

Comhairle Cathrach Chorcaí Cork City Council

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

Pat Lehane, Gerald McCarthy, 72 Main Street, Macroom, Co Cork.

07/05/2024

RE: Section 5 Declaration R845/24 4 Emerald View, Mallow Road, Cork, T23 CY9X.

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, in review of the above and having regard to -

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed construction of a single storey rear extension at 4 Emerald View, Mallow Road, Cork Is Development and is Not Exempted Development.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued.



Is mise le meas,

David o Regan

Assistant Staff Officer, Community, Culture & Placemaking Directorate

PLANNER'S REPORT Ref. R845 /24		Cork City Council Culture, Community and Placemaking
Application type Section 5 Declaration		
Description	Is the construction of a single storey rear extension at 4 Emerald View, Mallow Road, Cork, considered exempted development?	
Location	4 Emerald View, Mallow Road, Cork, T23 CY9X	
Applicant	Pat Lehane	
Date	02/05/2024	
Recommendation	mendation Is Development and Is Not Exempted Development	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. Requirements for a Section 5 Declaration

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

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

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

2. The Question before the Planning Authority

In framing the question to the planning authority, the applicant states in Q3 of the application form:

Is the construction of a single storey rear extension at 4 Emerald View, Mallow Road, Cork, considered exempted development?

3. Site Description

The property in question is a recently constructed two storey semi-detached dwelling a recently constructed small residential estate on the Old Mallow Road. There are a total of 6 no. residences, in the estate.

I note that 4 no. additional Section 5 applications have been received posing a similar question regarding no.s 1, 3, 5 & 6 Emerald View. These are Section 5 ref. no.s R843/24, R844/24, R846/24 and R847/24.

4. Relevant Planning History

On site

14/36179

The development of 6 semi-detached dwellings and all ancillary car parking, landscaping and site development works at the former Garda Station, Old Mallow Road, Blackpool, Cork. The proposed development includes the demolition of a shed; the change of use and conversion of the former Garda Station to 2 semi-detached dwellings; minor modifications to the facade of the former Garda Station, alterations to the front boundary and the construction of 4 two-storey, semi-detached dwellings.

Granted 10/04/2015

Outcome

Note - Condition No. 2

Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001 (as amended), and any statutory provision replacing or amending them, no development falling within Class 1 of Class 2 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without the prior grant of planning permission.

Reason In order to ensure that a reasonable amount of usable private open space is retained for the benefit of occupants of the extended dwelling

On same property

22/41260 Permission to construct a two-storey dwelling house and for all associated works.

Outcome Refused 05/09/2022

Reason

The proposed development would materially contravene the provisions of the Cork City Development Plan 2022-2028, specifically Objective 6.18 (b) with regard to development on an open space which forms part of an executed planning permission. This site has been formally laid out as public open space and, if removed, the development would seriously injure the

residential amenities of the area and be contrary to the proper planning and sustainable

development of the area.

5. Legislative Provisions

5.1 The Act

Section 2(1),

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

Section 3(1),

In this Act, "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),

The following shall be exempted developments for the purposes of this Act-development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2),

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 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

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

5.2 The Regulations

Article 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.

