or rear garden.

**7. ENVIRONMENTAL ASSESSMENT**

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

*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.*

### 7.1 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.

### 7.2 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.

## 8. CONCLUSION

As the history file for the overall housing estate is unavailable I cannot state categorically that a condition limiting the construction of rear extensions was not placed on the governing estate planning permission file de-exempting the construction of rear extensions.

However in any event as outlined above exemptions for rear extensions currently available under Class 1 of the Part 1 of the Second Schedule of the Planning and Development Regulations apply to ‘*development within the curtilage of a house.*’ It would appear from the drawings submitted and a site inspection that the extension has been constructed fully over the intervening rear boundary wall which is shared with No. 11 ‘The Heathers’ and overhangs that property beyond this boundary line and as such does not lie within the curtilage of No. 12 The Heathers.

It is concluded therefore that the rear extension ‘is development’ but could not have availed of any available exemptions at the time of its construction and therefore ‘is not exempted development.’

## 9. RECOMMENDATION

I recommend therefore that the applicant be advised as follows:

Please note that exemptions available under Class 1 of the Planning and Development Regulations apply to ‘*development within the curtilage of a dwelling house.*’ It would appear from the drawings submitted and a site inspection that the extension has been constructed fully on the intervening rear boundary wall with No. 11 The Heathers and partially overhangs that adjoining property and therefore does not lie fully within the curtilage of the house.

On the basis of this the Planning Authority is of the opinion that the development of an extension to the rear of No. 12 The Heathers cannot avail of the exempted development regulations and therefore ‘is development’ and ‘is not exempted development’.

~~Please advise the applicant also of his rights of appeal in this instance.~~



Evelyn Mitchell,  
SENIOR EXECUTIVE PLANNER  
11.11.2019



**ADDITIONAL REPORT FURTHER TO ABOVE**

Since the drafting of my report dated 11.09.2009 the applicants agent has clarified that the rear extension including guttering has been constructed within the curtilage of the dwelling house as the extension is set back from the original line of the boundary wall which it replaced. The drawings have been corrected to demonstrate this. In addition a revised site layout map has been submitted showing the dimensions to the side.


The planning history file has also been obtained in the interim from the developer of the estate. I attach the notification of decision to grant and note there is no limiting condition on the construction of rear extensions in this part of the estate.

It has been clarified that the extension was constructed in 2011 bringing it under the 2001 exemptions. When assessed against the conditions/limitations contained in these regulations it is deemed to be 'exempted development' (see previous assessment in this regard).

**CONCLUSION**

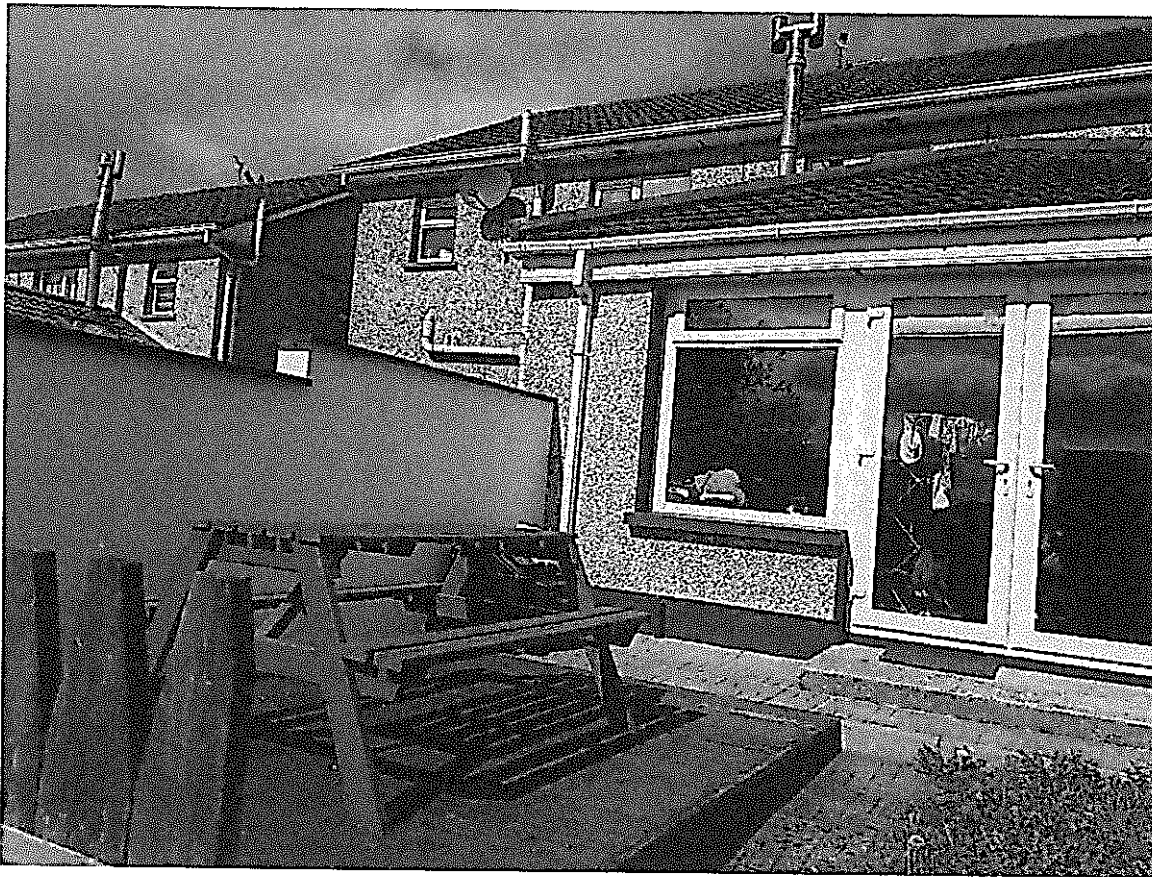
Is 'development' and is 'exempted development'.

S.S.O. Please also attach a cover note that the Exemption Certificate is being issued on the basis that all works have been carried out fully within the curtilage of the dwelling house and do not overhang adjoining properties in any manner.

  
Evelyn Mitchell,  
SENIOR EXECUTIVE PLANNER  
25.09.2019













# Comhairle Cathrach Chorcaí Cork City Council

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

Alan Carey  
c/o Breeda O'Leary  
Bridestown  
Kildinan  
Co Cork

25/09/19

**RE: Section 5 Declaration R528/19 12 The Heathers  
Classes Lake, Oven, Cork**

A Chara,

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

The Planning Authority has concluded that *construction of a rear extension* is '**development**' and is '**exempted development**'.

This Exemption Certificate has been issued on the basis that all works have been carried out fully within the curtilage of the dwelling house and does not overhang adjoining properties in any manner.

Yours faithfully,

---

**Paul Hartnett**  
**Development Management Section**  
**Community, Culture and Placemaking Directorate**  
**Cork City Council**



**We are Cork.**

**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](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924564/4321  
Líonra/Web: [www.corkcity.ie](http://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**

No. 12 THE HEATHERS  
CLASSES LAKE  
OVENS

**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.*

A SINGLE STOREY REAR EXTENSION  
TO REAR OF A SEMI-DETACHED  
NO 12 THE HEATHERS  
IS THIS CONSIDERED EXEMPTED  
DEVELOPMENT.

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**  
(Use additional sheets if required).

SINGLE STOREY EXTENSION  
TO REAR OF A TWO-STOKEY  
SEMI-DETACHED NO 12 THE HEATHERS

**Comhairle Cathrach-Chorcaí  
Cork City Council**

31-07-2019

**Strategic Planning & Economic  
Development Directorate**



### 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	EXTENSION 19.33 M <sup>2</sup>
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> 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: N/A	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
_____	_____
_____	_____
_____	_____

### 4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		ALAN CAREY	
Applicants Address		12 THE HEATHERS CLASSES LAKE OVENS	
Person/Agent acting on behalf of the Applicant (if any):	Name:	BREEDA O LEARY	
	Address:	BRIDESTOWN KILDINAN CO. CORR	
	Telephone:	_____	
	Fax:	_____	
	E-mail address:	_____	
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 <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	_____	

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

Signature: \_\_\_\_\_

Date: 9/7/19

**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



# Planning Pack Map

## SITE LOCATION MAP

Application for Section 5 Declaration

Alan Carey Property at No. 12 The Heathers, Classes Lake, Ovens

Scale: 1:1000 Date: 19/07/19

Breda O'Leary Dip. Arch. Tech. Bristowtown, Kildinan, Co. Cork.

Tel: 0872908358 Email: [bolcarvallaspects@email.com](mailto:bolcarvallaspects@email.com).

