



Comhairle Cathrach Chorcaí Cork City Council

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

Edward Walsh,
Clonmoyle West,
Aghabullogue,
6 Joyce House,
Co. Cork,
P12 N562.

07/03/2023

RE: Section 5 Declaration R759/23 36 Deanwood Avenue, Togher,
Cork T12 TRK2

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 31st January 2023, I wish to advise as follows:

The Planning Authority, having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, 9, and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2022,

The Planning Authority considers that *the garage conversion to habitable room would have an approximate floor area of 27.5m² and an extension for ensuite and utility room with approximate floor area of 15m² (total area of 42.5m²)* to rear side of house at 38 Deanrock Avenue, Togher 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, 07th March 2023.

Is mise le meas,

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



We are Cork.

Planner's Report Ref. R759/23	Cork City Council, Culture, Community and Placemaking
Application type	Section 5 Declaration
Description	Is the conversion of the existing sloping corrugated roof to a pitched tiled roof and later extension of 15sqm to the rear of the garage, and change in purpose from a garage to a bedroom and ensuite plus utility room an exempted development?
Location	36 Deanwood Avenue, Togher, Cork, T12 TRK2
Applicant	Edward Walsh
Date	31 January 2023
Recommendation	Is Development and Is 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; '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:

'Is the conversion of the existing sloping corrugated roof to a pitched tiled roof and later extension of 15sqm to the rear of the garage and change in purpose from a garage to a bedroom and ensuite plus utility room an exempted development?'

Additional details regarding question/ works / development

The applicant states: 'The houses in Deanwood were built with outbuildings that were structurally semi-detached and had a sloping corrugated roof. In 1990, we replaced the corrugated roof with a tiled roof and bridged the gap between the out-building the main dwelling. The garage still functioned as a garage and the shed now served as a utility room and a toilet. The existing area of the garage/ shed was not changed/extended.

In 2009, my parents applied for a grant to convert the garage /shed into a bedroom, ensuite bathroom, and utility room. She was suffering from Parkinson's Disease. Following a submission of drawings and various tenders, they were awarded a grant from

the Cork City Council. The back of the shed was extended to facilitate the addition of the ensuite bathroom and utility room. The added area was no greater than 15 square metres.

We would like to apply for an exemption on the basis that the height of the pitched roof is under 4 metres and that the extension to the existing dwelling is no greater than 15 square metres.’

3. Site Description

The subject site is located on 36 Deanrock Avenue, Togher. The site comprises a two-storey semi-detached dwelling with rear single storey extension (converted garage). The adjoining neighbour has a similar pitched roof converted garage resulting in a valley gutter between no.36 and no. 38. Many of the dwellings on Deanrock Avenue include extensions and/or converted garages. The application form details no.6 indicates that the garage/shed is 27.5m² and the extension of bedroom ensuite and utility rooms is 15m². The side and rear elevation sketch drawings indicates height to ridge is 3.985m from finished floor levels. The images provided show a dry dash rendered extension and concrete tiled roof to match main house. There is an oil tank to side of house and rear garden shed.

4. Planning History

Subject Site: None

Applications in the vicinity:

03/26827 – Permission to construct 1 block of 2 semi-detached houses with attached garages at Deanwood Avenue, Togher, Cork. **Grant**

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, except where the context otherwise requires, "development" means —

- (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or
- (b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021)

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(1)(j)

The following shall be exempted developments for the purposes of this Act—development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.

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 above)

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.

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

(Article 6) Schedule 2, Part 1, Class 1

Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to: “The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.”

Schedule 2, Part 1, Class 1
Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>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 to the side of the house.</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres. (b) 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. (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</p> <p>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres. (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.</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>

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

6. Assessment

The purpose of this report is to assess whether or not the matter in question constitutes development and whether it falls within the scope of exempted development.

Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under Section 5.

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.’

The conversion of a former garage to a bedroom to rear of the house, and rear extension of former garage to accommodate bedroom ensuite and utility room falls within the definition of ‘works’. The garage conversion to a habitable room and re-roofing to tiles, and extension to the side and rear of the house is an act of alterations and construction and falls within the definition of ‘works’. Therefore, the proposal constitutes development within the meaning of the Act.