SCHEDULE 2, ARTICLE 6, PART 1, Exempted Development — General

SCHEDULE 2, ARTICLE 6, PART 1, Exempted Development — General				
Column 1	Column 2			
Description of Development	Conditions and Limitations			
Development within the curtilage of a house	1. (a) Where the house has not been extended previously, the floor area of any			
CLASS 1	such extension shall not exceed 40 square metres.			
The extension of a house, by the	(b) Subject to paragraph (a), where the house is terraced or semi-detached, the			
construction or erection of an extension	floor area of any extension above ground level shall not exceed 12 square			
(including a conservatory) to the rear of the	metres.			
house or by the conversion for use as part of	(c) Subject to paragraph (a), where the house is detached, the floor area of any			
the house of any garage, store, shed or other	extension above ground level shall not exceed 20 square metres.			
similar structure attached to the rear or to	2. (a) Where the house has been extended previously, the floor area of any such			
the side of the house.	extension, taken together with the floor area of any previous extension or			
	extensions constructed or erected after 1 October 1964, including those for			
	which planning permission has been obtained, shall not exceed 40 square metres.			
	(b) Subject to paragraph (a), where the house is terraced or semi-detached and			
	has been extended previously, the floor area of any extension above			
	ground level taken together with the floor area of any previous extension			
	or extensions above ground level constructed or erected after 1 October			
	1964, including those for which planning permission has been obtained,			
	shall not exceed 12 square metres.			
	(c) Subject to paragraph (a), where the house is detached and has been extended			
	previously, the floor area of any extension above ground level, taken			
	together with the floor area of any previous extension or extensions above			
	ground level constructed or erected after 1 October 1964, including those			
	for which planning permission has been obtained, shall not exceed 20 square metres.			
	Any above ground floor extension shall be a distance of not less than 2 metres			
	from any party boundary.			
	4. (a) Where the rear wall of the house does not include a gable, the height of the			
	walls of any such extension shall not exceed the height of the rear wall of			
	the house.			
	(b) Where the rear wall of the house includes a gable, the height of the walls of			
	any such extension shall not exceed the height of the side walls of the house.			
	(c) The height of the highest part of the roof of any such extension shall not			
	exceed, in the case of a flat roofed extension, the height of the eaves or			
	parapet, as may be appropriate, or, in any other case, shall not exceed the			
	height of the highest part of the roof of the dwelling.			
	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.			
	(a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.			
	(b) Any window proposed above ground level in any such extension shall not be			
	less than 11 metres from the boundary it faces.			
	(c) Where the house is detached and the floor area of the extension above ground			
	level exceeds 12 square metres, any window proposed at above ground			
	level shall not be less than 11 metres from the boundary it faces.			
	7. The roof of any extension shall not be used as a balcony or roof garden.			
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Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act

(a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

6.1 Development

The first issue for consideration is whether or not the matter at hand is 'development'.

'Development' as defined in the Act (3)(1) comprises two possible chief components: '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'. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

'Works' is defined in section 2(1) of the Act as 'the carrying out of any works on, in, over, or under land' including '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.'.

I consider that the proposed rear extension constitutes development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Rear extensions are often categorised as exempted development in accordance with Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), if they meet with the conditions and limitations set out in Colum 2 and the provisions if Article 9.

I note however that Article 9(1)(a)(i) states that all classes of exempted development to which Article 6 relates shall not be exempted development if the development would contravene a condition attached to a permission. Condition no. 2 on grant of permission ref. no. 14/36179, under which the subject property at no. 4 Emerald View was permitted specifically states that Class 1 type exemptions shall not apply.

Accordingly, the proposed development cannot rely upon this exemption. No other exempted development provision exists that would exempt the proposed rear extension from the requirement for planning permission.

I recommend that a declaration be issued to stated that the proposed development is development and is not exempted development.

In making this recommendation I note that there are some aspects of the subject estate that may not accord with the permission granted under permission ref. no. 14/36179. This could de-exempt the development as per Article 9(1)(a)(viii) – that exempted development to which Article 6 relates shall not be exempted

development if it would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. Further information would be required to clarify this matter. Given the substantive restriction set out in Article 9(1)(a)(i) however I do not recommend that further information is sought.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. Conclusion

The question has been asked -

Is the construction of a single storey rear extension at 4 Emerald View, Mallow Road, Cork, considered exempted development?

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is development and is not exempted development

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, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed *construction of a single storey rear extension at 4 Emerald View, Mallow Road, Cork* **Is Development** and is **Not Exempted Development**.

Martina Foley

A/ Senior Executive Planner



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

2 9 APR 2024

GORK OTTY COUNCIL

26/04/2024

Re: Single Storey Rear Extensions – Declaration of Exemption

At: 1,3,4,5,6 Emerald View, Mallow Road, Cork.

A Chara,

In respect of the proposed developments outlined above we write to request a declaration of exemption from the obligation to apply for planning permission in accordance with the Planning and Development Regulations Schedule 2 Part 1 Exempted Development (Class 1) on behalf of our client, Pat Lehane for five separate dwellings at Emerald View.

Development within the curtilage of a house Class 1:

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 side of the house.

In respect of the above we note that the properties have not been extended previously, the floor area for the proposed extension for house no. 1 is approximately $27m^2$ (internal), and house no. 3-6 is approximately $22m^2$ each (internal) and as such does not exceed $40m^2$. The highest part of the roof of the extension does not exceed the eaves, or the highest part of the existing dwelling. The roof of the extension will not be used as a balcony or a garden.

