

Comhairle Cathrach Chorcaí Cork City Council

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

Dermot Harrington
Cork Architects
Nations House
14 Parnell Place
Cork

17th Nov 2020

**RE: Section 5 Declaration R613/20 1 Gillabbey Terrace,
Gillabbey Street, Cork**

A Chara,

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

- the particulars received by the Planning Authority on 22/10/2020
- Sections 2 and 3 of the Planning and Development Act, 2000 (as amended)
- Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)

it is considered that,

- rear extension to the existing dwelling

is development and is not exempted development.

Is misa le meas,

Kerry Bergin

Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 613/20
Description: Is the rear extension to the existing dwelling considered exempted development?
Applicant: Mick Coughlan
Location: 1 Gillabbey Terrace, Gillabey Street, Cork
Date: 12/11/2020

SUMMARY OF RECOMMENDATION

Constitutes development; is not exempted development

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.

Site Location

The property is located on Gillabbey Terrace, which is a terrace to the north of Gillabbey Street in Cork City. The dwelling itself is an end of terrace two storey residential property.

Subject Development

The existing development subject to this Section 5 declaration request asks the following question of the Planning Authority: Is the rear extension to the existing dwelling considered exempted development?

It is noted that the existing rear extension consists of a kitchen extension at ground floor level (3.45 sqm internal area) and a first floor extension which accommodates a bedroom (7.27 sqm internal area) as shown on the submitted floor plans. The submitted elevation drawings also show where a garage structure is located in the rear yard area of the property.

Land use zoning

The site is predominantly zoned ZO5 '*Residential, Local Services and Institutional Uses*'. The provision and protection of residential uses and residential amenity is a central objective of this zoning.

Built Heritage

The site is in the South Parish Architectural Conservation Area and in a Zone of Archaeological Potential where specific policy is set out in Chapter 9 of the City Development Plan.

Planning History:

71/2939 – refused application for a two storey extension to the rear of the property. (details submitted with the Section 5 documentation). The drawings (see copy attached) on the 1971 application showed a ground floor “scullery” room at rear elevation (with garage structure also indicated in rear yard area) with a first-floor bedroom. The location and dimensions of these proposed rooms which were refused are broadly similar to the extension subject to this current Section 5 application.

I note that the applicant has submitted a copy of a letter from the Chief Planning Assistant of Cork Corporation dated 19/05/1972 referring to a development at this address which did not require planning permission. The letter refers to a ground floor kitchen extension and first floor bedroom extension. The letter states that the existing extension "*is different to the extension refused permission under 2939/71*". There is no corresponding drawing available to the Planning Authority to check the scope of the extension which was previously decided as "*not necessary to obtain planning permission for the proposed alterations*" in the letter dated 19/05/1972. The applicant has not submitted any details of possible further development which had occurred at the property since the assessment in 1972.

In my view, the letter submitted on the file dated 19/05/1872 cannot be relied on as an exemption from the requirement of planning permission of the existing development. The details of the refused application for extension are very similar to what is currently presented. As the letter refers to an extension which is "different" to what was refused under TP2939/71, it does therefore not refer to the current extension subject to this section 5 application.

This section 5 application will therefore be assessed under current planning legislation as set out in the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended).

Relevant Legislation:

Planning and Development Act, 2000

Section 3 (1) of the Act defines "*Development*" as, '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 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.

The definition of "*Structure*" in Section 2 of the 2000 Act is as follows:

"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 (ii)"

Planning and Development Regulations 2001 (as amended)

Schedule 2, Part 1 of the above regulations relates to general exempted development.

Classes 1- 8 refer to development within the curtilage of a house.

Specifically, Class 1 refers to an extension of a house to the rear of the house, by the construction or erection of an extension (including a conservatory) or by the conversion for use as part of the house any garage, store, shed or other similar structure attached to the rear or to the side of the house,

Assessment

Sub-threshold EIS

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) Regulations 2011) 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 an EIS is not required to be submitted.

