Comhairle Cathrach Chorcaí
Cork City Council

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

David O' Sullivan
27 Willison Lawn
Willison Park
Blarney
Cork

13/01/2020

RE: Section 5 Declaration R536/19 27 Willison Lawn, Willison Park, Blarney, 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, 4 and 5 of the Planning and Development Act 2000 as amended, and
- Articles 6 and 9 and Part 1 of Schedule 2, Class 3, of the Planning and Development Regulations 2001 to 2018.

the Planning Authority considers that —

The construction of a study / music room at 27 Willison Lawn, Willison Park, Blarney is **DEVELOPMENT** and is **EXEMPTED DEVELOPMENT.**

Is misa le meas,

Kerry Bergin

Kerry Bergin
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council

We are Cork.

Comhairle Cathrach Chorcaí
Cork City Council

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

David O'Sullivan
27 Willison Lawn
Willison Park
Blarney, Cork

2nd December, 2019

RE: Section 5 Declaration R536/19 27 Willison Lawn, Willison Park, Blarney, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above named property and in particular to your response to the further information request received on 4th November, 2019. I wish to advise that this response is deemed inadequate as it does not address the further information request to a sufficient degree as follows:

Further Information was requested on 1st October, 2019 as follows:

1. Please submit the following drawings:

a) 1:500 scale Site Layout Map, indicating the location of the proposed structure, as well as the location of the existing dwelling, and any other relevant site information, including boundaries, etc.

b) 1:100 scale floor plan, elevations & section of the proposed structure for use as a study / music room. Please include specification of proposed external finishes.

2. Please clarify the exact nature of the use for the Study / Music Room i.e. is it solely for private use and ancillary to the family dwelling, or is there a commercial nature attached to it for teaching of music, etc.

The applicant provided a Site Layout Plan that was not to scale, and a floor plan that was not to scale. No scaled Elevation and Section was provided.

Therefore, in order that the applicant's Section 5 application be assessed, the applicant is again asked to provide the following information:

- 1:500 scale Site Layout Map
- 1:100 scale floor plan
- 1:100 scale Elevations
- 1: 100 scale Section.

Please Note: The scaled drawings should indicate the particular scale of each drawing on a titleblock.

Misa le Meas,

Eileen Kiely
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council

Received 4/09/18.

Helen
Can you prepare rpt. please
MW

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

R-Phost/E-Mail 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

27 Willison Lawn, Willison Park
Blarney, T23 PP9F

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 Study / music room at 27 Willison Lawn, Blarney exempt from planning?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).

non-domestic build/extension

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

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	17 m² approx
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1st October, 1964, (including those for which planning permission has been obtained)?	Yes ☐ No ☒ 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) rear garden (corner)	Proposed/existing use (please circle) music room/ study

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		David O'Sullivan
Applicants Address		27 Willison Lawn Willison Park, Blarney, Cork
Person/Agent acting on behalf of the Applicant (if any):	Name:	
	Address:	
	Telephone:	
	Fax:	
	E-mail address:	
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)		Yes ☑ No ☐

5. 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		
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: David Cherelli

Date: 30th day 2019

.....

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

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-

* NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED

(a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,

(b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,

(c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,

(d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,

(e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,

(f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,

(g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,

(h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,

(i) plans and drawings shall indicate the name and address of the person by whom they were prepared.

2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.

3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.

SECTION 5 DECLARATION – PLANNER'S REPORT	
File Reference:	**R 536/19**
Description:	**Is the construction of a study / music room exempted development?**
Applicant:	David O' Sullivan
Location:	27 Willison Lawn, Willison Park, Blarney.
SUMMARY OF RECOMMENDATION	
CONSTITUTES DEVELOPMENT AND IS EXEMPTED	

Purpose of Report
Under Section 5 (1) 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 requirements for making a Section 5 declaration are set out in the Act. 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.

Subject Development, and question before the Local Authority is:

Is the construction of a study / music room exempted development?

- **RELEVANT PLANNING HISTORY**

This area was part of the administrative area of Cork County Council until 31st May 2019. All application details below relate to applications lodged with Cork County Council.

TP 08/8517: INCOMPLETE APPLICATION: Retention of salon.

TP 08/8899: INCOMPLETE APPLICATION: Retention of partial change of use of dwelling to hair salon.

TP 08/9347: **PERMISSION REFUSED**: Retention of partial change of use of dwelling to hair salon.

- **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—

- *where the context so admits, includes the land on, in or under which the structure is situate, and*
- *in relation to a protected structure or proposed protected structure, includes—*
  - *the interior of the structure,*
  - *the land lying within the curtilage of the structure,*

- *any other structures lying within that curtilage and their interiors, and*
- *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 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—

- *any of the developments specified in subsection (1), or*
- *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.

