

Comhairle Cathrach Chorcaí Cork City Council

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

Kevin Crowley 12 Clarkes Wood Mount Oval Rochestown Cork

04th May 2021

RE: R645/21- Section 5 Declaration

Property: 12 Calrkes Wood, Mount Oval, Rochestown, Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise 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 garden office, hot tub, access steps and landscaping on the upper level of the garden to the rear of the dwelling at 12 Clarkes Wood, Mount Oval, Rochestown, Cork IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Yours faithfully,

Kerry Bergin

Assistant Staff Officer

Community, Culture and Placemaking

Cork City Council



PLANNER'S REPORT

Ref. R 645/21

Cork City Council

Development Management Community, Culture & Placemaking Directorate

Application type

SECTION 5 DECLARATION

Question

Is the construction of a garden office, hot tub, access steps and landscaping on the upper level of the garden to the rear of the

dwelling development and, if so, is it exempted development?

Location

12 Clarkes Wood, Mount Oval, Rochestown, Cork

Applicant

Kevin Crowley (owner)

Date

30/04/2021

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 somewhat framed using the phrasing of section 5. The applicant states in the request, "is the proposed construction of a garden office, hot tub, access steps and landscaping on the upper level of the garden at the above address 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:

Is the construction of a garden office, hot tub, access steps and landscaping on the upper level of the garden to the rear of the dwelling development and, if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is a two-storey, detached dwelling in the Existing Built-Up zoning area. The area is predominantly residential in nature.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development is for:

1. A garden office

- 2. A hot tub
- 3. Access steps and landscaping works on the upper level of the garden

All of the above works are to the rear of the dwelling.

5. RELEVANT PLANNING HISTORY

R 632/20:

Section 5 request relating to whether the proposed construction of a garden office, hot tub, access steps and landscaping at upper level of the garden is development, and if so, is it exempted development.

 Cork City Council deemed the proposed works to be development and not exempt, due to concerns that proposed landscaping works consisted of the change of ground level of more than 1m.

E8260:

Alleged Unauthorized Development at 12 Clarke's Wood, Mount Oval Village, Rochestown. This case has yet to be closed.

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 1

Classes 1-8 relate to development within the curtilage of a house and 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

Column 1 Description of Development	Column 2 Conditions and Limitations
Development within the curtilage of a house	
CLASS 3	

Column 1 Description of Development	Column 2 Conditions and Limitations	
The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object,	1.	No such structure shall be constructed, erected or placed forward of the front wall of a house.
greenhouse, garage, store, shed or other similar structure.	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.
	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.
_	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.
	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.
	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.
Class 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a	1.	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.
wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	2.	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

Column 1 Description of Development	Column 2 Conditions and Limitations
	or public area, including public open space, shall be rendered or plastered.
	3. No such structure shall be a metal palisade or other security fence.
Class 6	
 a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house. 	The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.
b) Any works within the curtilage of a house for—	
i. the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or	
ii. the provision of a hard surface in the area of the garden	Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of
forward of the front building line of the house, or in the area of the garden to the side of the side	the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller Or
building line of the house, for purposes incidental to the enjoyment of the house as such	if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

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 the proposed works to the rear of the existing dwelling, it is clear that the construction of a garden office, hot tub, access steps and landscaping on the upper level of the garden to the rear of the dwelling 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 works come 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).

It is considered that the proposed works should be looked at in three (3) individual elements:

- A garden office
- 2. A hot tub
- Access steps and landscaping works on the upper level of the garden

7.2.1 Construction of a Garden Office

I consider that article 6 and Class 3 applies, as the development is for a garden office to the rear of the house.

Having assessed the proposed development against Class 3 and its conditions and limitations I find as follows:

Condition / Limitation 1

The proposed structure is to be constructed to the rear of the dwelling.

Condition / Limitation 2

The proposed garden room is approximately 12m² in area and is a single storey structure. Therefore the cumulative area of all structures is less than the permitted 25m².

