



# Comhairle Cathrach Chorcaí

## Cork City Council

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

Stephan O'Brien  
17 Vicars Court  
Vicars Road  
Togher  
Cork  
T12 PPCO

04<sup>th</sup> May 2021

**RE: R651\_21 – Section 5 Declaration**  
**Property: 17 Vicars Court, Vicars Road, Togher, Cork**

Dear Sir/Madam,

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

The Planning Authority in considering this referral, had regard particularly to –  
(a) section 2, 3 and 4 of the Planning and Development Act, 2000,  
(b) articles 6, and 9 of the Planning and Development Regulations, 2001, as amended,  
(c) Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and  
(d) the plans and particulars received by the Planning Authority on the 14 April 2021.

The Planning Authority has concluded that the height of the walls of the extension exceed the height of the side walls of the house and the height of the highest part of the roof of the extension, being a flat roofed extension, exceeds the height of the eaves of the dwellinghouse.

The development does not, therefore, come within the scope of the exemption set out in Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001.

The Planning Authority decides that the rear extension as set out in the referral and plans received on the 9 March 2021 is development and is not exempted development.

Note: It has not been fully determined if the extension would breach condition and limitation number 5, which requires that the construction or erection of any such extension to the rear of the house shall not reduce the area of private open space to the rear of the house to less than 25 square metres.

Yours faithfully,

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



We are Cork.

## SECTION 5 DECLARATION – PLANNER’S REPORT

<b>File Reference:</b>	R651.21
<b>Description:</b>	Whether the construction of an extension to the rear of a dwelling is or is not exempted development.
<b>Applicant:</b>	Stephen O’Brien
<b>Location:</b>	17 Vicars Court, Vicars Road, Togher T12 PPCO

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### 1. Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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.

### 2. Site Location

The site is located at 17 Vicars Court, Vicars Road, Togher. On the site there is an end of terrace single storey dwelling with the other dwellings to the north of the site. The terrace of houses is at the end of a cul de sac road. The site is roughly triangular in shape. The rear elevation includes a projecting gable on approx. 50m of the rear elevation.

### 3. The Question before the Planning Authority

Whether the construction of an extension to the rear of a dwelling is or is not exempted development?

### 4. Planning history

None recent

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### 5. Planning legislation

#### 5.1 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(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.

## **5.2 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 exempt 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(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act – sets out a number of restrictions.

*Schedule 2, Part 1 – Exempted Development*

General Classes 1–8 describes classes of development situated within the curtilage of a house which are exempted development, provided that such development complies with the conditions and limitations expressed at Column 2 for each class.

Class 1 Extension to rear of house

## **6. Assessment**

### **6.1 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’.

As noted above Section 3 (1) of the Planning and Development Act states that: ‘development’ means, *except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.*

The extension clearly constitutes ‘works’, which is defined in section 2(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

### **6.2 Exempted Development**

The next issue for consideration is whether or not the proposal is exempted development.

The proposal is a single storey extension to the rear of a semi-detached dwelling at 17 Vicars Court, Vicars Road, Cork. The extension is annexed off the kitchen and is 23.5m<sup>2</sup>.

The relevant class in the Regulations is Class 1 as the description of the development is *'The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house...'*

Attached to Class 1 are a number of conditions and limitations and the proposal is assessed against each of these:

Condition and Limitation		Assessment
1a	Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.	There have been no previous extensions. The floor area is 23.5m <sup>2</sup> . This is satisfactory.
1b	Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.	N/A – extension is ground floor only
1c	Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.	N/A – house is not detached
2a	Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.	N/A – house has not been extended previously.
2b	Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.	N/A – house has not been extended previously.
2c	Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.	N/A – house has not been extended previously.
3	Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.	N/A – extension is ground floor only.

4a	<i>Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</i>	N/A - The rear wall of the house includes a gable.
4b	<i>Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</i>	<p>The rear wall of the house includes a half of a projecting gable (the other half is on the adjoining dwelling to the north) and this does not extend to the full width of the rear elevation.</p> <p>This condition and limitation refers to “side <u>walls</u> of the house”.</p> <p>There is a partial side wall to the projecting gable and the height of the extension does exceed this side wall.</p> <p>The extension does not exceed the height of the wider side elevation.</p>
4c	<i>The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</i>	<p>The roof of the extension is flat roof.</p> <p>The height of the extension does exceed the height of the eaves at the corner of the projecting gable with the rear elevation of the house.</p>
5	<i>The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</i>	<p>For the purpose of this condition and limitation, the rear of the house is taken to mean that area within a line drawn from the southern corner maintaining the side elevation building line to the rear boundary wall. There is another area of open space to the south west of the dwelling; this is considered to be to the side of the house.</p> <p>The remaining area to the rear for private open space has not been set out.</p> <p>The proposed ground floor plan 1:100 is not at an accurate scale and it is not possible to calculate the area of private open space to the rear.</p> <p>There is insufficient information to make a determination as to whether this condition and limitation can be complied with.</p>

6a	Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.	There is a window on the north elevation and a glazed patio door on the west elevation. Both are in excess of 1 metre from the boundaries they face. This is satisfactory.  A roof light is proposed. I consider that the roof light serves ground floor accommodation and should be considered as being at ground level for the purposes of the Regulations. The roof light is such that it faces skyward rather than the boundaries. It is reasonable to conclude, therefore, that the roof lights in question do not face any boundary for the purposes of the regulations and do not, therefore, contravene the limitation set out in 6(a).
6b	<i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i>	N/A – extension is ground floor only.
6c	<i>Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</i>	N/A – house is not detached.
7	<i>The roof of any extension shall not be used as a balcony or roof garden.</i>	The roof is flat. There is no indication that it will be used as a balcony or roof garden.

The height of the extension roof exceeds beyond the eaves height of the rear elevation and therefore does not comply with Condition and Limitation 4(c). The extension would also not comply with Condition and Limitation 4(b) as the height of the extension exceeds the height of the side wall of the projecting gable to the rear.

On this basis I conclude the proposed development is therefore not exempted development.