Appropriate Assessment

The subject site is located approx. 1.8km south of an existing Special Protection area, namely Cork Harbour SPA (Site Code: 004030) and proposed NHA, namely Douglas River Estuary (Site Code: 001046).

The potential for this development to have significant impacts on any Natura 2000 site has been ruled out because it is of a type and scale of development which will not result in any impact on the habitats or species for which the Nature 2000 site is designated.

Assessment

As per definition of "Structure" in Section 2 of the Planning and Development Act, 2000, the existing extension is a structure.

As per definition of "development" in Section 3 (1) of the Planning and Development Act 2000 (as amended), it is considered that the erection of this extension constitutes works, and as such, is 'development' and that the remaining question therefore is whether it is 'exempted development'.

Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) relates exempted development. As noted above, Class 1 refers to the extension of a house. Class 1 sets out 7 conditions and limitations for such extensions which are as follows:

Description of Development	Conditions and Limitations
<p>Development within the curtilage of a house</p> <p>CLASS 1</p> <p>The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(b) 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.</p> <p>(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</p> <p>2. (a) 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.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached</p>

	<p>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.</p> <p>(c) 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.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>4. (a) 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.</p> <p>(b) 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.</p> <p>(c) 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.</p> <p>5. 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.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(c) 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.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>
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Having regard to the conditions and limitations set out for exempted development within the curtilage of a dwelling as set out above, from the details on the application, I note the following from the conditions and limitations as set out above :

5. 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.

It is noted from the submitted ground floor plan and the remaining outdoor rear yard area is 8 sqm. This falls significantly short of the 25 sqm area required for the private amenity open space required under Class 1 above.

I note that the areas of the ground and first floor extensions would comply with 6 of the 7 conditions as outlined about. In relation to no. 5 above (in bold), the remaining area left for "*private open space reserved*

exclusively for the use of the occupants of the house to the rear" is less than the required minimum of 25 sqm.

Conclusion

Having regard to:

- the particulars received by the Planning Authority on 22/10/2020
- Sections 2 and 3 of the Planning and Development Act, 2000 (as amended)
- Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)

it is considered that,

- rear extension to the existing dwelling

is development and is not exempted development.

Gwen Jordan McGee

Gwen Jordan McGee

Senior Executive Planner

12/11/2020

**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

1 GILABBEY TERRACE, GILABBEY ST, CORK T12 P2DD

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 THIS REAR EXTENSION TO THE EXISTING DEVELOPMENT
CONSIDERED EXEMPTED DEVELOPMENT ; (PLEASE NOTE
ATTACHED CORK CITY COUNCIL CORRESPONDENCE DATED
19TH MAY 1972).

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

SEE ATTACHED SURVEY DRAWS OF EXISTING DEVELOPMENT

3. Are you aware of any enforcement proceedings connected to this site? **No.**
 If so please supply details:

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?
 If so please supply details:

2939/71

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	10.5sqm EXTENSION (HIGHWAYED)
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st 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)
/	/

8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other
Where legal interest is 'Other', please state your interest in the land/structure in question	AGENT	
If you are not the legal owner, please state the name and address of the owner if available	MICHAEL CAHILL, 7 QUARREY TERRACE, QUARREY ST, COLL	

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

Signature: DK (DANIEL HARINGTON MURPHY)

