



Comhairle Cathrach Chorcaí Cork City Council

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

Tanya O Sullivan
Parkview
Douglas Road
Douglas
Cork

13/07/2020

RE: Section 5 Declaration R581/20 – Parkview, Douglas Road, Douglas, Cork

A Chara,

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

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the construction of a boundary wall to the side and rear of the dwelling at Parkview, Douglas Road, Douglas, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Is misa le meas,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT

Ref. R 581/20

Cork City Council

Development Management
Strategic Planning and
Economic Development

Application type	SECTION 5 DECLARATION
Question	<i>Is the construction of a boundary wall to the side and rear of the dwelling development and, if so, is it exempted development?</i>
Location	Parkview, Douglas Road, Douglas, Cork
Applicant	Tanya O'Sullivan (owner)
Date	09/07/2020
Recommendation	Is development and is exempted development

INTERPRETATION

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

1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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

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

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

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the planning authority is not framed using the phrasing of section 5. The applicant states in the request, "Can I construct a wall at the side and rear of my property in compliance with the requirements of not exceeding 1.2 metres in height or 2 metres at the side and rear?".

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

Is the construction of a boundary wall to the side and rear of the dwelling development and, if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is a two-storey, semi-detached dwelling in the Residential, Local Services and Institutional Uses zoning area. The area is predominantly residential in nature.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the construction of a plastered and capped boundary wall of approximately 42m to the side and 7m to the rear of the existing property to replace an existing hedge.

5. RELEVANT PLANNING HISTORY

None

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

"exempted development" has the meaning specified in section 4.

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

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

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

Section 3(1)

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

Section 4(1)(h)

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

...

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

Section 4(2)

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

Section 4(3)

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

- (a) any of the developments specified in subsection (1), or*

(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9

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

(Article 6) Schedule 2, Part 1, Class 5

Classes 1-8 relate to development within the curtilage of a house and Class 5 relates to “the construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete”.

Schedule 2, Part 1, Class 5

Exempted Development — General

<p>Column 1 Description of Development</p>	<p>Column 2 Conditions and Limitations</p>
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 5 <i>The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</i></p>	<ol style="list-style-type: none"> 1. <i>The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.</i> 2. <i>Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open</i>

<p style="text-align: center;"><i>Column 1</i> <i>Description of Development</i></p>	<p style="text-align: center;"><i>Column 2</i> <i>Conditions and Limitations</i></p>
	<p style="text-align: center;"><i>space, shall be rendered or plastered.</i></p> <p>3. <i>No such structure shall be a metal palisade or other security fence.</i></p>

7. ASSESSMENT

7.1 Development

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

‘Works’ is defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. In relation to proposed boundary wall to the side and rear of the existing dwelling, it is clear that a new boundary wall constructed to the side and rear of a dwelling house comprises ‘works’. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION
Is development

7.2 Exempted development

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

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

I consider that the proposal comes within **subsection (2) of section 4**, i.e. the Regulations, and not subsection (1).

Section 4(1)

I do not consider that the proposal comes within the scope of section 4(1) of the Act.

Section 4(2)

It is therefore necessary to consider whether the proposed boundary wall 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 5** applies, as the development is for the construction of a boundary wall to the side and rear of the house.

Having assessed the proposed development against Class 5 and its conditions and limitations I find as follows:

Condition / Limitation 1

The details provided in the application form state that the proposed wall will not exceed 2 metres to the side and rear of the house and 1.2 metres for the extents of the wall forward of the front building line of the house.

Condition / Limitation 2

The proposed finishes are to be plastered and capped.

Condition / Limitation 3

The proposed finishes will not be a metal palisade or other security fence.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is exempted development

8. ENVIRONMENTAL ASSESSMENT

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

Section 4(4),

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

Section 4(4A)

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

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
- (b) as respects which an environmental impact assessment or an appropriate assessment is required,*

to be exempted development.

Section 177U(9)

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

8.1 Screening for Environmental Impact Assessment

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

8.2 Screening for Appropriate Assessment

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

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the construction of a boundary wall to the side and rear of the dwelling at Parkview, Douglas Road, Douglas, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.