In support of this application, please find enclosed the following documents:

- 5no. Section 5 Declaration Application Forms (1no. per dwelling)
- 10 no. copies 6" record place map (2no. pre dwelling)

registered architects & assigned certifiers www.gmcarchitects.ie



- 10 no. copies 1:1000 / 1:2500 rural place map (2no. per dwelling)
- 10 no. copies site layout @ scale 1:250 (2no. per dwelling)
- 10 no. copies of proposed floor plans, section, elevations @ scale 1:100 (2no. per dwelling)
- Application fee of €80.00 per dwelling amounting to €400.00 total.

We trust you will find the enclosed documents in order, and we await your response.

Yours Sincerely,

Eoghan McKivergan BSc. Arch Tech.

COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork. R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924029

Lionra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM

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

1.	NAME	OF	PERSON	MAKING	THE	REQUEST
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Par LEHRNE

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

4 EMERALD VIEW, MALLOW ROAD, CORK T23 CY9X

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question:

Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

IS THE CONSTRUCTION OF A SINGLE STOREY
REAR EXTENSION AT 4 EMERALD VIEW, MALLOW
ROAD, CORK, CONSIDERED EXEMPTED DEVELOPMENT?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

DEVELOPMENT MANAGEMENT CCP

2 9 APR 2024

CORK CITY COUNCIL

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ADVISORY NOTES:

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

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

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

The application should be sent to the following address:

The Development Management Section, Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

Please email planning@corkcity.ie with any queries.

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

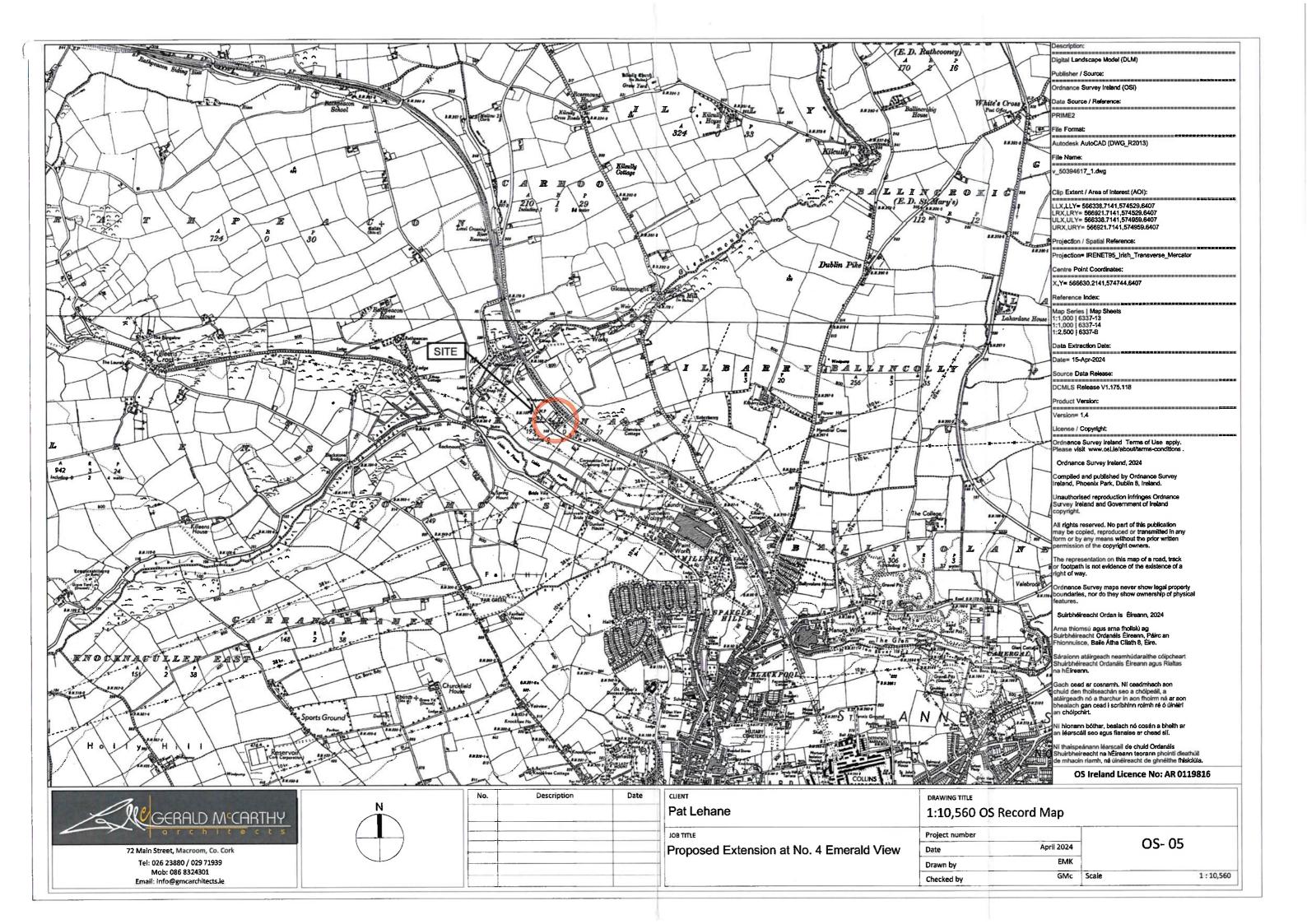
The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation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