There is insufficient information on the private open space remaining to the rear of the house. As the proposal does not satisfy the requirement of conditions and limitations 4(b) and 4(c) there is no merit in seeking further information.

It is my view that the extension is not exempt from planning permission under Schedule 2, Part 1, Class 1, (Exempted Development) of the Regulations.

### 6.3 Environmental Assessment & Restrictions on Exemption

A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 9 of the Regulations.

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.

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.

There is no information on the Planning Enquiry System as to the planning permission reference number for this part of the estate and it is uncertain if a condition limiting the construction of rear extensions was not placed on the governing estate planning permission file de-exempting the construction of rear extensions. It is noted that the legal owner is cork City Council and the governing permission could have been obtained through the Part 8 planning process.

None of the other restrictions on exemption set out in Article 9 apply.

## **7. Conclusion & Recommendation**

The Planning Authority in considering this referral, had regard particularly to –

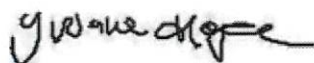
- (a) section 2, 3 and 4 of the Planning and Development Act, 2000,
- (b) articles 6, and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- (d) the plans and particulars received by the Planning Authority on the 14 April 2021.

The Planning Authority has concluded that the height of the walls of the extension exceed the height of the side walls of the house and the height of the highest part of the roof of the extension, being a flat roofed extension, exceeds the height of the eaves of the dwellinghouse.

The development does not, therefore, come within the scope of the exemption set out in Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001.

The Planning Authority decides that the rear extension as set out in the referral and plans received on the 9 March 2021 is development and is not exempted development.

Note: It has not been fully determined if the extension would breach condition and limitation number 5, which requires that the construction or erection of any such extension to the rear of the house shall not reduce the area of private open space to the rear of the house to less than 25 square metres.



**Yvonne Hogan, Area Planner**  
**28.04.2021**

**COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL**

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

Community Culture & Placemaking

14 APR 2021

R-Phost/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)

Fón/Tel: 021-4924762

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**

17 Vicars Court, vicars Road, Toghern, Cork,  
T12 PPL0

**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 construction of a single storey extension exempted development?

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

(Use additional sheets if required).

See email of drawings + plans sent to planning policy email address on tuesday 23<sup>rd</sup> of March

A letter of planning approval or exemption is required before works commence as advised by engineer Brian Byrd of the Housing Directorate

Cork City Council

26-03-2021



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?

5. Was there previous relevant planning application/s on this site?  No.  
 If so please supply details:

**6. APPLICATION DETAILS**

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	20 Sq Meters.
(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 checked="" type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
<u>N/A</u>	<u>N/A</u>

**8. LEGAL INTEREST**

Please tick appropriate box to show applicant's legal interest in the land or structure	<input 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	Cork City Council	

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

Signature: Stephen O'Brien

Date: 25/3/21



Page 2

Jeffrey C. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

1. [redacted]

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2. [redacted]

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**ADVISORY**

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- 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.

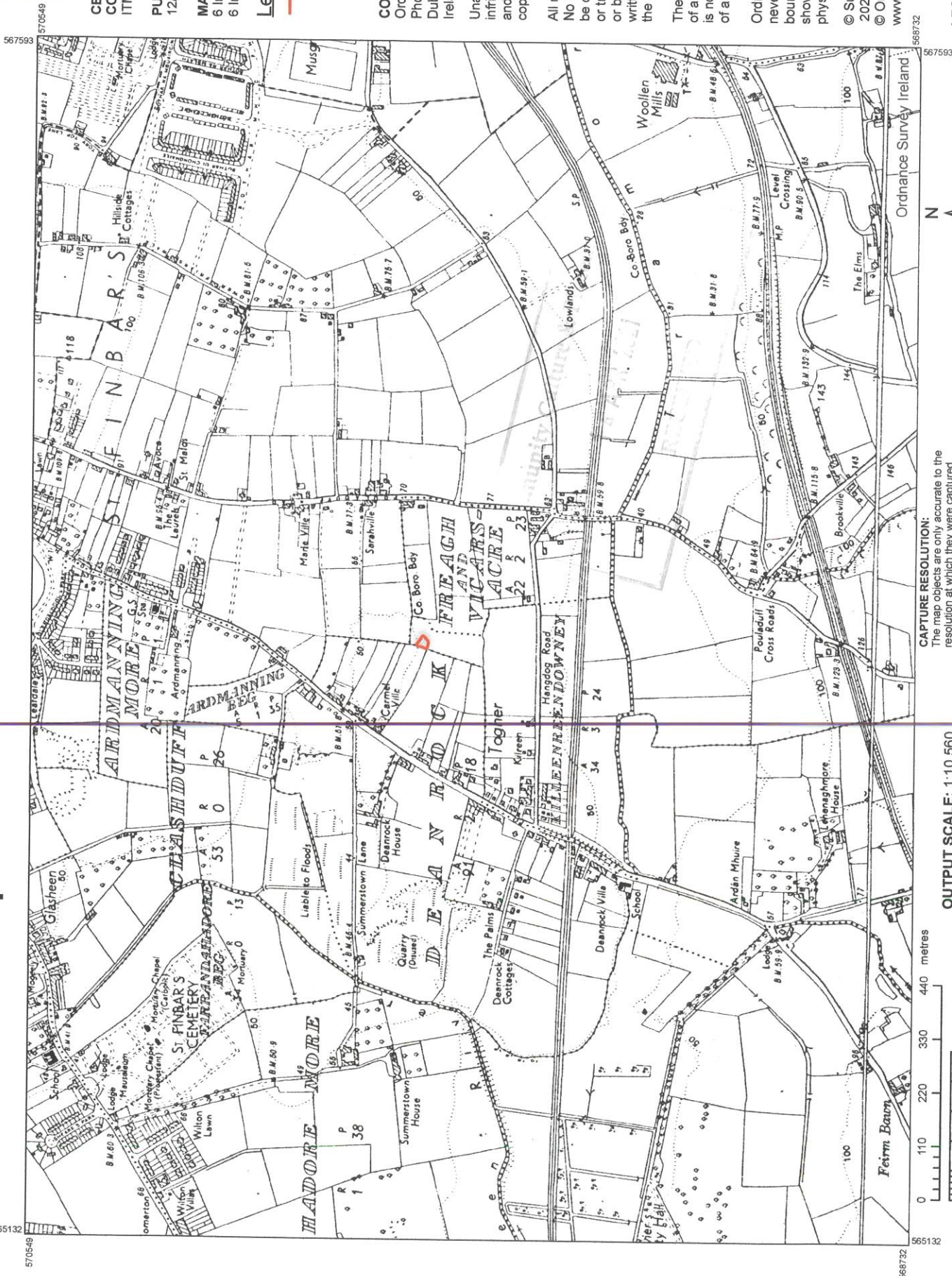
*The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation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