1.1 <u>The Regulations</u>
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,

- **ENVIRONMENTAL ASSESSMENT**

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

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—

- *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*
- *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.

Section 82(1),

82.—(1) [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

- **Screening for Environmental Impact Assessment**

Pursuant to article 103(1) of the Planning and Development Regulations 2001 as amended, having regard to the nature and scale of the proposed development and following a preliminary examination of, at the least, the nature, size or location of the proposed development, it is considered that there is no real likelihood of significant effects on the environment and it is consequently concluded that EIA is not required.

- **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**.

• Assessment

Zoning and Development Objectives

The subject site is located at 27 Willison Park, in Blarney, a residential estate in Tower approximately 1 km. to the East of the village centre. This area was part of the administrative area of Cork County Council until 31st May 2019, before moving into the jurisdiction of Cork City Council. The subject site is located within the development boundary of Tower, and is zoned *'existing built up area'*.

Fig. 1: Extract from Blarney Macroom Municipal District LAP 2011

- ***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'*. It is clear that the proposal constitutes *'works'*, which is 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

- ***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).

Essentially the proposal involves the construction of a flat roof timber structure in the rear garden of a dwelling.

The applicable Class of exempted development under the Regulations, to which consideration may be given to this question is as follows:

Class 3

The construction, erection, or placing within the cartilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other ***similar structure.***

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 constructed, erected or placed within the curtilage of a house shall not, taken together with any such structures previously constructed, erected or placed within the said cartilage, 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.*

Request for Further Information.
The applicant was requested on **1/10/2019**, to provide further information in respect to this Section 5 application

Further Information was requested as follows:

Please submit the following drawings:

- *1:500 scale Site Layout Map, indicating the location of the proposed structure, as well as the location of the existing dwelling, and any other relevant site information, including boundaries, etc.*
- *1:100 scale floor plan, elevations & section of the proposed structure for use as a study / music room. Please include specification of proposed external finishes.*

Please clarify the exact nature of the use for the Study / Music Room i.e. is it solely for private use and ancillary to the family dwelling, or is there a commercial nature attached to it for teaching of music, etc.

A response was received on **4/11/2019**. The applicant responded by providing a Site Layout Plan and a Floor Plan (N.T.S). He also indicated the following:

- *It is solely for private use (teenage study / practice and listen to music).*
- *There is no commercial nature (no teaching of music or any kind of teaching).*

Further Information Assessment
The applicant's responses are considered to *not have satisfied* the Request for Further Information (RFI). No scaled Site Layout Plan or Elevations or Section of the proposed structure have been submitted. The applicant should be requested to provide **a Clarification of Further Information**, as follows:

Clarification of Further Information

The applicant made a submission on **12/12/2019,** to the following request:

Clarification of Further Information was requested as follows:

The applicant provided a Site Layout Plan that was not to scale, and a floor plan that was not to scale. No scaled Elevation and Section was provided.

Therefore, in order for the applicant's Section 5 application to be assessed, the applicant is again asked to provide the following information:

- *1:500 scale Site Layout Map.*

- *1:100 scale floor plan.*
- *1:100 scale Elevations.*
- *1:100 scale Section.*

Please note: The scaled drawings should indicate the particular scale of each drawing on a titleblock.

Clarification of Further Information Assessment

Having assessed the proposed structure against **Class 3** and its conditions and limitations I find as follows:

Condition / Limitation 1

Located entirely to the rear of the existing dwelling, and no part is to be placed forward of the front wall of the existing dwelling.

Condition / Limitation 2

Has an area of 20 sq. m., therefore, it is under the maximum limitation of 25 sq. m. (the existing garden shed structure measures 4 sq. m. approximately).

Condition / Limitation 3

The rear garden open space will not be reduced below 25 sq. m.

Condition / Limitation 4

The external finishes are acceptable in respect to the existing dwelling

Condition / Limitation 5

The flat roofed structure will not exceed 3m. in height.

Condition / Limitation 6

The applicant has confirmed that the structure is to be used as a Music Room for the ancillary use of the existing dwelling, and that there is no commercial activity related to its use.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION
Is exempted development

1. RECOMMENDATION
In view of the above and having regard to —

- Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 as amended, and

- Articles 6 and 9 and Part 1 of Schedule 2, Class 3, of the Planning and Development Regulations 2001 to 2018.

the Planning Authority considers that —

The construction of a study / music room at 27 Willison Lawn, Willison Park, Blarney is **DEVELOPMENT** and is **EXEMPTED DEVELOPMENT**.

