

Comhairle Cathrach Chorcaí Cork City Council

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

Marion and Stacey Fitton
c/o Gareth O Sullivan
Simply Architecture
18A Washington Street
Cork City
Cork

25/04/2020

**RE: Section 5 Declaration R568/20 –Carriganarra,
Carrigrohane, 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
- Article 9(i) and (ii) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended,
- Conditions 1 and 2, of permission 17/5777

the Planning Authority has concluded that —

- (1) *The removal of 3 No windows (2 on west and 1 on east elevation);*
- (2) *The addition of 1 window on the east elevation;*
- (3) *The creation of a splayed entrance piers and sliding gate in addition to the repair of the existing stone wall*

at Carriganarra Carrigrohane, Cork

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 568/20

Cork City Council
Development
Management
Strategic Planning
and Economic
Development

Application type **SECTION 5 DECLARATION**
Question *Whether the following works is development and if so whether it is exempted development.*
 (1) *The removal of 3 No windows (2 on west and 1 on east elevation);*
 (2) *The addition of 1 window on the east elevation;*
 (3) *Splayed entrance piers and sliding gate in addition to the repair of the existing stone wall.*
Location *Carriganarra, Carrigrohane.*
Applicant *Marian and Stacey Fitton*

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.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the Planning Authority is reworded as follows:

'Whether the following works is development and if so whether it is exempted development.

(1) The removal of 3 No windows (2 on west and 1 on east elevation);

(2) The addition of 1 window on the east elevation;

Splayed entrance piers and sliding gate in addition to the repair of the existing stone wall.'

3. SITE DESCRIPTION

The subject property is a newly constructed dwelling built on an infill site along the Carriganarra Road. The entrance has been constructed as per the alterations mentioned above. No on-site inspection was possible due to Covid 19 restrictions on site visits.

4. PLANNING HISTORY

17/5777 Permission granted to construct a one and a half storey dwelling house & a detached garden store (change of design from approved application reference 16/05018), new site entrance with walls and piers and all associated site works including proposed connection to public foul drainage system.

16/5018: Permission granted to construct a one and a half storey dwelling house, a detached garden store, new site entrance with walls and piers and all associated site works including proposed connection to public foul drainage system.

03/3593: Outline planning permission for construction of a dwelling house.

98/407: Outline planning permission granted for the construction of a dormer dwelling.

5. CURRENT LEGISLATIVE PROVISIONS

5.1 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(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.*

5.2 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 (but not restricted to the following:

- (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, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4metres in width,’*
- (iii) *endanger public safety by reason of traffic hazard or obstruction of road users,’*

6. ASSESSMENT

6.1 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’. The development is considered to consist of ‘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’ and is therefore ‘development’ within the meaning of the Act.

CONCLUSION — is development

6.2 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).

The development is hereunder assessed against the restrictions on exemptions outlined in Article 9 of the Regulations:

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***

The following were among several conditions attached to 17/5777:

1. The proposed development shall comply with the terms and conditions of Planning Permission Reg. No. 16/5018 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein.

Reason: In the interests of clarity.

2. The proposed development shall be carried out in accordance with plans and particulars lodged with the Planning Authority on the 11/07/2017, save where amended by the terms and conditions herein.

Reason: In the interests of clarity.

6. All trees and hedgerows within and on the boundaries of the site, except those specified trees whose removal is authorised in writing by the Planning Authority to facilitate the development, shall be protected during building operations and retained thereafter.

Reason: In the interests of visual amenity.

10. Gates shall open inwards.

Reason: In the interests of road safety.

11. Vegetation or any structure shall not exceed 1m in height within the sight distance triangle.

Reason: To provide proper sight distance for emerging traffic in the interests of road safety.

Conditions 10 and 11 were also conditions of the previous permission 16/5018.

I note restriction on exemption in relation to contravention of a condition attached to a permission. No gate has been provided. The Area Engineer confirms that C. 11 has been complied with. However, the changes to the elevations and entrance design would contravene Condition 1 and 2 of the permission. From photos attached to 16/5018 a hedgerow fronted the site – this has been removed in its entirety appearing to contravene Condition 6 although C.11 may take precedence over this.

(ii) consist of or comprise the formation, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4metres in width.

The proposal involves splaying the permitted entrance and making the entrance in the original stone wall much greater than permitted. The actual gated vehicular entrance width would be the same, but the entrance location is to be set back from the road edge. Therefore, the width of the entrance created on the road edge is now much wider at approx. 7m. than the 3.5 permitted (and has resulted in the loss of a larger section of original wall). The proposal therefore contravenes this restriction on exemption (the main road is wider than 4m).

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

I have checked this issue with the Area Engineer having regard also to Condition 11 of the permission – he notes that the splay/revisions have not compromised this condition/public safety (see attached email).

Other issues: An additional window would normally in itself require planning permission and there are no stated exemptions for same.

CONCLUSION — *is not exempted development*

7. 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.

a. 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.

b. 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.

8. CONCLUSION & 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
- Article 9(i) and (ii) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended,
- Conditions 1 and 2, of permission 17/5777

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at Carriganarra Carrigrohane, Cork

IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.

Evelyn Mitchell,
Senior Executive Planner,
22.04.2002.

**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

CARRIGANARRA, CARRIGROHANE, Co. CORK

03 MAR 2020

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.

