

Comhairle Cathrach Chorcaí Cork City Council

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

Kevin Crowley 12 Clarkes Wood, Mount Oval, Rochestown, Cork

20/02/2021

RE: R632/20 - Section 5 Declaration

Property: 12 Clarkes 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:

- Section 2, 3, and 4 of the Planning and Development Act 2000, as amended,
- Article 6 of the Planning and Development Regulations, 2001, as amended

The Planning Authority has concluded that -

 The construction of a garden office, hot tub, access steps and landscaping at upper level of the garden at 12 Clarkes Wood, Mountoval, Rochestown is development and is not exempted development.

Yours faithfully,

Kerry Bergin

Assistant Staff Officer

Community, Culture and Placemaking

Cork City Council



SECTION 5 DECLARATION - PLANNER'S REPORT

File Reference:

R 632/20

Description:

Is the proposed construction of a garden office, hot tub, access steps and

landscaping at upper level of the garden at the below address development,

and if so, is it exempted development?

Applicant:

Marie and John Lecane

Location:

12 Clarkes Wood, Mountoval, Rochestown

Date:

17/2/21

SUMMARY OF RECOMMENDATION

Constitutes development; is not exempted development

Interpretation

In this report the '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.

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.

The Questions before the Planning Authority

The Question to the Planning Authority is,

Is the proposed construction of a garden office, hot tub, access steps and landscaping at upper level of the garden at the above address exempted development?

In my opinion the intention of the request is clear.

Site Description

The subject site comprises a two storey, detached dwelling, located at 12 Clarkeswood, Mountoval, Rochestown, Cork. The site is bound by a low wall to the front of the property, with car parking for 2 no. cars within the curtilage of the dwelling. The dwelling is bound by existing dwellings to the east, south and west.

Description of Development

While the proposed development is for the construction of a garden office, hot tub, access steps and landscaping at the upper level, it is clear from the additional details submitted with the declaration that the proposed development requires additional work to be carried out to facilitate the proposed development.

The proposal involves the provision of a 12sqm garden office, measuring at c. 2.4m in height at the south eastern corner of the garden at the upper level. Steps to facilitate access to this office are proposed to be created following the existing slope of the site.

In addition, on the south western lower level of the rear garden, a platform of 800mm high will be created, with 2m dug into the existing slope. A new mass concrete wall 2.3m high will be constructed to support the existing slope. It is noted that the new mass concrete wall will be clad in timber and screened with landscaping.

Planning History

There is no recent planning history associated with the subject dwelling,

However, there is an open enforcement file on the subject site, and the details are set out hereunder;

E8260: Alleged Unauthorized Development at 12 Clarke's Wood, Mount Oval Village, Rochestown. This case has yet to be closed.

Relevant Legislation

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) (2)

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempt 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)

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.

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 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.

SCHEDULE 2, ARTICLE 6, PART 1, Exempted Development — General

- Seriebote 2, Ait rete 0, rait 1, Exempted Development	General
Column 1	Column 2
Description of Development	Conditions and Limitations
Development within the curtilage of a house	1. No such structure shall be constructed, erected or
CLASS 3	placed forward of the front wall of a house.
The construction, erection or placing within the curtilage of a	2. The total area of such structures constructed, erected
house of any tent, awning, shade or other object, greenhouse,	or placed within the curtilage of a house shall not,
garage, store, shed or other similar structure.	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
	The disastance shall not be ased for marrian 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 wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.		 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. 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 or public area, including public open space, shall be rendered or plastered. 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)	 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 forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such 	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 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 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.		

Article 9 (1)

- 1. Development to which article 6 relates shall not be exempted development for the purposes of the Act
 - a) if the carrying out of such development would
 - i. Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - ii. Consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width
 - iii. Endanger public safety by reason of traffic hazard or obstruction of road users,
 - iv. Except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or

- the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- v. Consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies
- vi. Interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- vii. Consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
 - A consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended.
 - B comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
 - C consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- 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,
- ix. Consist of the demolition or such alteration of a building or other structure as would preclude .or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan in the draft variation of the development plan or the draft development plan,
- x. Consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
- xi. Obstruct any public right of way.
- xii. Further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural

conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

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 relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel SAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

Assessment

Is it 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 construction of the proposed garden office, the construction the wall as well as the platform constitute the carrying out of works and as such constitute development.