Condition / Limitation 3

The proposed development will not reduce the amount of private open space enjoyed by the dwelling to below 25m².

Condition / Limitation 4

The proposed garden office is to the rear of the dwelling, and not located to the side.

Condition / Limitation 5

The height of the proposed structure is indicated as being 2.4m and will be below the maximum height allowed of 3m.

Condition / Limitation 6

The structure will 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 existing house.

It is therefore considered that the proposed Garden Office is exempted development.

7.2.2 Construction of a hot tub

I consider that article 6 and Class 3 applies, as the development is for a hot tub to the rear of the house.

Condition / Limitation 1

The proposed structure is to be constructed to the rear of the dwelling.

Condition / Limitation 2

The proposal is for a hot tub with no roof structure. The area of this element is not considered to cumulatively exceed 25m² when considered with the proposed garden office room.

Condition / Limitation 3

The proposed development will not reduce the amount of private open space enjoyed by the dwelling to below 25m².

Condition / Limitation 4

The proposed hot tub is to the rear of the dwelling, and not located to the side.

Condition / Limitation 5

The height of the proposed structure is indicated as being less than 1m and will be below the maximum height allowed of 3m.

Condition / Limitation 6

The structure will 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 existing house.

It is therefore considered that the proposed hot tub is exempted development.

7.2.3 Construction of access steps and landscaping works to the upper level of the garden I consider that article 6 and Classes 5 and 6 apply, as the development is for a walls and landscaping works to the rear of the house.

I consider that article 6 and Class 3 applies, as the development is for a hot tub to the rear of the house.

The applicant has submitted detailed photographs of the garden area prior to any works talking place along with photos of the garden as it currently is. Details of the proposed works have also been submitted.

It is noted that the garden originally was split across different heights due to the contours of the location and that a retaining wall was present prior to any works taking place.

The proposal is to alter the rear landscaping to allow for a stepped landscaping solution rather than the previous sloped ground level. The applicant has indicated that the ground level will not be altered by a height exceeding 1m in any area. I note a number of walls are proposed in various elements of the garden. These walls appear to vary in height from 0.3m to 1.9m. As all of these walls are to the rear of the property, a height of up to 2m is considered acceptable. As no wall exceeds this height, they would be considered to be exempted works in accordance with article 6, class 5.

I note the construction of a platform for the hot tub. This platform will be 0.4m in height. This is considered acceptable as the ground level will not be altered by more than 1m in accordance with article 6, class 6.

The applicant has stated in the application form that no works will increase or decrease the ground level by more than 1m. This is considered acceptable however it should be noted that all works must be carried out in accordance with the details provided to the Planning Authority as part of this Section 5 application. Should works be carried out which differ to that stated/shown in this application, it may be considered that the works do not meet the criteria required to be considered exempt and, as such, may require planning permission.

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 garden office, hot tub, access steps and landscaping on the upper level of the garden to the rear of the dwelling at 12 Clarkes Wood, Mount Oval, Rochestown, Cork IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Eoin Cullinane Assistant Planner 29/04/2020 Coris Gey Council

1 1 - 03 - 2021

Is the construction of a shed at No 1 Wall St, Cork development and if so, is it

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

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

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

Is the proposed construction of a garden office, hot tub, access steps and landscaping on the upper level of

12 Clarkes Wood, Mount Oval, Rochestown, Cork, T12 NP6Y

exempted development?

2. QUESTION/ DECLARATION DETAILS

the garden at the above address exempted development?