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**CENTRE COORDINATES:**  
ITM 566727,570736

**PUBLISHED:** 03/07/2019  
**ORDER NO.:** 50071803\_1

**MAP SERIES:** 1:1,000 6380-22  
1:2,500 6380-C

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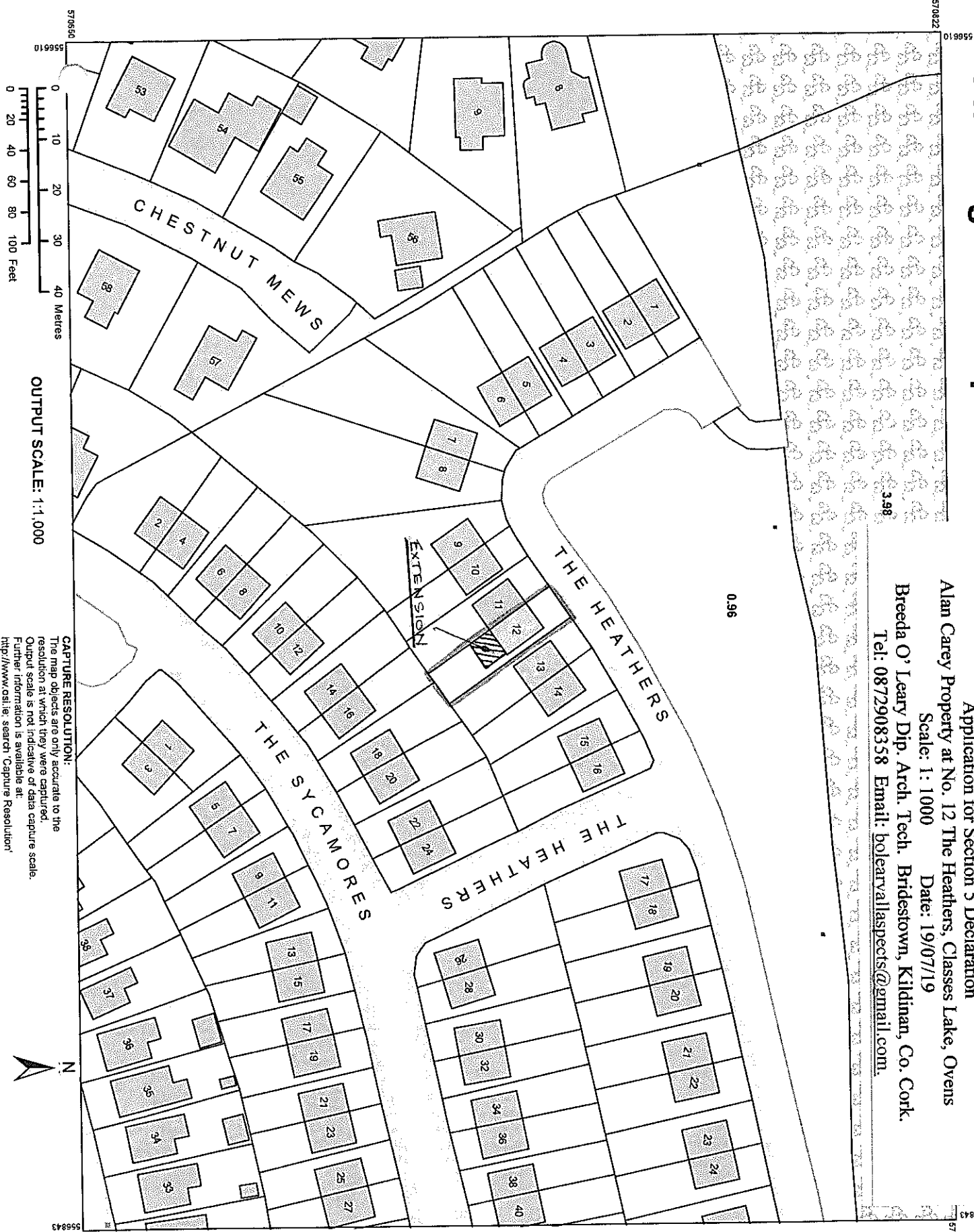
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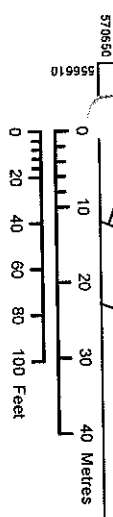
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**LEGEND:**  
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search 'Large Scale Legend'



0.96



OUTPUT SCALE: 1:1,000

**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/CaptureResolution>



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## **Evelyn Mitchell**

---

**From:** Evelyn Mitchell  
**Sent:** 12 September 2019 12:54  
**To:** 'Bolearyallaspects@gmail.com'  
**Cc:** Paul Hartnett  
**Subject:** 12 The Heathers

Hi Breeda – I tried your mobile earlier and left a message. I am out of the office until Monday from 2 and I wanted to contact you before then. Re your application for a Section 5 cert our concern is that the development including guttering lies outside the curtilage of the house. If this is not the case you should let us know – the drawings submitted suggest otherwise so it would need to be clarified. A solicitors letter confirming that the extension is entirely constructed on your property and not overhanging No 11 would be useful but revised plans would be required also as the floorplan submitted appears to show the extension built along the boundary and the guttering would then overhang into the No. 11. The section and rear elevation drawings show overhanging occurring as the boundary is marked by a hatched line. If this is incorrect it should be revised.

I think also there is a discrepancy in the site plan but the scale is hard to decipher – from measuring on site there is more space between the extension and the boundary to the east. This should be corrected if so.

Also if you can let us know the date of construction of the extension as different regulations applied at different time. Trust this is of use. Evelyn

**Evelyn Mitchell**

Senior Executive Planner

Development Management Section  
Community, Culture and Placemaking Directorate,  
Cork City Council,  
City Hall,  
Cork T12 T997

T: 021-492-4347  
F: 021-492-4706

web: [www.corkcity.ie](http://www.corkcity.ie)



# Comhairle Cathrach Chorcaí Cork City Council

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

Alan Carey  
c/o Breeda O'Leary  
Bridestown  
Kildinan  
Co Cork

11/09/19

**RE: Section 5 Declaration R528/19 12 The Heathers  
Classes Lake, Oven, Cork**

A Chara,

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

Please note that exemptions available under Class 1 of the Planning and Development Regulations apply to 'development within the curtilage of a dwelling house.' It would appear from the drawings submitted and a site inspection that the extension has been constructed fully on the intervening rear boundary wall with No. 11 The Heathers and partially overhangs that adjoining property and therefore does not lie fully within the curtilage of the house.

On the basis of this the Planning Authority is of the opinion that the development of an extension to the rear of No. 12 The Heathers cannot avail of the exempted development regulations and therefore '**is development**' and '**is not exempted development**'.

Yours faithfully,

**Paul Hartnett**  
**Development Management Section**  
**Community, Culture and Placemaking Directorate**  
**Cork City Council**



**We are Cork.**

C O R K C O U N T Y C O U N C I L

LOCAL GOVERNMENT (PLANNING & DEVELOPMENT) ACTS, 1963-1993

NOTIFICATION OF DECISION TO GRANT PERMISSION (with conditions)

Reference No. in Planning Register  
S/98/2278

CLASSES LAND LTD  
c/o Tony Dennehy,  
7, Woodlands,  
Cloghroe,  
Co. Cork

In pursuance of the powers conferred upon them by the above mentioned Acts the Council of the County of Cork have by Order dated **7 JAN 1999** decided to GRANT PERMISSION for the development of land namely;

Residential development - 100 no. dwellinghouses  
(change of house type & layout)

AT: 23-40 BERRYFIELD, 1-66 SYCAMORES,  
1-42 THE HEATHERS, COOLROE,  
BALLINCOLLIG

in accordance with the plans and particulars submitted by the applicant

On: 29/05/98.

And as amended by Drawings on 10/11/98

and subject to the conditions ( 24 No.) set out in column 1 of the Schedule attached hereto. The reasons for the imposition of the said conditions are set out in column 2 of the Schedule.

An appeal against a decision of the Planning Authority may be made to An Bord Pleanala by any person before the EXPIRATION of the period of ONE MONTH beginning on the day of the giving (i.e. Date of Order) of the decision of the Planning Authority. (SEE NOTES ATTACHED)

If there is no appeal against the said decision, a grant of PERMISSION in accordance with the decision will be issued after the expiration of the period within which an appeal may be made to An Bord Pleanala.

It should be noted that until a grant of PERMISSION has been issued, the development in question is NOT AUTHORISED.

Planning Department,  
County Hall,  
Cork.

Signed on behalf of the said Council

DATE:

**7 JAN 1999**

SEE NOTES ATTACHED

SCHEDULE

Reference No. in Planning  
Register: 98/2278

-----  
Column 1 - Conditions  
-----

-----  
Column 2 - Reason  
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(1)  
The gate shown on the northern boundary of the site shall be for access only to the woodland and shall not be used for any other purpose, notwithstanding the exempted development provisions of the Local Government (Planning and Development) Regulations, 1977, as amended, save with the prior grant of Approval of the Planning Authority.

In the interests of the proper planning and development of the area.

(2)  
The major road access nominated as the Sycamores shall be completed up to the eastern property boundary of the site and shall be completed prior to the occupation of any dwelling in the Sycamores east of the junction to the Heathers.

