

Comhairle Cathrach Chorcaí Cork City Council

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

John O Leary B.E.
Woodbrook Lodge
Kilmurry
Kilworth
Co. Cork
P61Y971

20/10/2020

**RE: Section 5 Declaration R607/20 "Hove" No 31 Hartlands Road,
Cork City**

A Chara,

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

Having regard to Class 3 of Part 1 of Schedule 2 of the Planning and Development and Condition and Limitation No. 5 of that Class and the proposed height of the structure, the construction of a garden shed at 'Hove', 31 Hartland's Road, is **'development'** and is **not 'exempted development'**.

Is misa le meas,

Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT
Ref. R 607/20

Cork City Council
Development
Management
Strategic Planning
and Economic
Development

Application type **SECTION 5 DECLARATION**
Question *Whether the construction of a garden shed is or is not development and if development or is not exempted development*
Location *Hove, 31 Hartland's Road, Cork.*
Applicant *Caroline O'Leary and Brian O'Reilly*

1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

Section 5(1) of the Planning and Development Act 2000 as amended states:

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

1. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the Planning Authority is reworded as follows:

'Whether the construction of a garden shed is development and if so is or is not exempted development'.

2. SITE DESCRIPTION

The subject property comprises a detached dwelling situated to the rear of a dwelling fronting Hartland's Road and accessed via a right of way.

3. PLANNING HISTORY

T.P. 18/38004: Permission granted (by CCC and on appeal by ABP) for:

- a) retention of alterations made to the existing driveway entrance to improve sightlines and vehicle access,
- b) alterations to the existing bungalow and demolition of two existing one storey extensions to the rear and side of the bungalow,
- c) construction of 74sq.m. (total floor space) on one and a half storey extension to the south west facing elevation (side) of the existing bungalow, and all ancillary site works.

4. CURRENT LEGISLATIVE PROVISIONS

4.1 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(1)(h),

4.(1) The following shall be exempted developments for the purposes of this Act—

...

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4(3),

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or*
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

4.2 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 exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9,

Article 9 sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including (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"...

(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,'

Classes 1-8 of Part 1 of Schedule 2 relate to development within the curtilage of a house. Class 3 relates to "The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure."

Schedule 2, Part 1, Class 3
 Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 3 The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.</p>	<ol style="list-style-type: none"> 1. No such structure shall be constructed, erected or placed forward of the front wall of a house. 2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres. 3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres. 4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house. 5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres. 6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

5. ASSESSMENT

This assessment is based on a desktop/google maps assessment and the detail submitted.

5.1 Development

The first issue for consideration is whether or not the matter at hand is 'development', which is defined in the Act as comprising two chief components: 'works' and / or 'any material change in the use of any structures or other land'. 'Works' are defined in section 3(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

5.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines 'exempted development' as having 'the meaning specified in section 4' of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2). In my opinion the proposed extension does not come within the scope of section 4(1). The proposed shed comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word 'or' in section 4(3).

A planning history search did not reveal the governing permission (no map register for city sites prior to the mid 1990s – no references to Hove in 'blue' and 'black' books – i.e. the written registers) – a number of properties in PES system are not mapped and do not have house names. I was unable therefore to ascertain as to whether any condition affects the proposed development.

The proposed development is hereunder assessed against the conditions and limitations attached to development proposed under Class 5 of Part 1 of Schedule 2 of the Regulations:

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.

The proposed shed would be located to the rear of the house.

2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

The proposed floor area is stated as 19.75 sq.m. in the application form – the drawings show an outer dimension of 4.8 x 5.2 (24.96 sq.m.) – with a triangle of area removed at the entrance so this would be less than 25 sq.m. Based on the drawings submitted there do not appear to be any other such structures in the curtilage of the house.

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.

From the OS map submitted there would be well in excess of 25 sq.m. left over following construction.

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.

N/A - The shed would be to the rear not the side 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.