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***We request that you read these as they contain important information about how we process personal data.***

# Site Location Map



**CENTRE COORDINATES:**  
ITM 566363,569641

**PUBLISHED:**  
12/04/2021

**ORDER NO.:**  
50184600\_1

**MAP SERIES:**  
6 Inch Raster  
6 Inch Raster

**MAP SHEETS:**  
CK074  
CK086

**Legend**  
— Site Boundary

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Further information is available at:  
<http://www.osi.ie>, search 'Capture Resolution'

**OUTPUT SCALE: 1:10,560**



# Planning Pack Map



National Mapping Agency

**CENTRE COORDINATES:**  
ITM 566363,569641

**PUBLISHED:** 12/04/2021  
**ORDER NO.:** 50184600\_1

**MAP SERIES:** 1:1,000 6427-03  
1:1,000 6427-04  
1:1,000 6427-08  
1:1,000 6427-09

**Legend**

— Site Boundary

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**OUTPUT SCALE: 1:2,500**



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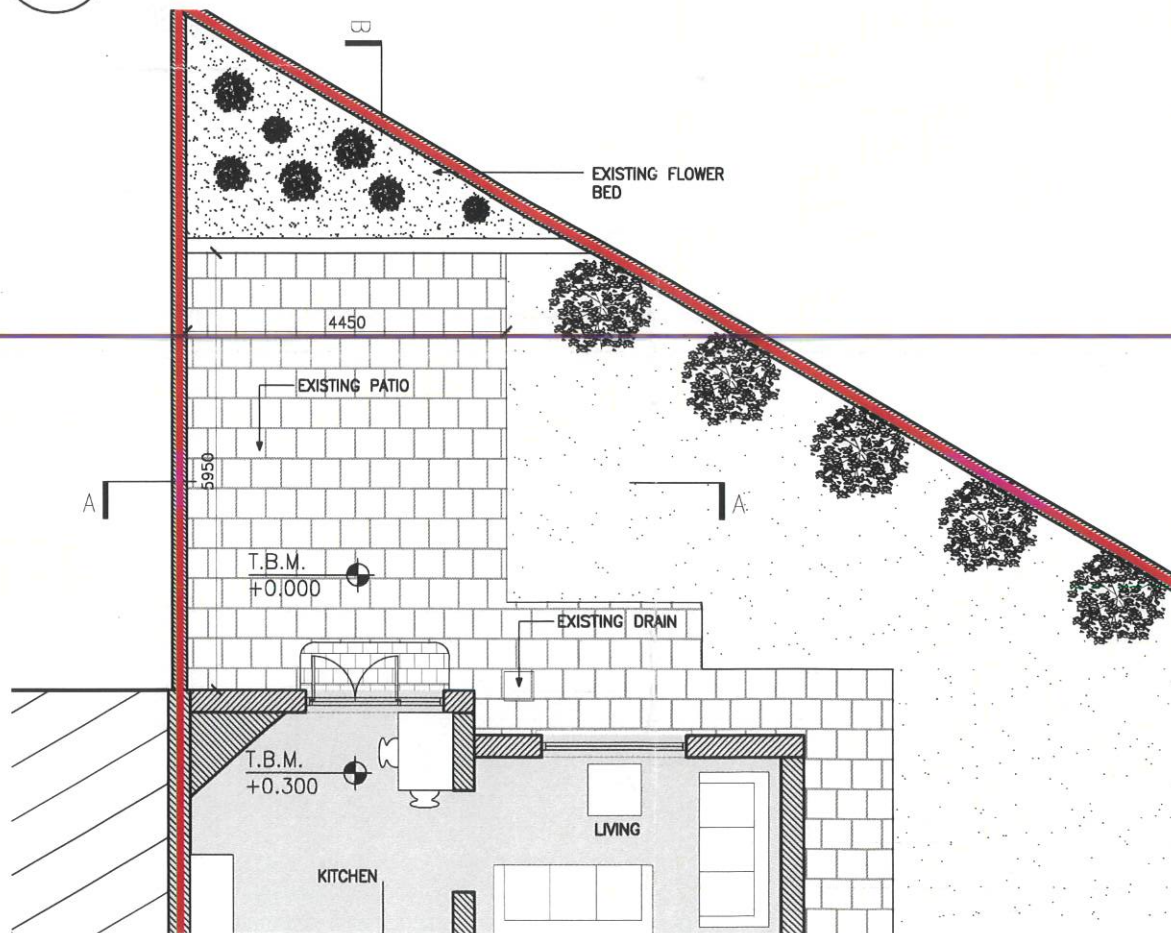
566071