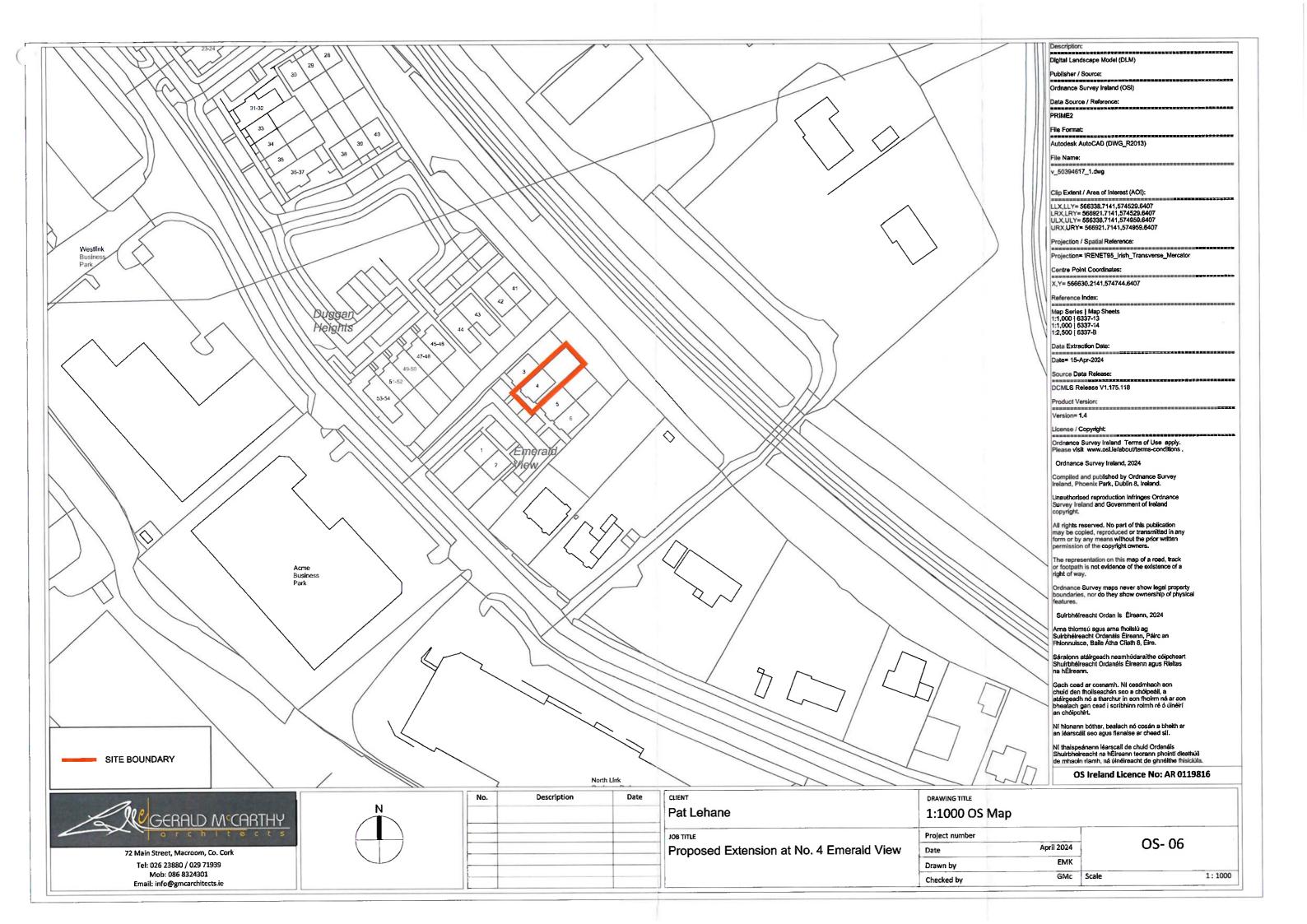
DATA PROTECTION

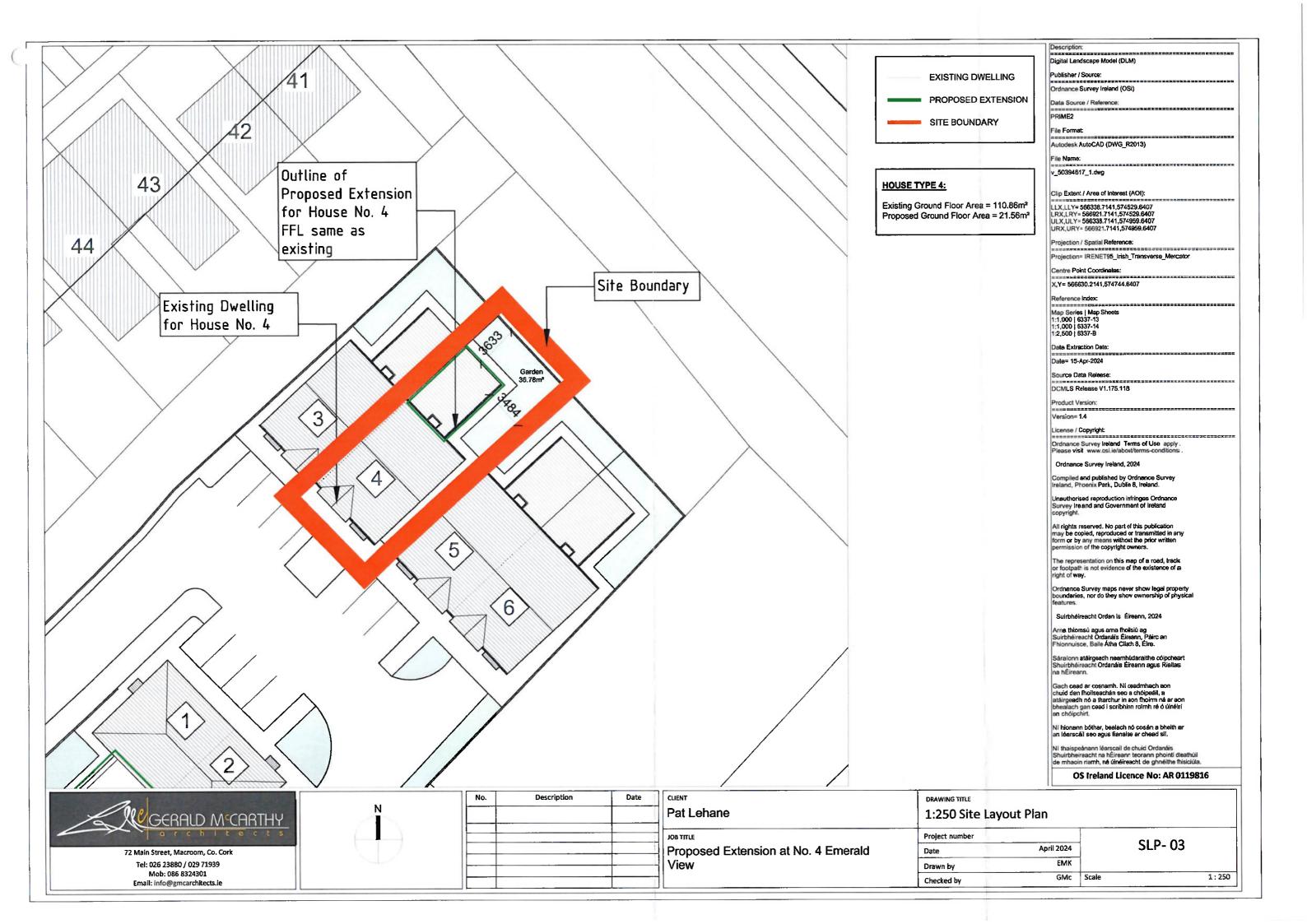
"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at https://www.corkcity.ie/en/council-services/public-info/gdpr/