Date: 21.10.21

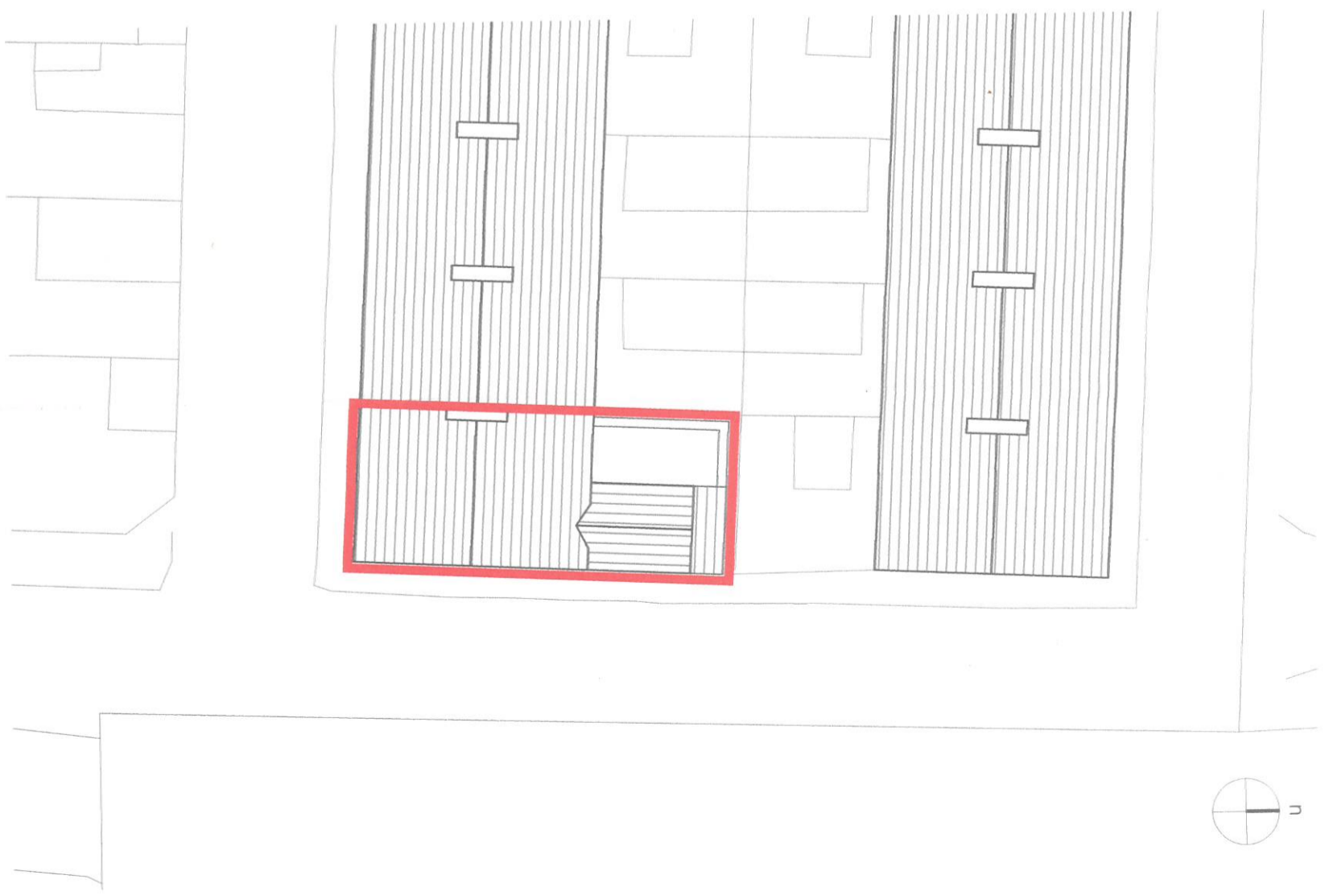
- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any 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.