CONCLUSION Is development

Is it Exempted Development?

The next issue for consideration is whether or not the matter at hand is exempted development. Class 3 developments, as set out in Schedule 2 of the *Planning and Development Regulations 2001* (as amended), include the

constructions of sheds. Class 5 developments, as set out in Schedule 2 of the *Planning and Development Regulations 2001* (as amended), include the constructions of walls. Class 6 developments, as set out in Schedule 2 of the *Planning and Development Regulations 2001* (as amended), include the carrying out of landscaping works. The query here is whether the subject development meets the conditions and limitations as set out in Column 2 of each class.

Having assessed the proposed garden shed structure, I consider that it satisfies the limitations set out under column 2 of Class 3. However, it is noted that landscaping works are required to facilitate the development of this structure. The landscaping works are assessed below.

Having assessed the proposed construction of the 2.43m supporting wall, it is considered that this development does not satisfy the criteria set out under column 2 of Class 5. The proposed wall exceeds the 2m limitation for concrete mass walls, as set out under limitation 1 of that column. It is further noted that the proposed wall is likely to be visible from the public road. In this regard it should be capped and rendered/plastered. In this regard it is considered that the proposed development does not meet the limitation set out under limitation 2 of that column.

It is further noted that the proposed landscaping works at the area of the proposed hot tub platform will result in the creation of a difference in levels 1.75m between the ground level of the garden and the jacuzzi platform area, and a further difference in levels of 1.25m between the jacuzzi platform and the top of the retaining wall. In addition, the proposed landscaping works at the upper level, at the south east side of the garden will result in the creation of a level difference of 2.05m. In this regard, it is considered that these landscaping works do not satisfy the limitations set out in column 2 of Class 6.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is Exempted Development

Recommendation

In view of the above, and having regard t-

- Section 2, 3, and 4 of the Planning and Development Act 2000, as amended,
- Article 6 of the Planning and Development Regulations, 2001, as amended

The Planning Authority has concluded that -

The construction of a garden office, hot tub, access steps and landscaping at upper level of the garden at 12
 Clarkes Wood, Mountoval, Rochestown is development and is not exempted development.

Sinéad Kearney

Assistant Planner

SEP 18/2/202

2 1-01-2021

Control of Clanning & Economic

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

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

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

exempted development?

2. QUESTION/ DECLARATION DETAILS PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question:

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, better
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?
ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
The current garden is split level with upper level 2.3m above lower level and slopes upwards to the rear well which
15 4.211 high. The proposal is to provide access stone from Islandian
of the upper level at the north hand side adiabation of
(1.m from wall) a home office is proposed (12 sg.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 of the left side.
of the left side of the garden a new created platform 800mm high will be created (2m x 4m) 2m will be
and the existing slope with a new mass concrete wall 2.3m high supporting the existing close
lew wall is 1000m from the boundary wall. Hot tub is a free standing unit which will be placed on the platform.
eighbouring garden by boundary wall and new mass concrete supporting wall. New mass concrete wall will be clad in

