

# Comhairle Cathrach Chorcaí Cork City Council

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

John O' Leary  
Woodbrook Lodge  
Kilmurray  
Kilworth  
Co. Cork

025/12/2020

**RE: Section 5 Declaration R617/20 No 31 Hartlands Road, Cork**

A Chara,

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

Having regard to Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended, the construction of a garden shed at 'Hove', 31 Hartland's Road, is **'development'** and is **'exempted development'** provided ongoing compliance with Condition and Limitation 6 of that Class - i.e. *The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.*

Is misa le meas,

Kerry Bergin  
Community, Culture and Placemaking Directorate  
Cork City Council



We are Cork.

PLANNER'S REPORT  
Ref. R 617/20

Cork City Council  
Development  
Management  
Strategic Planning  
and Economic  
Development

Application type      **SECTION 5 DECLARATION**  
Question              *Whether the construction of a garden shed is or is not development and if development or is not exempted development*  
Location              *Hove, 31 Hartland's Road, Cork.*  
Applicant              Caroline O'Leary and Brian O'Reilly  
Received              30.10.2020.

### 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.

#### 1. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the Planning Authority is reworded as follows:

*'Whether the construction of a garden shed is development and if so is or is not exempted development'.*

#### 2. SITE DESCRIPTION

The subject property comprises a detached dwelling situated to the rear of a dwelling fronting Hartland's Road and accessed via a right of way.

#### 3. PLANNING HISTORY

T.P. 18/38004: Permission granted (by CCC and on appeal by ABP) for:

- a) retention of alterations made to the existing driveway entrance to improve sightlines and vehicle access,
- b) alterations to the existing bungalow and demolition of two existing one storey extensions to the rear and side of the bungalow,
- c) construction of 74sq.m. (total floor space) on one and a half storey extension to the south west facing elevation (side) of the existing bungalow, and all ancillary site works.

R 607/20: Section 5 for similar type development- i.e. the construction of a garden shed. Conclusion was: is 'development' and is 'not exempted development' given the height of the roof (in excess of 4m).

(see note also below re governing permission).

## **4. CURRENT LEGISLATIVE PROVISIONS**

### **4.1 Planning and Development Act, 2000 as amended**

*Section 2(1),*

*“exempted development” has the meaning specified in section 4.*

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

*Section 3(1),*

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

*Section 4(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.*

### **4.2 Planning and Development Regulations, 2001 as amended**

*Article 6(1),*

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

*Article 9,*

Article 9 sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including (a) if the carrying out of such development would:-

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

(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,'

Classes 1-8 of Part 1 of Schedule 2 relate to development within the curtilage of a house. Class 3 relates to "The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure."

*Schedule 2, Part 1, Class 3*

*Exempted Development — General*

<p><i>Column 1</i> <i>Description of Development</i></p>	<p><i>Column 2</i> <i>Conditions and Limitations</i></p>
<p><i>Development within the curtilage of a house</i></p> <p><b>CLASS 3</b> The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.</p>	<ol style="list-style-type: none"> <li>1. No such structure shall be constructed, erected or placed forward of the front wall of a house.</li> <li>2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.</li> <li>3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.</li> <li>4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.</li> <li>5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</li> <li>6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.</li> </ol>

## 5. ASSESSMENT

### 5.1 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' are defined in section 3(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. As the proposal comprises 'works', it is clearly therefore 'development' within the meaning of the Act.

### CONCLUSION — is development

### 5.2 Exempted development

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

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2). In my opinion the proposed extension does not come within the scope of section 4(1). The proposed shed 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).

A planning history search did not reveal the governing permission for the existing house (no map register for city sites prior to the mid 1990s and no references to Hove in 'blue' and 'black' books – i.e. the written registers, apart from 5250/75 on a site whose address is given as 'adjacent to The Hove' which was withdrawn) – I ordered this file and the attached OS map (copyright date illegible but application made in 1975) shows the house (Hove) in situ. I have checked the B&W 6 inch historical maps and the survey of 1899 shows a house in this location therefore it is presumably a pre '63 property.

The proposed development is hereunder assessed against the conditions and limitations attached to development proposed under Class 5 of Part 1 of Schedule 2 of the Regulations:

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.