**01**  
EX-01 **EXISTING SITE LOCATION PLAN**  
SCALE 1:500 @ A3

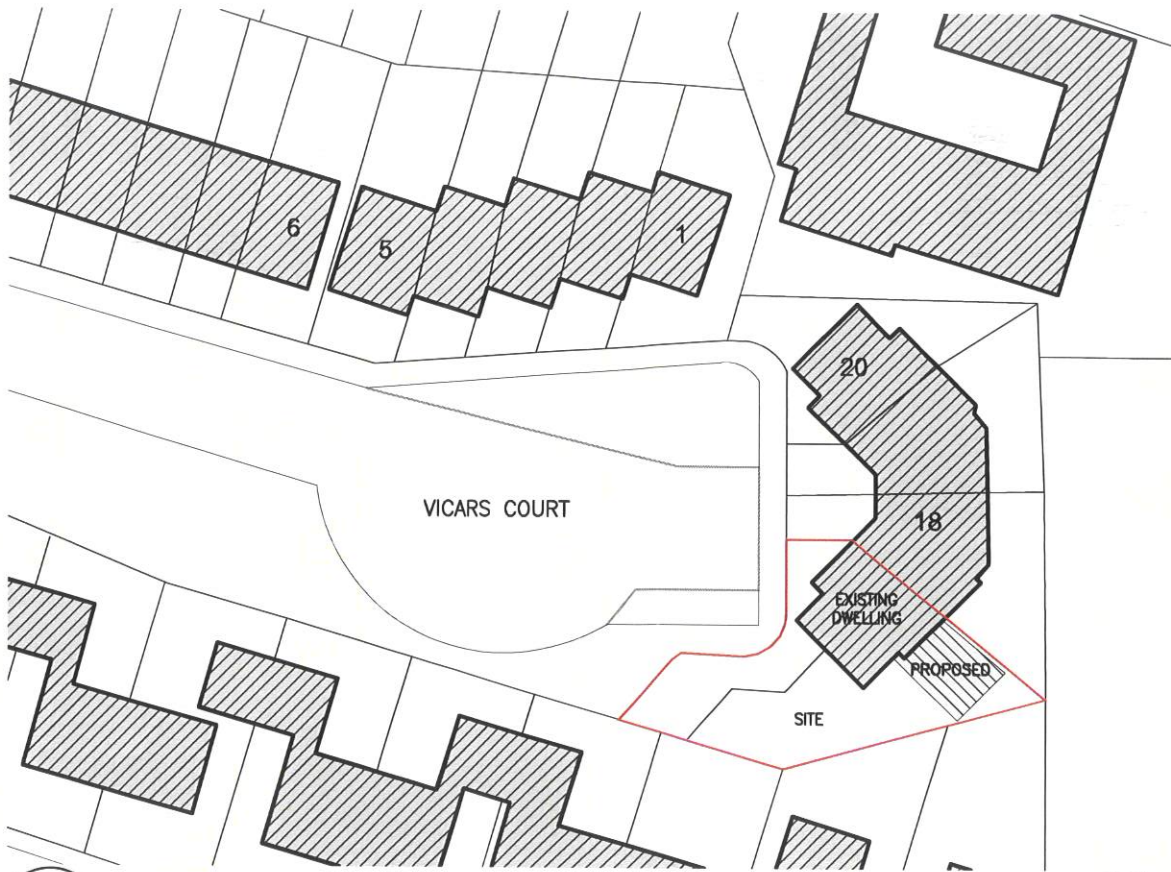
**02**  
EX-01 **EXISTING DWELLING**  
SCALE 1:200 @ A3



**03**  
EX-01 **EXISTING GROUND FLOOR PLAN**  
SCALE 1:100 @ A3

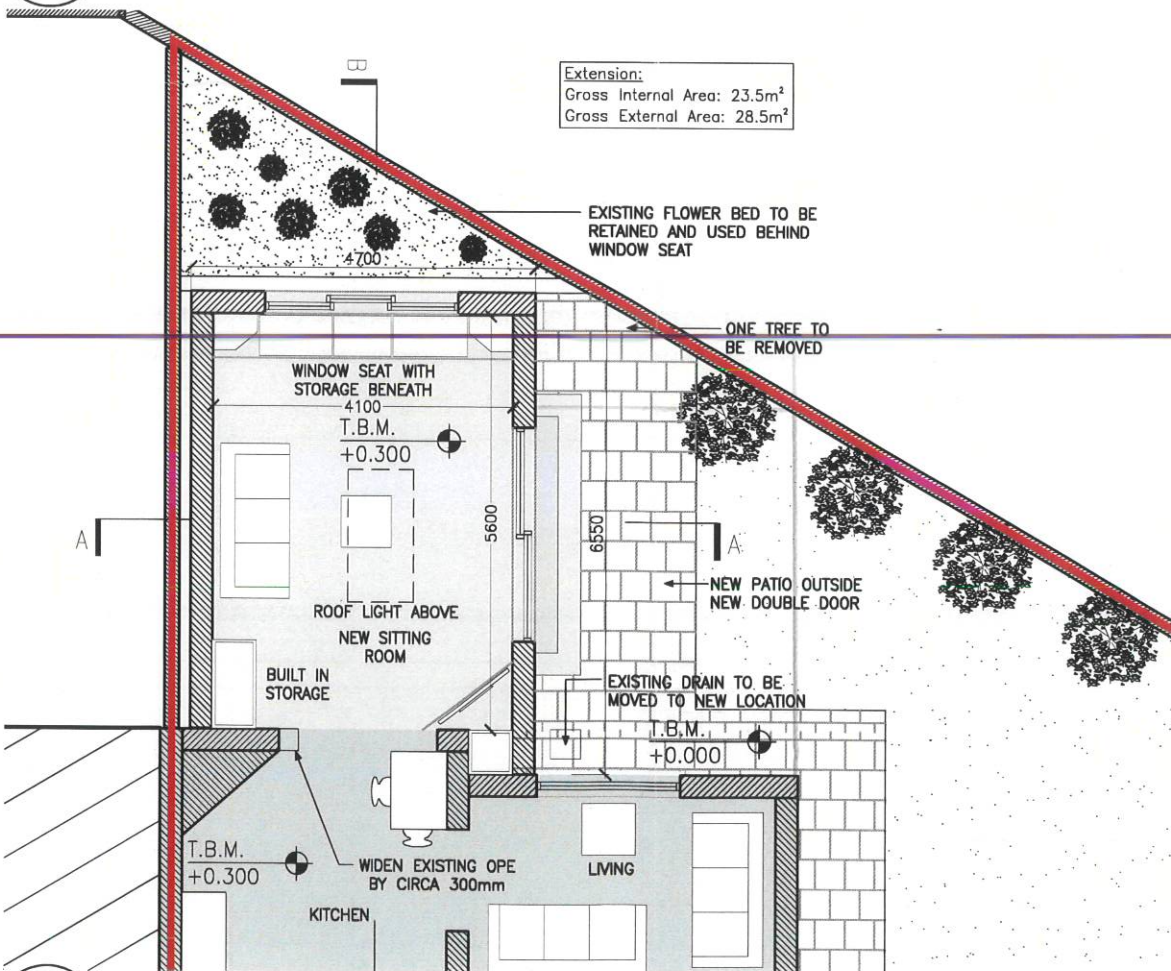
**04**  
EX-01 **EXISTING DWELLING**  
SCALE 1:100 @ A3