Sample Question:

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).
The current garden is split level with upper level 2.3m above lower level and slopes upwards to the rear wall which
is 4.2m high. The proposal is to provide access steps from lower to upper levels, remove sloped garden and replace
with formal terracing with associated landscaping. On the upper level at the right hand side adjacent to the boudary wall
(1.m from wall) a home office is proposed (12 sq.m area and 2.4m height). No windows on the side adjacent to the boundary wall with appropriate landscaping to screen the office. Access to the office will be via newly created steps
following the existing slope of the site. No lanscaping will increase or decrease the current levels on site by more than 1m
On the left side of the garden a new created platform 200mm high will be created (2m x 4m) adjacent to the existing 2.3m
retaining wall. A new wall 2m high and 1m from the boundary wall will be constructed to create additional privacy.
Hot tub is a free standing unit which will be placed on the platform.
None of the proposed works increase or decrease exisiting ground levels by more than 1m nor all of the walls are above 2m

3.	If so please supply details: Received a letter regarding potential unauthorised of				tion 5 which
4.	was deemed not exempt. Revised plans and Application take into account the comments received regarding level changes and wall high Is this a Protected Structure or within the curtilage of a Protected Structure?				
	If yes, has a Declaration under Section 53 requested or issued for the property by t			elopment Act 2000 been	
5.	Was there previous relevant planning ap If so please supply details:	plication/	s on this site?		
6.	APPLICATION DETAILS				
	the following if applicable. Note: Floor areas of the indicated in square meters (sq. M)	are measur	ed from the insid	de of the external walls and	
COLUMN TO SERVICE STATE OF THE PARTY OF THE	(a) Floor area of existing/proposed structure/s		12 sq m new office		
(b	b) If a domestic extension, have any previo extensions/structures been erected at the location after 1 st October, 1964, (including for which planning permission has been obtained)?	nis	Yes If yes, please	No provide floor areas. (sq m)	
(c) If concerning a change of use of land and	d / or build	ling(s), please s	state the following:	
Existin	ng/ previous use (please circle)	Proposed	l/existing use (please circle)	- - -
8. LEG	AL INTEREST				
	e tick appropriate box to show applicant'	s A. Ow	ner	B. Other	
	interest in the land or structure				
	e legal interest is 'Other', please state interest in the land/structure in question				
	are not the legal owner, please state the	e			
	and address of the owner if available				
9. I / W	Ve confirm that the information contains	ed in the	application is t	true and accurate:	
Signati	ure:				
Date: _	5/5/2/				

CONTACT DETAILS

10. Applicant:

Name(s)	Kevin Crowley
Address	

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

Name(s):			
Address:			
Telephone:			
E-mail address:			
	ence be sent to the above address? 'No', all correspondence will be sent to the Applicant's	Yes	No 🗸

12. ADDITIONAL CONTACT DETAILS

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

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, Community, Culture & Placemaking 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 Pleanala 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.