The proposed shed would have a slated pitched roof. The height is shown on the drawing (Scale 1:30) as being in excess of 4m (approx. 4.8m).

6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

Application form states this would be a garden shed.

CONCLUSION — is not exempted development

6. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state as follows:

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.

Section 177U(9)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

6.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that environmental impact assessment is not required.

6.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly it is considered that appropriate assessment is not required.

7. CONCLUSION & RECOMMENDATION

Having regard to Class 3 of Part 1 of Schedule 2 of the Planning and Development and Condition and Limitation No. 5 of that Class and the proposed height of the structure, the construction of a garden shed at 'Hove', 31 Hartland's Road, is **'development'** and is not **'exempted development'**.

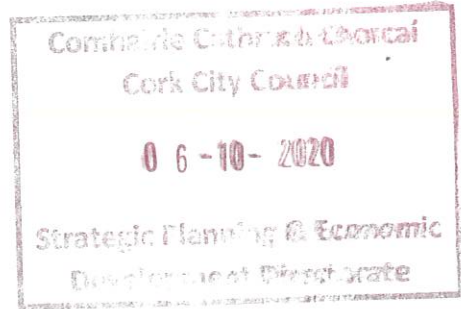
Evelyn Mitchell,
Senior Executive Planner,
20.10.2020

To The Planner

Woodbrook Lodge,
Kilmurry,
Kilworth,
Co. Cork P61_Y971

At Planning Dept,
City Hall,
Cork

Ref Confirmation of Exemption from Planning



Dear Sir/Madam,

I act for owners of No.31. Hartland's Road who wish to erect a shed in their rear garden. This shed, for their domestic enjoyment, would be single-storey, 19.75 sq.m in floor area, constructed entirely of wood, roofed in slate, distant 1.2m from nearest boundaries, have one door and 4 windows. No window shall overlook any neighbour. It shall have 2 sky lights, none of which can be reached from floor level nor overlook any neighbour.

According to my copy of the Planning Regulations, being less than 25sq.m and to the rear of the subject dwelling, this shed would be Exempted Development.

On the above basis, I request a statement of exemption and attach a selection of drawings.

Kind Regards

John O'Leary
John J.O'Leary BE 086-4026669

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?

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:

18 / 38004

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	19.75 sq. m.
(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 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)
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8. 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		

