



# Comhairle Cathrach Chorcaí Cork City Council

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

Eoin Ryan  
c/o William Harvey  
156 The Elysian  
Eglinton Street  
Cork

30<sup>th</sup> March 2021

**RE: R641/21 – Section 5 Declaration**  
**Property: Ferbane, Ballinlough Road, Cork**

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise you -


In view of the above and having regard to —

- Sections 2, 3, 4 and 82 of the Planning and Development Act 2000 as amended, and
- Article 6 and Part 2, Class 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the erection of a sign on the side elevation of Ferbane, Ballinlough Road, Cork IS  
**DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT**

Yours faithfully,

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



**We are Cork.**

## PLANNER'S REPORT

**Ref. R 641/21**

Cork City Council  
Development Management  
Community, Culture & Placemaking  
Directorate

Application type	<b>SECTION 5 DECLARATION</b>
Question	<i>Whether the erection of a sign on the side elevation of Ferbane, Ballinlough Road, Cork is exempted development.</i>
Location	Ferbane, Ballinlough Road, Cork
Applicant	William Harvey
Date	26/03/2021
<b>Recommendation</b>	<b>Is development and is not exempted development</b>

### 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 framed using the phrasing of section 5. The applicant states in the request, "*Is the erection of an advertisement sign to the gable of the abovementioned property exempted development?*"

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:

*Whether the erection of a sign on the side elevation of Ferbane, Ballinlough Road, Cork is exempted development.*

#### 3. SITE DESCRIPTION

The subject property is a 2-storey building fronting onto Ballinlough Road. The site is located with the Ballinlough Road (Annville / Ardeevin group) Architectural Conservation Area.

#### 4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes erection of a sign on the side elevation of Ferbane, Ballinlough Road at first floor level.

## 5. RELEVANT PLANNING HISTORY

- TP 15/36632 Permission for demolition of existing rear single storey extension and construction of a new two-storey extension including refurbishment of the existing dwelling and replacement of windows and doors and all associated site works at Ferbane, Ballinlough Road, Cork
- *Application Withdrawn*

### Adjoining Properties

- TP 10/34626 Permission GRANTED for proposed alterations to an existing commercial retail unit located at Unit 12a, Ballinlough Road, Cork. The work comprises alterations to an existing WC and the provision of a new access to the WC from Bellair Estate, together with all associated site development works and services at Unit 12a, Ballinlough Road, Cork

- TP 06/31074 Permission GRANTED for alterations to the front and side elevations and replacement of flat roof to the rear section of the property at Unit 12a, Ballinlough Road, Cork

Enforcement Ref.: E7350

- Unauthorised Development.
- Case Resolved on 17<sup>th</sup> January 2013

Enforcement Ref.: E7153

- Unauthorised Development.
- Case Dismissed on 1<sup>st</sup> June 2011

Enforcement Ref.: E6617

- Unauthorised Development.
- Case Resolved on 7<sup>th</sup> October 2008

## 6. LEGISLATIVE PROVISIONS

### 6.1 Planning and Development Act, 2000 as amended

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#### **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.

**Section 82(1)**

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[Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

**6.2 Planning and Development Regulations 2001 to 2018 as amended**

**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,

- (a) (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

**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

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

Classes 1-18 relate to advertisements and Class 1 relates to advertisements “exhibited on business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises”.

**Schedule 2, Part 2, Class 1**

*Exempted Development — Advertisements*

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><b>CLASS 1</b> Advertisements (other than those specified in classes 2, 3 or 5 of this Part of this Schedule) exhibited on business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises</p>	<ol style="list-style-type: none"> <li>1. The total area of such advertisements exhibited on or attached or affixed to the front of any building on the premises shall not exceed an area equal to 0.3 square metres for every metre length of such front, less the total area of any such advertisements exhibited on the premises but not exhibited on or attached or affixed to a building, and in any event shall not exceed 5 square metres.</li> <li>2. The total area of such advertisements exhibited on or attached or affixed to any face of a building on the premises other than the front thereof shall not exceed 1.2 square metres and the total area of any such advertisements on such face which are illuminated shall not exceed 0.3 square metres.</li> <li>3. The total area of such advertisements which are not exhibited on or attached or affixed to a building on the premises shall not exceed 3 square metres, of which not more than 1.5</li> </ol>