Conclusion: The works are considered 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).

I consider that the proposal comes within both subsections (1) and (2) of Section 4.

Section 4(1)

I am of the view that the development falls within the scope of section 4(1), being the works to convert a former garage to habitable room (bedroom) of approximately 27.5m². The development has been constructed with solid walls finished in dry dash render and concrete roof tiles to match main house. It is noted that other garages in the estate have been converted into residential use with garages/ sheds constructed to the rear/side. I consider these elements come within the scope of section 4(1)(h) where the alterations 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.

In terms of the approximate 15m² extension to rear of former garage, I consider this element to also come within the scope of section 4(1)(h).

Section 4(2)

It is therefore necessary to consider whether the converted garage of approximately 27.5m² and extension of bedroom ensuite and utility room of approximately 15m² comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word ‘or’ in section 4(3).

I consider that **Article 6 and Class 1** applies, as the proposal relates to the converted garage to bedroom of approximately 27.5m² and construction of extension to an ensuite and utility room of approximately 15m². I am satisfied that the extension can therefore be assessed against the exemption criteria of Article 6 of Schedule 2, Part 1, Class 1.

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

Condition / Limitation 1

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.
- (b) 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.
- (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

Assessment

The house has been extended previously and so; this limitation doesn’t apply.

Condition / Limitation 2

- (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.
- (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.

Assessment

Schedule 2, Part 1, Class 1 'Development within the curtilage of a house' of the Regulations considers an extension to include the conversion for use as part of the house of any garage. The garage conversion to habitable bedroom, and extension (for ensuite and utility room) combined would have an approximate floor area of 27.5m² and 15m², giving a total area of 42.5m², and so, this proposal does conflict with this limitation, albeit for an excess of solely 2.5m².

Condition / Limitation 3

Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

Assessment

The converted garage and extension are at single storey level only. This proposal does not conflict with this limitation.

Condition / Limitation 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.

Assessment

The converted garage and extension are of single storey only and the main house is two storeys. This proposal does not conflict with this limitation.

Condition / Limitation 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.

Assessment

This proposal does not conflict with this limitation.

Condition / Limitation 6

(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.

Assessment

This proposal does not conflict with this limitation.

Condition / Limitation 7

The roof of any extension shall not be used as a balcony or roof garden.

Assessment

This proposal does not conflict with this limitation as the roof is pitched.

Conclusion: The works are **not** exempted development.

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. Recommendation

In view of the above and having regard to –

- Section 2, 3 and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9, and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2022.

The Planning Authority considers that the garage conversion to habitable room would have an approximate floor area of 27.5m² and an extension for ensuite and utility room with approximate floor area of 15m² (total area of 42.5m²) to rear side of house at 38 Deanrock Avenue, Togher, Cork is **Development** and is **Not Exempted Development**.

Hugh Killen
Planner

7 March 2023

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: 021-4924762
Líonra/Web: www.corkcity.ie

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

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

36, Deanwood Avenue, Togher, Cork T12 TRK2

2. QUESTION/ DECLARATION DETAILS

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

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

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

Is the conversion of the existing sloping corrugated roof to a pitched tiled roof and later extension of 15 sqm to the rear of the garage and change in purpose from a garage to a bedroom and ensuite plus utility room an exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Please see the attached sheet

DEVELOPMENT MANAGEMENT
CCP

3 1 JAN 2023

CORK CITY COUNCIL

The houses in Deanwood were built with outbuildings that were structurally semi-detached and had a sloping corrugated roof. In 1990, we replaced the corrugated roof with a tiled roof and bridged the gap between the out-building the main dwelling. The garage still functioned as a garage and the shed now served as a utility room and a toilet. The existing area of the garage/shed was not changed/extended.

In 2009, my parents applied for a grant to convert the garage/shed into a bedroom, ensuite bathroom, and utility room. She was suffering from Parkinson's Disease. Following a submission of drawings and various tenders, they were awarded a grant from the Cork City Council. The back of the shed was extended to facilitate the addition of the ensuite bathroom and the utility room. The added area was no greater than 15 square metres.