Helen O'Sullivan

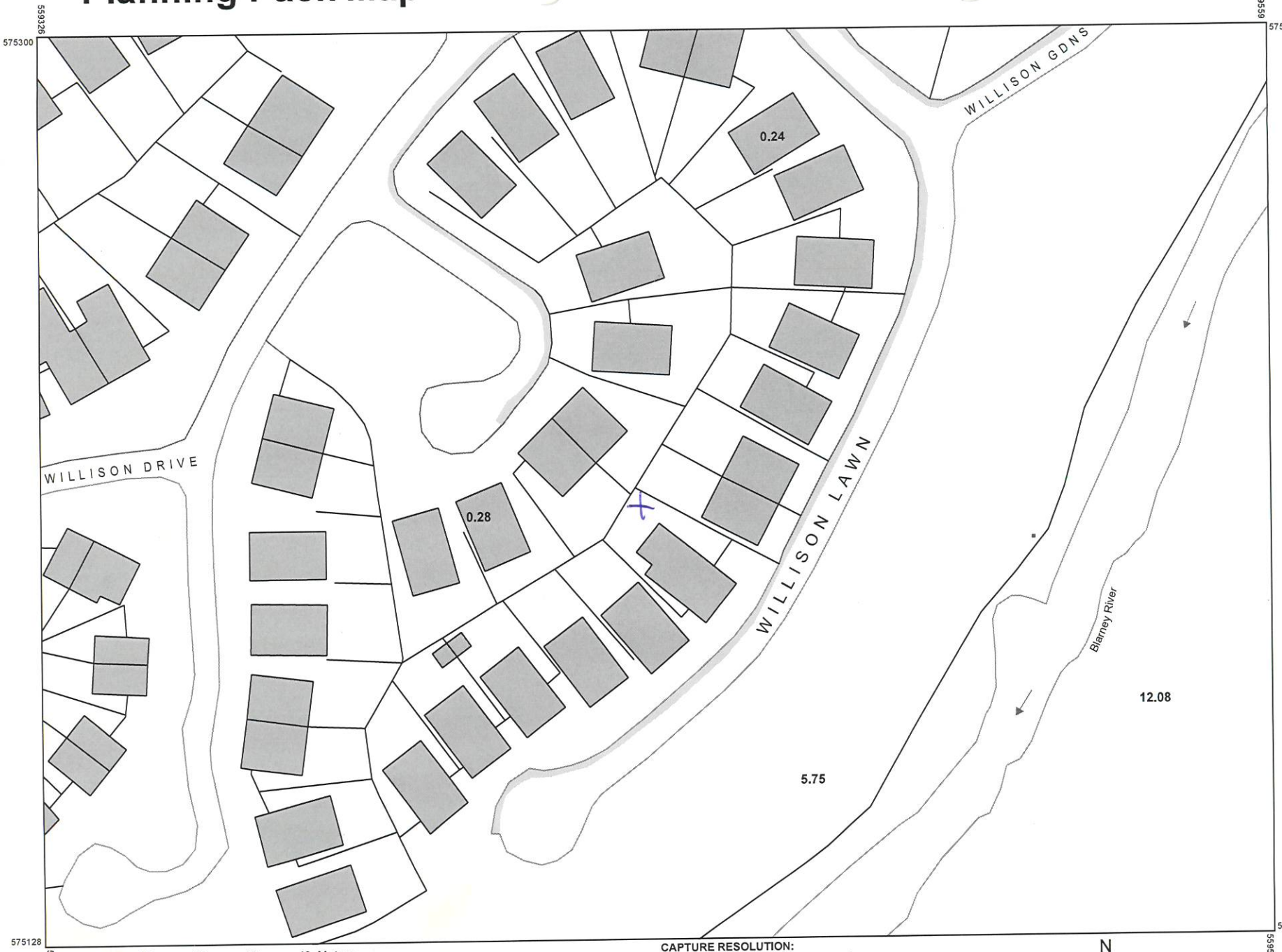
Helen O' Sullivan

Assistant Planner

10/01/2020

Agreed
Melissa Walsh
13/01/19

Planning Pack Map



0 10 20 30 40 Metres

0 20 40 60 80 100 Feet

OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:
The map objects are only accurate to the resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
http://www.osi.ie; search 'Capture Resolution'