*The proposed shed would be located to the rear of the house.*

2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

*The proposed floor area is stated as 19.75 sq.m. in the application form– the drawings show an outer dimension of 4.8 x 5.2 (24.96 sq.m.) – with a triangle of area removed at the entrance so this would be less than 25 sq.m. From my site inspection no other such structures are located within the curtilage of the house.*

3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.

From the O.S. map submitted there would be well in excess of 25 sq.m. left over following construction.

4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.

*N/A - The shed would be to the rear not the side of the house.*

5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.

*The proposed shed would have a slated pitched roof. The height is shown on the drawing (Scale 1:30) as being 4m max.*

6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

*Cover letter attached to application form states the shed would be used for the domestic enjoyment of the owners.*

**CONCLUSION — is not exempted development**

## **6. ENVIRONMENTAL ASSESSMENT**

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

*Section 4(4),*

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

*Section 4(4A)*

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

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

*Section 177U(9)*

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

### **6.1 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.

## 6.2 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.

## 7. CONCLUSION & RECOMMENDATION

Having regard to Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended, the construction of a garden shed at 'Hove', 31 Hartland's Road, is **'development'** and is **'exempted development'** provided ongoing compliance with Condition and Limitation 6 of that Class – i.e. *The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.*

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Evelyn Mitchell,  
Senior Executive Planner,  
02.12.2020

To The Planner

Woodbrook Lodge,  
Kilmurry,  
Kilworth,  
Co. Cork P61\_Y971

At Planning Dept,  
City Hall,  
Cork

Ref Confirmation of Exemption from Planning

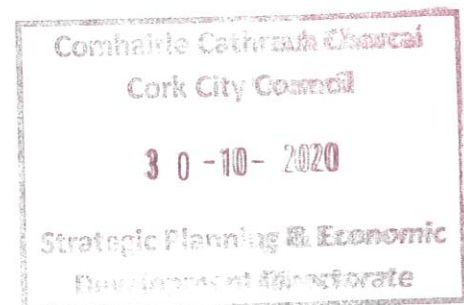
Date 27 Oct 2020

Dear Sir/Madam,

I act for owners of No.31. Hartland's Road who wish to erect a shed in their rear garden. This shed, for their domestic enjoyment, would be single-storey, 19.75 sq.m in floor area, constructed entirely of wood, roofed in slate, distant not less than 1.2m from nearest boundaries, have one door and 4 windows. No window shall overlook any neighbour. It shall have 2 sky lights, none of which can be reached from floor level nor overlook any neighbour. According to my copy of the Planning Regulations, being less than 25sq.m, less than 4m in height and to the rear of the subject dwelling, this shed would be Exempted Development. On the above basis, I request a statement of exemption and attach a selection of drawings.

Kind Regards

John J.O'Leary BE 086-4026669





**COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL**

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

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Líonra/Web: [www.corkcity.ie](http://www.corkcity.ie)

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

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

"HOVE" No 31 HARTLAND'S ROAD, CORK CITY

**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 CONSTRUCTION AS PER REV. 2 details dated 27/10/2020 EXEMPTED development?

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

(Use additional sheets if required).

See Rev. 2 details dated 27/10/2020 attached

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?  YES

If so please supply details:

18-38004

**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	19.75 m <sup>2</sup>
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input 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)
_____	_____
_____	_____
_____	_____

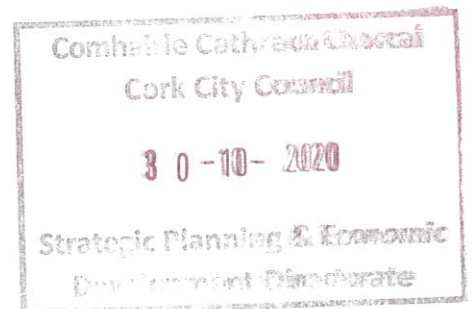
**8. LEGAL INTEREST**

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: John O'Leary B.E.

Date: 27<sup>th</sup> Oct 2020



- 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.

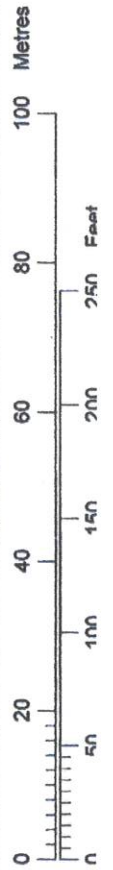
*The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation 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.