Eoin Cullinane
Assistant Planner
09/07/2020

**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

Fón/Tel: 021-4924564/4321

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

Parkview, Douglas Road, Douglas, Cork T12 A2C3

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.

Can I construct a wall at the side and rear of my property in compliance with the requirements of not exceeding 1.2 metres in height or 2 metres at the side and rear?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

I request to construct a wall at the side and rear of my property. Currently a hedge is present. However, due to the extensive works performed in 2019, a section of the hedge was removed. For safety reasons, I want to replace hedge with wall as currently a person can access property from side via this gap.

Size of wall: approx 7 metres at rear and 4.2 metres at side.
Height of wall: 2 metres at back and side back of house, 1.2 metres at side front in line with guidelines

Neighbours: No impact to neighbours at side as wall will mark boundary to side footpath and adjacent entry to Baltimore lawn. At back the wall will have a small grass margin which has a large tree planted there.

Construction: Standard block, plastered and copped.

Comhairle Cathrach Chorcaí
Cork City Council

17-06-2020

Strategic Planning & Economic
Development Directorate

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

Signature: Tanya O'Sullivan

Date: 12 Jun 2020

.....

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:

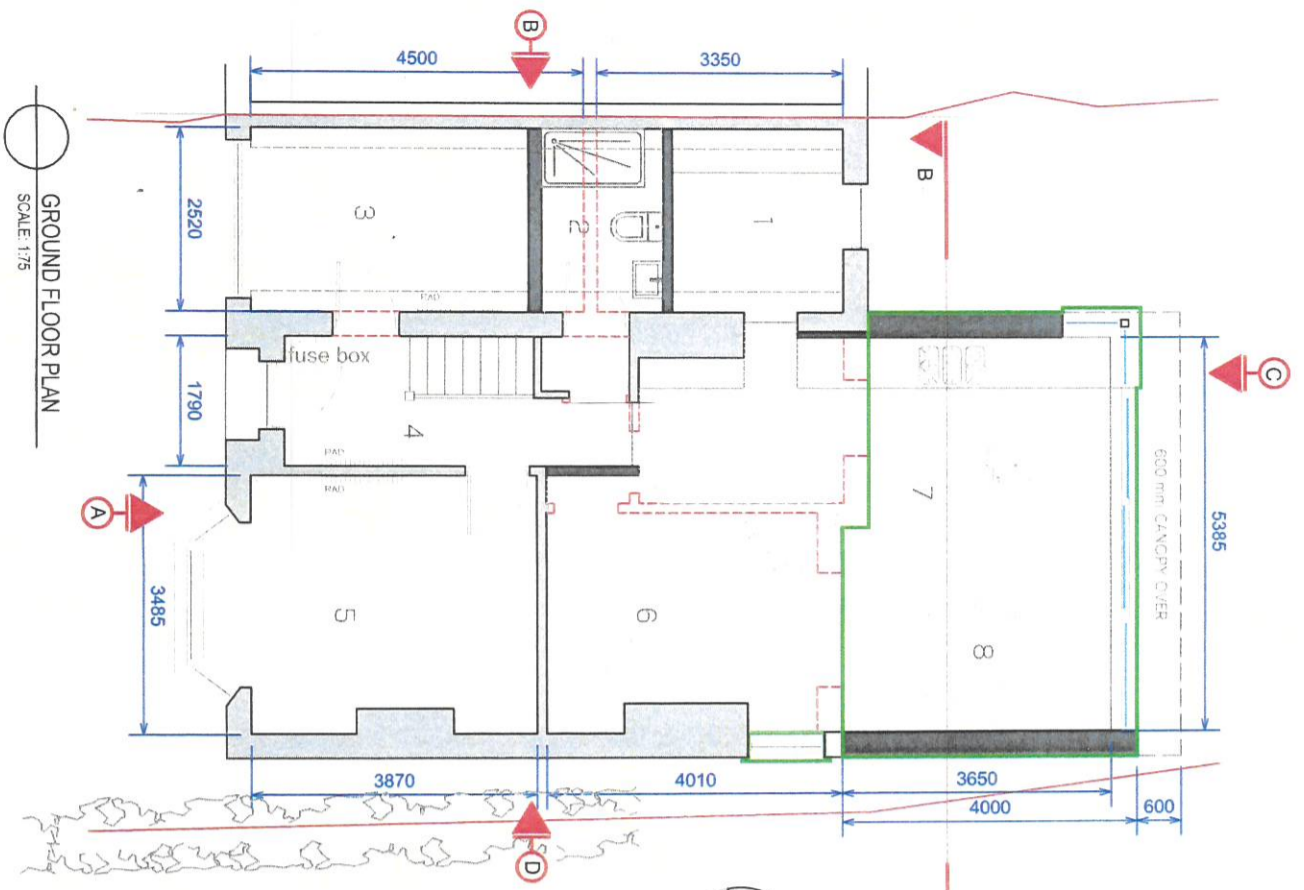
The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- 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