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

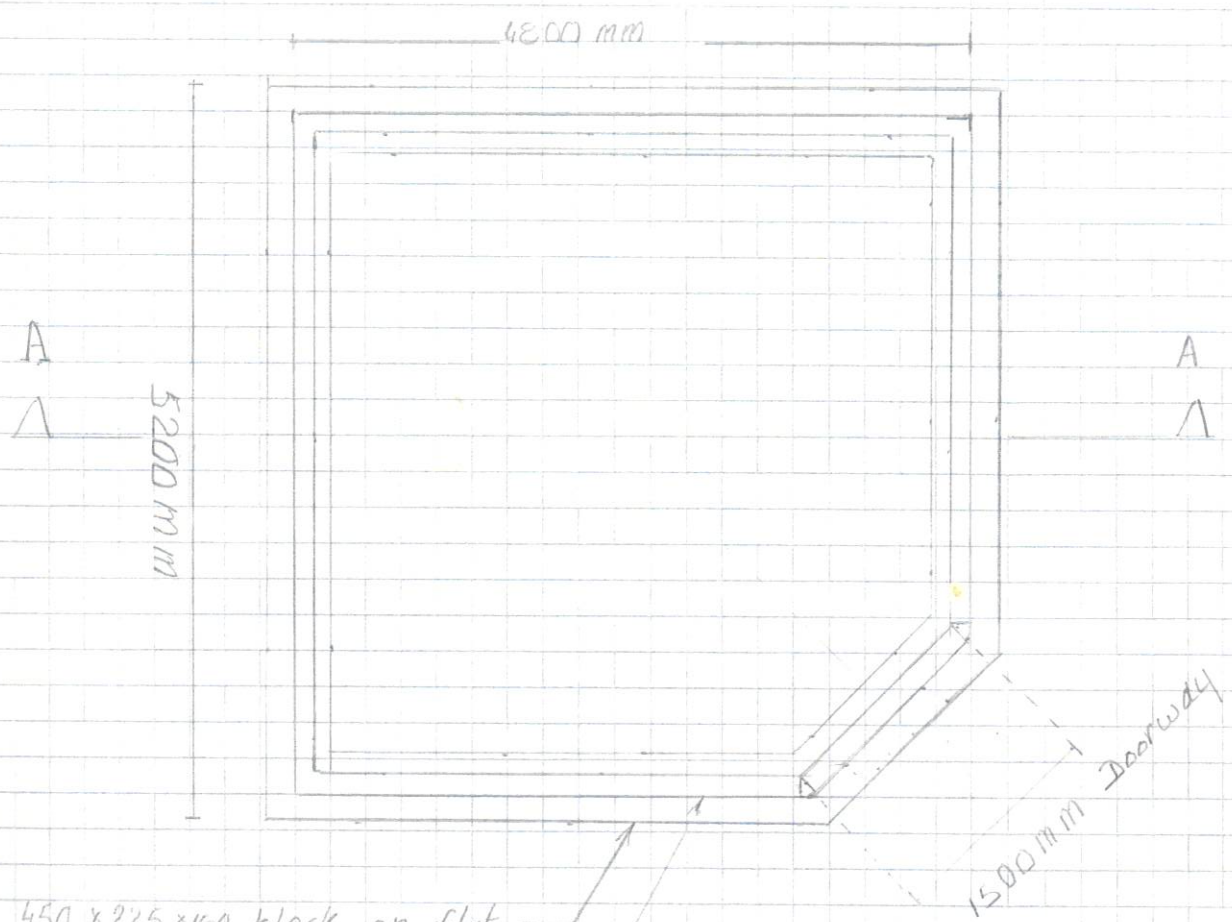
Signature: John O'Leary

Date: 1/10/2020

- 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.

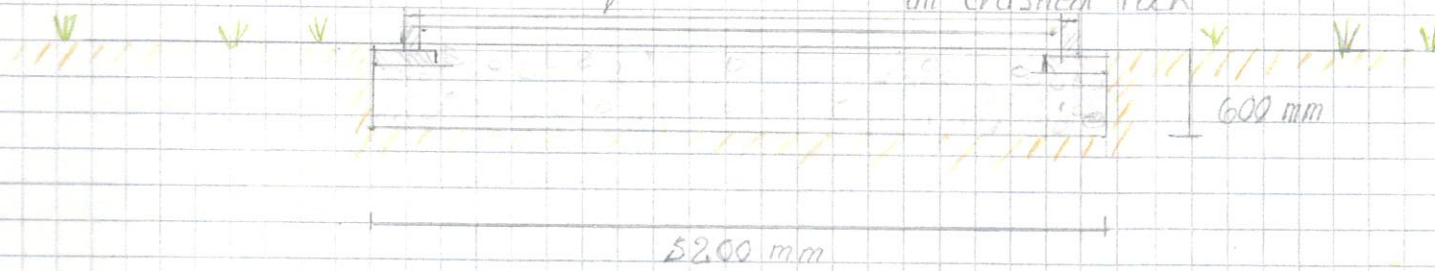
DATA PROTECTION: The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution.