# Land Registry Compliant Map

Surveyed 1974  
Revised 2016  
Levelled 1973



Scale:- 1:1,000  
Scála:- 1:1,000

Plot Ref. No. 25312018\_1\_2  
Plot Date 02-NOV-2017

570924

ITM CENTRE PT. COORDS  
566344, 570838

## DESCRIPTION

— SITE MARKED 'A' &  
HIGHLIGHTED IN RED

## MAP SHEETS

1:1000  
6382-18 6382-19



Produced by National Map Services,  
Unit 7, South Ring Business Park,  
Kinsale Road,  
Co. Cork  
On behalf of Ordnance Survey Ireland,  
Phoenix Park, Dublin 8.

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Gach cead coisnadh, ní ceadnófaid an chuid  
den fhaisnéis seo a chloicall, a sárigeath nó  
a thrasúch in aon fhorm ná ar aon bhealach gan  
cead; scríobhaim tuairim ná ó úinéir an chloicall.  
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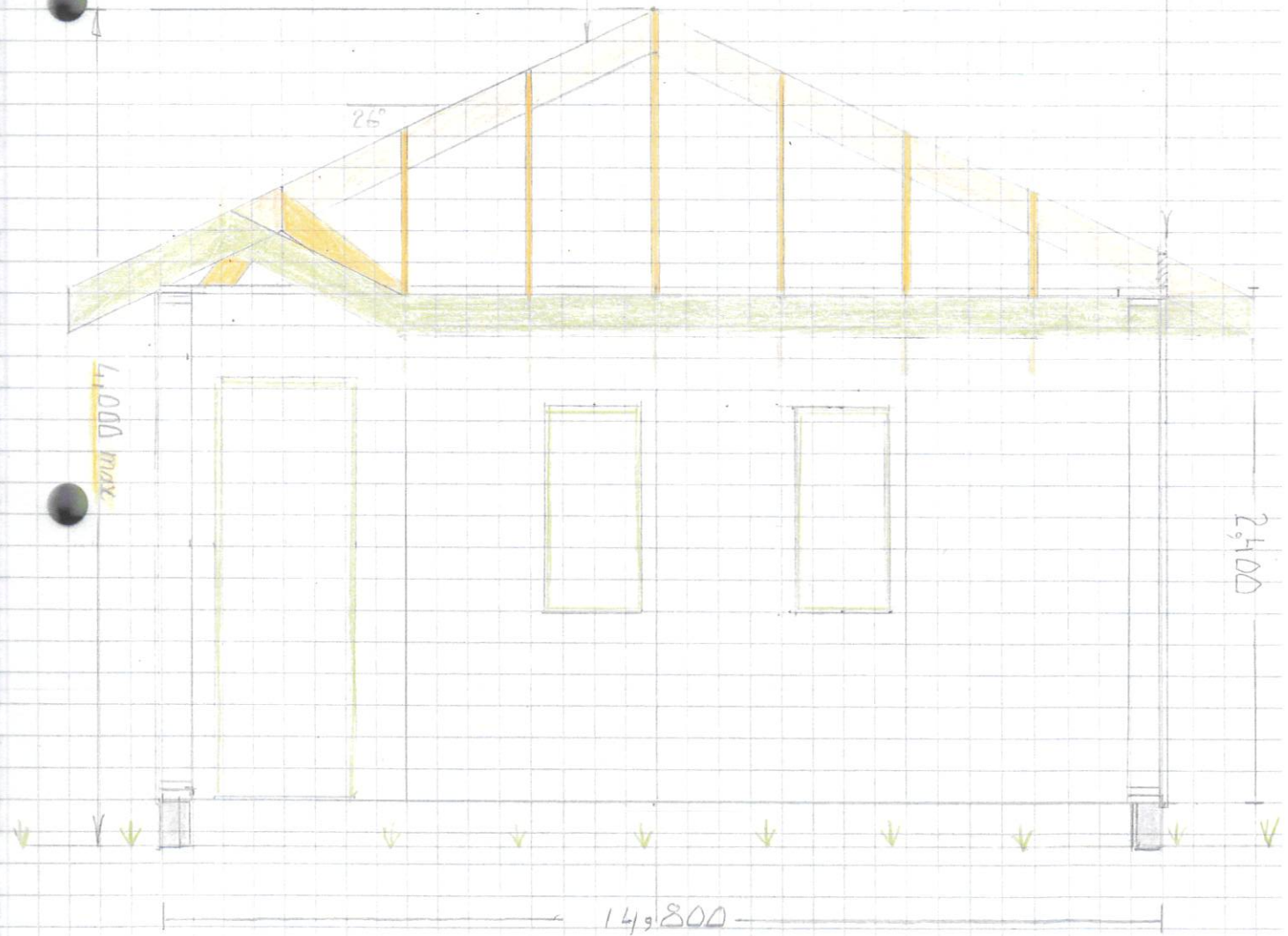
57052

