



Comhairle Cathrach Chorcaí Cork City Council

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

Mary O'Sullivan,
6 Lachteen Place,
Grenagh,
Co. Cork T23 FK03

14/09/2022

**RE: Section 5 Declaration R734/22 Morning Star National School,
Connolly Road, Ballyphehane, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 25th August 2022, I wish to advise as follows:

It is considered that the operation of a preschool use comes under the definition of a school in that a preschool provides "early childhood education". Having regard to the established and existing use of this building as a school, the preschool use would not constitute a material change of use and would therefore be **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, 14th September 2022.

Is mise le meas,

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



We are Cork.

PLANNER'S REPORT Ref. R734/22		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>The question has been asked: "The room in question is within the Morning Start Primary School. There has been a pre-school here for many years. I'm intending to run a preschool here. Its for 3 hours a day, 5 days a week. It is for 3-6year olds. Capacity for 22 children. Will operate from 9 am to 12pm"</i>	
Location	Morning Star NS Connolly Road.	
Applicant	Mary O'Sullivan	
Date	14/09/2022	
Recommendation	<i>Id development, is exempted development</i>	

This report should be read in conjunction with the previous planner's report dated 01/09/2022. The applicant was requested further information in respect of this further information request for the following:

- 1) *Based on the planning history search, it currently appears that a change of use from a school to a pre-school (and indeed the renewal or continued operation of a pre-school) within Morning Star NS does not have the benefit of planning permission. Plans submitted under the most recent planning application for an extension for new ASD rooms etc. designates the room in question as an "Existing Classroom". Notwithstanding this, should this not be the case, you are requested to submit further information demonstrating that planning permission exists for the existing, or the previously, operational pre-school. Please submit confirmation to permit the Planning Authority to issue a decision on the Section 5 declaration sought.*

The Planning Authority received a response to this further information request on 13/09/2022. In the letter from the applicant, it is confirmed that it is intended to operate a preschool under the existing education regulations and it will operate as a sessional preschool running for 3 hours a day, 5 days a week.

I note that the definition of a school is as follows:

"school" has the meaning assigned to it by the Education Act 1998.

<p>The Education Act 1998</p> <p>"school" means an establishment which-</p> <p>(a) provides primary education to its students and which may also provide early childhood education, or</p> <p>(b) provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training,</p> <p>but does not include a school or institution established in accordance with the Children Acts, 1908 to 1989, or a school or institution established or maintained by a health board in accordance with the Health Acts, 1947 to 1996, or the <u>Child Care Act, 1991</u> ;</p>
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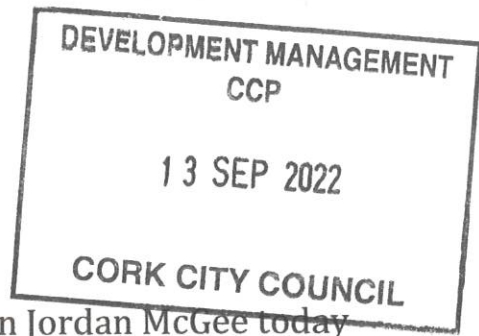
Assessment and Conclusion

It is considered that the operation of a preschool use comes under the definition of a school in that a preschool provides "early childhood education". Having regard to the established and existing use of this building as a school, the preschool use would not constitute a material change of use and would therefore be exempted development.

Gwen Jordan McGee

Gwen Jordan McGee
Acting Senior Planner

Allstars Preschool
Ballyphehane,
Cork T12R657



To whom it concerns,

Re : Section 5 Declaration.

Following a conversation I had with Gwen Jordan McGee today
Monday 12th September I wish to confirm that I intend to operate a
preschool under the existing educational regulations.

It will be a sessional preschool running for just 3 hours a day five
days a week.

Hope this confirmation will help the Section 5 Declaration submitted.

Kind regards

Mary O'Sullivan.

12/09/2022



Comhairle Cathrach Chorcaí Cork City Council

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

Mary O'Sullivan,
6 Lachteen Place,
Grenagh,
Co.Cork,
T23 FK03

02/09/2022

**RE: Section 5 Declaration R734/22 Morning Star National School,
Connolly Road, Ballyphehane, Cork T12 R657**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, I wish to advise under the provisions of section 5(2)(b) of the Planning and Development Act 2000, as amended, that the following further information is required in order to properly assess this application:

1. Based on the planning history search, it currently appears that a change of use from a school to a pre-school (and indeed the renewal or continued operation of a pre-school) within Morning Star NS does not have the benefit of planning permission. Plans submitted under the most recent planning application for an extension for new ASD rooms etc. designates the room in question as an "Existing Classroom". Notwithstanding this, should this not be the case, you are requested to submit further information demonstrating that planning permission exists for the existing, or the previously, operational pre-school. Please submit confirmation to permit the Planning Authority to issue a decision on the Section 5 declaration sought.