In the interests of the proper planning and development of the area.

(3)  
The screen walls to the east of sites 23 and 52 shall be constructed along the curved line marked A - B by the Council's Planning Officer, i.e. 25 metres back on both sides from the original south east corner of these sites.

In the interests of visual amenity and pedestrian access.

(4)  
Roads shall be named, a name plate shall be erected at the entrance to each road in a location clearly visible to drivers. Houses shall be numbered in a logical sequence which shall be agreed with the Planning Authority.

For easy identification and to facilitate personnel servicing site.

(5)  
All roads within the development shall be a minimum width of 6 metres. Revised site layout detailing the

In the interests of orderly development.



SCHEDULE

Reference No. in Planning Register: 98/2278

-----  
Column 1 - Conditions

-----  
Column 2 - Reason  
-----

above shall be submitted prior to commencing development.

(6)  
Before development commences a revised site layout shall be submitted showing sites numbers 1 and 3 the Sycamores and 40 Berryfield reorientated to face the open space, i.e. face west, and served by individual or separate cul-de-sacs.

In the interests of visual amenity and orderly development of the site.

(7)  
Watermains shall be of a minimum diameter of 100mm (4"), unless otherwise superceded by the conditions of this schedule. The watermain shall be looped between the Heathers and the Sycamores near number 29 the Heathers.

To ensure an adequate water supply to serve the development.

(8)  
Provision shall be made, to the satisfaction of the Council's Estates Engineer, for foul, storm sewer and watermain connections to the systems in the Heathers from the lands to the north east including extending these services to the eastern property boundary.

In the interests of the proper planning and development of the area.

(9)  
All rear gardens shall be surrounded by a 1.75 metre high solidly constructed concrete block wall. The wall shall be fitted with trellis to soften the effect, at least one per dwelling.

In the interests of visual amenity.

(10)  
The site shall be landscaped and planted in accordance with

In the interests of visual amenity.

SCHEDULE

Reference No. in Planning Register: 98/2278

Column 1 - Conditions

Column 2 - Reason

a comprehensive scheme to comprise predominantly native species and varieties and to include:

- [a] details of screen planting (which should not comprise of cupressocyparis leylandii nor grisellinia in rural situations)
- [b] species, variety, number and locations of trees and shrubs
- [c] programme for implementation of the scheme.

Full details shall be submitted to and agreed with the Planning Authority prior to commencement of development.

(11)

All planting to comply with the specifications of the landscaping scheme agreed shall be maintained by the developer and if any plant should die it shall be replaced within the next planting season.

In the interests of visual amenity.

(12)

Front boundary walls shall be the same design, construction and finish throughout the development.

In the interests of orderly development and visual amenity.

(13)

Water service control boxes to Cork County Council approval shall be fitted to each water service.

In the interests of the proper development of the site.

(14)

Road gullies shall have grit sumps of at least 1/30 cu.m capacity.

To prevent obstruction of road gullies.

SCHEDULE

Reference No. in Planning  
Register: 98/2278

-----  
Column 1 - Conditions

Column 2 - Reason  
-----

(15)  
Locking devices shall be fitted on all road surface water gratings in accordance with I.S. 261 and to the satisfaction of the Council's Estates Engineer.

In the interests of safety.

(16)  
Public lighting shall be installed to the E.S.B.'s specification and shall be switched on and kept activated to serve occupied houses until taken in charge by the Council.

In the interests of public safety.

(17)  
Footpaths shall be dished to the Council's Estate Engineer's satisfaction.

In the interests of orderly development.

(18)  
The developer shall provide built in connections to the foul sewer to facilitate the installation of washing machines and dishwashers. Additional gullies discharging to the foul sewer shall be provided where directed by the Council.

To avoid contamination of the storm system and facilitate satisfactory discharge of waste from these appliances.

(19)  
Before commencing any individual house construction the developer shall provide, to the satisfaction of the Planning Authority, security for the provision and satisfactory completion, including maintenance until taken in charge by that Authority, at its discretion, of roads, footpaths, sewers, watermains, road lighting, open spaces and other services required in connection with the development. The security

To ensure that these parts of the development are constructed and completed to a satisfactory standard.

SCHEDULE

Reference No. in Planning  
Register: 98/2278

-----  
Column 1 - Conditions

Column 2 - Reason  
-----

shall be a Bond in a form and amount approved by the Planning Authority and provided by a Bank or Insurance Company, acceptable to the Planning Authority.

(20)

Surface water shall not be permitted to enter the foul sewer.

To prevent overloading of the sewer.

(21)

Within a period of one month prior to the date of commencement of the development but not later than such date, the developer shall pay to Cork County Council a sum of £26000 updated in accordance with the Consumer Price Index from the date of granting Permission to the value pertaining at the time of payment as a contribution towards the expenditure incurred by the Council in the provision of a public water supply which has facilitated the proposed development.

It is considered appropriate that the developer should contribute towards the expenditure incurred by the Council in respect of these works which have facilitated the proposed development.

No development shall take place until the monies have been paid to the Planning Authority.

(22)

Within a period of one month prior to the date of commencement of the development but not later than such date, the developer shall pay to Cork County Council a sum of £26000 updated in accordance with the Consumer Price Index from the date of granting Permission to the value pertaining at the time of payment as a contribution towards the expenditure incurred by the Council in the

It is considered appropriate that the developer should contribute towards the expenditure incurred by the Council in respect of these works which have facilitated the proposed development.

SCHEDULE  
-----

Reference No. in Planning  
Register: 98/2278

-----

Column 1 - Conditions

Column 2 - Reason

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provision of public foul  
sewerage facilities which have  
facilitated the proposed  
development.

No development shall take  
place until the monies have  
been paid to the Planning  
Authority.

(23)

Within a period of one month  
prior to the date of  
commencement of the  
development but not later than  
such date, the developer shall  
pay to Cork County Council a  
sum of £13250 updated in  
accordance with the Consumer  
Price Index from the date of  
granting Permission to the  
value pertaining at the time  
of payment as a contribution  
towards the expenditure  
incurred by the Council in the  
provision of road improvement  
and traffic management works  
which have facilitated the  
proposed development.

No development shall take  
place until the monies have  
been paid to the Planning  
Authority.

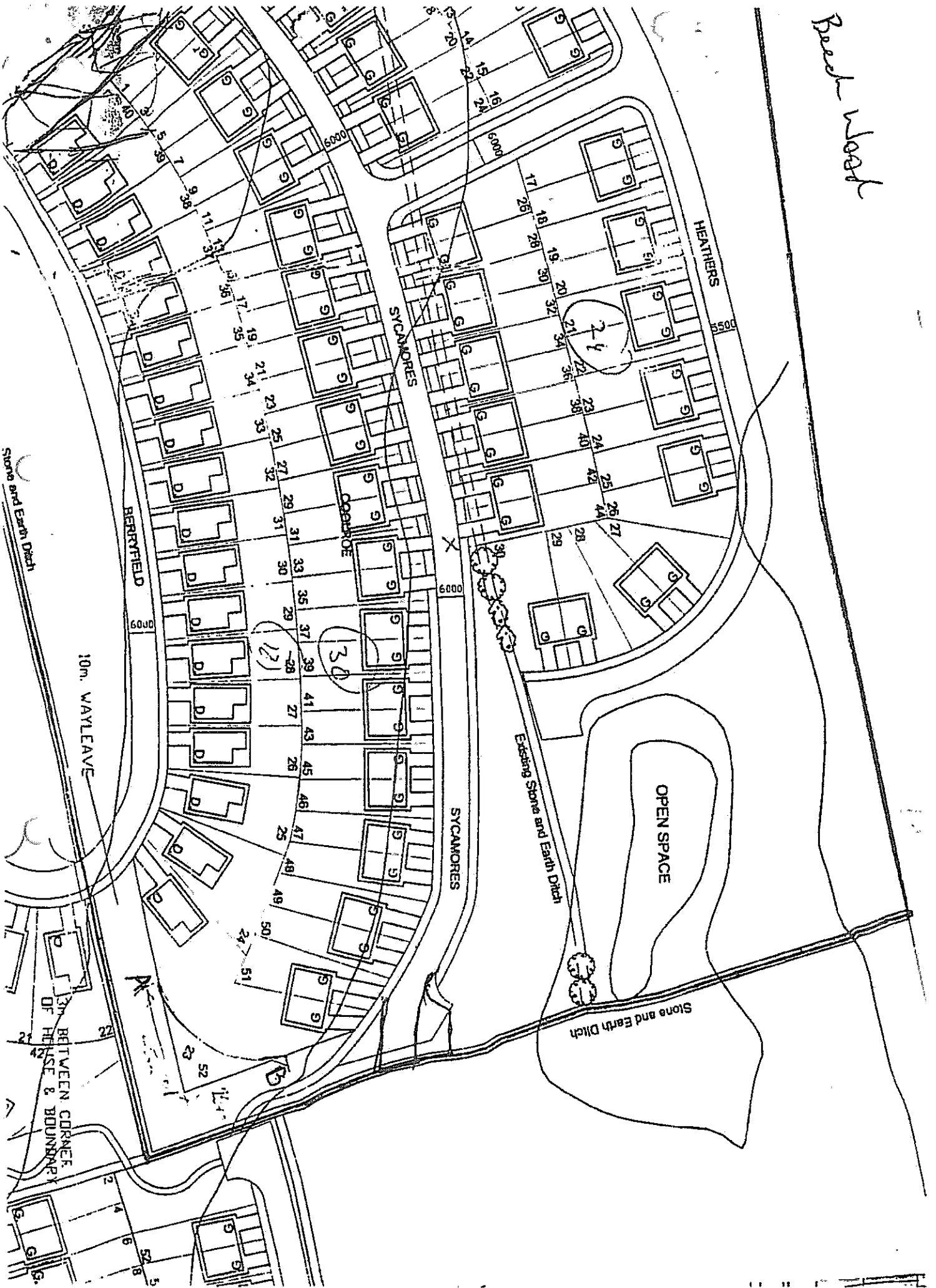
It is considered appropriate  
that the developer should  
contribute towards the  
expenditure incurred by the  
Council in respect of these  
works which have facilitated  
the proposed development.