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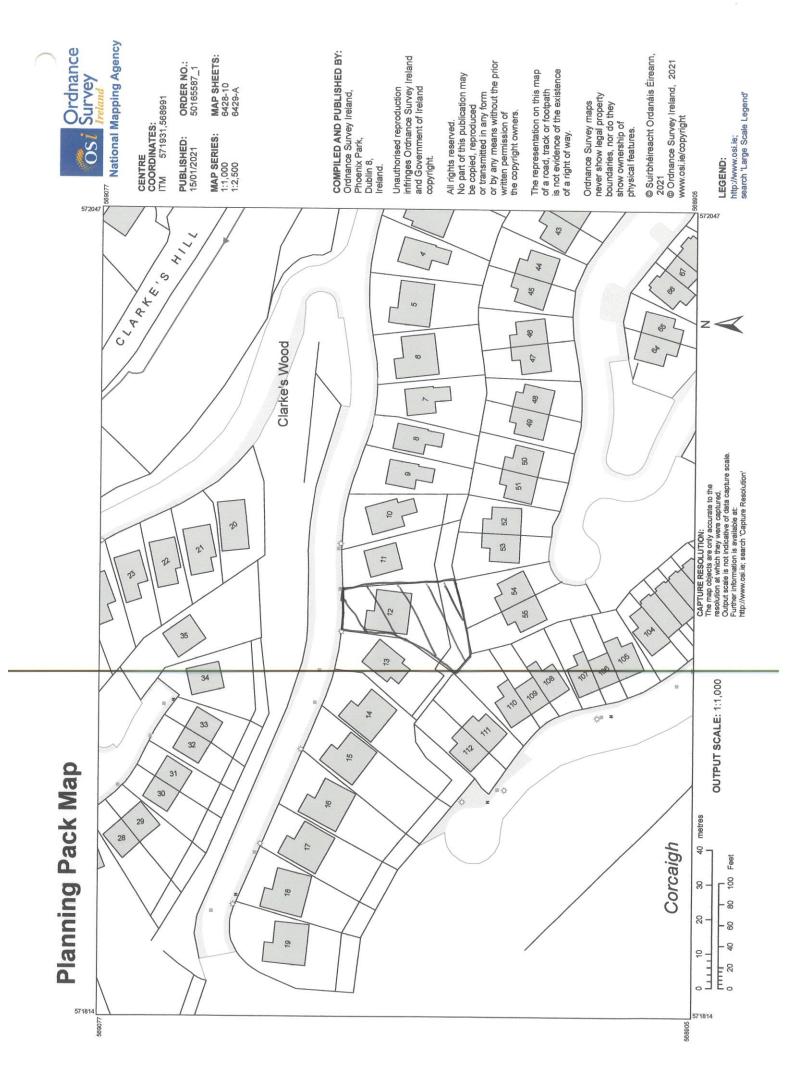
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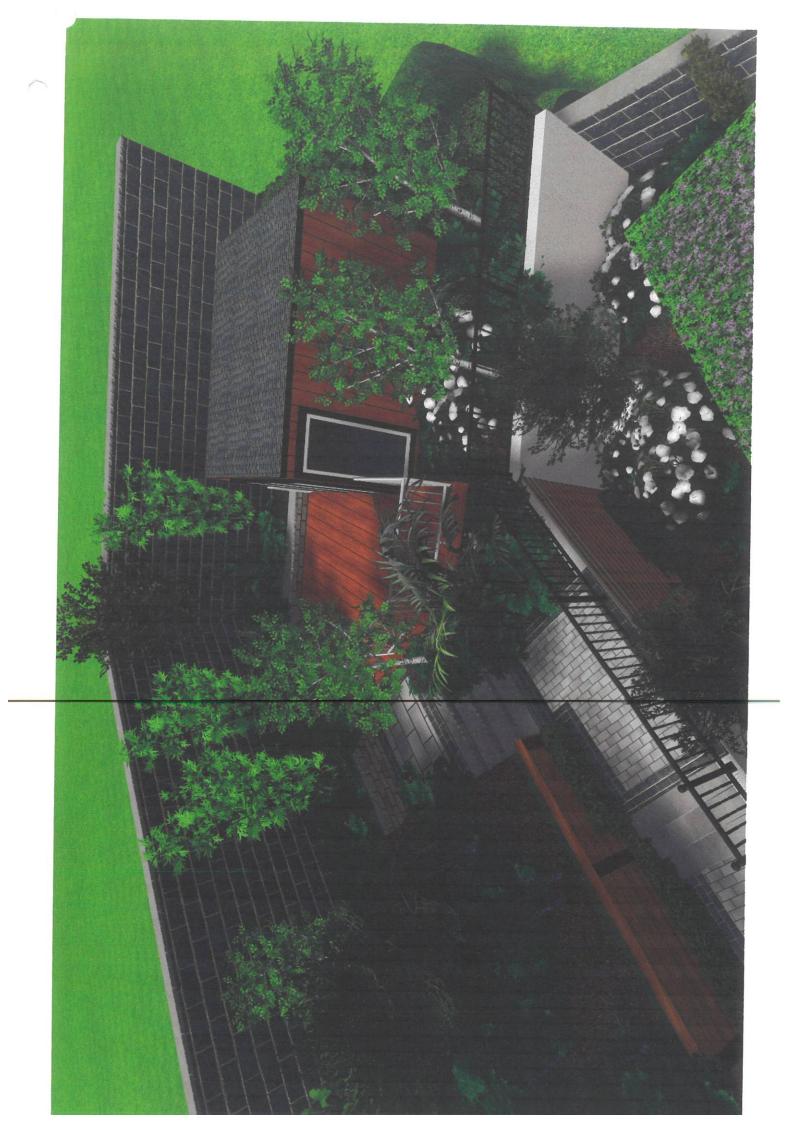
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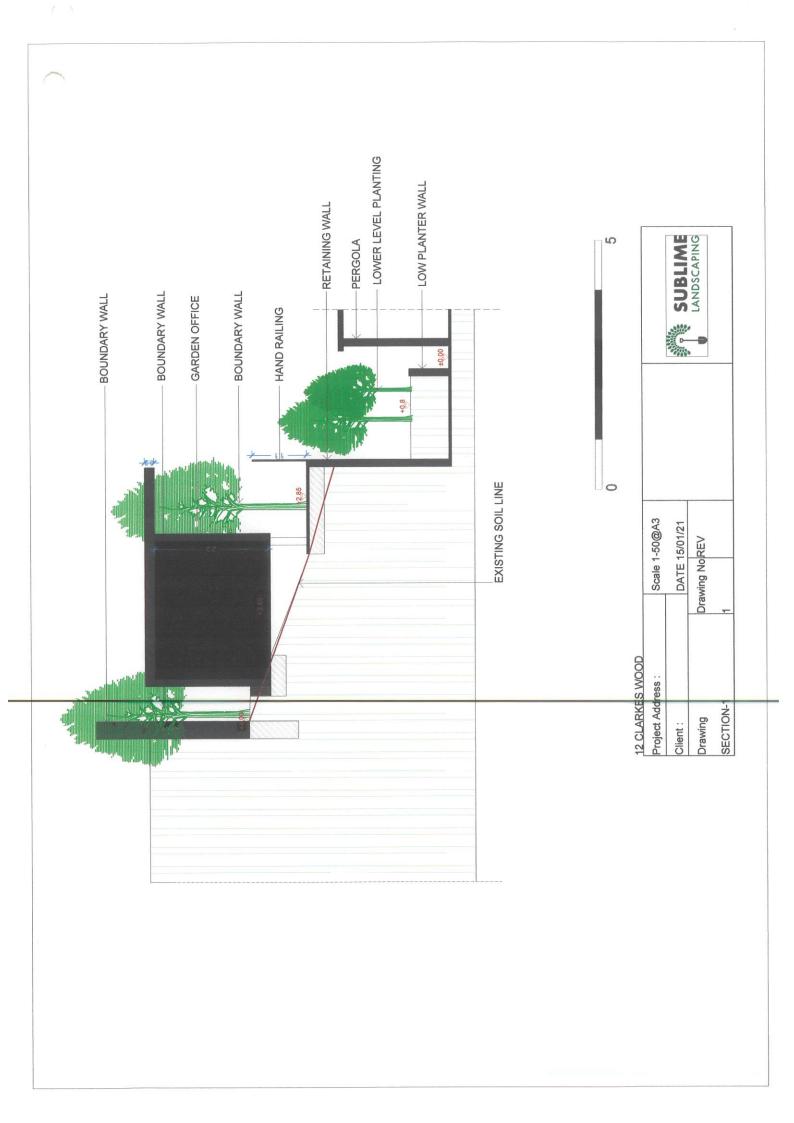
LEGEND:













12 Clarkeswood Mount Oval Cork

Kevin Crowley



CANDSCAPING

smilduz 7.0.9 7.0.9

Section 2 update

Requires on going maintenance by seperate contractor

Fertilising of trees § hedging once per year

Rabbit protection maybe required at base of all trees § shrubbery

Exisitng Boundary Wall

Timber Screening Exisitng Retaining Wall Sleeper Retaining Boundary Planting

Section 2

Graphic Scale (N.T.S)