Is mise le meas,

Áine O'Leary
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT**Ref. R734/22**Cork City Council
Development Management
Strategic Planning and Economic
Development

Application type	Section 5 Declaration
Description	<i>The question has been asked: "The room in question is within the Morning Start Primary School. There has been a pre-school here for many years. I'm intending to run a preschool here. Its for 3 hours a day, 5 days a week. It is for 3-6year olds. Capacity for 22 children. Will operate from 9 am to 12pm"</i>
Location	Morning Star NS Connolly Road.
Applicant	Mary O'Sullivan
Date	23/09/2022
Recommendation	<i>Request Further Information</i>

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 Q2 of the application form:

The question has been asked: "The room in question is within the Morning Start Primary School. There has been a pre-school here for many years. I'm intending to run a preschool here. Its for 3 hours a day, 5 days a week. It is for 3-6year olds. Capacity for 22 children. Will operate from 9 am to 12pm"

3. Site Description

The property in question is a single storey existing school which recently added a new extension to the side.

4. Planning History

Two planning applications are referred to which are both attached to this site:

This is summarised as follows:

CCC# Ref	CCC# Conditions
15/36523	Permission granted to construct a single storey 3 classroom ASD unit, new resource room, toilet facilities, new boiler room, to erect poles and ball stop net, to demolish existing water tower, rear toilet block and storage facilities and carryout alterations at entrances etc.
00/24117	Permission granted for extension to existing school comprising of 3 offices, staff room, library and associated works.

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 5(1)

"school" has the meaning assigned to it by the Education Act 1998.

The Education Act 1998

"school" means an establishment which-

(a) provides primary education to its students and which may also provide early childhood education, or

(b) provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training,

but does not include a school or institution established in accordance with the Children Acts, 1908 to 1989, or a school or institution established or maintained by a health board in accordance with the Health Acts, 1947 to 1996, or the Child Care Act, 1991 ;

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,
- (a) (viii) 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,

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned

Schedule 2, Part 1, Class 14 Change of Use

Lists development which can be considered exempt development. From use as a school to use as a pre-school is not listed herein.

6. ASSESSMENT

6.1 Development

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

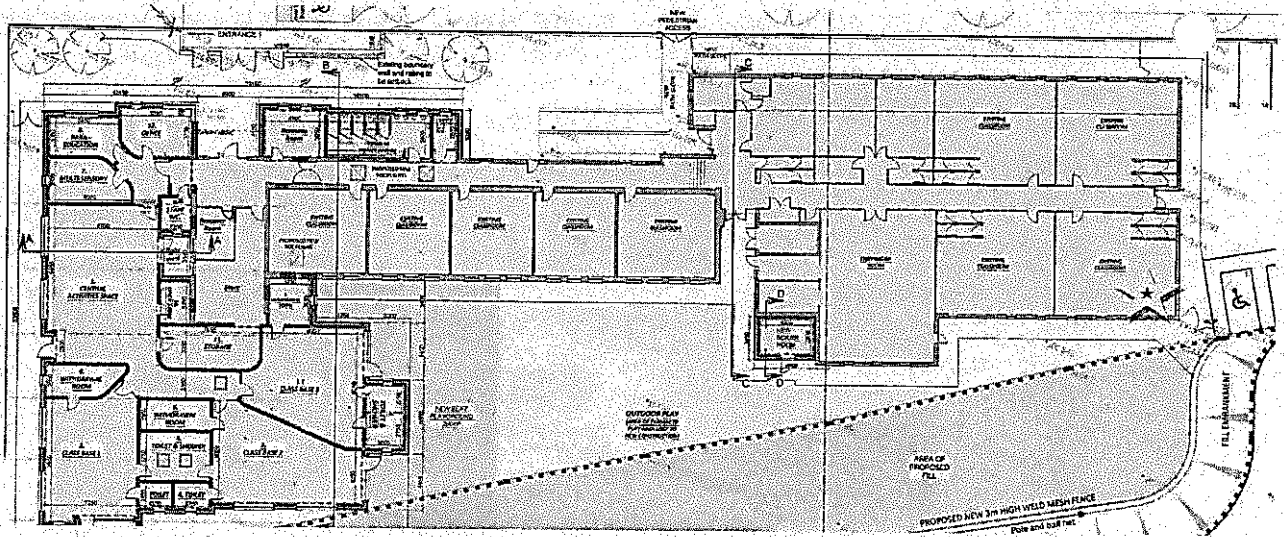
'Development' as defined in the Act (3)(1) comprises two possible chief components: 'the carrying out of any works on, in, over or under land', or 'the making of any material change in the use of any structures or other land'. In order to ascertain whether or not the subject use is considered to be development 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 change of use constitutes development as it comprises the material change of use of the existing structure namely from that as defined as a school (under the Education Act 1998), to that of a pre-school