(24)

Before development commences  
the applicant shall submit and  
agree location, materials and  
other details of the proposed  
fence to the woodland on the  
northern boundary of the site.

In the interests of the proper  
development of the site.

Book Wood



## Evelyn Mitchell

---

**From:** Bolearyallaspects@gmail .com [bolearyallaspects@gmail.com]  
**Sent:** 13 September 2019 12:51  
**To:** Evelyn Mitchell  
**Subject:** Re: 12 The Heathers  
**Attachments:** Alan Carey-12 The Heathers.pdf; file-28 (1).jpeg

Hi Evelyn

Sorry to have missed your call but was out an about most of Thurs..had poor phone coverage ..... hopefully the following info can clear this up

Since receiving your letter by email ....I revisited the site again and re - checked measurements etc

When my client was building the rear extension in May 2012 it was agreed with his neighbour at no 11 .. that the dividing fence would be removed (marks still exist on rear house walls where fence was originally located ) see photo. The new rear boundary dividing wall was constructed in conjunction with the extension build, ... and I can confirm herewith that this entire wall, the rear extension and associated rainwater goods are wholly constructed within the confines / boundaries of No. 12 (the applicants ) ... in fact No 11 gained 100mm..

... see photos and revised drawings to demonstrate this ....

The extension measures 1.7m from the centre of the boundary fence to the east ...I will mark this on the site plan

Hopefully this might clarify things... you might give me a ring on your return ..

*Regards*

*Breeda O' Leary  
Planning & Design Consultant  
0872908358*

On Thu, Sep 12, 2019 at 12:54 PM Evelyn Mitchell <[evelyn\\_mitchell@corkcity.ie](mailto:evelyn_mitchell@corkcity.ie)> wrote:

Hi Breeda – I tried your mobile earlier and left a message. I am out of the office until Monday from 2 and I wanted to contact you before then. Re your application for a Section 5 cert our concern is that the development including guttering lies outside the curtilage of the house. If this is not the case you should let us know – the drawings submitted suggest otherwise so it would need to be clarified. A solicitors letter confirming the that the extension in its entirety is constructed on your property and not overhanging No 11 would be useful but revised plans would be required also as the floorplan submitted appears to show the extension built along the boundary and the guttering would then overhang into the No. 11. The section and rear elevation drawings show overhanging occurring as the boundary is marked by a hatched line. If this is incorrect it should be revised.

**ADDITIONAL REPORT FURTHER TO ABOVE**

Since the drafting of my report dated 11.09.2009 the applicants agent has clarified that the rear extension including guttering has been constructed within the curtilage of the dwelling house as the extension is set back from the original line of the boundary wall which it replaced. The drawings have been corrected to demonstrate this. In addition a revised site layout map has been submitted showing the dimensions to the side.

The planning history file has also been obtained in the interim from the developer of the estate. I attach the notification of decision to grant and note there is no limiting condition on the construction of rear extensions in this part of the estate.

It has been clarified that the extension was constructed in 2011 bringing it under the 2001 exemptions. When assessed against the conditions/limitations contained in these regulations it is deemed to be ‘exempted development’ (see previous assessment in this regard).

**CONCLUSION**

Is ‘development’ and is ‘exempted development’.

S.S.O. Please also attach a cover note that the Exemption Certificate is being issued on the basis that all works have been carried out fully within the curtilage of the dwelling house and do not overhang adjoining properties in any manner.

---

Evelyn Mitchell,  
SENIOR EXECUTIVE PLANNER  
25.09.2019



## Evelyn Mitchell

---

**From:** Bolearyallaspects@gmail .com [bolearyallaspects@gmail.com]  
**Sent:** 16 September 2019 15:44  
**To:** Evelyn Mitchell  
**Subject:** Re: 12 The Heathers  
**Attachments:** Alan Carey- Site Layout.pdf

Hi Evelyn

I have attached a pdf of the Site layout .... you may not be able to read dimensions .....will I post you hard copies of all drgs...

*Regards*

*Breeda O' Leary  
Planning & Design Consultant  
0872908358*

On Mon, Sep 16, 2019 at 9:38 AM Evelyn Mitchell <[evelyn\\_mitchell@corkcity.ie](mailto:evelyn_mitchell@corkcity.ie)> wrote:

Hi Breeda – thanks for sending that on – that certainly clarifies things. If you can send me in the revised site plan which the dimensions that would be great. Evelyn

---

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When my client was building the rear extension in May 2012 it was agreed with his neighbour at no 11 .. that the dividing fence would be removed (marks still exist on rear house walls where fence was originally located ) see photo. The new rear boundary dividing wall was constructed in conjunction with the extension build, ... and I can confirm herewith that this entire wall, the rear extension and associated

Also if you can let us know the date of construction of the extension as different regulations applied at different time. Trust this is of use. Evelyn

**Evelyn Mitchell**

Senior Executive Planner

Development Management Section

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**Evelyn Mitchell**

Senior Executive Planner

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Community, Culture and Placemaking Directorate,