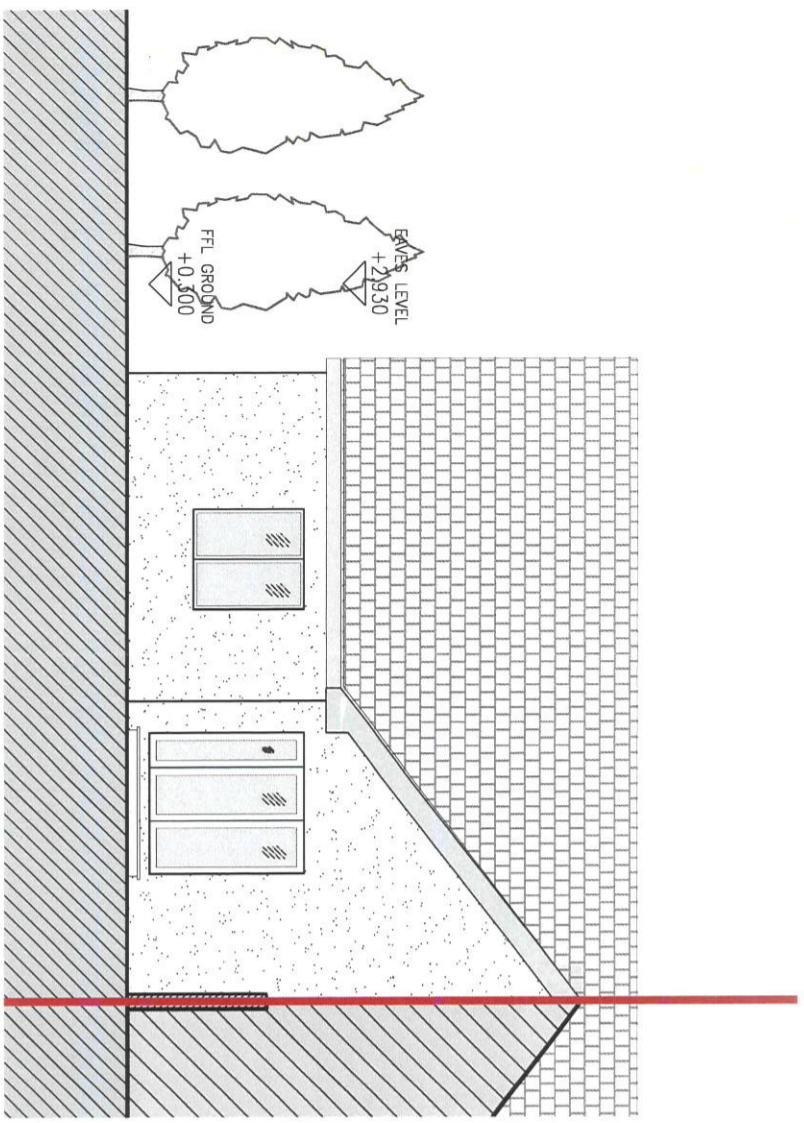
**01** PROPOSED SITE LOCATION PLAN  
PR-01 SCALE 1:500 @ A3