We would like to apply for an exemption on the basis that the height of the pitched roof is under 4 metres and that the extension to the existing dwelling is no greater than 15 square metres.

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? NO

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

If so please supply details:

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	27.5 sqm / 15 sqm
(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)
GARAGE AND SHED	BEDROOM ENSUITE AND UTILITY ROOM

8. LEGAL INTEREST

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

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

Signature: Edward Walsh

Date: 31/01/2023

Site Location Map

CENTRE COORDINATES:
ITM 566303,569693

PUBLISHED: 24/01/2023
ORDER NO.: 50313269_1

MAP SERIES: 6 Inch Raster
MAP SHEETS: CK074, CK086

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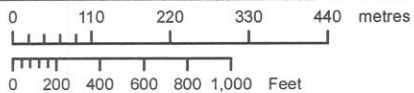
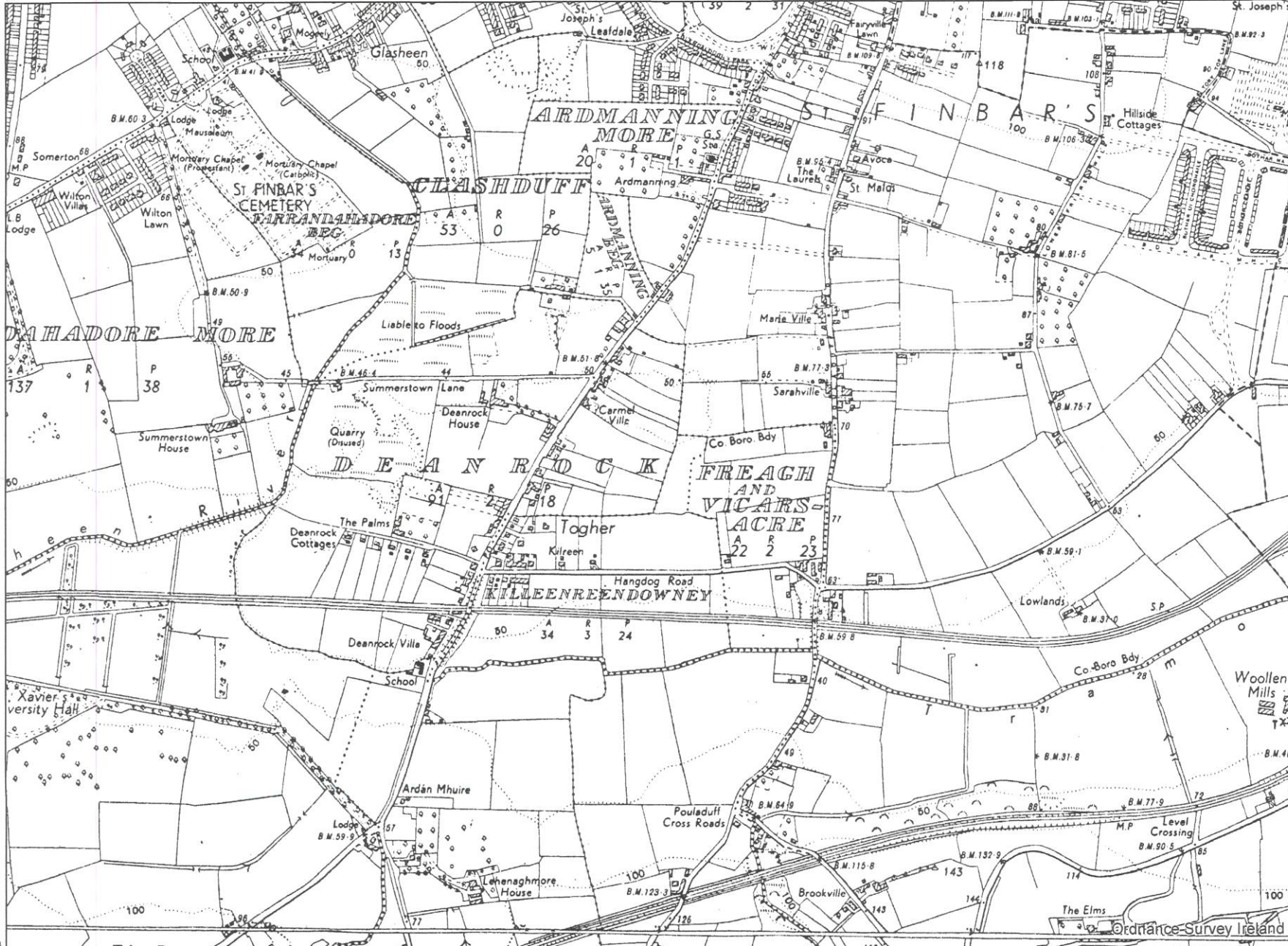
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Planning Pack Map