Cork City Council,

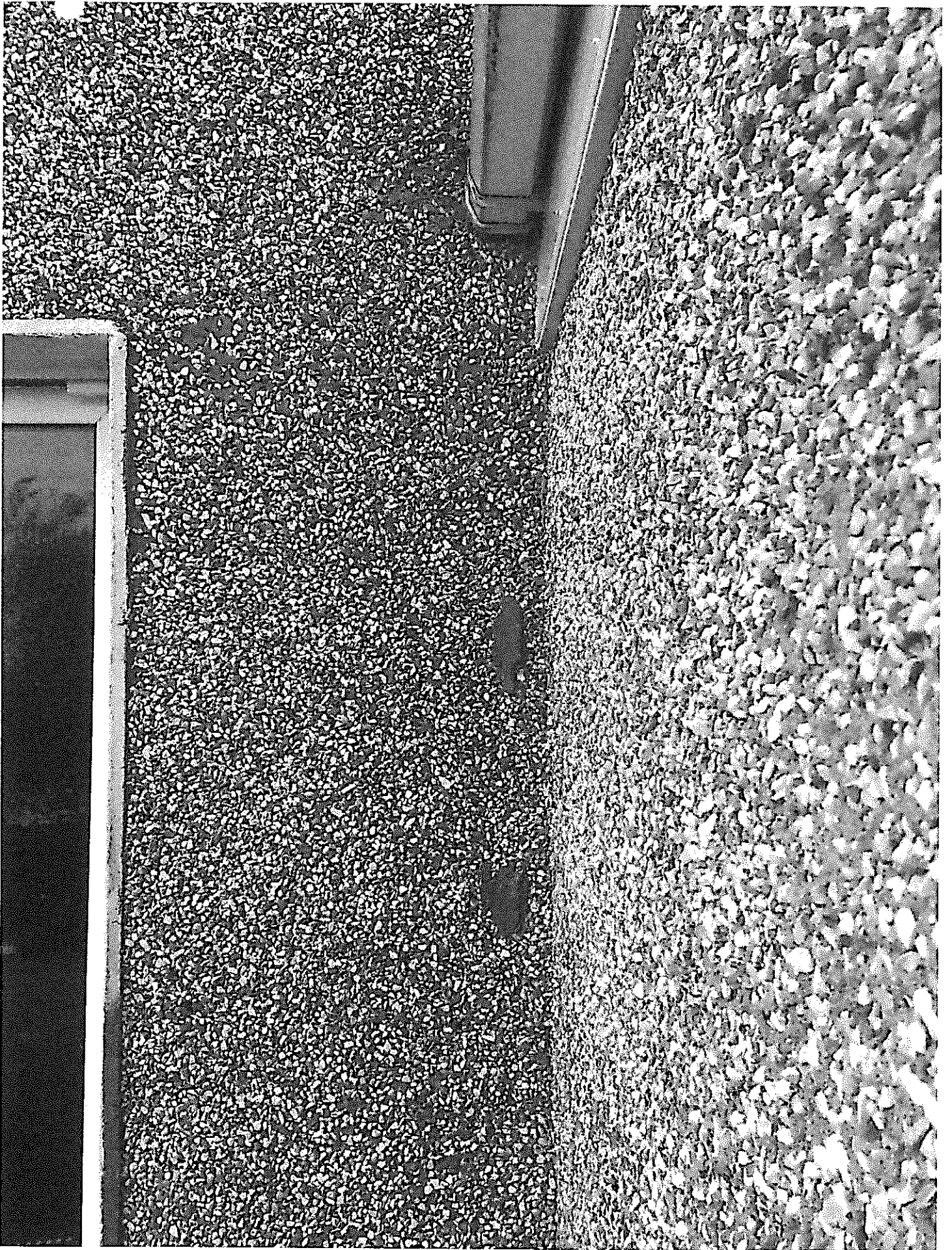
City Hall,

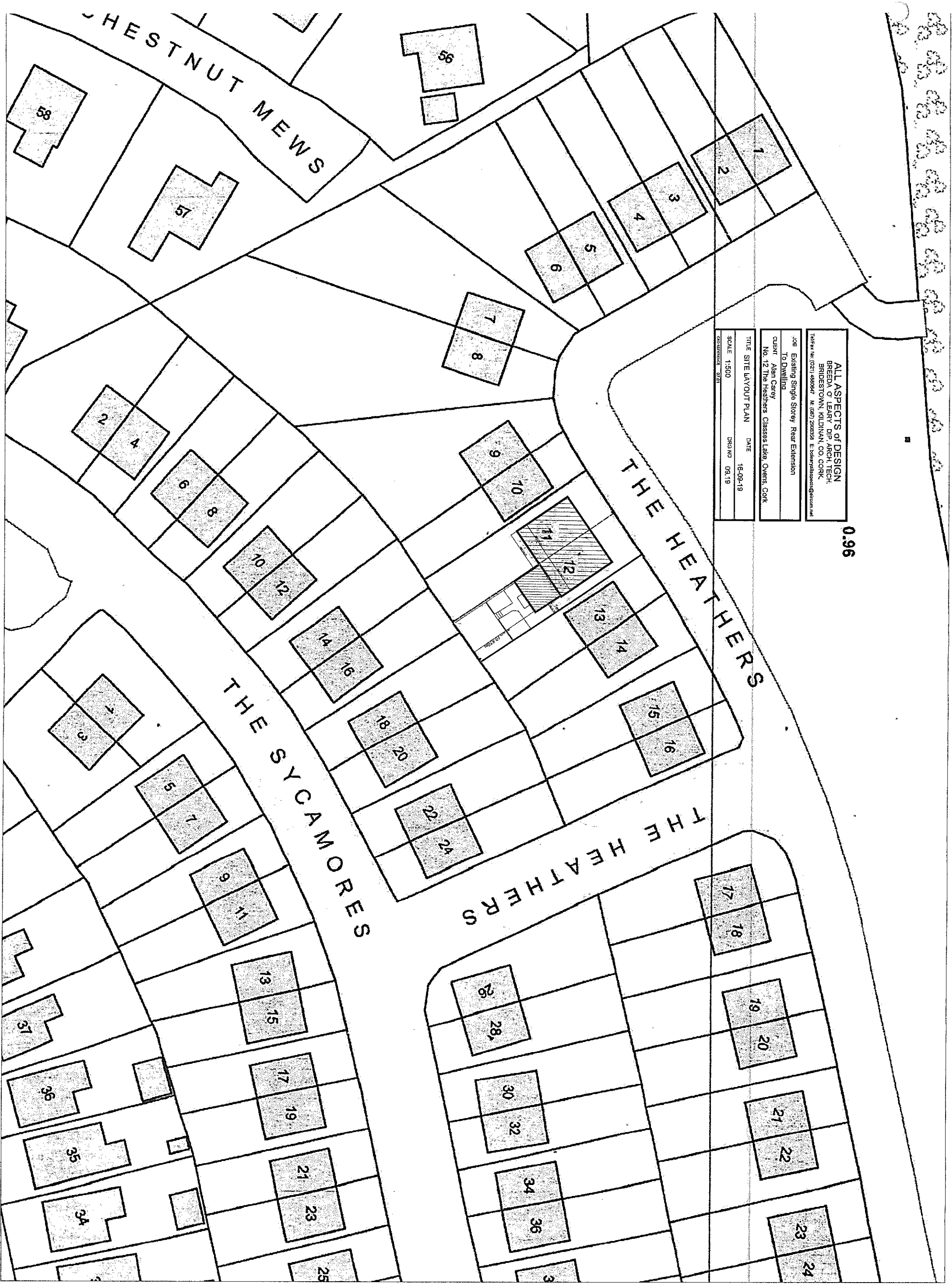
Cork T12 T997

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**F: 021-492-4706**

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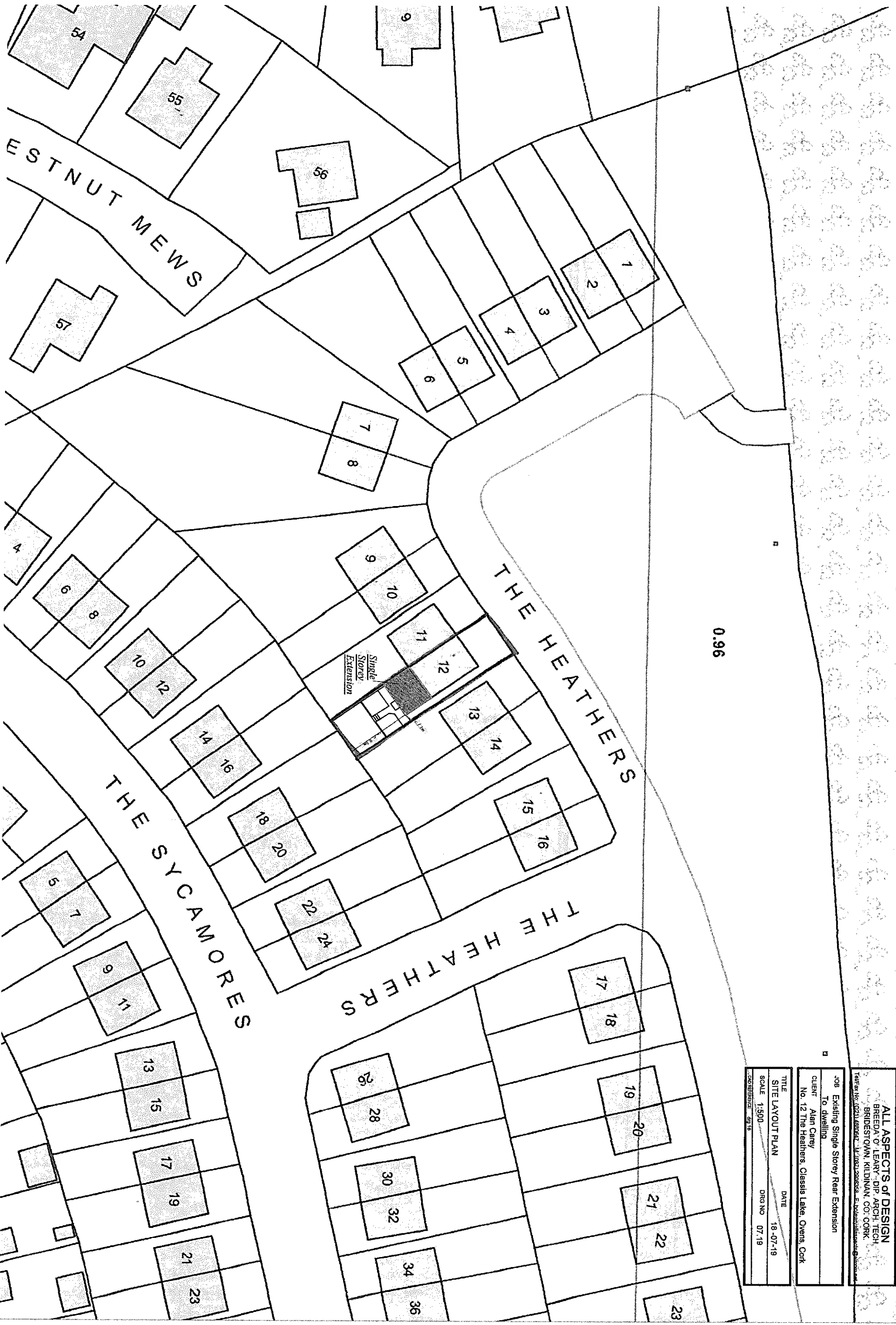