5.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. There is no record of permission being sought for a pre-school at this premises. I note that applicant states that a pre-school has been operating here "for a number of years". Notwithstanding that, the Planning Authority has no record that permission was sought or granted for such a use. The most recent applicant under TP15/36523 shows the existing room wherein the new operator is proposing a pre-school is shown as "Existing Classroom"



As aforementioned, *Schedule 2, Part 1, Class 14 "Change of Use"* lists development which can be considered exempt development. From use as a school to use as a pre-school is not listed herein. The applicant states that there has been a pre-school operating here "for many years". As such, it is considered that the change of use is (as per *Article 10 (1)(c)*)

.. "development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned"

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 whether

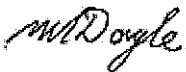
The question has been asked: "The room in question is within the Morning Start Primary School. There has been a pre-school here for many years. I'm intending to run a preschool here. Irt's for 3 hours a day, 5 days a week. It is for 3-6year olds. Capacity for 22 children. Will operate from 9 am to 12pm"

Having considered the particulars submitted with the application and the relevant legislation as set out above, it certainly appears that the change of use from a school to a pre-school and indeed the renewal or continued operation of a pre-school within Morning Star NS does not have the benefit of planning permission. Notwithstanding same, further information shall be issued to the applicant to submit evidence that such planning exists. In that case, it could be considered compliant with an existing planning permission and/or conditions of same.

9. RECOMMENDATION

It is recommended that the following further information be sought:

- 1) Based on the planning history search, it currently appears that a change of use from a school to a pre-school (and indeed the renewal or continued operation of a pre-school) within Morning Star NS does not have the benefit of planning permission. Plans submitted under the most recent planning application for an extension for new ASD rooms etc. designates the room in question as an “Existing Classroom”. Notwithstanding this, should this not be the case, you are requested to submit further information demonstrating that planning permission exists for the existing, or the previously, operational pre-school. Please submit confirmation to permit the Planning Authority to issue a decision on the Section 5 declaration sought.



Mary Doyle
Executive Planner

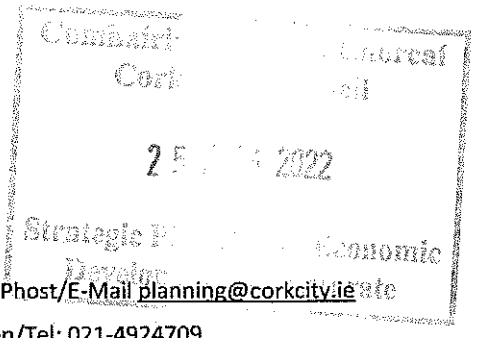
**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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

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

Fón/Tel: 021-4924709

Lionra/Web: www.corkcity.ie



SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

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

Connolly Rd, Ballyphehane, Cork T12 R657

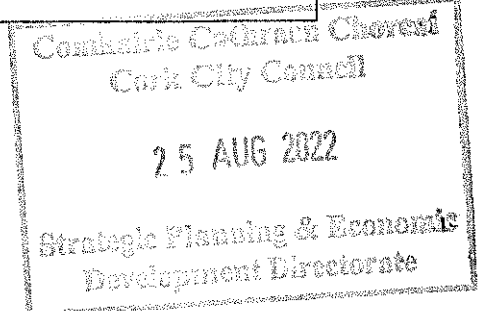
2. QUESTION/ DECLARATION DETAILS

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. My name is MARY O'Sullivan.
The room in question is within Morning Star primary school. There has been a preschool here for many years. I'm intending to run a preschool here. It's for 3 hours a day, 5 days a week. It is for 3-6 yr olds. Capacity for 22 children.
We will operate from 9am - 12pm

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

There has been no alterations made to this room. It is self contained
The room in question is last one in corridor marked with a green dot (on map) nearest to exit door. Sketch enclosed, also one of room in detail. The name of the preschool is Allstars Preschool Ltd



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

If so please supply details: No

4. Is this a Protected Structure or within the curtilage of a Protected Structure? No

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

5. Was there previous relevant planning application/s on this site? No

If so please supply details:

Tusk accepted a sworn Affidavit previously as that preschool was there for more than 5 years.