If so please supply details: Received a letter regarding potential unauthorised development. Ref: E8260				
unauthoris	ised development.	Ref: E8260		
4. Is this a Protected Structure or within the curtilage of a Protected Structure?				
If yes, has a Declaration under Section	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?			
requested or issued for the property				
, ,	by the rialilling	g Authority:	<i>'</i> []	
5. Was there previous relevant planning application/s on this site? If so please supply details:				
6. APPLICATION DETAILS				
THE EICATION DETAILS				
Answer the following if applicable, Note: Floor area	GC G			
Answer the following if applicable. Note: Floor area should be indicated in square meters (sq. M)	us are measured	from the insid	de of the external walls and	
(a) Floor area of existing/proposed struction	ture/s			
	1	12 sq m ne	ew office	
(b) If a domestic extension, have any prev	maria.	Yes	No	
extensions/structures been erected at	this	If yes, please	provide floor areas. (sq m)	
location after 1 st October, 1964, (include for which planning power)	ding those		areas. (sq m)	
for which planning permission has bee obtained)?	en l			
(c) If concerning a change of use of land				
(c) If concerning a change of use of land ar Existing/ previous use (please circle)	nd / or building	g(s), please s	tate the following:	
	Proposed/existing use (please circle)		lease circle)	
LEGAL INTEREST			E 0.0.254.25	
No.				
Please tick appropriate box to show applicant'	's A Owner		B Out	
o medical ill tile idni or ctructure	- Owner		B. Other	
Where legal interest is 'Other', please state				
our interest in the land/structure in access				
you are not the legal owner places at a	e			
ame and address of the owner if available				
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/ We confirm that the infa	- V			
/ We confirm that the information containe	ed in the appli	cation is tru	e and accurate.	
nature:				
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te:				
	_			

CONTACT DETAILS

10. Applicant:

Name(s)	
	Kevin Crowley
Address	12 Clarkes Wood, Mount Oval, Rochestown, Cork, T12 NP6Y
	(mccap@yahoo.com)
	0874694403

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

Name(s):		
Address:		
,	***************************************	
Telephone:		
E-mail address:		
Should all correspon (Please note that if the answe address)	ndence be sent to the above address? Yes r is 'No', all correspondence will be sent to the Applicant's	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 $\ensuremath{\epsilon} 80$

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 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.

National Mapping Agency Ordnance OS₁ Survey MAP SHEETS: 6428-10 6429-A COMPILED AND PUBLISHED BY: infilinges Ordnance Survey Ireland and Government of Ireland ORDER NO.: 50165587_1 © Suirbhéireacht Ordanáis Éireann, or by any means without the prior written permission of the copyright owners. 2021 © Ordnance Survey Ireland, 2021 www.osi.ie/copyright All rights reserved.