**ALL ASPECTS OF DESIGN**  
 BREEDA O'LEARY DIP. ARCH. TECH.  
 BRIDGESTOWN, KILKINIAN, CO. CO. K.  
 TEL: 0121 489087 M: 087 26055 E: b.oleary@allaspects.com  
 JOB: Existing Single Storey Rear Extension  
 To Dwelling  
 CLIENT: Alan Carey  
 No. 12 The Heathers Clonsilla, Ovens, Cork.  
 TITLE: SITE LAYOUT PLAN DATE: 16-09-19  
 SCALE: 1:500 DRAWN: 08.19  
 CHECKED: 08.19

0.96

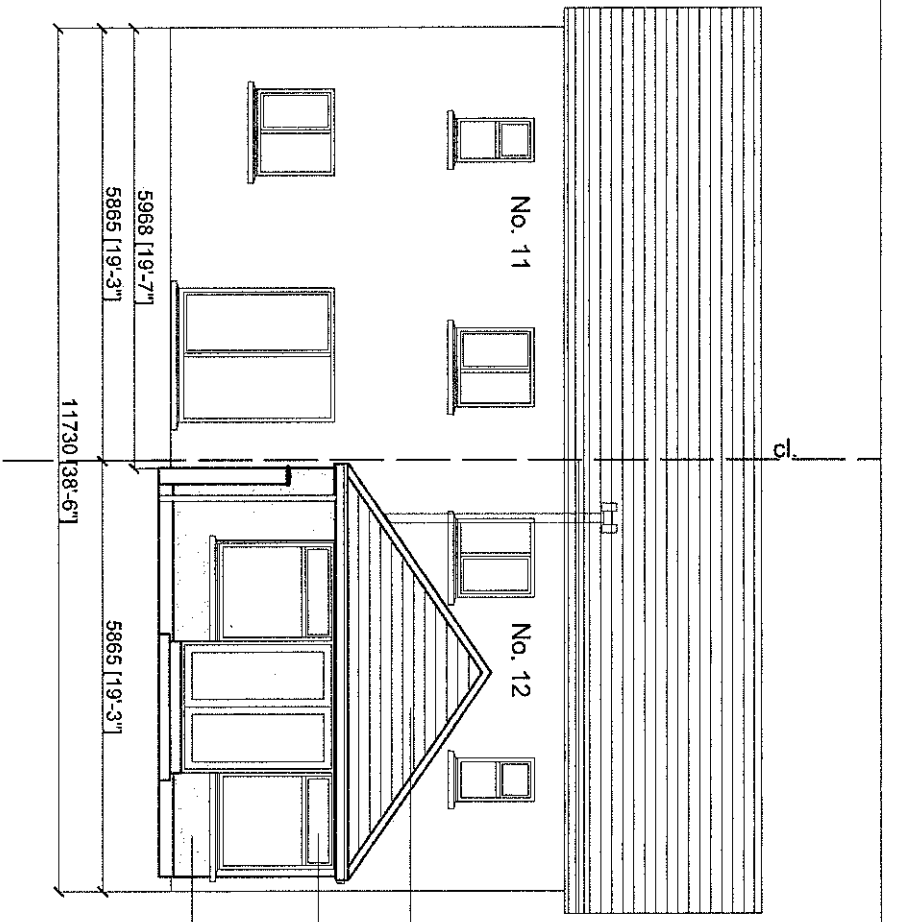




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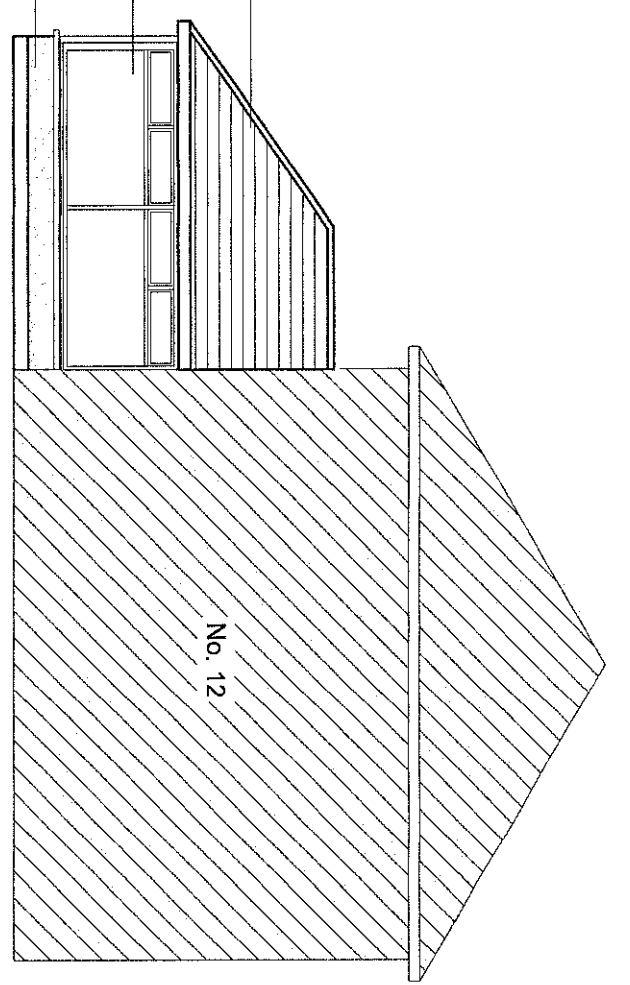
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<b>ALL ASPECTS OF DESIGN</b>	
BREEDA O'LEARY, DIP. ARCH. TECH. BRIDGESTOWN, KILDINIAN, CO. CORK	
Tel: 0231 889842, 0231 889843, 0231 889844, 0231 889845, 0231 889846, 0231 889847, 0231 889848, 0231 889849, 0231 889850, 0231 889851, 0231 889852, 0231 889853, 0231 889854, 0231 889855, 0231 889856, 0231 889857, 0231 889858, 0231 889859, 0231 889860, 0231 889861, 0231 889862, 0231 889863, 0231 889864, 0231 889865, 0231 889866, 0231 889867, 0231 889868, 0231 889869, 0231 889870, 0231 889871, 0231 889872, 0231 889873, 0231 889874, 0231 889875, 0231 889876, 0231 889877, 0231 889878, 0231 889879, 0231 889880, 0231 889881, 0231 889882, 0231 889883, 0231 889884, 0231 889885, 0231 889886, 0231 889887, 0231 889888, 0231 889889, 0231 889890, 0231 889891, 0231 889892, 0231 889893, 0231 889894, 0231 889895, 0231 889896, 0231 889897, 0231 889898, 0231 889899, 0231 889900, 0231 889901, 0231 889902, 0231 889903, 0231 889904, 0231 889905, 0231 889906, 0231 889907, 0231 889908, 0231 889909, 0231 889910, 0231 889911, 0231 889912, 0231 889913, 0231 889914, 0231 889915, 0231 889916, 0231 889917, 0231 889918, 0231 889919, 0231 889920, 0231 889921, 0231 889922, 0231 889923, 0231 889924, 0231 889925, 0231 889926, 0231 889927, 0231 889928, 0231 889929, 0231 889930, 0231 889931, 0231 889932, 0231 889933, 0231 889934, 0231 889935, 0231 889936, 0231 889937, 0231 889938, 0231 889939, 0231 889940, 0231 889941, 0231 889942, 0231 889943, 0231 889944, 0231 889945, 0231 889946, 0231 889947, 0231 889948, 0231 889949, 0231 889950, 0231 889951, 0231 889952, 0231 889953, 0231 889954, 0231 889955, 0231 889956, 0231 889957, 0231 889958, 0231 889959, 0231 889960, 0231 889961, 0231 889962, 0231 889963, 0231 889964, 0231 889965, 0231 889966, 0231 889967, 0231 889968, 0231 889969, 0231 889970, 0231 889971, 0231 889972, 0231 889973, 0231 889974, 0231 889975, 0231 889976, 0231 889977, 0231 889978, 0231 889979, 0231 889980, 0231 889981, 0231 889982, 0231 889983, 0231 889984, 0231 889985, 0231 889986, 0231 889987, 0231 889988, 0231 889989, 0231 889990, 0231 889991, 0231 889992, 0231 889993, 0231 889994, 0231 889995, 0231 889996, 0231 889997, 0231 889998, 0231 889999, 0231 890000	
E-mail: <a href="mailto:breeda@allaspectsdesign.com">breeda@allaspectsdesign.com</a>	
Job: Existing Single Storey Rear Extension To dwelling	
CLIENT: Alan Carey	DATE: 18-07-19
No. 12 The Heathers, Classis Lake, Ovens, Cork	
TITLE: SITE LAYOUT PLAN	DRG NO: 07.19
SCALE: 1:500	DATE: 07.19
DATE: 07.19	SCALE: 1:500