70752

566228

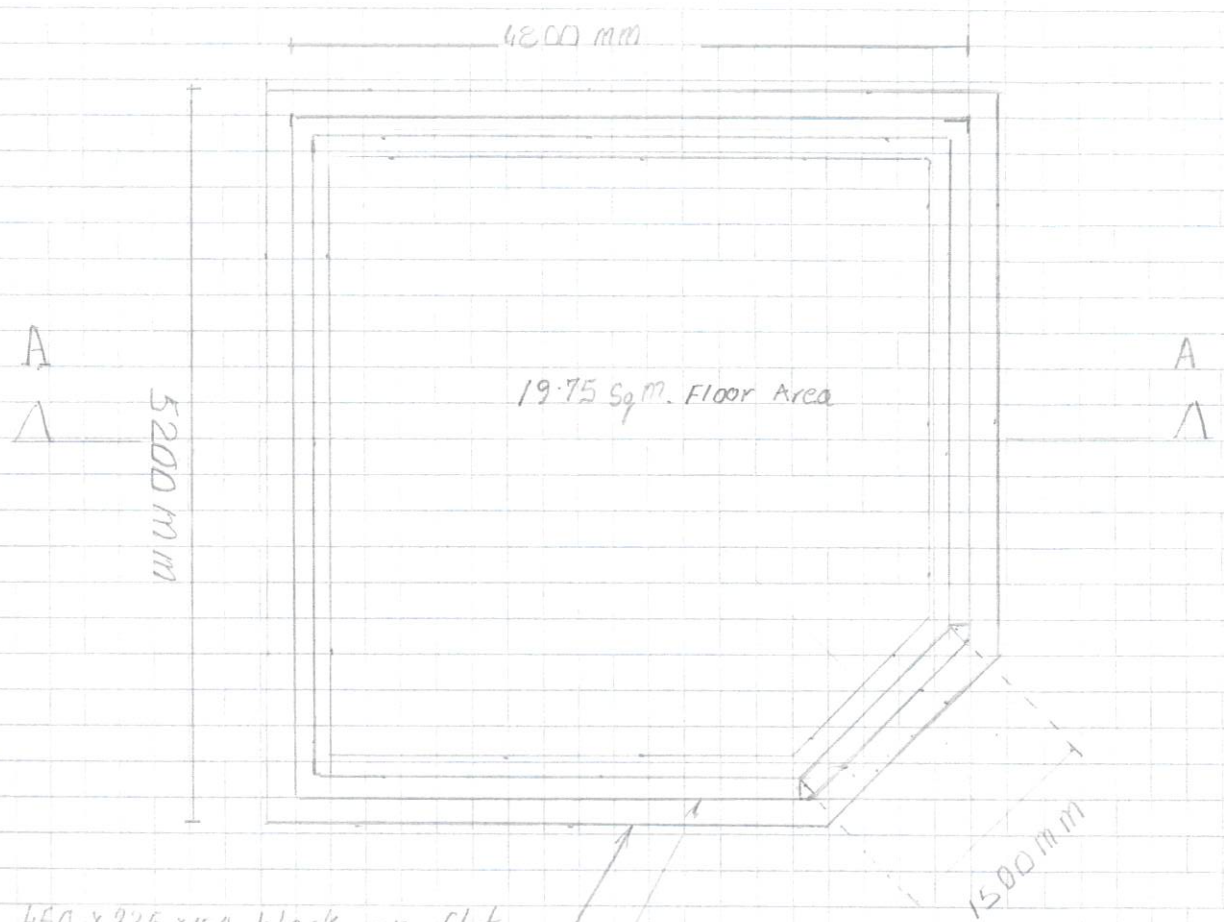
slate on  
battens on  
plywood on  
rafters