CENTRE COORDINATES:
ITM 566303,569693

PUBLISHED: 24/01/2023
ORDER NO.: 50313269_1

MAP SERIES: 1:1,000
MAP SHEETS: 6427-03, 6427-04

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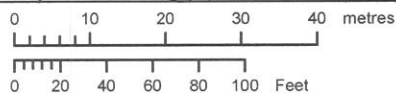
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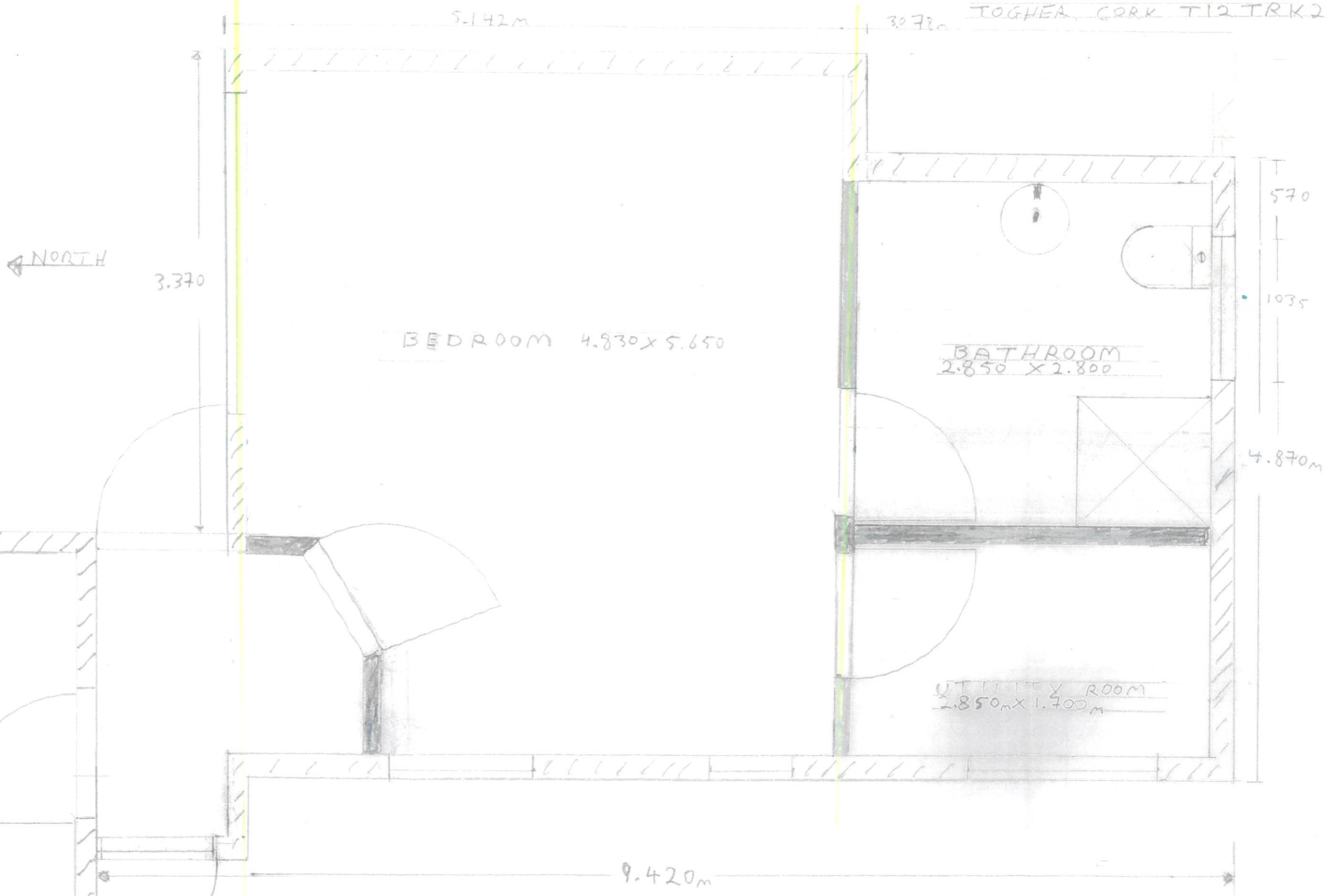
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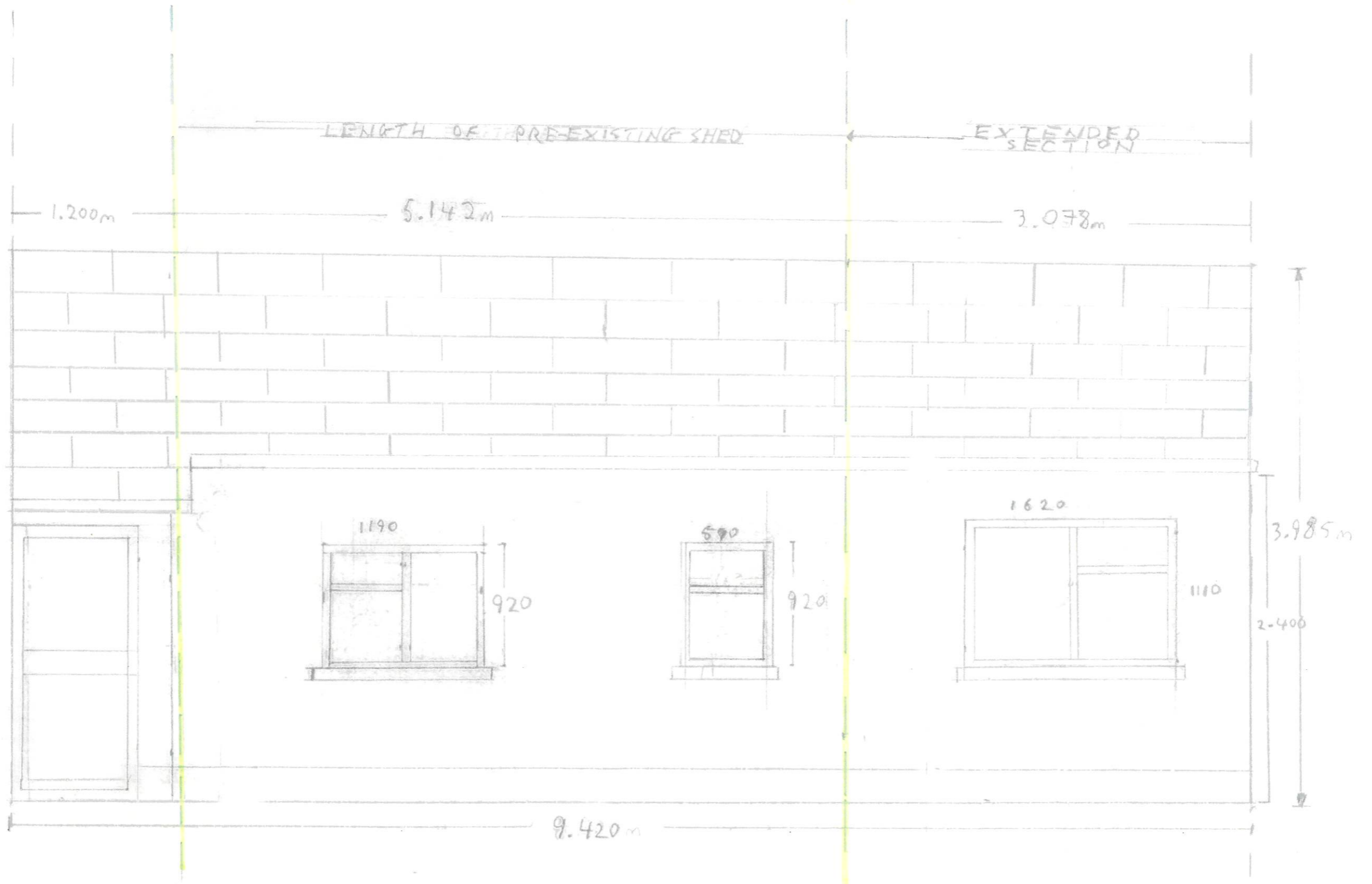
36 DEANWOOD AVENUE
TOGHERA, CORK T12 TRK2