Column 1 Description of Development	Column 2 Conditions and Limitations
	<p><i>square metres shall consist of advertisements which are illuminated.</i></p> <p>4. (a) <i>No part of any such advertisement which is not exhibited on or attached or affixed to a building on the premises, or of an advertisement structure on which it is exhibited, shall be more than 2.5 metres in height.</i></p> <p>(b) <i>No part of any such advertisement which is exhibited on or attached or affixed to a building on the premises shall be more than 4 metres in height above ground level.</i></p> <p>5. <i>Where any such advertisement projects more than 5 centimetres over any public road, the sign or other advertisement structure on which it is exhibited shall not be less than 2 metres above the level of such road and shall not project more than 1 metre over such road.</i></p> <p>6. <i>Where any such advertisement consists of a circular sign and projects more than 5 centimetres over any public road, the diameter of such sign shall not exceed 1 metre and no other such advertisement shall be exhibited on a sign or other advertisement structure projecting more than 5 centimetres over such road.</i></p>
	<p>7. <i>Where any one or more such advertisements are exhibited on a swinging or fixed sign or other advertisement structure (other than a circular sign) projecting more than 5 centimetres from any external face of a building, the total area of such advertisements shall not exceed 1.2 square metres and the area of any face of any such advertisement shall not exceed 0.4 square metres.</i></p> <p>8. <i>No such advertisement shall contain or consist of any symbol, emblem, model, logo or device exceeding 0.6 metres in height or any letter exceeding 0.3 metres in height.</i></p> <p>9. <i>No such advertisement shall cover any part of any window or door of any building on which</i></p>



Column 1 <i>Description of Development</i>	Column 2 <i>Conditions and Limitations</i>
	<i>the advertisement is exhibited or to which it is attached or affixed.</i>

## 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 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’. In relation to proposed signage alterations, the proposed element is for alterations to the existing facade which 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 signage 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 Section 82(1) of the Planning and Development Act (as amended) applies as the development is on a building within the Ballinlough Road (Annville / Ardeevin group)

Architectural Conservation Area. The proposed signage is indicated as being approximately 8m<sup>2</sup> and will be situated at first floor level. It is considered, given the scale and prominent location, that the proposed signage would materially affect the character of the area and therefore the proposed signage is not considered exempt.

Having reviewed the proposal in the context of Article 6 and Class 1 of Part 2 of the Planning and Development Regulations, the proposed signage is not considered to come within these exemption categories as the premises on which the signage is to be affixed to appears to be a dwelling house and Class 1 of Part 2 states that the exemptions apply to those “**exhibited on business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises**”.

Therefore, based upon the above reasoning, it is reasonable to conclude that the exemptions for advertising signs relate to those affixed to business premises only and given that the building to which the proposed signage is to be affixed appears to be a dwelling house the proposed development is not considered to be exempted development.

#### **Restrictions on exemption**

I do not consider that any apply in this instance.

#### **CONCLUSION**

**Is not 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**.

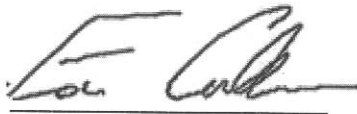
## 9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, 4 and 82 of the Planning and Development Act 2000 as amended, and
- Article 6 and Part 2, Class 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

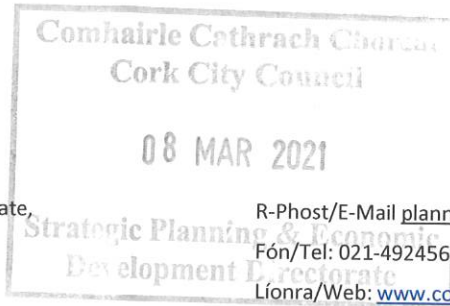
the erection of a sign on the side elevation of Ferbane, Ballinlough Road, Cork **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT**



Eoin Cullinane  
Assistant Planner  
24/03/2021

**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](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924564/4321  
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**

FERRANE, BALLINLOUGH ROAD, CORK

**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 ERECTION OF AN ADVERTISEMENT SIGN  
TO THE GABLE OF THE ABOVE MENTIONED  
PROPERTY EXEMPTED DEVELOPMENT?

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

*(Use additional sheets if required).*

SEE ATTACHED MAP + SKETCH

### 3. 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		N/A
(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)	
_____	N/A	
_____	_____	
_____	_____	

### 4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		WILLIAM HARVEY	
Applicants Address		MADORE, BLACKROCK ROAD, CORK	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Eoin Ryan	
	Address:	156 The Elysian, Eglinton Street, Cork	
	Telephone:	[REDACTED]	
	Fax:	[REDACTED]	
	E-mail address:	[REDACTED]	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

### 5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	<input checked="" type="checkbox"/> A. Owner	<input type="checkbox"/> B. Other
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		



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

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

7/3/2021

.....

