

Comhairle Cathrach Chorcaí Cork City Council

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

John Cunningham
c/o Eric Corkery
DL Group
1 Hodders Villas
Ballincollig
Cork

27/08/2019

RE: Section 5 Declaration R533/19 2 Westbourne Terrace, The Lough, Cork

A Chara,

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

In view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended),

With regard to the first question, it is considered that the construction of a single storey extension to the rear with 2 no. velux windows is development and **is exempted development**.

With regard to the second question, the installation of the 2 no. velux windows to the rear of the original building is development and **is exempted development** under Section 4(1)(h) of the Planning and Development Act 2000 (as amended); while the 1 no. velux window at the front of the original building is development and **is not exempted development**.

Yours faithfully,

Paul Hartnett
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

Strategic Planning & Economic Development Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

Comhairle Cathrach Chorcaí
Cork City Council
12 AUG 2019
Strategic Planning & Economic
Development Directorate

Email: planning@corkcity.ie

Fón/Tel: 021-4924564/4321

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

No. 2 Westbourne Terrace, The Lough, 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 construction of a single storey extension to the rear of an existing dwelling which includes 2 velux roof lights and the installation of 3 velux roof lights on the original building an exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

On the original building, 1 No. velux roof light has been installed on the rear (East) elevation, 1 No. velux roof light has been installed on the front (West) elevation and 1 No. velux roof light has been installed on the south elevation, these have all been installed since the original construction.

A single storey extension was also constructed with a floor area of 7.2m, these construction works were all carried out prior to my client John Cunningham buying the property in the early 2000's.

I have enclosed an Ordnance survey map from the 1900's which shows the original outline of the building bound in red.

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	7.2m ²
(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 checked="" 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) _____ _____ _____

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		John Cunningham
Applicants Address	No.2 Westbourne Terrace, The Lough, Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Eric Corkery
	Address:	DL Group consulting engineers 1 Hodders villas, Ballincollig, Co. Cork
	Telephone:	[REDACTED]
	Fax:	
	E-mail address:	
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	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		

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

Signature: Eric Corkery

Date: 09.08.19

.....

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.

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

PLANNER'S REPORT Ref. R533/19		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	"Is the (i) construction of a single storey extension to the rear of an existing dwelling which includes 2 velux lights; and (ii) the installation of 3no. velux roof lights on the original building an exempted development?"	
Location	2 Westbourne Terrace, The Lough	
Applicant	John Cunningham	
Date	21/08/2019	
Recommendation	<p>With regard to the first question, it is considered that the construction of a single storey extension to the rear with 2 no. velux windows is development and is exempted development.</p> <p>With regard to the second question, the installation of the 2 no. velux windows to the rear of the original building is development and is exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended); while the 1 no. velux window at the front of the original building is development and is not exempted development.</p>	

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

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

In framing the question to the planning authority, the applicant states in Q2 of the application form:

"Is the (i) construction of a single storey extension to the rear of an existing dwelling which includes 2 velux lights; and (ii) the installation of 3no. velux roof lights on the original building an exempted development?"



3. Site Description

The property in question is a mid terrace a two storey dwelling with a two-storey and single storey historical extensions to the rear. There is one no. velux window to the front of the property; and 4 to the rear (one on the main dwelling roof, one on the two-

storey rear extension; and 2 on the single storey extension).

4. Planning History

There is no known planning history associated with this site.

5. Legislative Provisions

5.1 The Act

Section 2(1),

"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),

The following shall be exempted developments for the purposes of this Act-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 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

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.

5.2 The Regulations

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,*

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

Planning & Development Regulations 2001 (as amended) SCHEDULE 2, PART 1
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Exempted Development — General Column 1

Column 2

Conditions and Limitations

Description of Development

Development within the curtilage of a house

CLASS 1

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.

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

(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.

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.

(b) 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.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

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.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

6. ASSESSMENT

6.1 Development

The first issue for consideration is whether or not the matter at hand is 'development'.

'Development' as defined in the Act (3)(1) comprises two possible chief components: *'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'*. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

'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.'*

I consider that the proposed elements ((i) the single storey extension; and (ii) the 5 no. velux windows) constitutes development as it comprises of works which includes construction, alteration and extension.

5.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development.

There is no known planning history on this site and therefore co existing planning permission conditions which could be contravened.