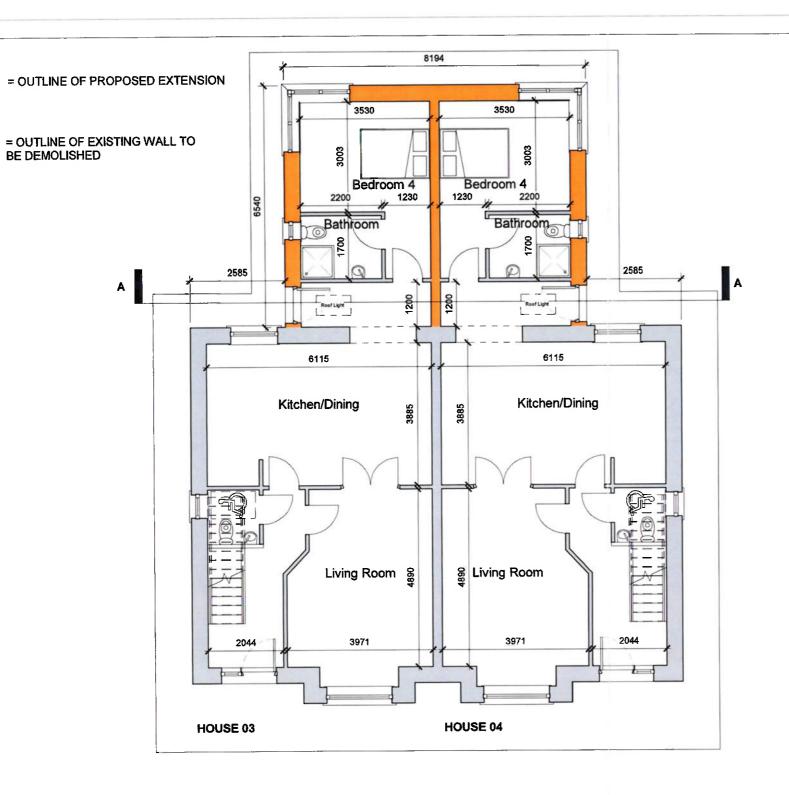
We request that you read these as they contain important information about how we process personal data.

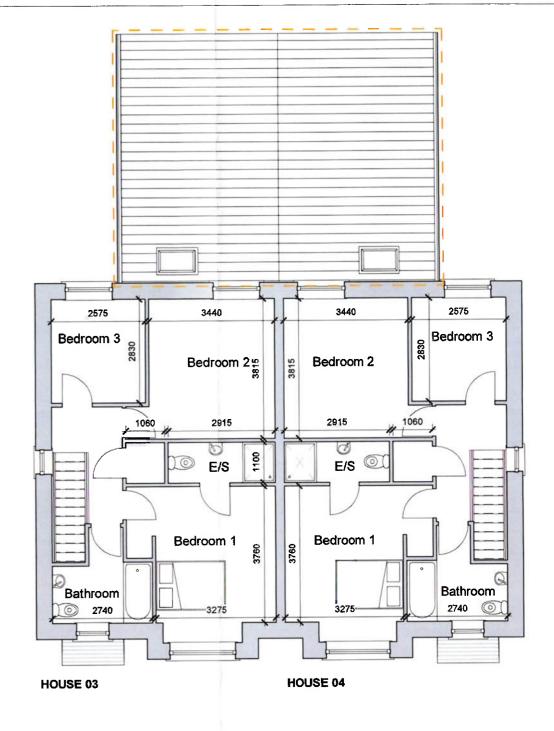
- 1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-
- * NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED
- (a) site or layout plans shall be drawn to a scale of not less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











Ground Floor Plan

1:100

House 03

Proposed extension floor area = 21.560 sq.m

Proposed extension floor area = 21.560 sq.m

Architect to be informed of any descrepancies before work proceeds. Contractor to check all dimensions on site before commencement of work. Large scale drawings take preference over

Figured dimensions to be taken in preference

smaller drawings.
This drawing is copyright. IF IN DOUBT, ASK!