N

Ordnance Survey Ireland
National Mapping Agency

CENTRE COORDINATES:
ITM 559443,575214

PUBLISHED: 22/07/2019
ORDER NO.: 50074961_1

MAP SERIES: 1:2,500
MAP SHEETS: 6335-B

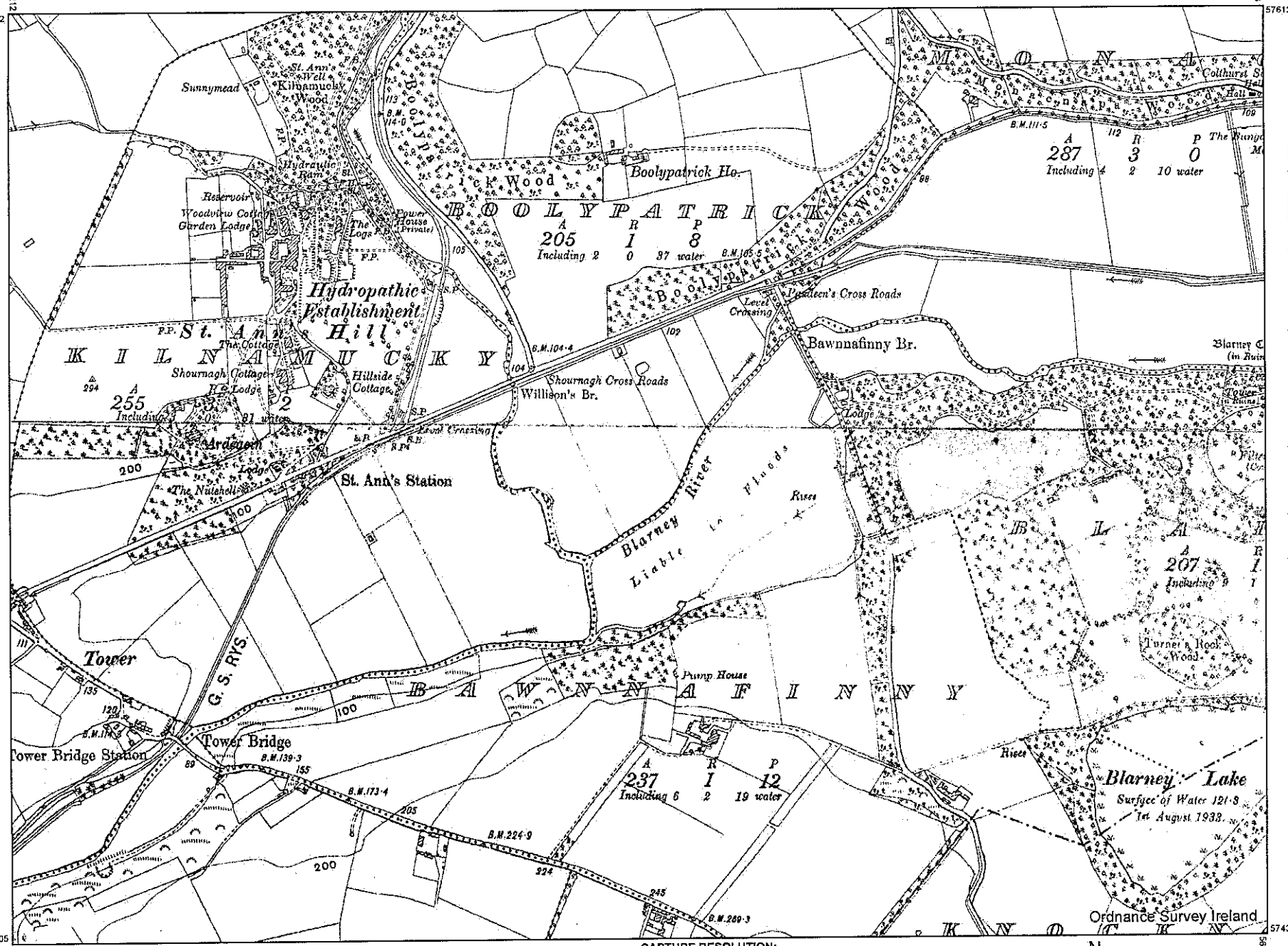
COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8
Ireland.

The representation on this map of a road, track or footpath is not evidence of the existence of a right of way.

Ordnance Survey maps never show legal property boundaries, nor do they show ownership of physical features.