6. APPLICATION DETAILS

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

(a) Floor area of existing/proposed structure/s	<u>70.4 sq m</u>
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input 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>No change of use</u>	

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input type="checkbox"/>	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	<u>I have permission from the school to operate a preschool,</u>	
If you are not the legal owner, please state the name and address of the owner if available	<u>Diocese of Cork and Ross Redemption Rd, Cork</u>	

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

Signature: MOSCH

Date: 24/08/2022

CONTACT DETAILS

9. Applicant:

Name(s)	Mary O'Sullivan
Address	b. Lachteen Place Greagh Co Cork T23 FK03

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

Name(s):	
Address:	
Telephone:	
E-mail address:	
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

11. ADDITIONAL CONTACT DETAILS

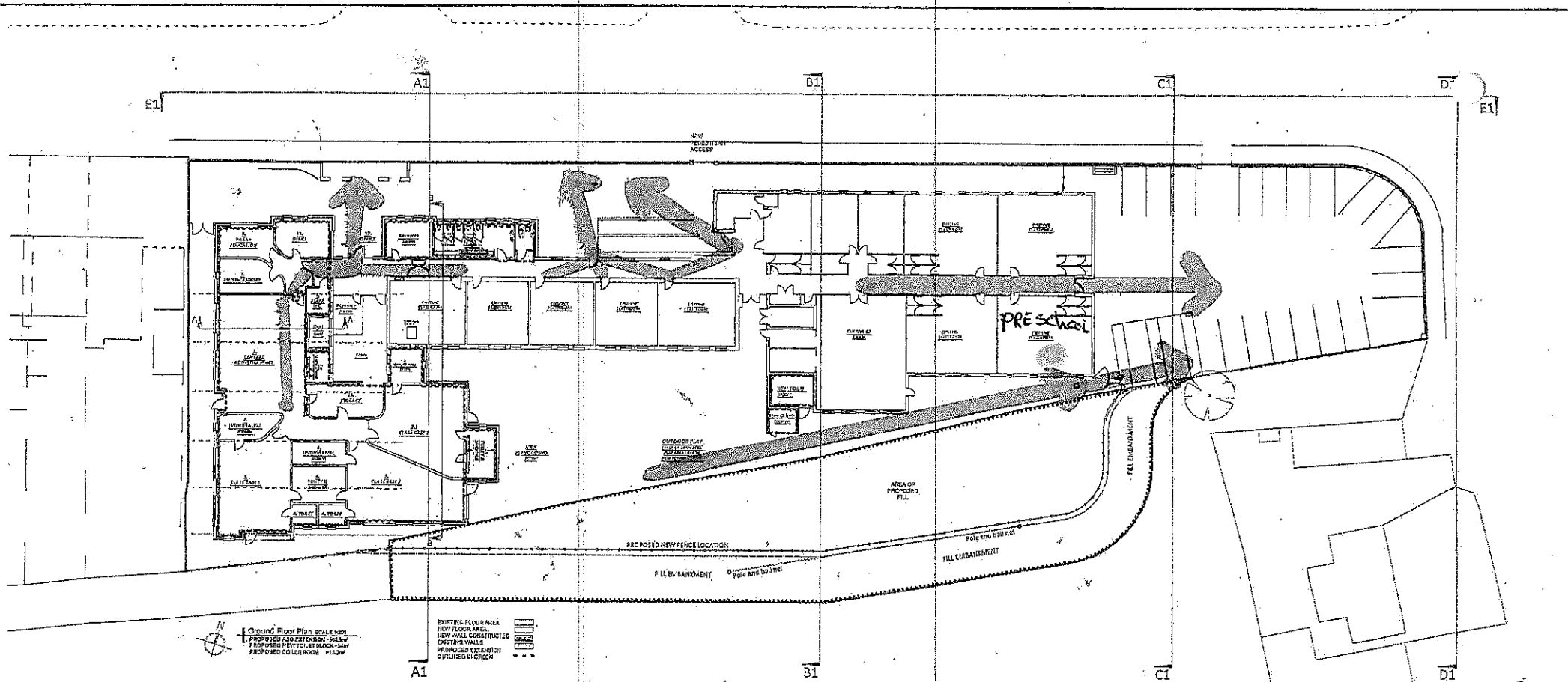
The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

Tel. No. 