The single storey extension to the rear appears to be a total of 9.2sq.m and is well over 11m from the rear boundary it faces. The roof area of the single storey element is not being used as a balcony. It is considered that the single storey extension comes within the conditions and limitations of the Exempted Development.

With regard to the 4no. velux windows to the rear. These are considered under **Section 4(1)(h)** of the Planning & Development Act 2000 (as amended) which states:

The following shall be exempted developments for the purposes of this Act-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;

The velux windows to the rear are considered to be alterations and improvements which do not materially affect the external appearance of the structure as to render the appearance inconsistent with the character of the neighbouring structures, and therefore are exempted development under 4(1)(h).

To this end, however, the velux window at the front is considered as alterations and improvements which does materially affect the external appearance of the structure as to render the appearance inconsistent with the character of the neighbouring structures and is therefore not exempted development under 4(1)(h).

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) 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 environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. 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 the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. Conclusion

The following questions have been asked:

“Is the

- (i) construction of a single storey extension to the rear of an existing dwelling which includes 2 velux lights; and
- (ii) the installation of 3no. velux roof lights on the original building an exempted development?

With regard to the first question, it is considered that the construction of a single storey extension to the rear with 2 no. velux windows is development and is exempted development.

With regard to the second question, the installation of the 2 no. velux windows to the rear of the original building is development and is exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended); while the 1 no. velux window at the front of the original building is development and is not exempted development.

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
- Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended),

With regard to the first question, it is considered that the construction of a single storey extension to the rear with 2 no. velux windows is development and is exempted development.

With regard to the second question, the installation of the 2 no. velux windows to the rear of the original building is development and is exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended); while the 1 no. velux window at the front of the original building is development and is not exempted development.


Mary Doyle
Executive Planner

21/08/2019

Agreed.

S. Jordan

22/8/2019

Share

Data Catalogue

- Aerial 2005-2012
- Aerial 2005
- Aerial 2000
- Aerial 1995
- Digital Globe 2011-2013
- Historic Map 25 inch (1888-1913)
- Historic Map 6 inch B&W (1837-1...)
- Historic Map 6 inch Colour (1837...