site location plan
scale 1:1000



site plan (area - 61sqm)
scale 1:200

survey drawings only

1 gillabhey terrace . gillabhey st . cork

19.10.20	Surveyed
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cook architects

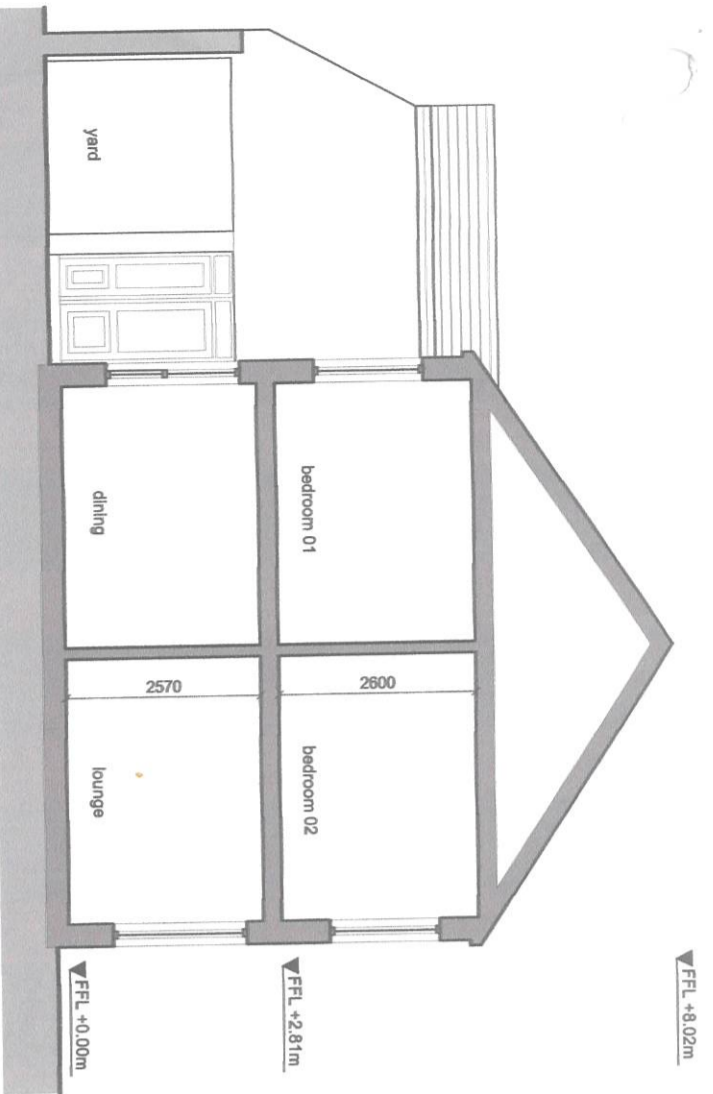
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Client	M Coughlan	Date	Oct 2020	Scale	1:1000@A3
Project	Gillabhey	Dwg No	2081-100		
Dwg Title	Site Plans				

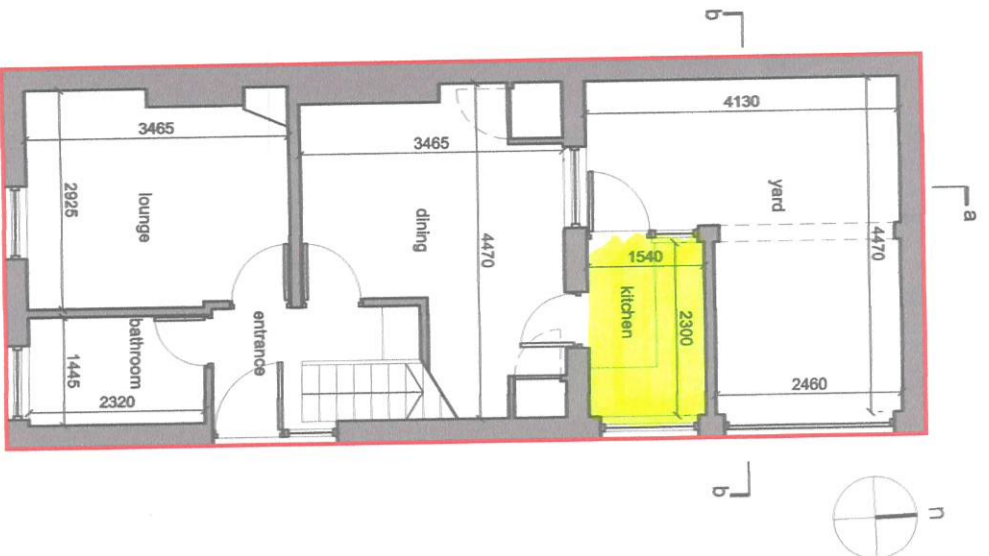
To be read with relevant Consultant Drawings
Do Not Scale - Use Figure Dimensions Only - Check Dimensions on site