**02** PROPOSED...  
PR-01 SCALE 1:2

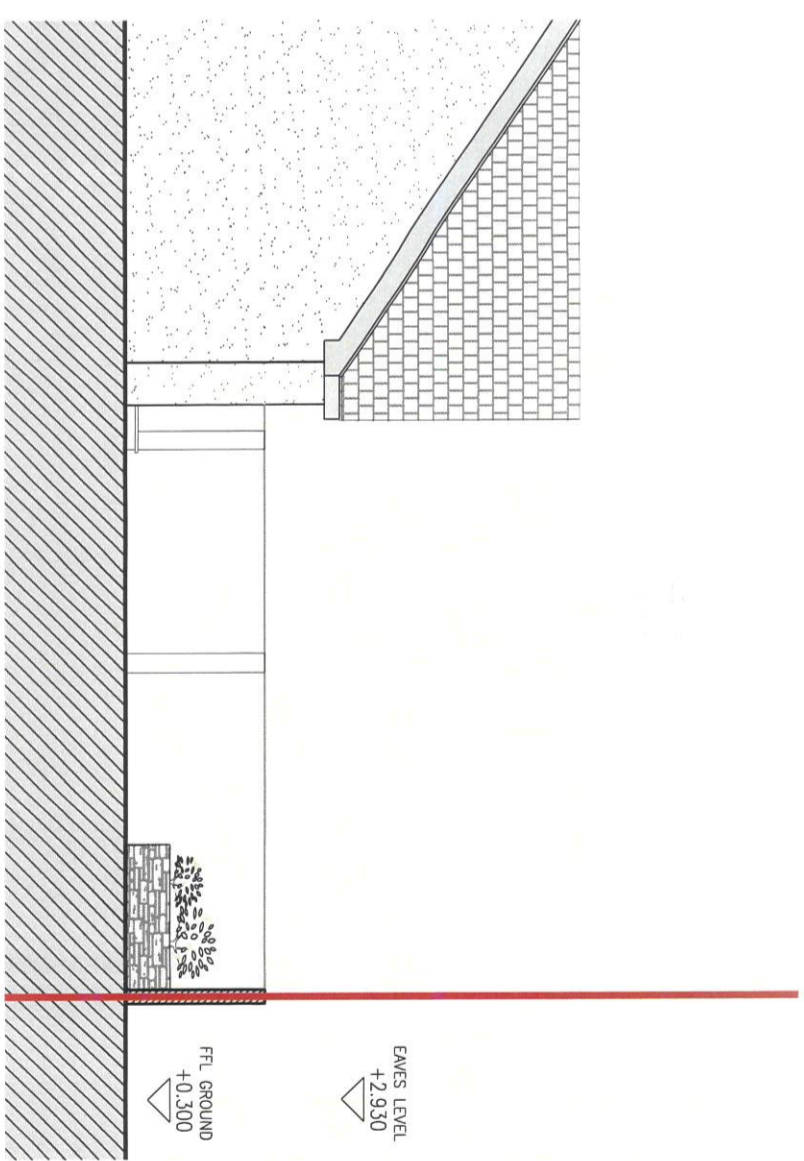


**03** PROPOSED GROUND FLOOR PLAN  
PR-01 SCALE 1:100 @ A3

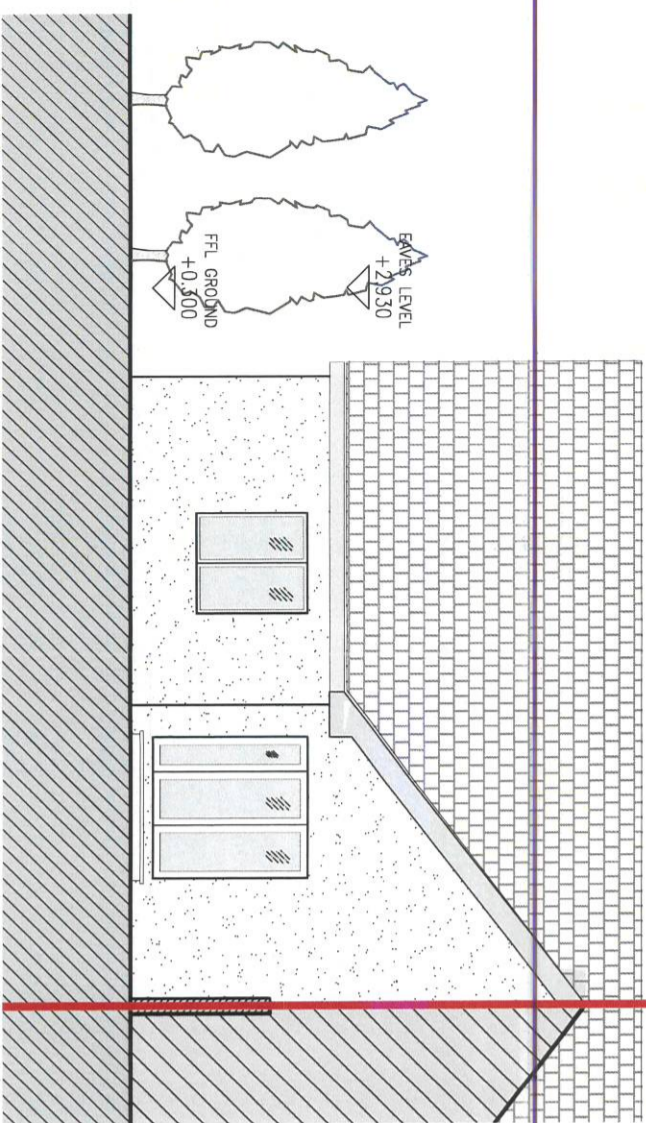
**04** PROPOSED...  
PR-01 SCALE 1:1



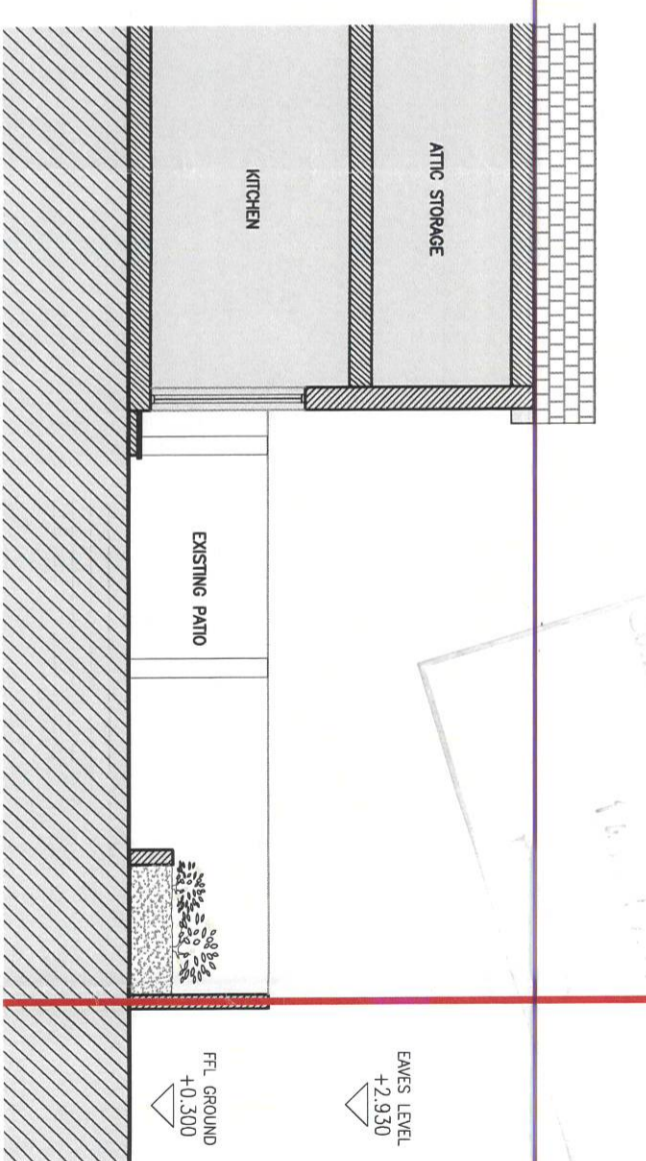
**01**  
EX-02  
EXISTING SOUTH-WEST ELEVATION (BACK)  
SCALE 1:100 @ A3



**02**  
EX-02  
EXISTING NORTH-WEST ELEVATION (SIDE)  
SCALE 1:100 @ A3



**03**  
EX-02  
EXISTING SECTION A-A  
SCALE 1:100 @ A3



**04**  
EX-02  
EXISTING SECTION B-B  
SCALE 1:100 @ A3

**LEGEND:**

- Denotes Site Boundary
- Adjoining Buildings
- Existing Building
- Proposed Building

**NOTE:**  
Glazing systems are indicative. New window and door styles to be decided by client and contractor at a later date.