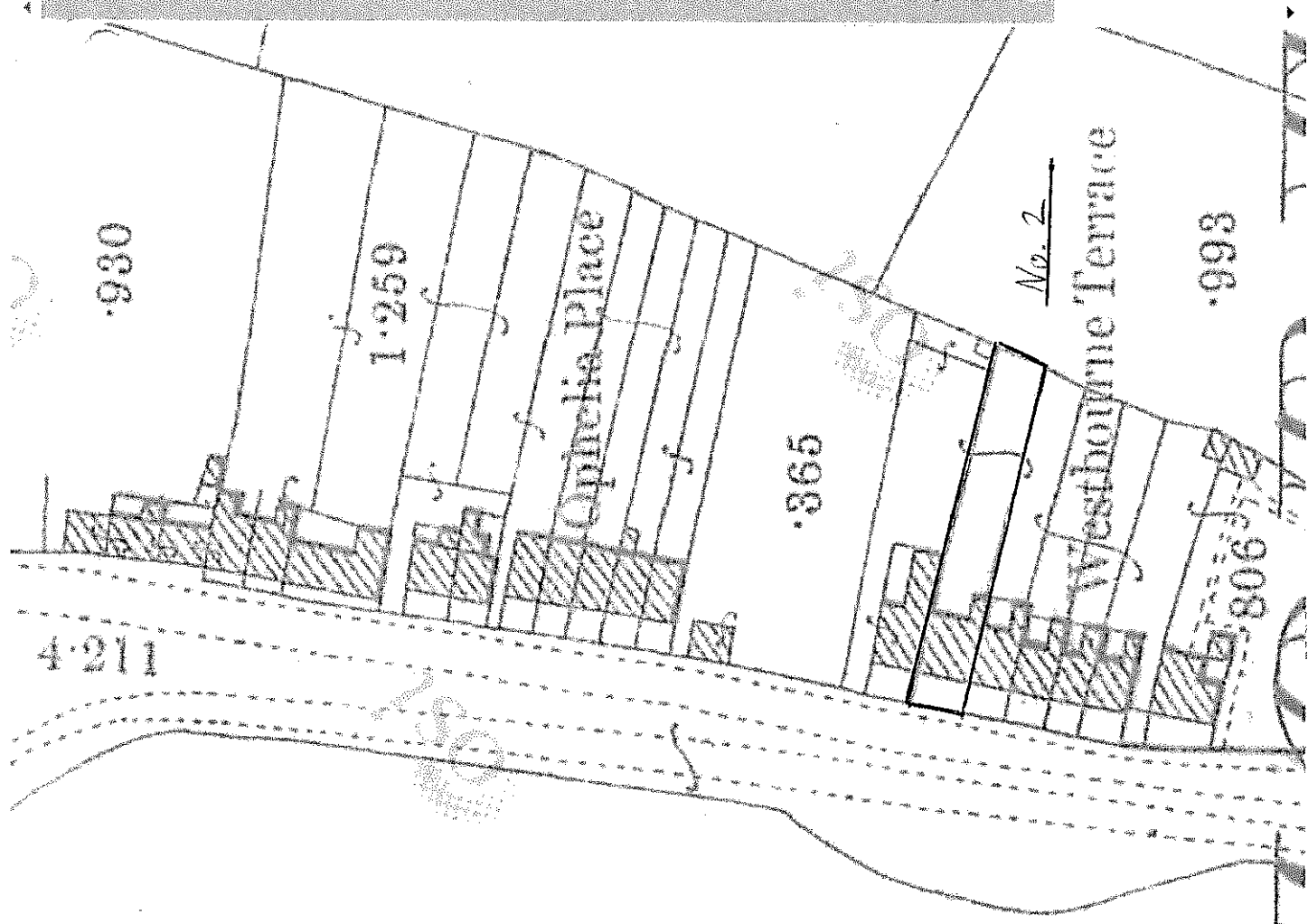
Selection

- Historic Map 25 inch (1888-1913)
Transparency
 - Historic Map 6 inch B&W (1837-1...)
Transparency
- Close Menu

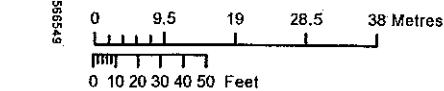
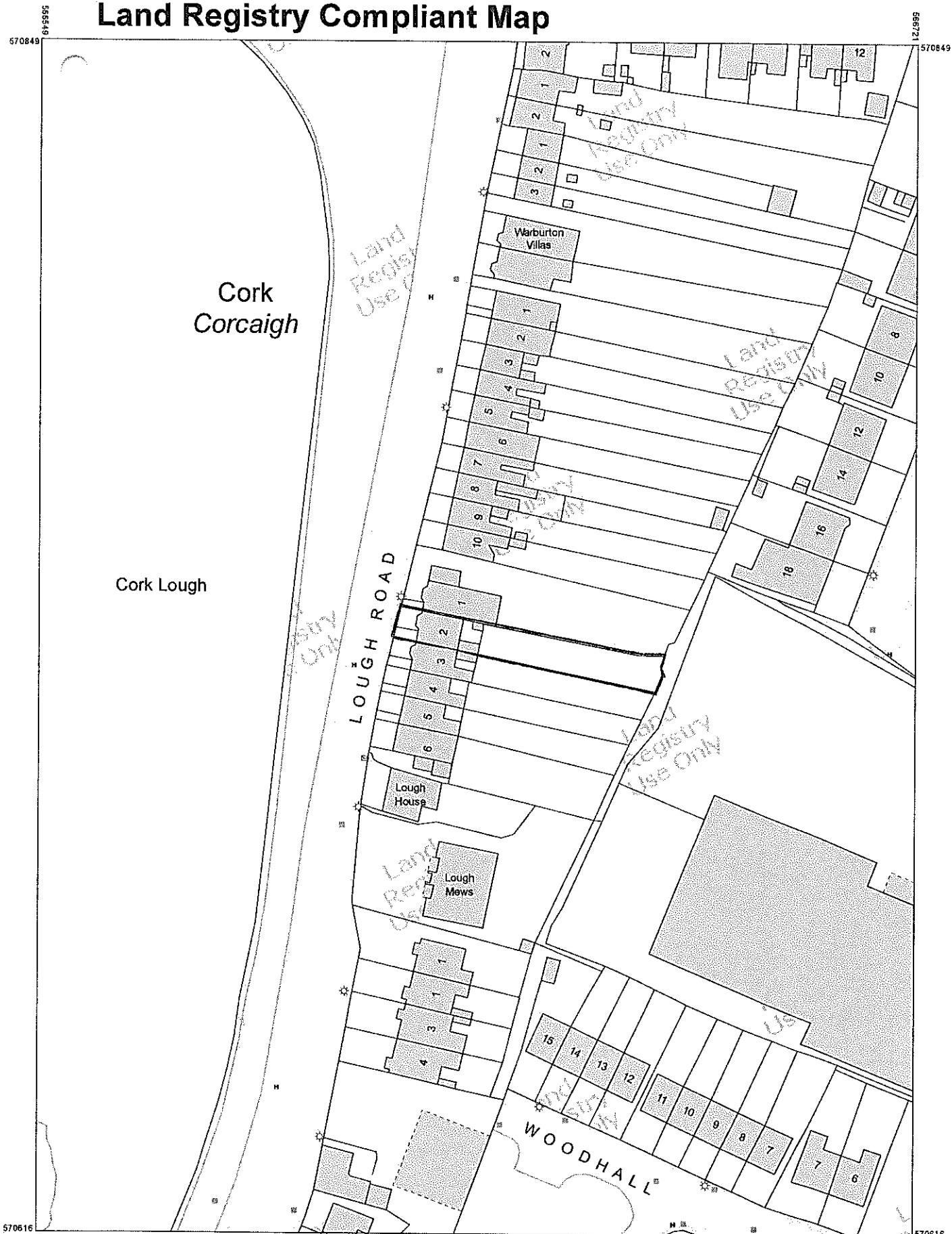
North Arrow