No.	Description	Date
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		_

CLIENT Pat Lehane	Floor
JOB TITLE	Project n
HOUSE TYPE 03-04 - Proposed Extension	Date
11000E 111 E 00-04 - 1 Toposed Extension	

IG TITLE Plans N/A number A101 Apr. 2024 **EMK** Drawn by Checked by GMC Scale

First Floor Plan

1:100

As indicated

72 Main Street, Macroom, Co. Cork

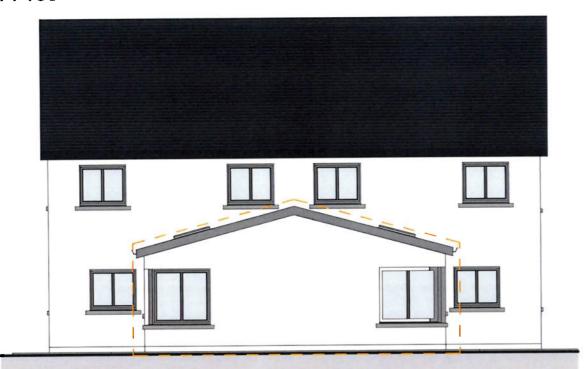
GERALD MCARTHY

Tel: 026 23880/029 71939 Mob: 086 8324301 Email: info@gmcarchitects.ie



Front Elevation

1:100



Rear Elevation

1:100



Side Elevation

1:100



Side Elevation

1:100



72 Main Street, Macroom, Co. Cork

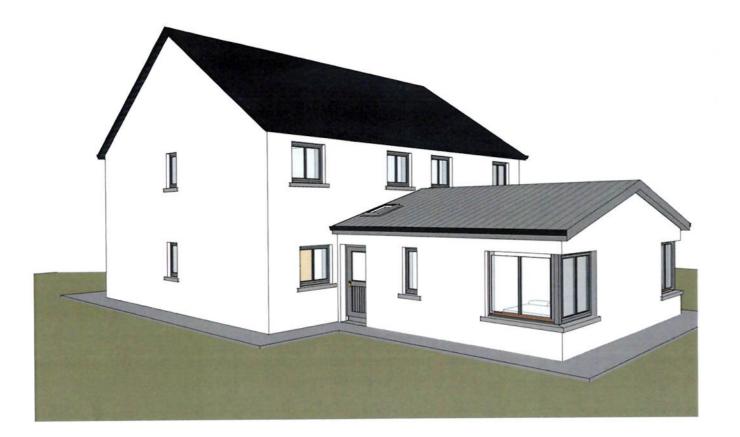
Tel: 026 23880/029 71939 Mob: 086 8324301 Email: info@gmcarchitects.ie

Figured dimensions to be taken in preference Architect to be informed of any descrepancies before work proceeds. Contractor to check all dimensions on site before commencement of work. Large scale drawings take preference over smaller drawings. This drawing is copyright.

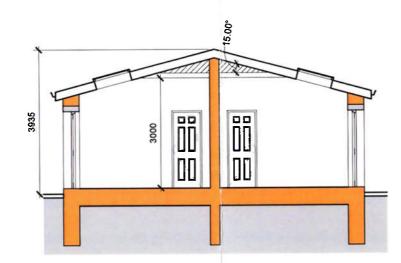
IF IN DOUBT, ASK!

No.	Description	Date
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		-
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		1

CLIENT Pat Lehane	DRAWING TITLE Elevations				:20:21
JOB TITLE	Project number N/A			11 55	
HOUSE TYPE 03-04 - Proposed Extension	Date	Apr. 2024		A102	2024
HOUSE I THE US-04 - Proposed Extension	Drawn by	EMK] §
	Checked by	GMC	Scale	1:100] 797







CLIENT

Pat Lehane

巴拉斯(有數數

= OUTLINE OF PROPOSED EXTENSION

= OUTLINE OF EXISTING WALL TO BE DEMOLISHED

Section A-A

1:100



72 Main Street, Macroom, Co. Cork
Tel: 026 23880/029 71939
Mob: 086 8324301
Email: info@gmcarchitects.ie

Figured dimensions to be taken in preference
Architect to be informed of any descrepancies
before work proceeds.
Contractor to check all dimensions on site
before commencement of work.
Large scale drawings take preference over
smaller drawings.
This drawing is copyright.

IF IN DOUBT, ASK!

e	No.	Description	Date
es			

JOB TITLE
HOUSE TYPE 03-04 - Proposed Extension

	ection A-A	
Project number	N/A	
Date	Apr. 2024	A103
Drawn by	КОВ	
	Project number Date	3D Views & Section A-A Project number N/A Date Apr. 2024

GMC Scale

Checked by

26/04/2024 15:20:25

As indicated