PLAN OF EXTENSION INCLUDING CONVERSION OF EXISTING SHED

SCALE 1:31

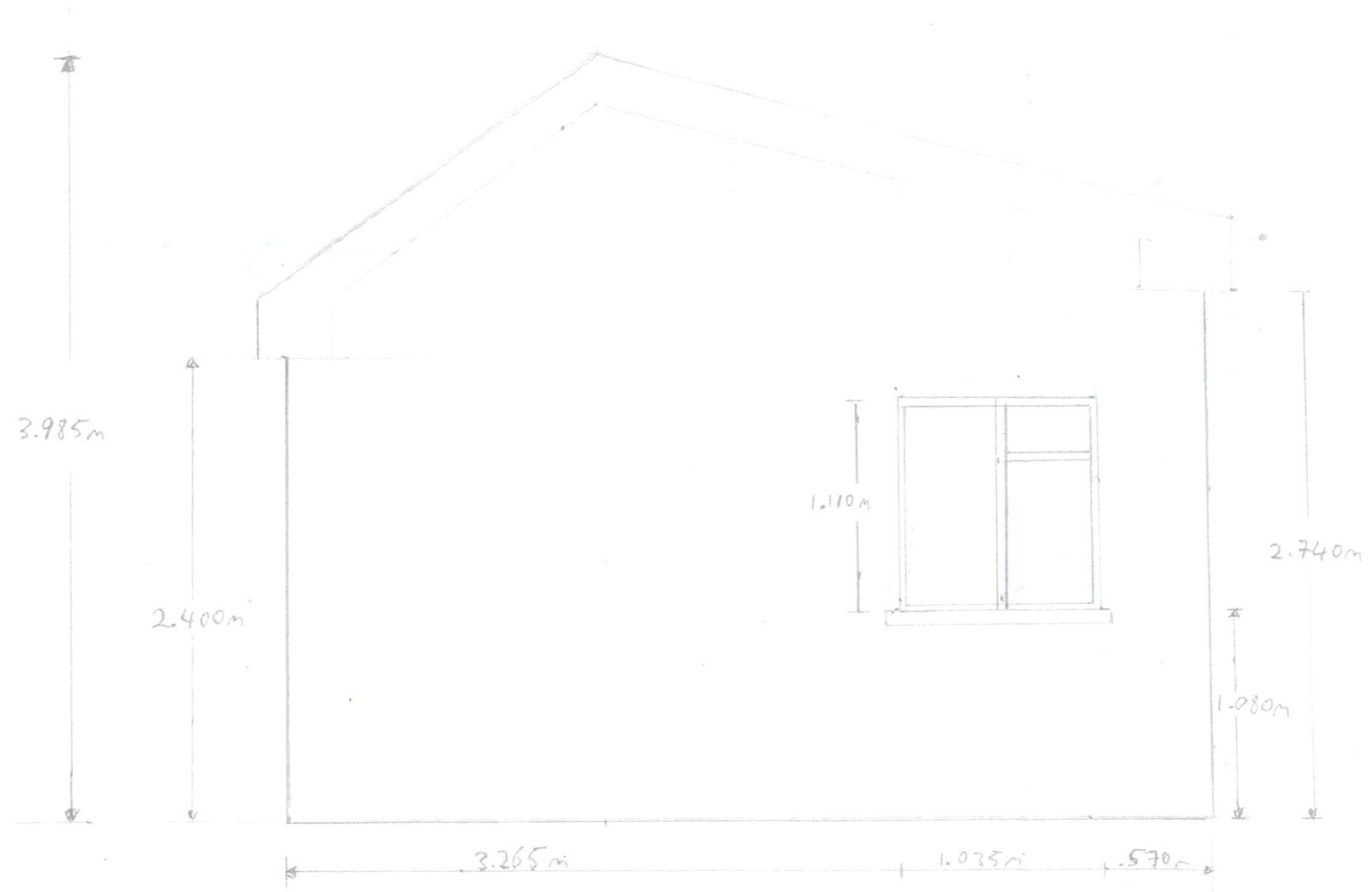
36 DEANWOOD AVENUE
TOGETHER CORK T12 TRK 2