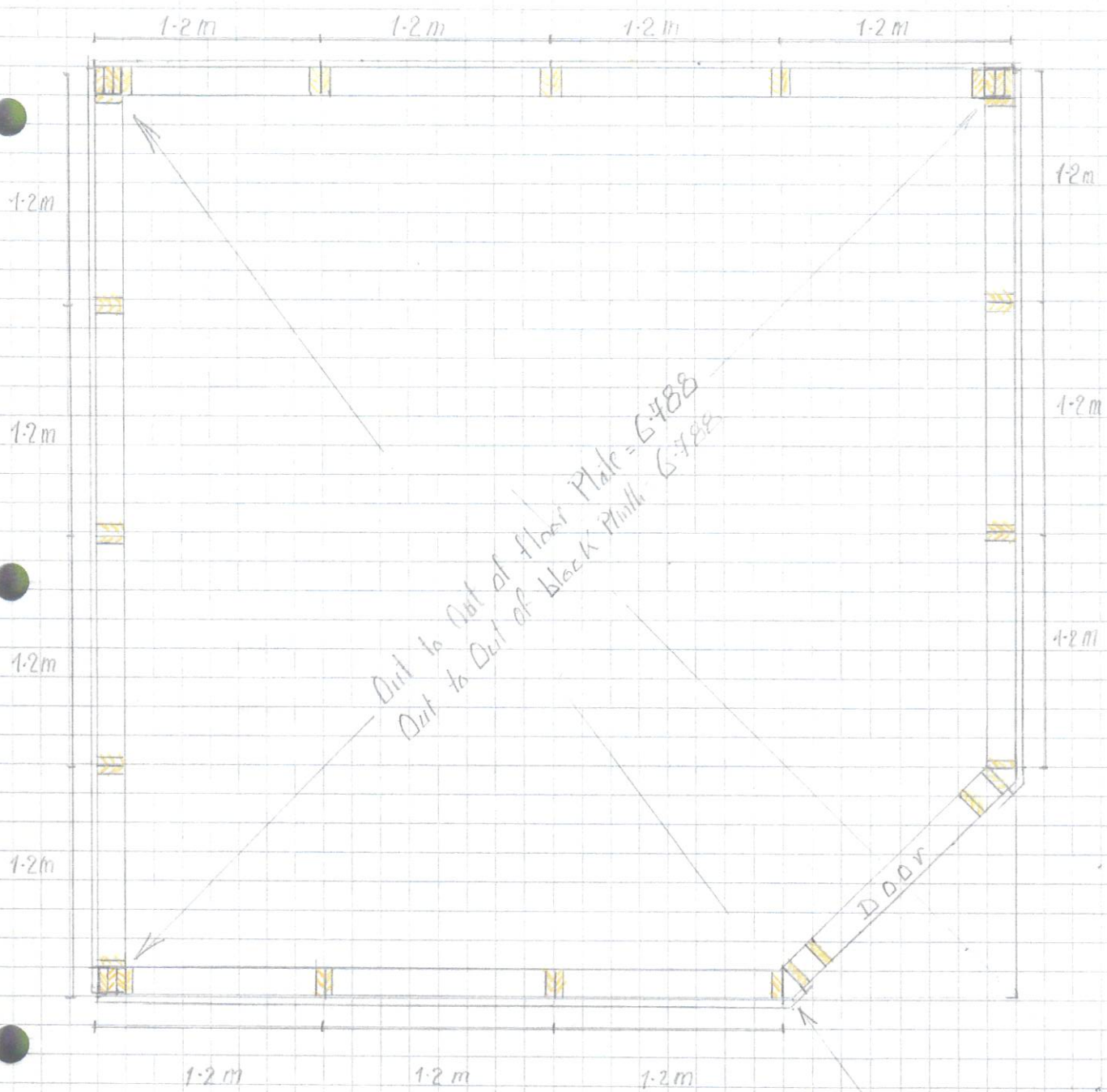
450 x 225 x 150 block on flat
450 x 225 x 150 block on edge

Plan of Floor 1:50

100 mm slab floated
on 1000 g Polythene
on 100 mm insulation
on Radon blanket
on blinding
on crushed rock



Section A-A scale 1:50



Out to Out of floor Plate = 6.488
 Out to Out of black flint = 6.788

6040 mm to here
 from corner of black flint



PLAN of floor Plate

Scale 1:30

Slate on
battens on
plywood on
rafters

556 x 150 x 44
closure pieces
between rafters

45°

2400

149800

East elevation 1:30