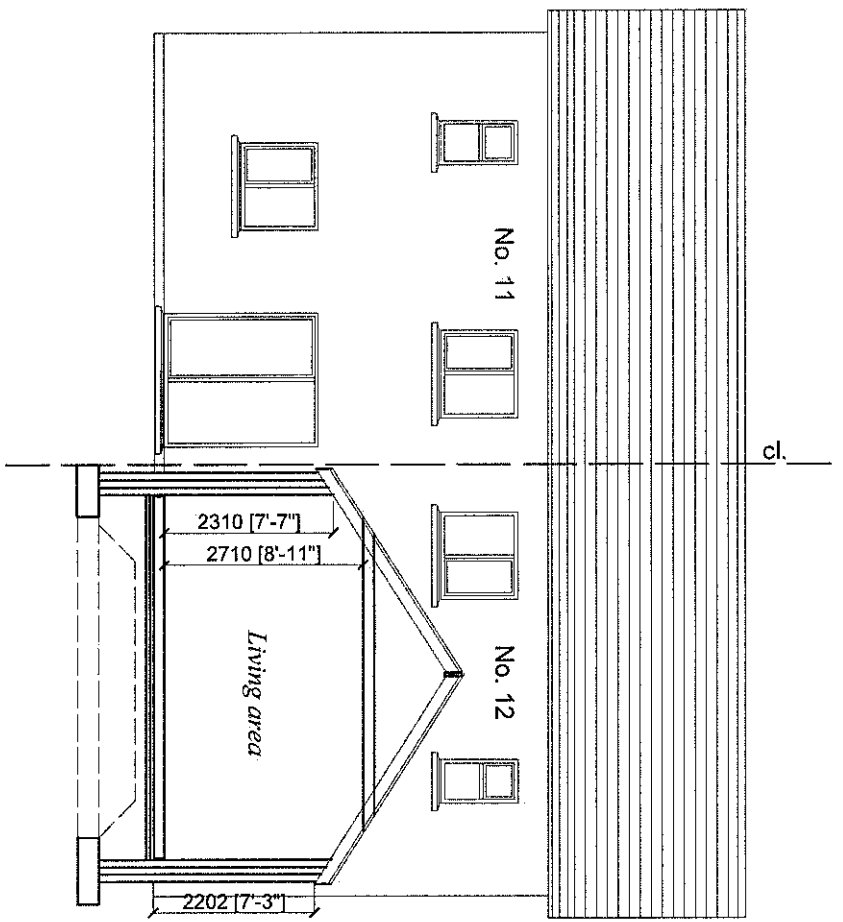


Rear Elevation - S. East

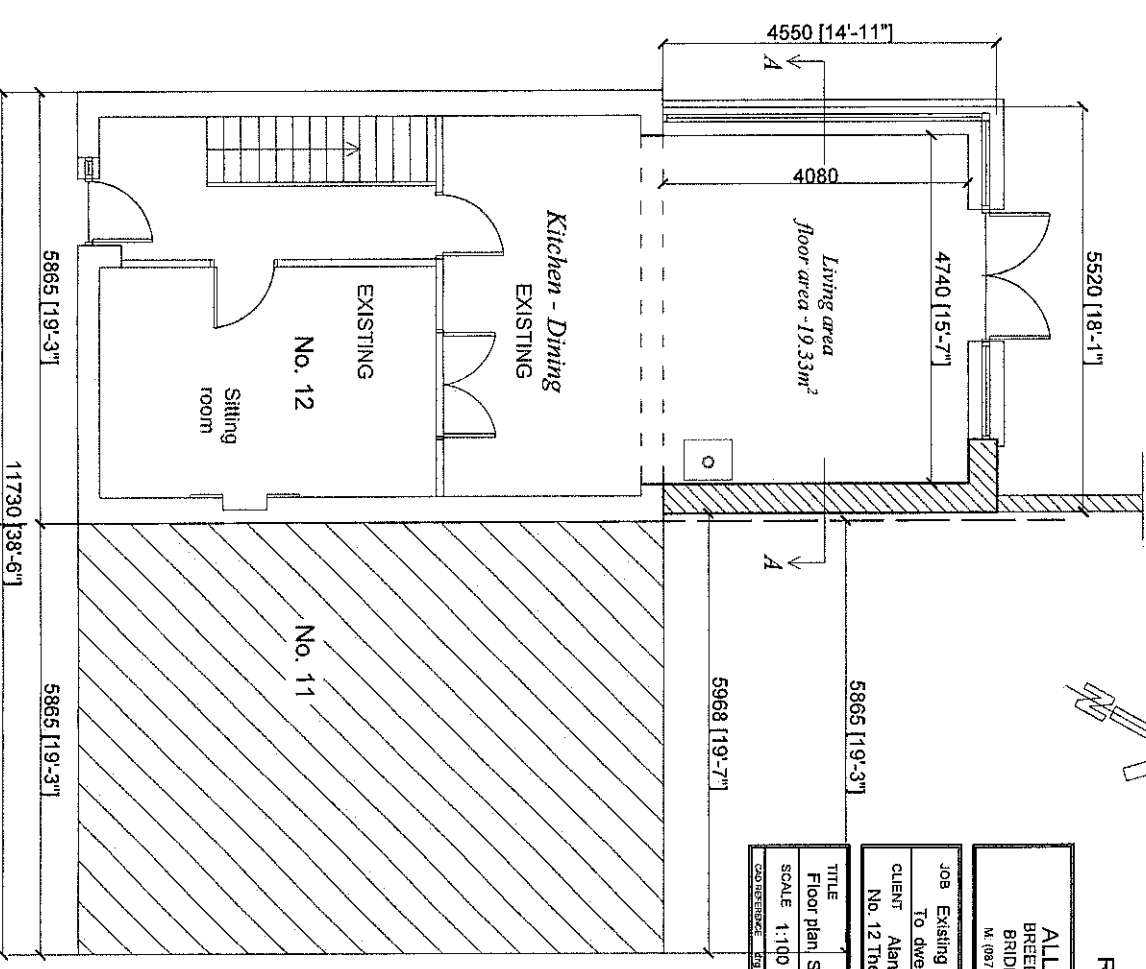
Brown tile finish to roof to match main dwelling  
 White pvc d/g windows & glazed door  
 Pebble dash finish to external walls to match main dwelling