SIDE ELEVATION

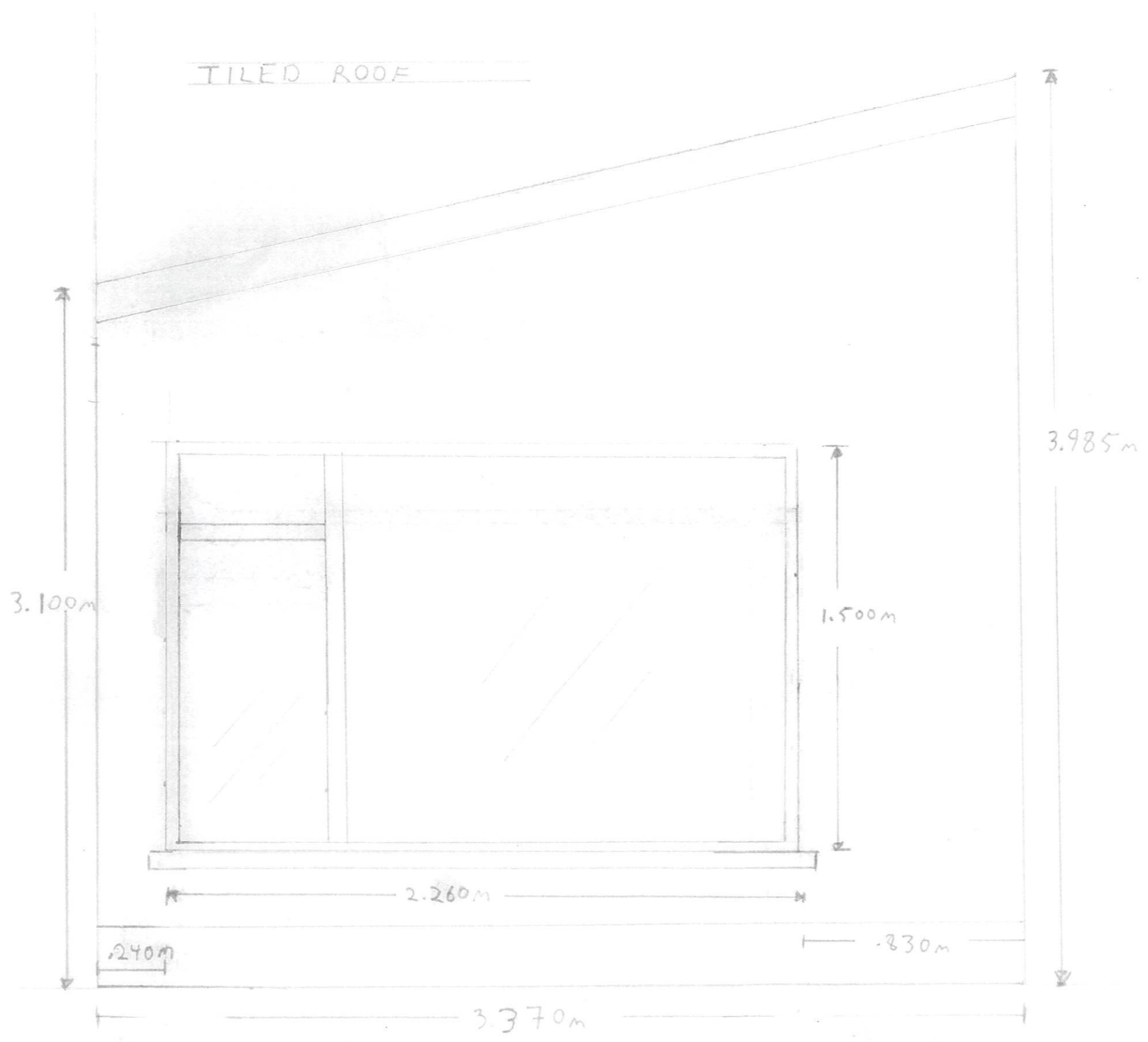
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36 DEANWOOD AVENUE
TOGHER CORK: T12 TRK2