Surface of Water 75.8

10th. November 1892.



Land Registry Compliant Map



OUTPUT SCALE: 1:1,000



CENTRE COORDINATES:
ITM 566635,570733

PUBLISHED: 29/07/2019
MAP SERIES: 1:1,000
MAP SHEETS: 6382-18, 6382-24

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LEGEND: <http://www.osi.ie>; search 'Large Scale Legend'

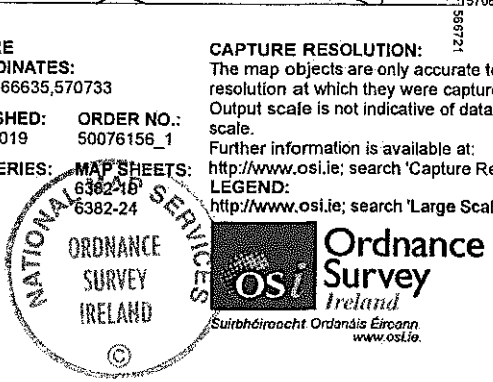
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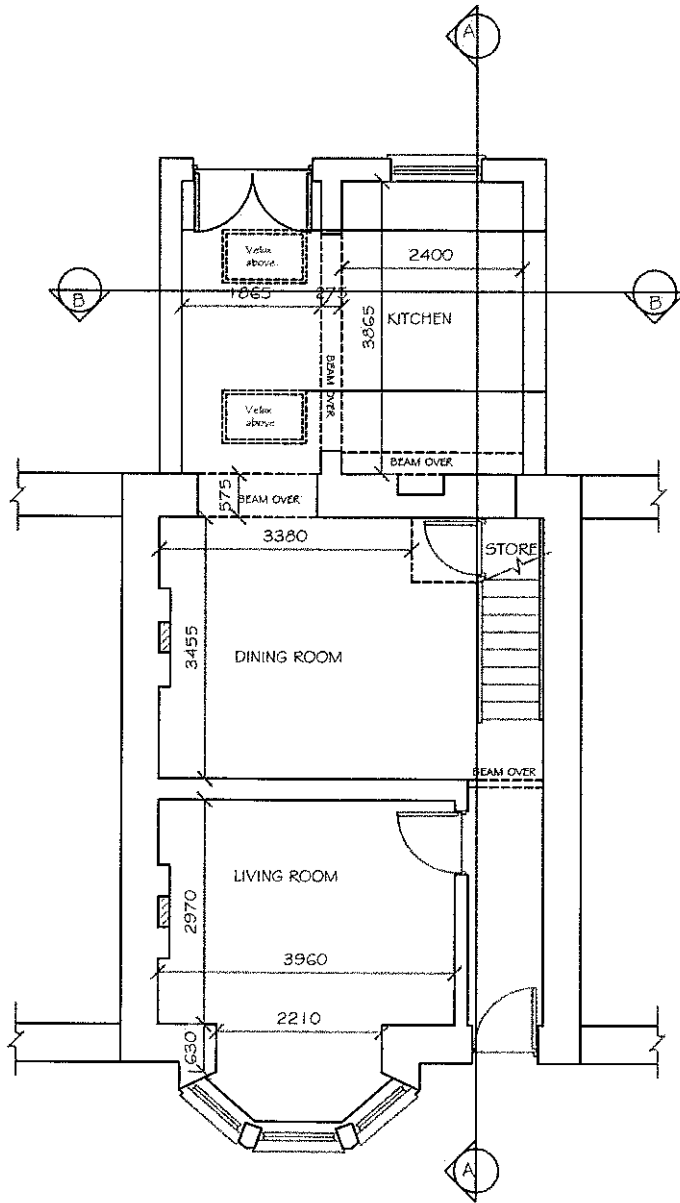
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Drawing Key