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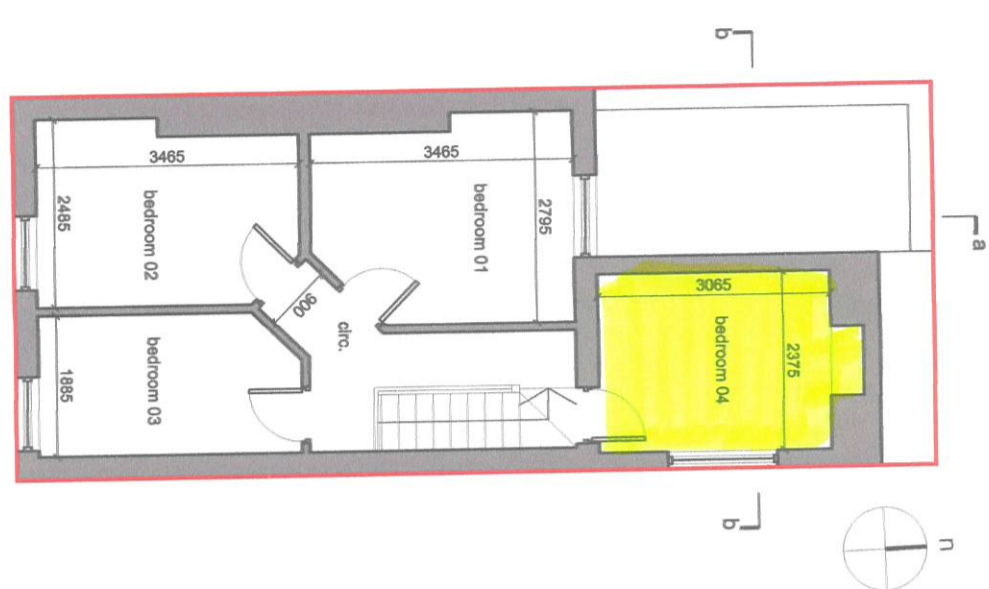
section aa

scale 1:100



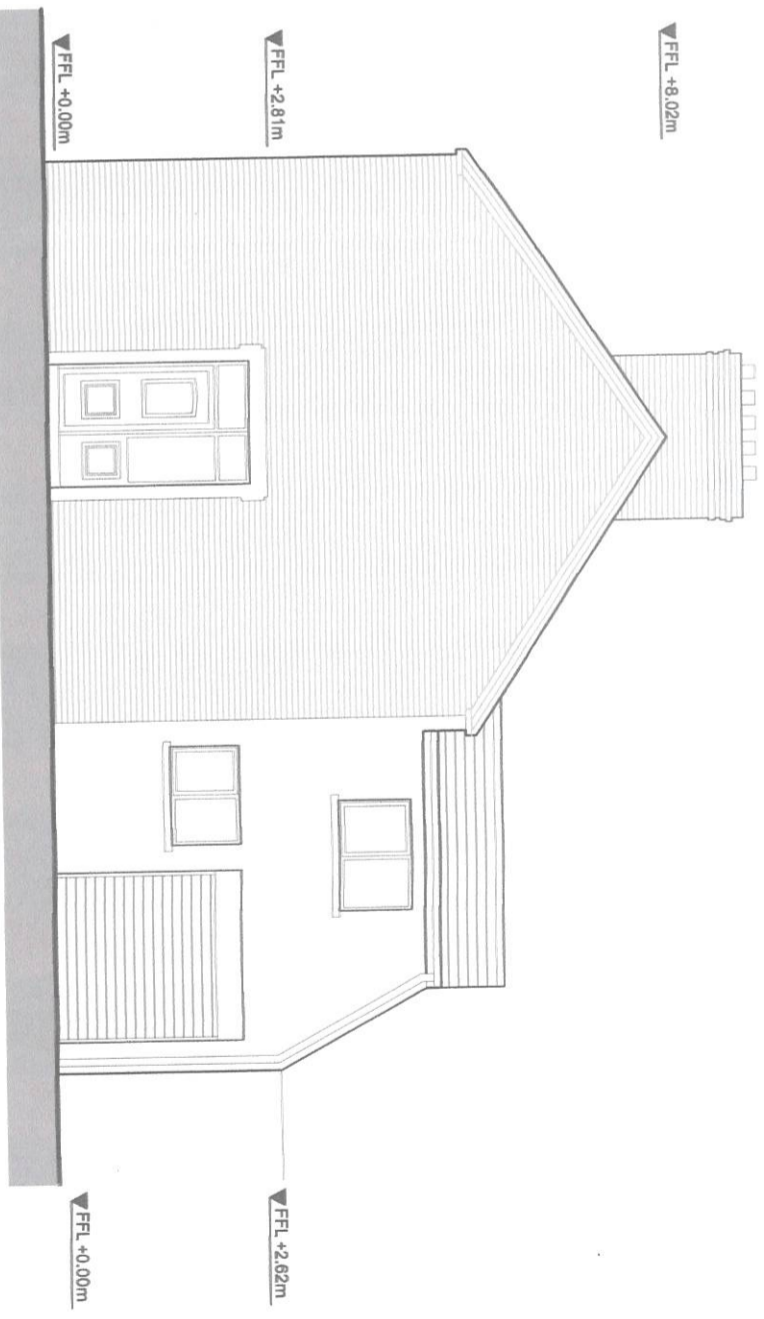
ground floor plan (area - 35.8 sqm)