Mobile No. 

Email Address: 

For Office Use Only: File Ref. No. _____



Ground Floor Plan SCALE 1:500
 PROPOSED AIR CONDITIONING
 PROPOSED REVISIONS BLACK
 PROPOSED DIMENSIONS

EXISTING FLOOR AREA
 NEW FLOOR AREA
 NEW WALL CONSTRUCTED
 EXISTING WALLS
 PROPOSED EXTENSION
 OUTLINED IN GREEN

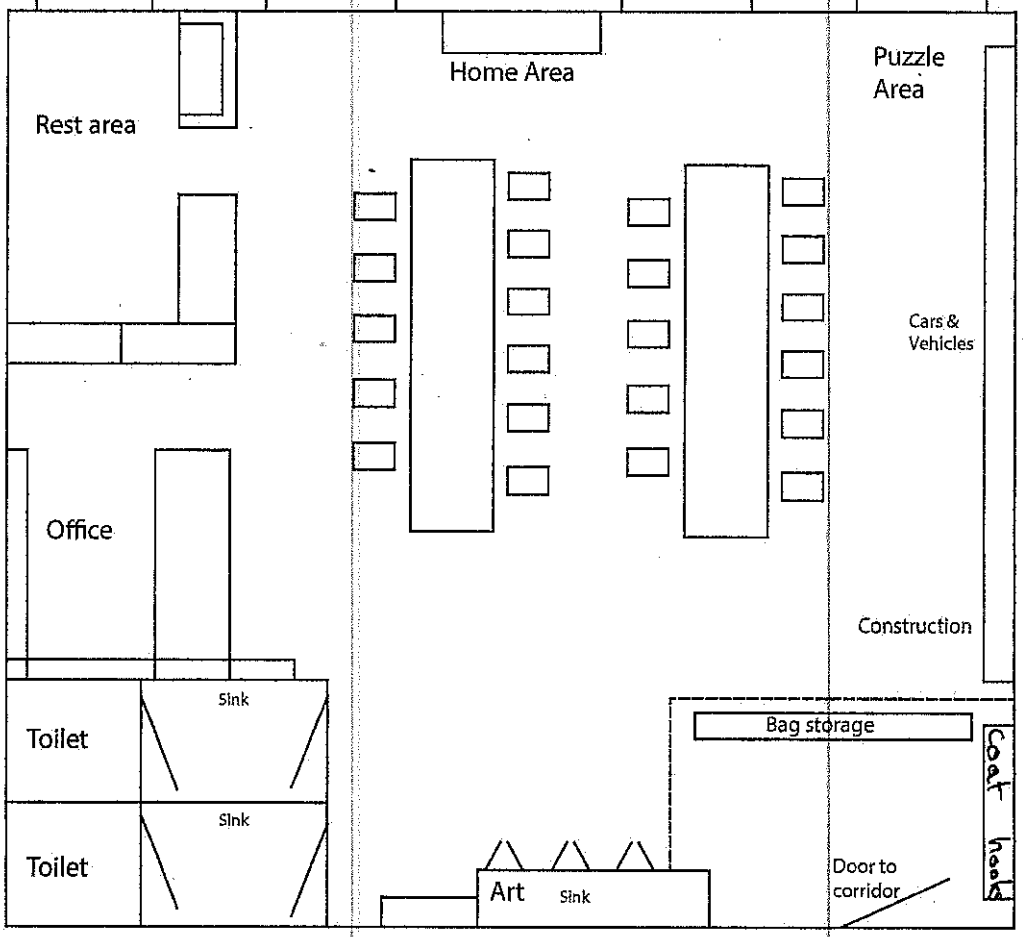


MORNING STAR NATIONAL SCHOOL
Scoil Réalt na Maidine
 BALLYPHEHANE - CORK



Evacuation Procedure

← OUTDOOR Area →



Classroom →

8.8 metres

8 metres