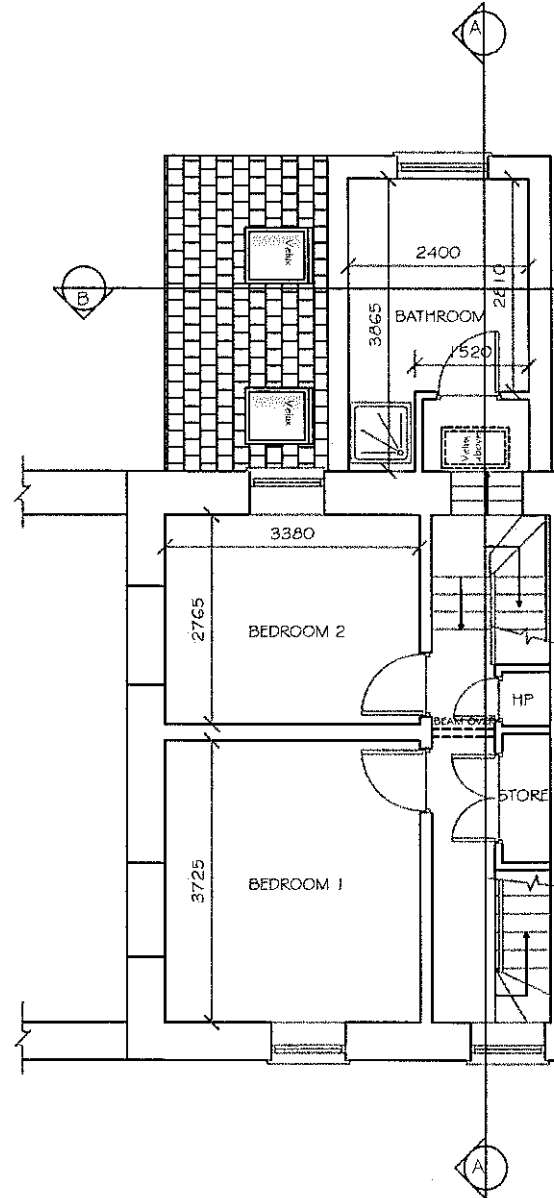
— = changes are outlined in blue.