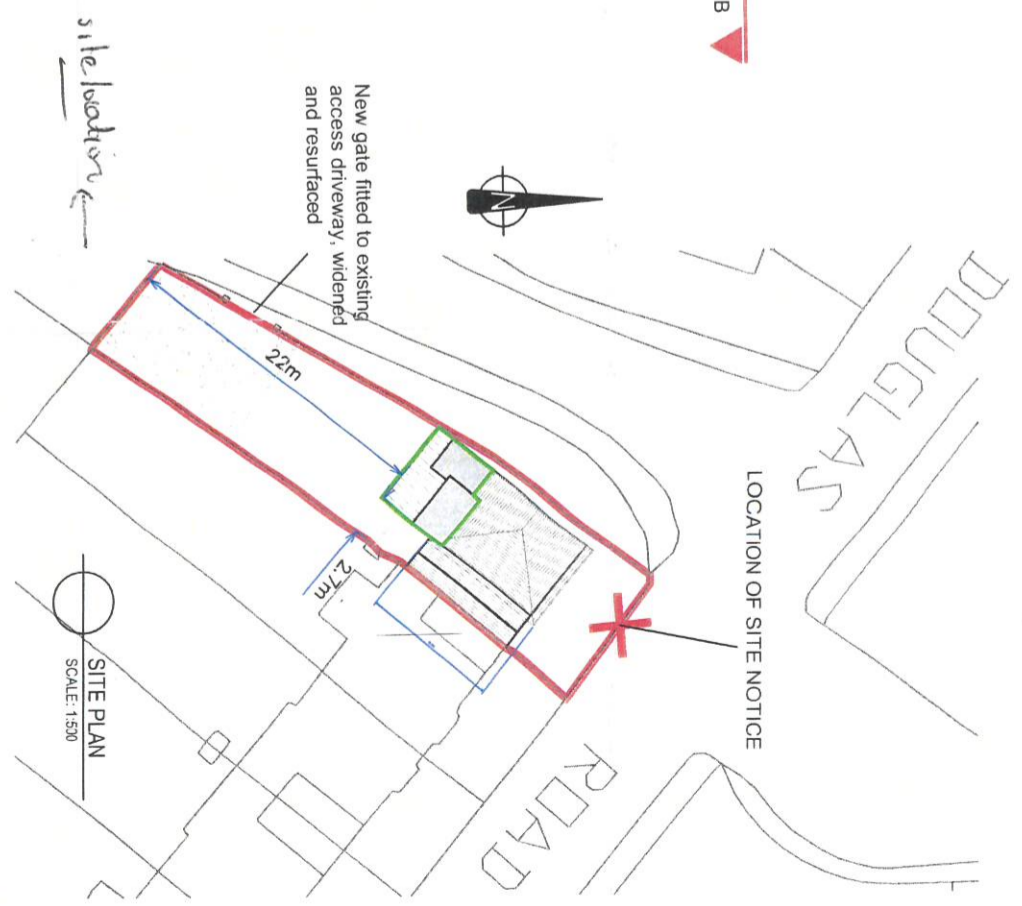
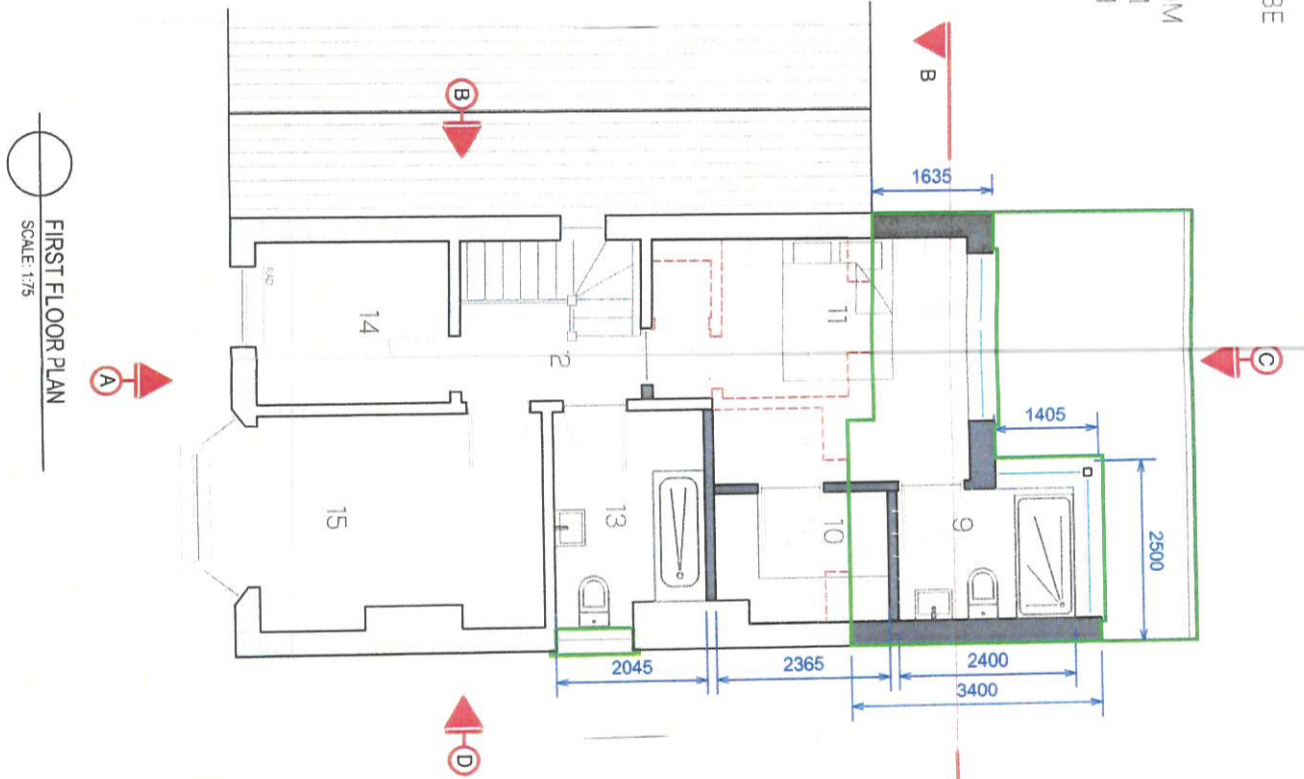
The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution



- ROOMS**
- 1. UTILITY
 - 2. W/C
 - 3. GUEST BEDROOM
 - 4. HALL
 - 5. LIVING ROOM
 - 6. LOUNGE
 - 7. KITCHEN
 - 8. DINING ROOM
 - 9. EN-SUITE
 - 10. WARDROBE
 - 11. BEDROOM
 - 12. LANDING
 - 13. BATHROOM
 - 14. BEDROOM
 - 15. BEDROOM

TOTAL HOUSE

EXISTING DWELLING	125.34m ² / 1349.14ft ²
GROUNDLOOR EXTENSION	92.27m ² / 993.18ft ²
FIRST FLDR EXTENSION	20.67m ² / 222.49ft ²
GARAGE	12.40m ² / 133.47m ²
	11.30m ² / 121.63ft ²



Extension works completed Nov 2019

AS PROPOSED - 1ST/2ND FLOOR PLAN

CLIENT	Tanya O'Sullivan Park View Douglas Road Ballinlough	FRAME SIZE	A3	SCALE	GM	STAGE	PLANNING
ZONE	C453	DATE	300	SCALE	C	1:100, 1:500	