Side Elevation - N. East



Section A-A

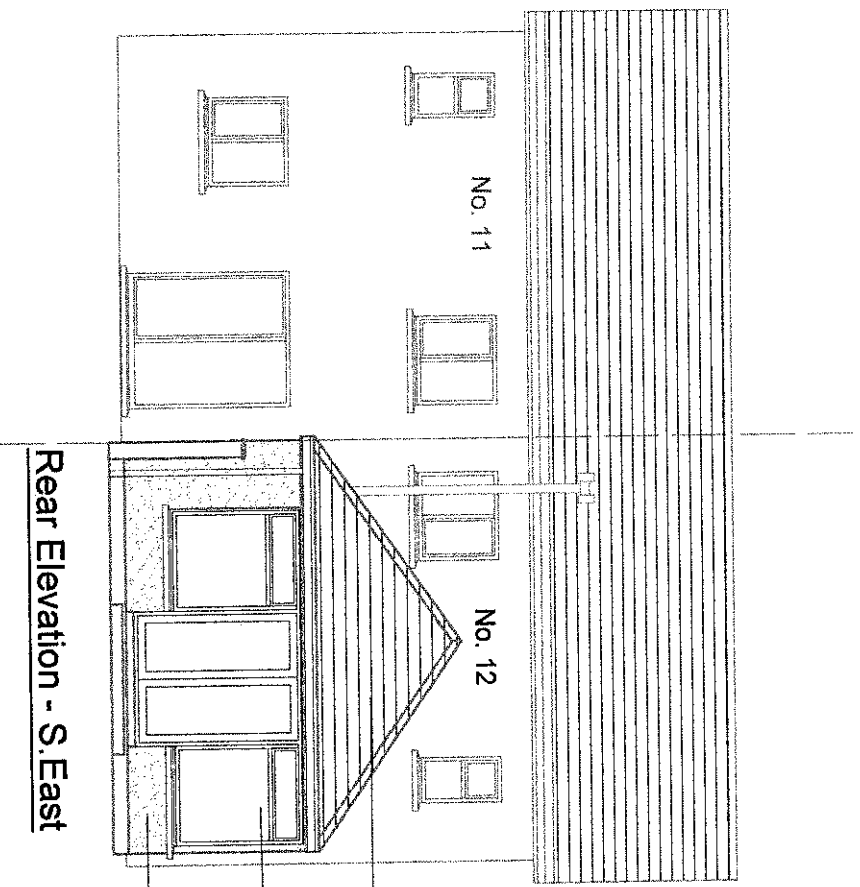


Floor Plan

Ref : R528/19

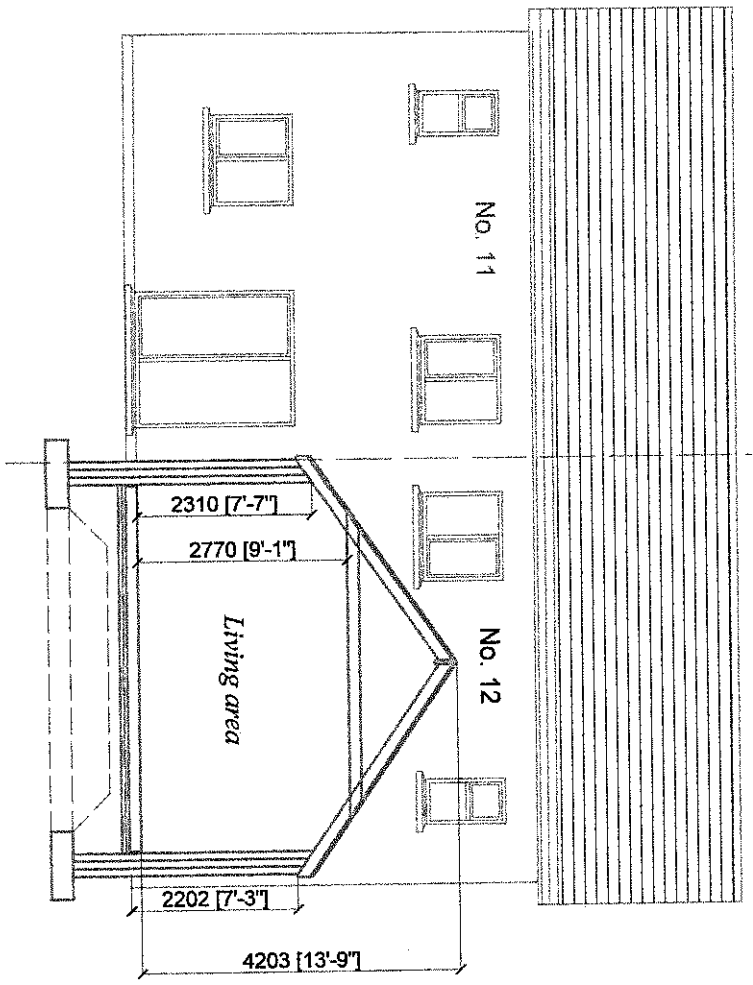
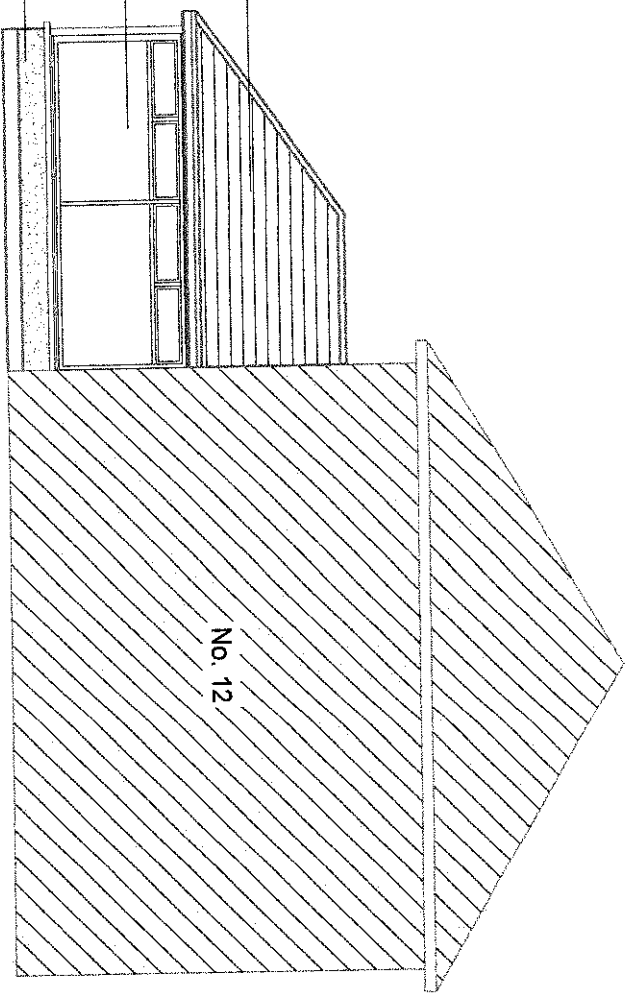
<b>ALL ASPECTS OF DESIGN</b> BREEDA O'LEARY DIP. ARCH. TECH. BRIDESTOWN, KILDINIAN, CO. CORK. M. (087) 2908338 E. borieary@allaspects.com	
<b>JOB</b> Existing Single Storey Rear Extension To dwelling <b>CLIENT</b> Alan Carey <b>NO.</b> No. 12 The Heathers Classis Lake, Ovens, Cork	<b>DATE</b> 18-07-19 <b>DRG NO.</b> 07.10
<b>TITLE</b> Floor plan Section & Elevations <b>SCALE</b> 1:100 <small>CON. REFERENCE: 07/19</small>	



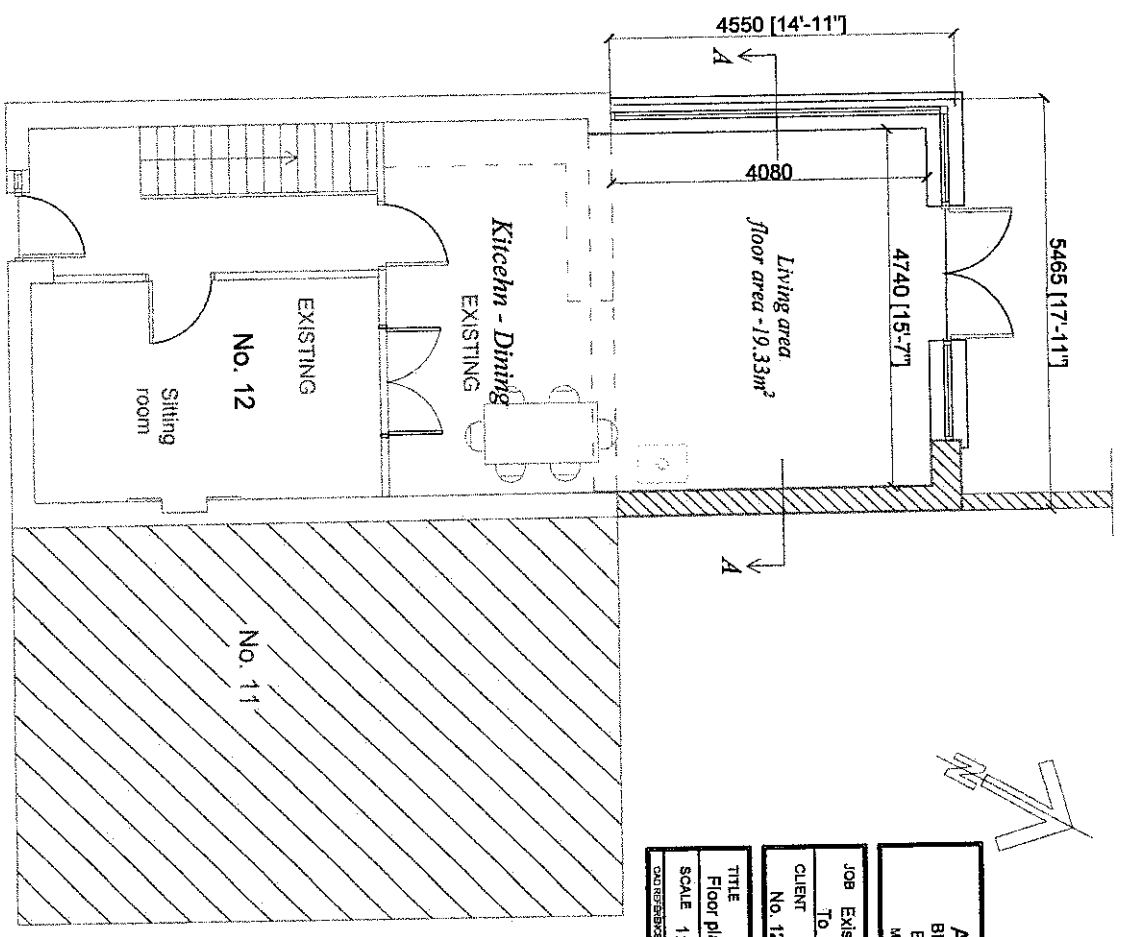


Brown tile finish to roof to match main dwelling  
 White pvc d/g windows & glazed door  
 Pebble dash finish to external walls to match main dwelling

Side Elevation - N. East



Section A-A



Floor Plan

<b>ALL ASPECTS of DESIGN</b>	
BREEDA O'LEARY DIP. ARCH. TECH. BRIDGESTOWN, KILDINIAN, CO. CORK. M. (087) 2583338 E. bobby@allaspects@gmail.com	
Job	Existing Single Storey Rear Extension To dwelling.
Client	Alan Carey No. 12 The Heathers Classic Lake Ovens, Cork
Title	Floor plan, Section & Elevations
Scale	1:100
Date	18-07-19
DRG NO	07/10
CONTRIBUTOR	07/18