scale 1:100



first floor plan (area - 39.6 sqm)

scale 1:100



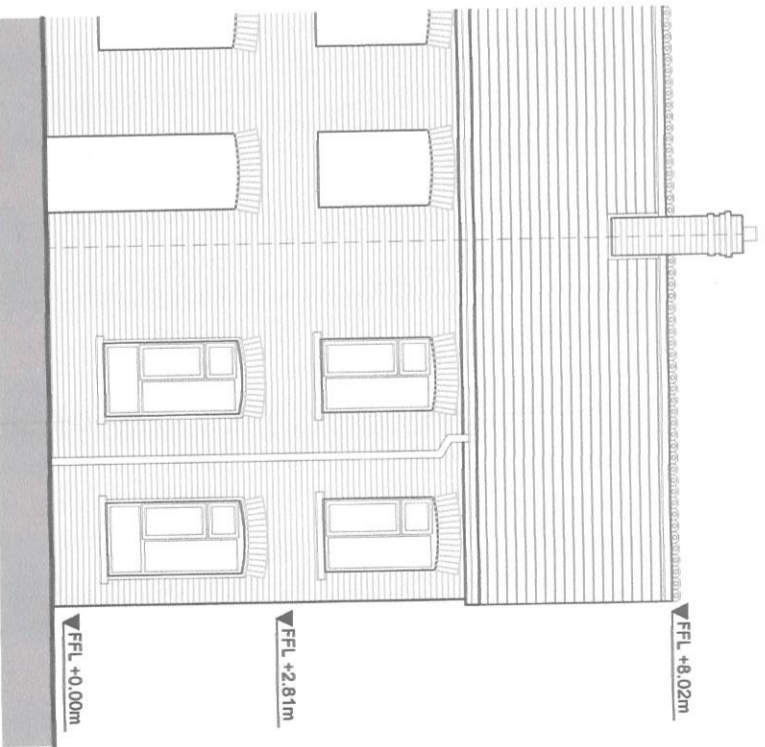
east elevation

scale 1:100



section bb

scale 1:100



south elevation

scale 1:100

19.10.20	Surveyed
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Client	M Coughlan	Date	Oct 2020	Scale	1:100@A3
Project	Gilabbey	Drng No	2081-150		
To be read with relevant Consultants Drawings					
Do Not Scale - Use Figure Dimensions Only - Check Dimensions on site					
North Architects of Any Description Copyright Reserved © cook architects					

survey drawings only
 1 gilabbey terrace . gilabbey st . cork