**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.

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*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

Comhairle Ceithreach Cheyval  
Cork City Council

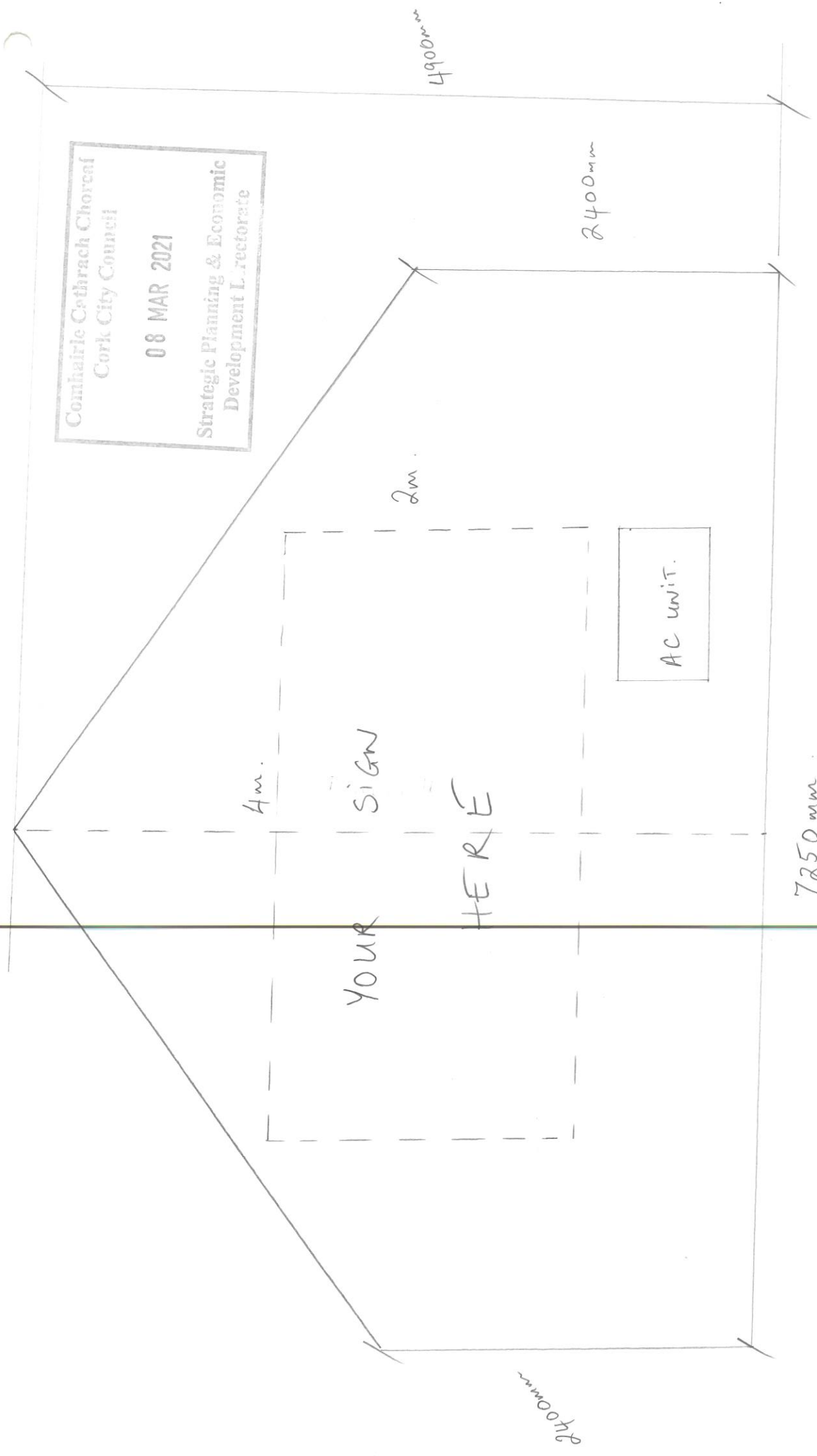
08 MAR 2021

Stráiceanna, Bunsúla, Cinnéil  
Bunsúla





Elevation 4/3/2021













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Date Printed: 14/05/2015

Creation Date: 14 May 2015 11:00:24

Application N