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

Site Location Map



0 110 220 330 440 Metres

0 210 420 630 840 1,050 Feet

OUTPUT SCALE: 1:10,560

CAPTURE RESOLUTION:
The map objects are only accurate to the resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
http://www.osi.ie; search 'Capture Resolution'

N

Ordnance Survey Ireland
National Mapping Agency

CENTRE COORDINATES:
ITM 559443,575214

PUBLISHED:	ORDER NO.:
22/07/2019	50074961_1

MAP SERIES:	MAP SHEETS:
6 Inch Raster	9900-01
6 Inch Raster	CK062
6 Inch Raster	CK073

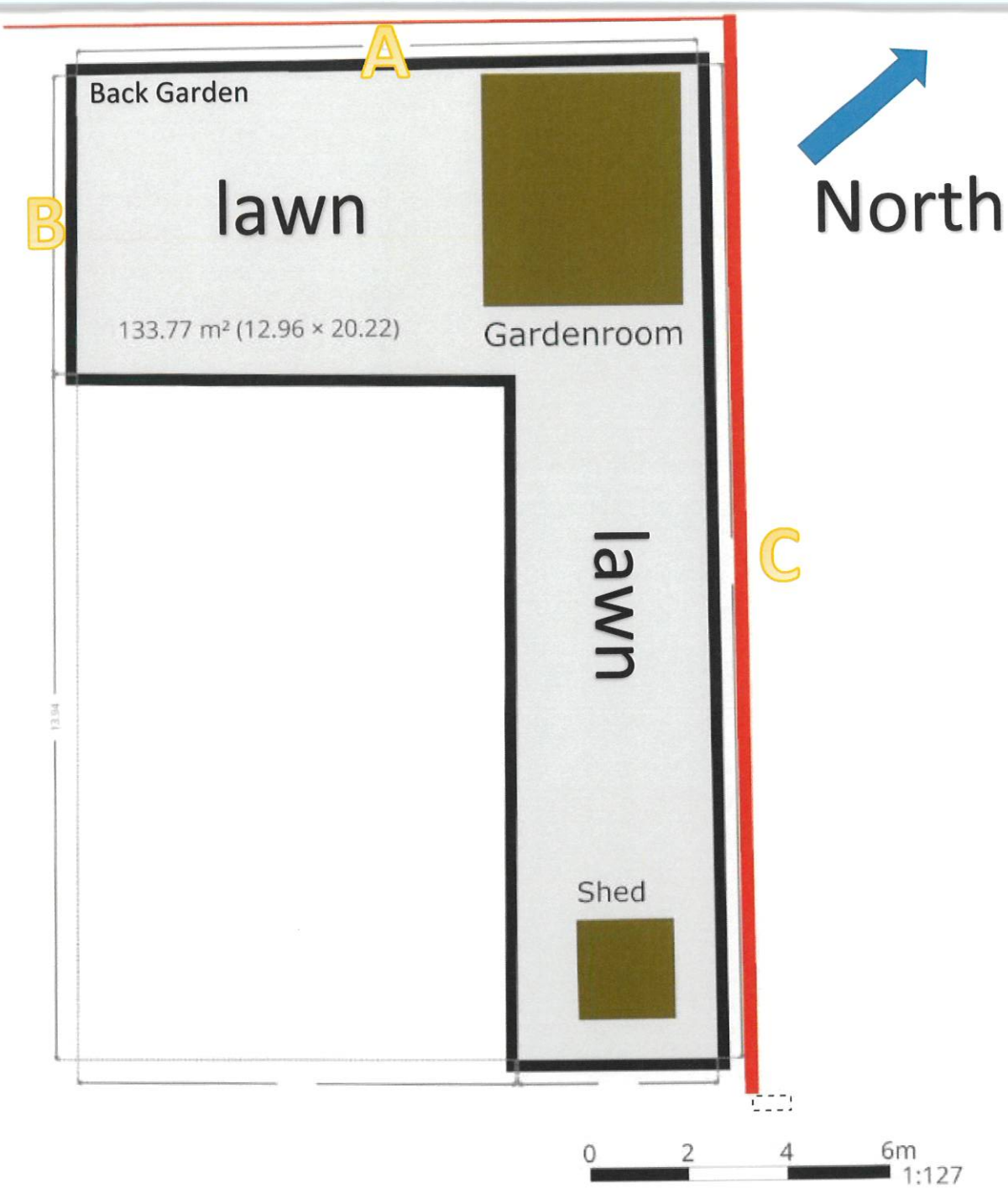
COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

The representation on this map of a road, track or footpath is not evidence of the existence of a right of way.

Ordnance Survey maps never show legal property boundaries, nor do they show ownership of physical features.

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

Proposed Garden Layout



- Garden Total area = 133.77 meters squared (12.06 x 20.22)
- Shed [existing] = 2.4 x 2.4 meters squared
- Gardenroom = 3.6 x 5.5 meters squared
- Gardenroom Internal < 17 meters squared (3.2 * 5.1) (Walls = 200mm)
- Red Line indicates fence boundaries
- **A = 12.7 meters [approx.]**
- **B = 6 meters**
- **C = 20 meters**