REAR ELEVATION

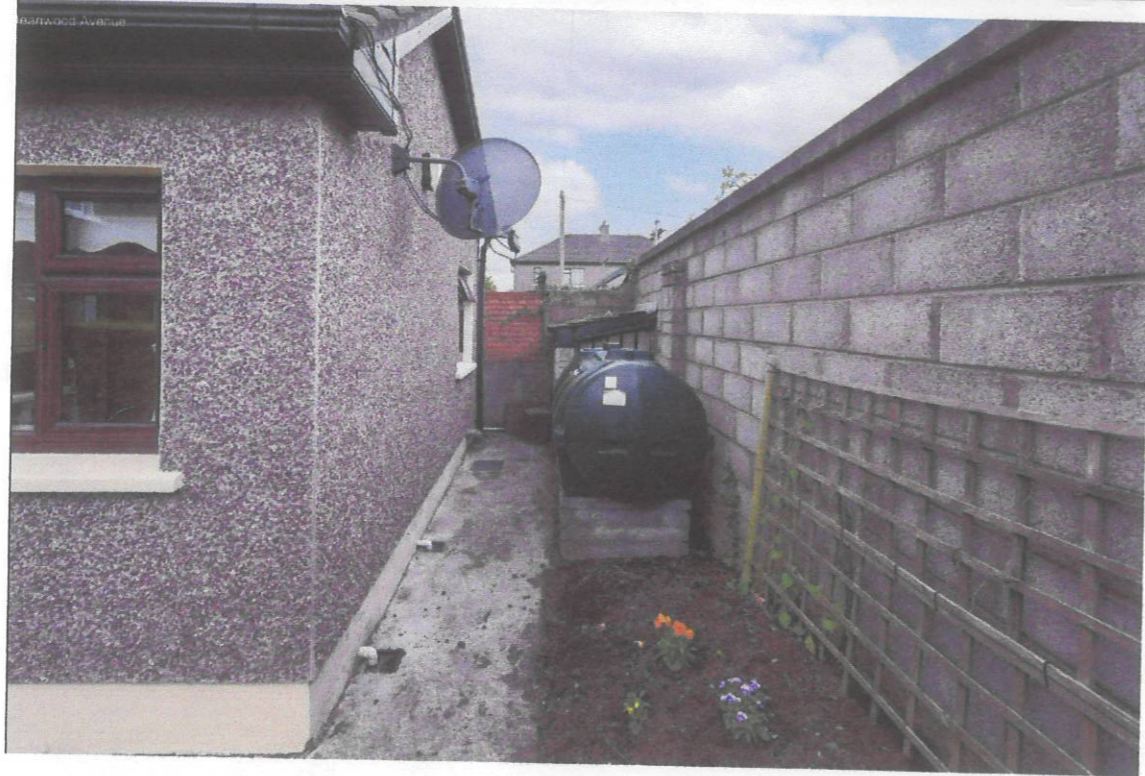
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36 DEANWOOD AVENUE
TOGHER CORK T12 TRK2

FRONT ELEVATION

SCALE 1:16.6





Front View 36 Deanwood Avenue, Togher Cork T12 TRK2



36 Deanwood Avenue Togher Cork T12 TRK2

Google Maps 2009 Pre-existing garage with pitched roof