GROUND FLOOR PLAN

SCALE 1:100

Total floor area:
 Original dwelling = 37.8m²
 Existing = 7.2m²

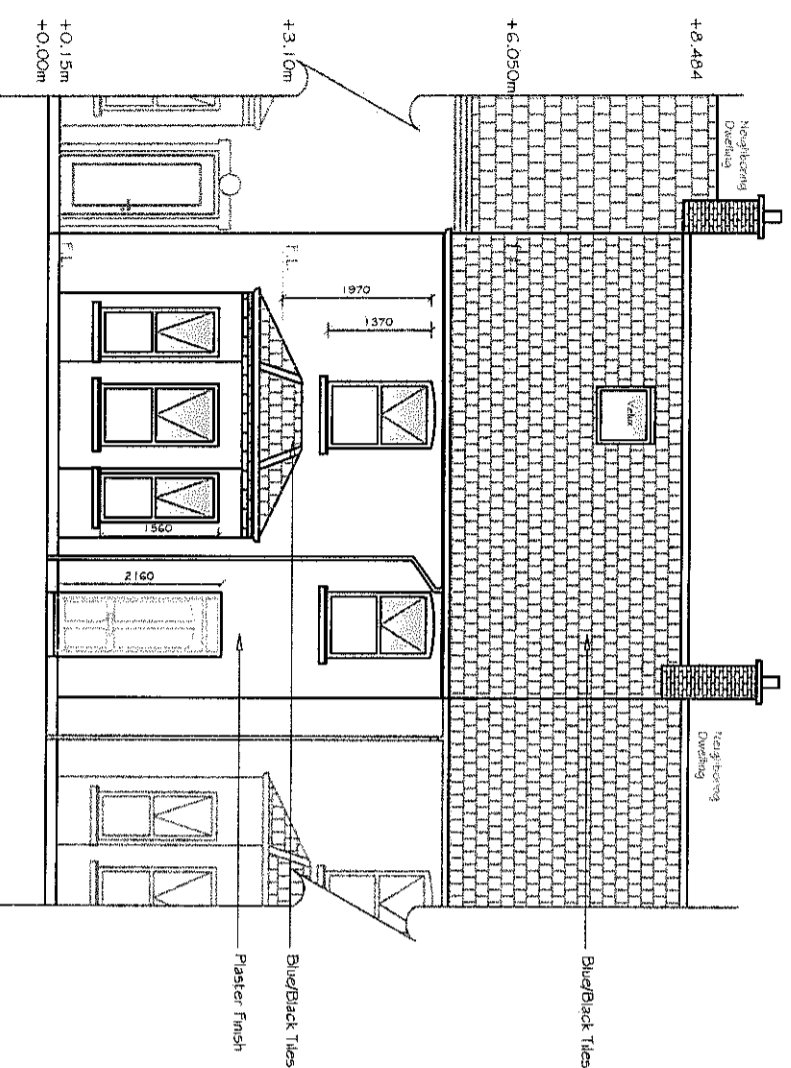


FIRST FLOOR PLAN

SCALE 1:100

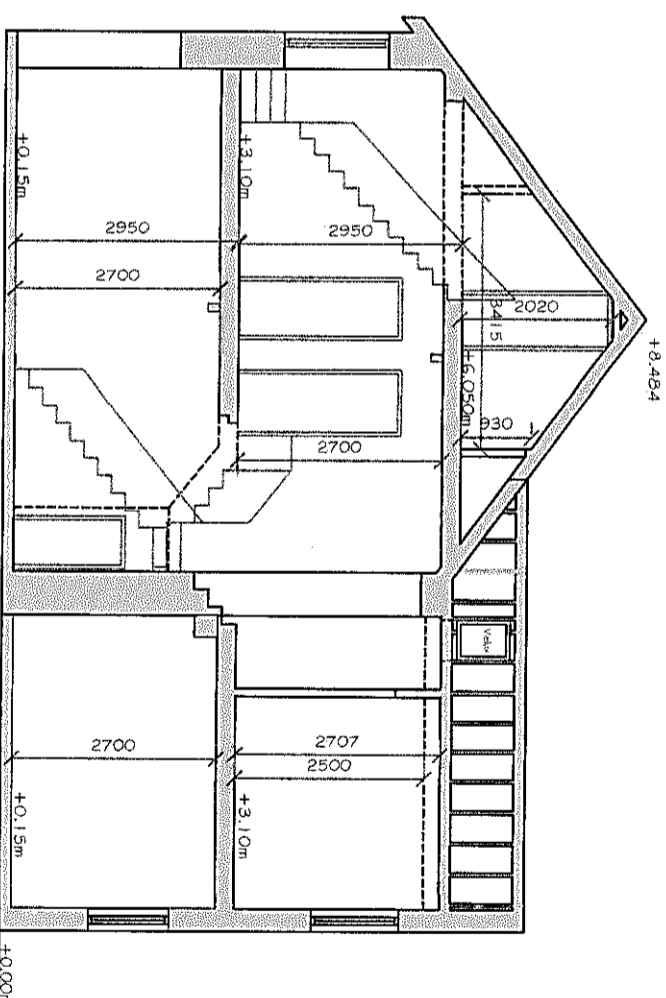
Total floor area:
 Original dwelling = 34.2m²

NOTES:



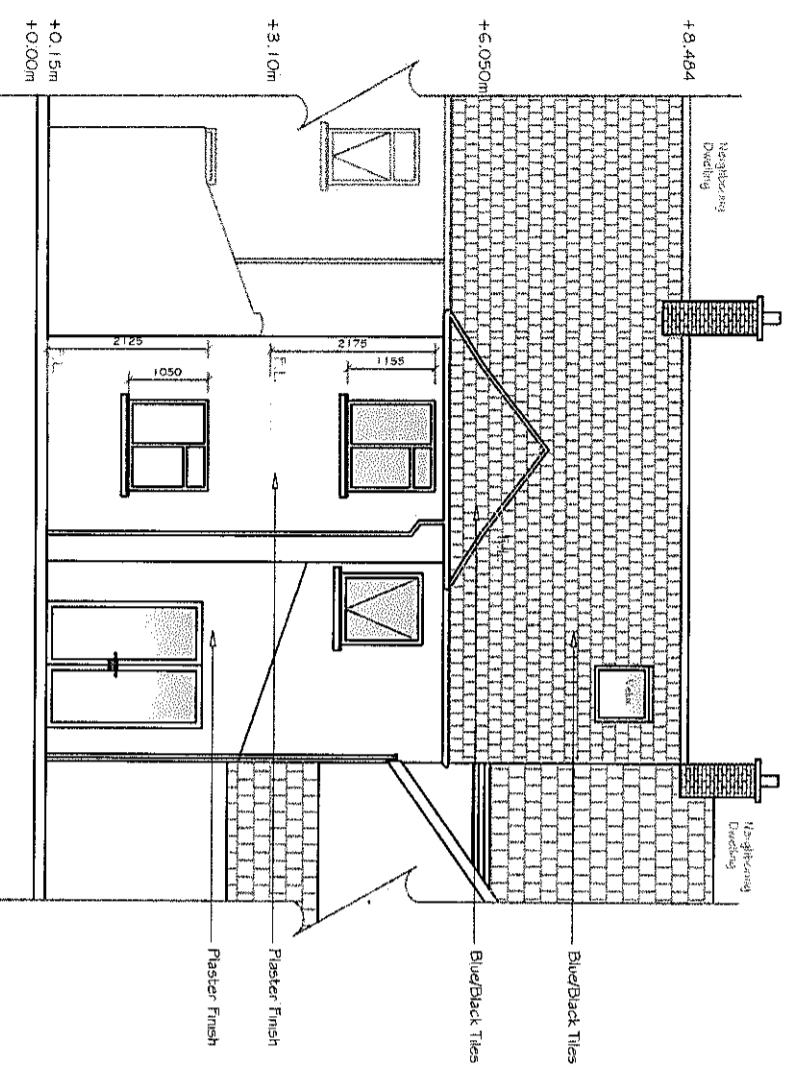
FRONT (EAST) ELEVATION

SCALE 1:100



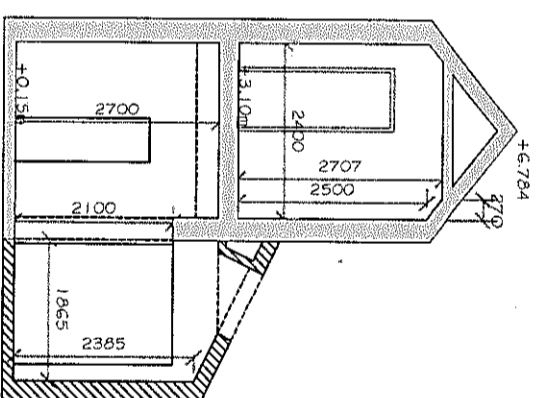
SECTION A-A

SCALE 1:100



REAR (WEST) ELEVATION

SCALE 1:100



SECTION B-B

SCALE 1:100

Drawing Key

- = changes are outlined in blue.
- ▨ = Section through building fabric

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<p>Client: John Cunningham</p>		<p>Project: Retention of two storey extension at No.2 Westbourne Terrace, The Lough, Cork City</p>	
<p>Drawing: Existing ground, First & Second floor plans</p>		<p>Scale: 1:100</p>	
<p>For Approval</p>	<p>Revision</p>	<p>Issue</p>	<p>Date</p>
<p>A</p>	<p>1</p>	<p>9.7.19</p>	<p>EC</p>
<p>By</p>	<p>Issue</p>	<p>Date</p>	<p>By</p>
<p>37218/5</p>	<p>03</p>	<p>9.7.19</p>	<p>EC</p>
<p>1:100</p>	<p>EC</p>	<p>CD</p>	<p>A3</p>