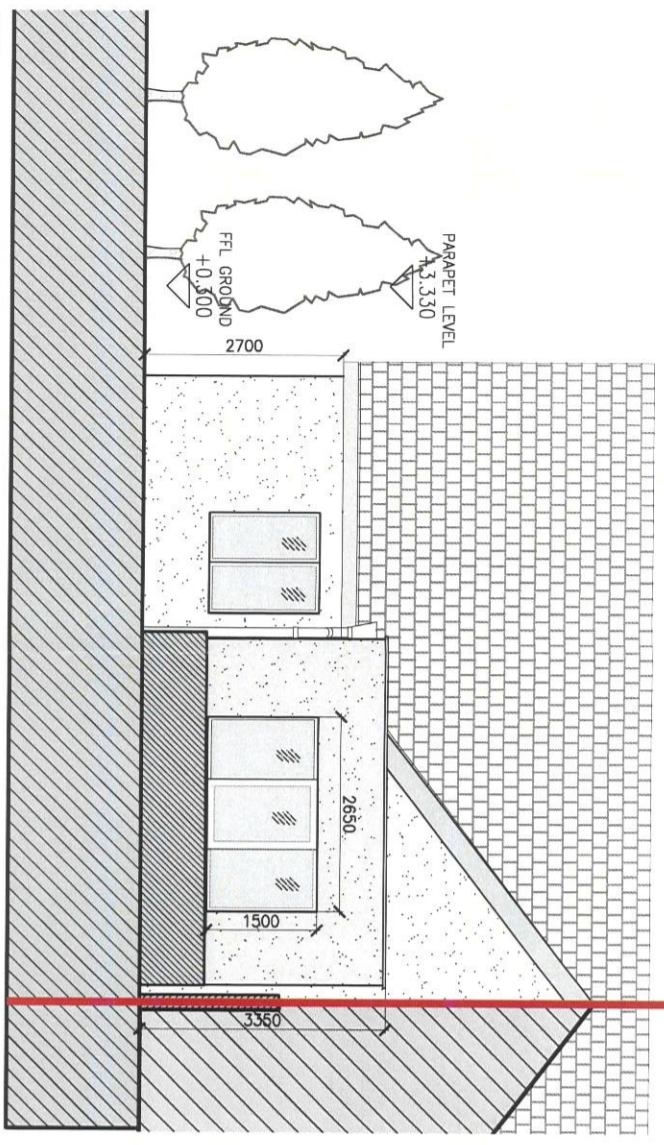
**NOTE:**  
Drawing is for illustration purposes only and should not be used for construction or any other purpose.  
Drawing to be printed at A3.

**SETTING OUT:**  
Contractor is responsible for checking of all dimensions, etc, before commencement and bringing any discrepancies in same to the Architect's attention.

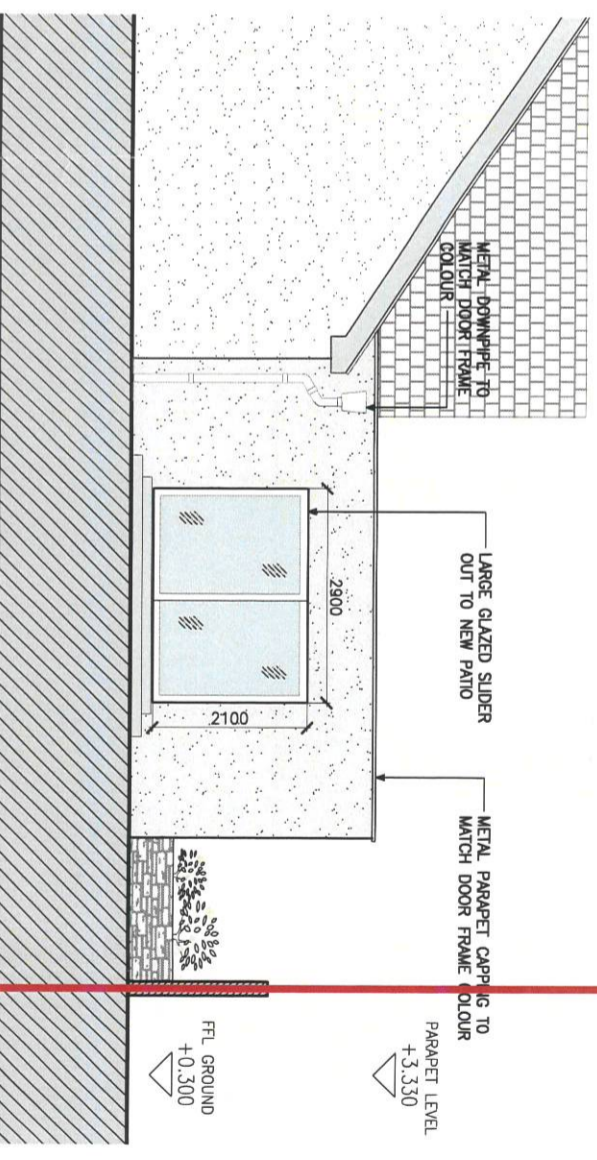
**COMPLIANCE WITH BUILDING REGULATIONS:**  
All materials and workmanship to conform in full with Building Regulations 2001, contractor to make himself familiar with the Building Regulations before commencement of work.