556 x 150 x 44  
closure pieces  
between rafters



East elevation 1:30 Rev2 27/10/20





450 x 225 x 150 block on flat

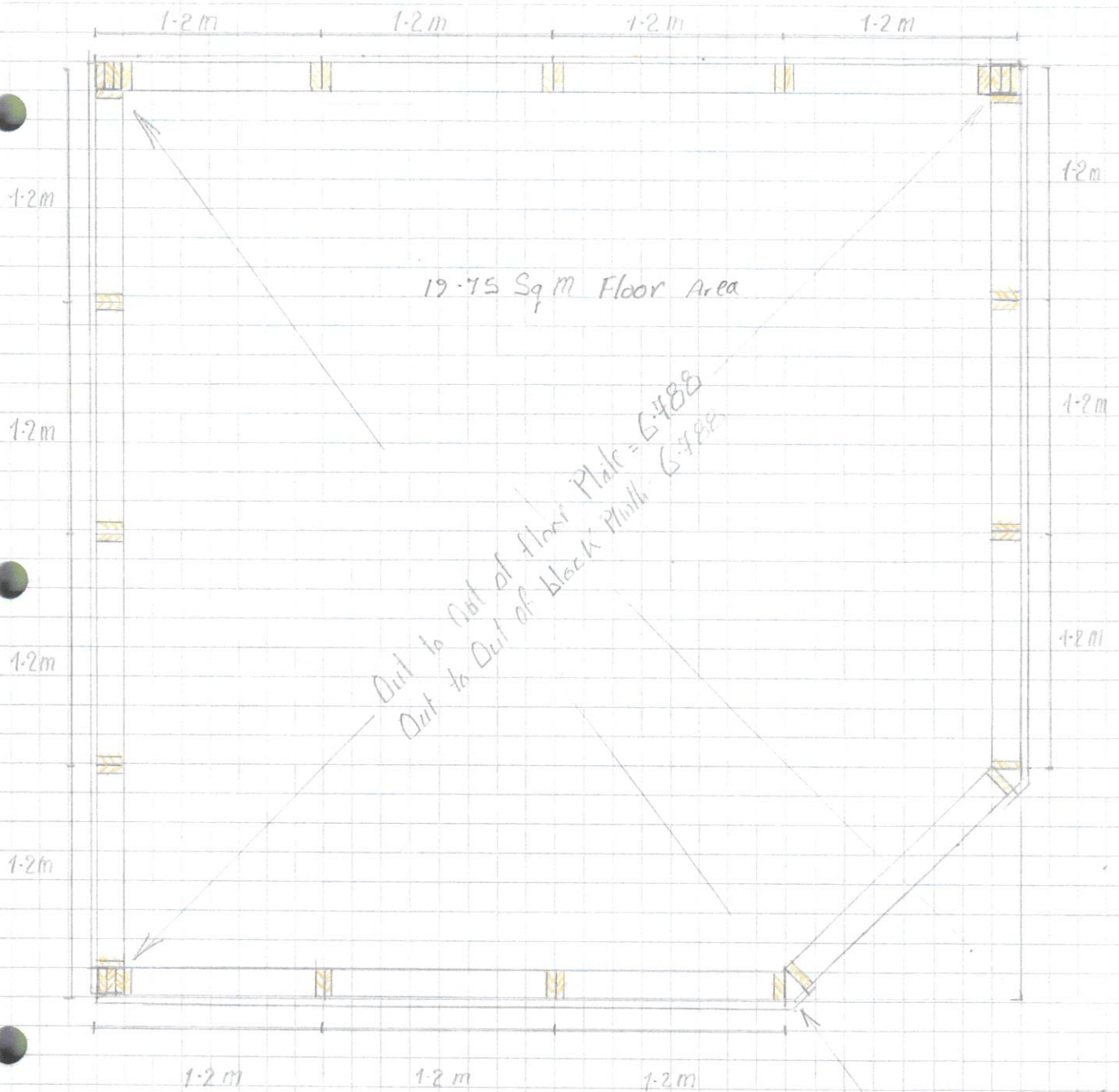
450 x 225 x 150 block on edge

Plan of Floor 1:50

- 100 mm slab floated
- on 1000 g Polythene
- on 100 mm insulation
- on Radon blanket
- on blinding
- on crushed rock



Section A-A scale 1:50



PLAN of floor Plate

Scale 1:30