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Further information is available at:
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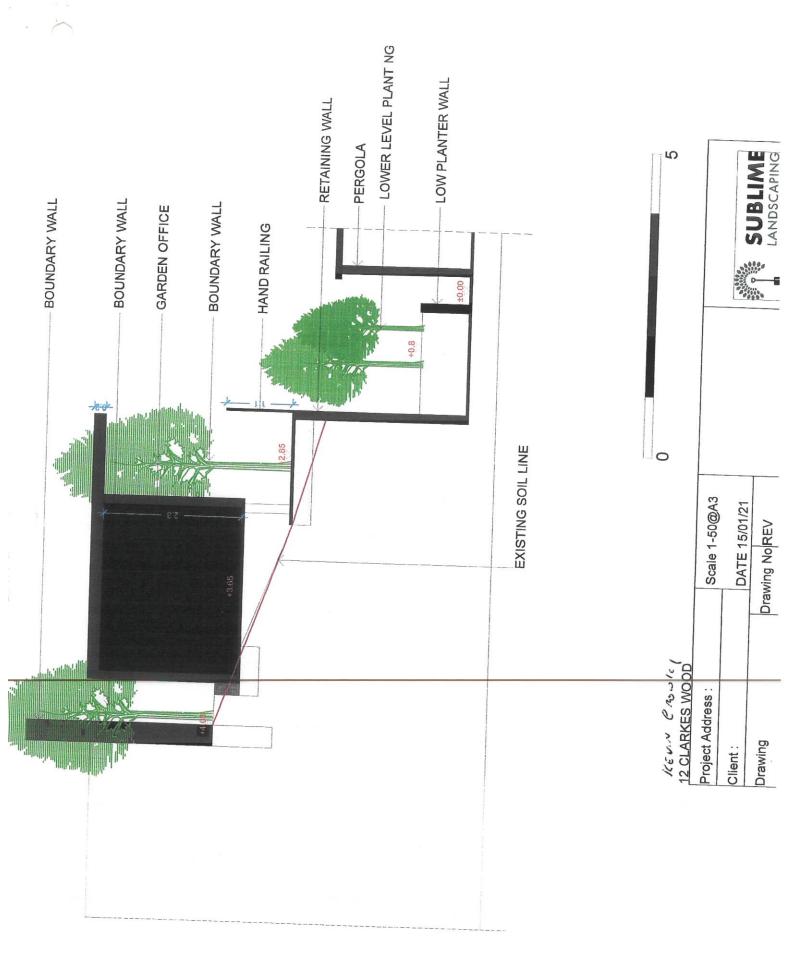
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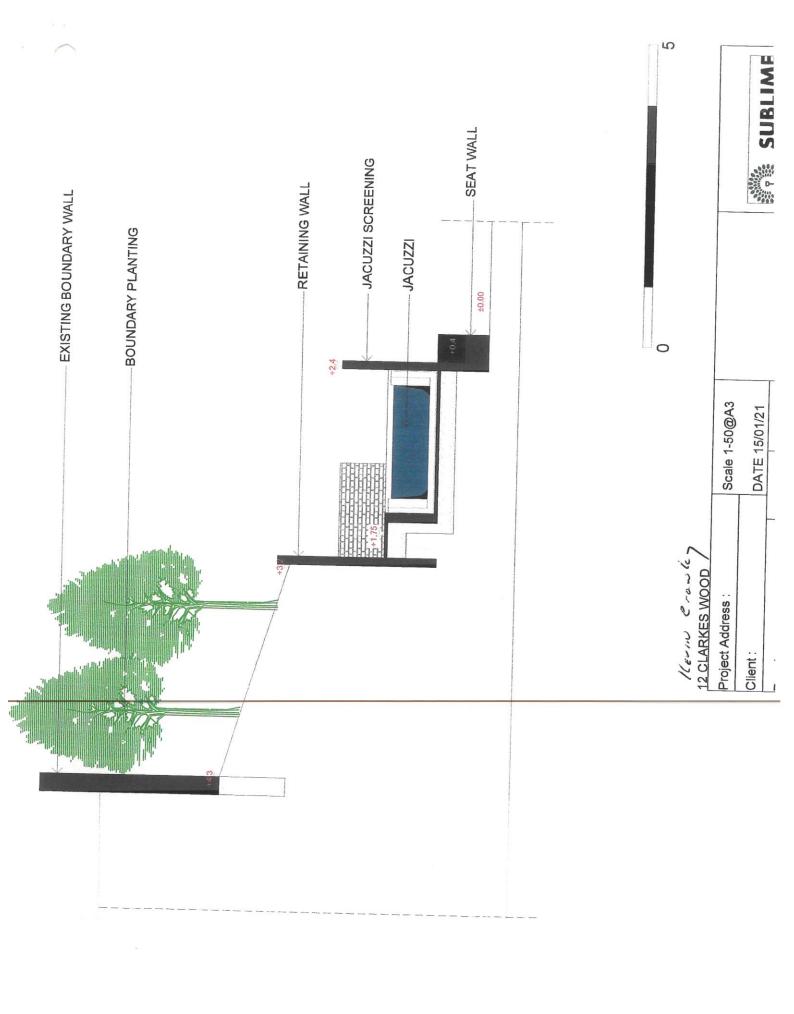
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119ns 7.0.9 7.0.9 CONE LANDSCAPING Mount oval EfoI **SUBLIME** 12 Clarkeswood Sheet Title 2021007A Kevin Crowley Landscape Plan Sheet TZ-TO-ST Requires on going maintenance by seperate contractor Rabbit protection maybe required at base of all trees § shrubbery Fertilising of trees § hedging once per year 07

Graphic Scale (N.T.S)





Droposed Olan Hern emoly



Proposed plant

Proposed Olean Keens Chowler