**CONTRACTOR TO CHECK ALL DIMENSIONS ON SITE**

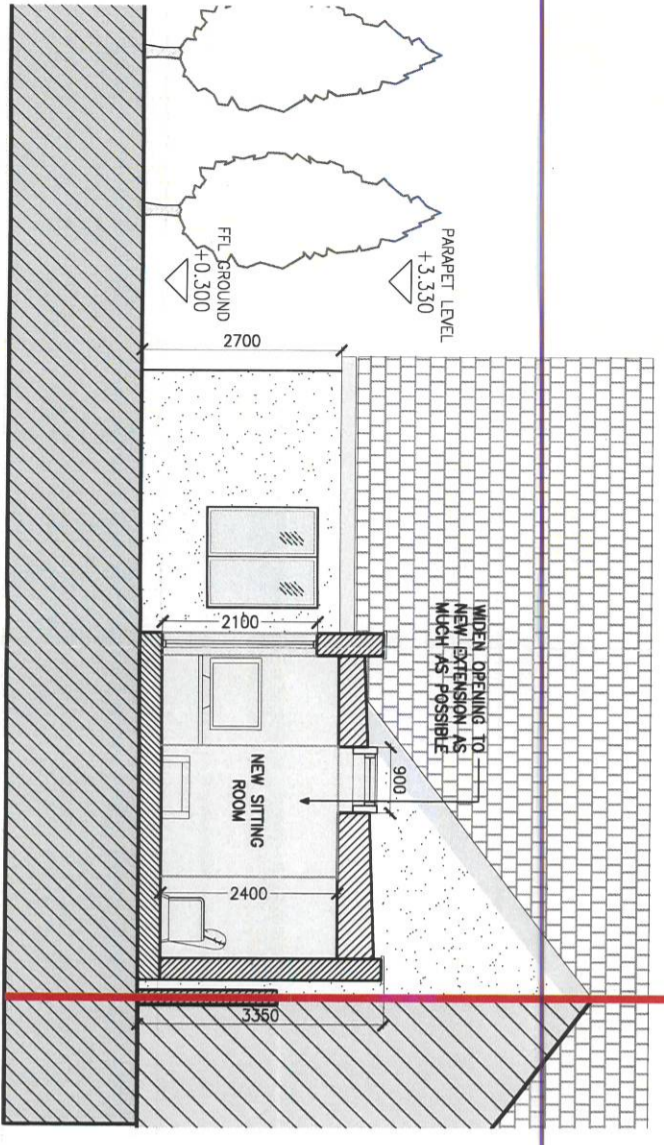
Rev	Description	Drn By	Date
A	Information	SH	09.03



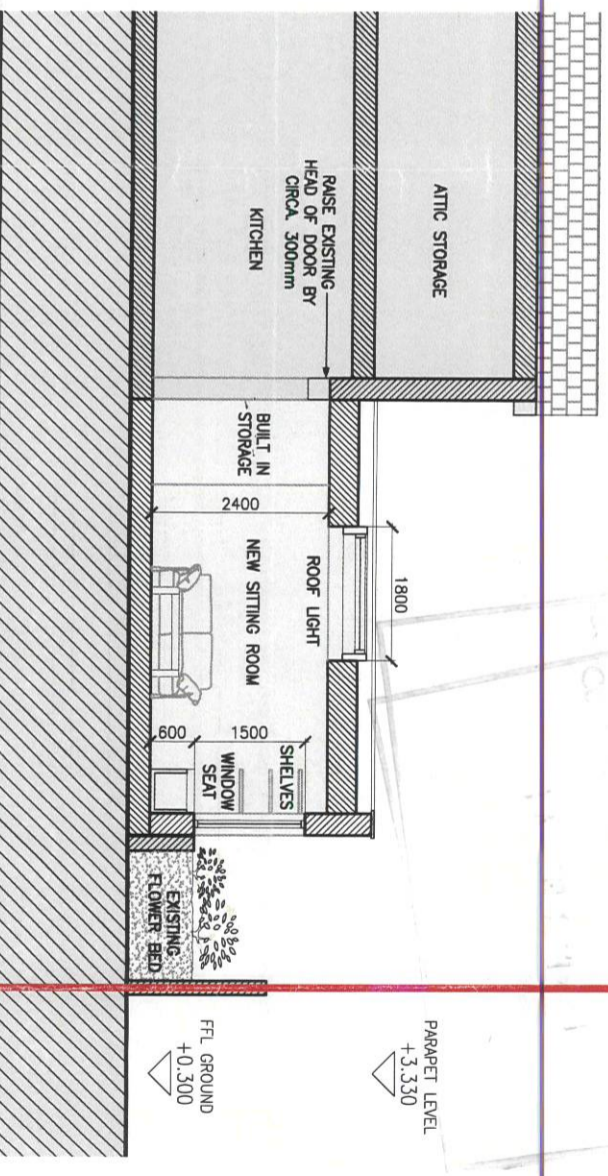
**01**  
PR-02  
PROPOSED SOUTH-WEST ELEVATION (BACK)  
SCALE 1:100 @ A3



**02**  
PR-02  
PROPOSED NORTH-WEST ELEVATION (SIDE)  
SCALE 1:100 @ A3



**03**  
PR-02  
PROPOSED SECTION A-A  
SCALE 1:100 @ A3



**04**  
PR-02  
PROPOSED SECTION B-B  
SCALE 1:100 @ A3

**LEGEND:**

- Demos Site Boundary
- Adjoining Buildings
- Existing Building
- Proposed Building

**NOTE:**  
Glazing systems are indicative. New window and door styles to be decided by client and contractor at a later date.

**NOTE:**  
Drawing is for illustration purposes only and should not be used for construction or any other purpose.  
Drawing to be printed at A3.

**SETTING OUT:**  
Contractor is responsible for checking of all dimensions, etc. before commencement and bringing any discrepancies in same to the Architect's attention.

**COMPLIANCE WITH BUILDING REGULATIONS:**  
All materials and workmanship to conform in full with Building Regulations 2001, contractor to make himself familiar with the Building Regulations before commencement of work.

**CONTRACTOR TO CHECK ALL DIMENSIONS ON SITE**

Rev	Description	Drn By	Date
A	Information	SH	09.03