Are the following alterations to the approved elevations & entrance piers considered to be acceptable under exempted development?

- 1) The removal of 3 no windows (2 on the West elevation & 1 on the East elevation
- 2) The addition of 1 window on the East elevation
- 3) Splayed entrance piers and sliding gate in addition to the repair of the existing stone wall.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Please see enclosed drawings 218-E20-P001, 218-E20-P002, 218-E20-P100, 218-E20-P101 & 218-E20-P1000 to 218-E20-P1006 outlining the original approved layouts and the as built layouts, for which we seek clarification.

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	N/A
(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) N/A
(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)
N/A	N/A

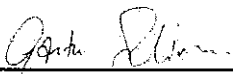
4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Marian & Stacey Fitton	
Applicants Address	CARRIGANARRA, CARRIGROHANE, Co. CORK	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Gareth Sullivan C/O Simply Architecture
	Address:	REDACTED
	Telephone:	REDACTED
	Fax:	
	E-mail address:	REDACTED
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
Where legal interest is 'Other', please state your interest in the land/structure in question	N/A	
If you are not the legal owner, please state the name and address of the owner if available	N/A	

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

Signature: 

Date: 09/03/2020

.....

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.

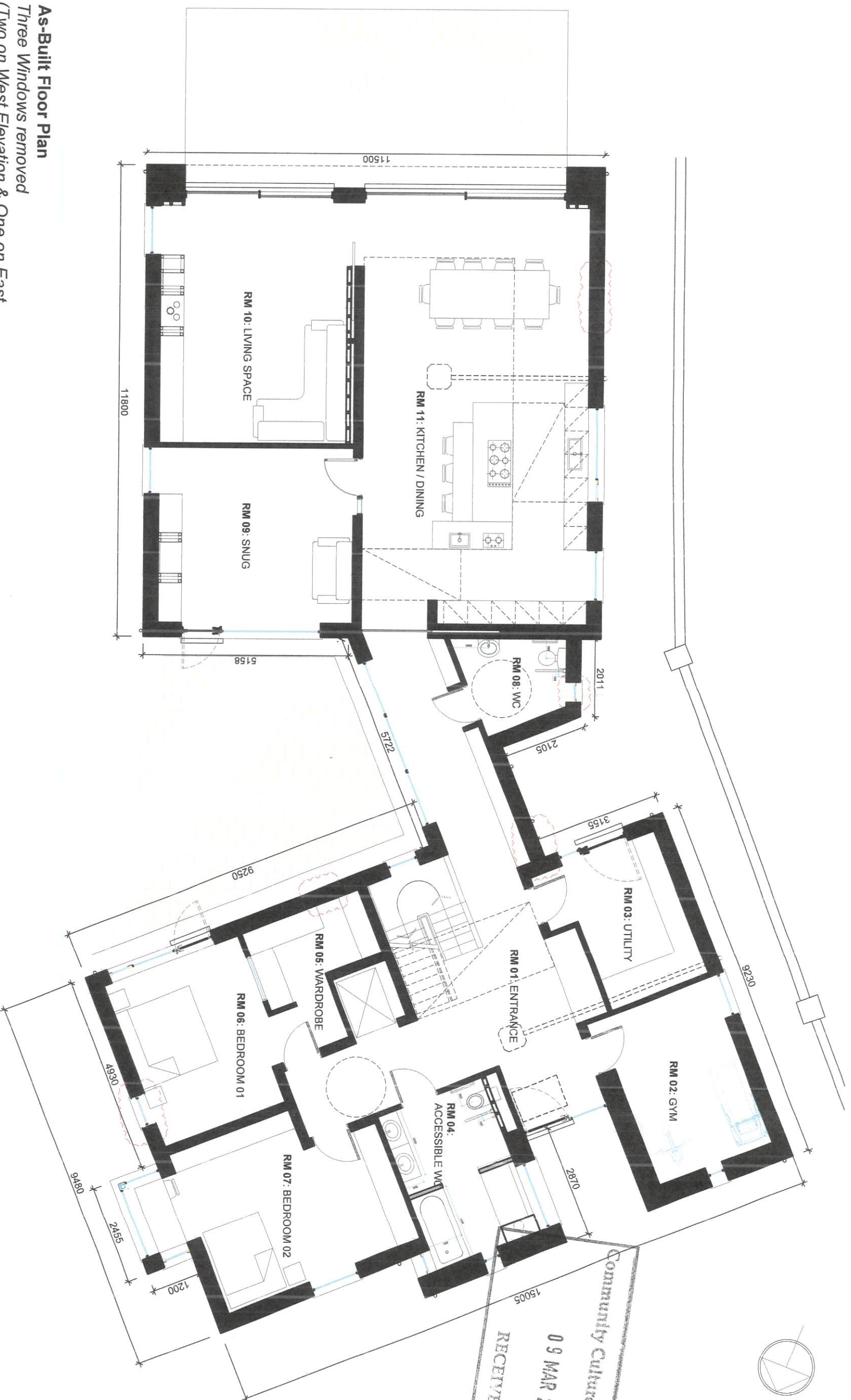
The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation 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



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09 MAR 2020
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- **As-Built Floor Plan**
- Three Windows removed (Two on West Elevation & One on East Elevation)
- One Window added (East Elevation)
- One window lengthened (West Elevation)

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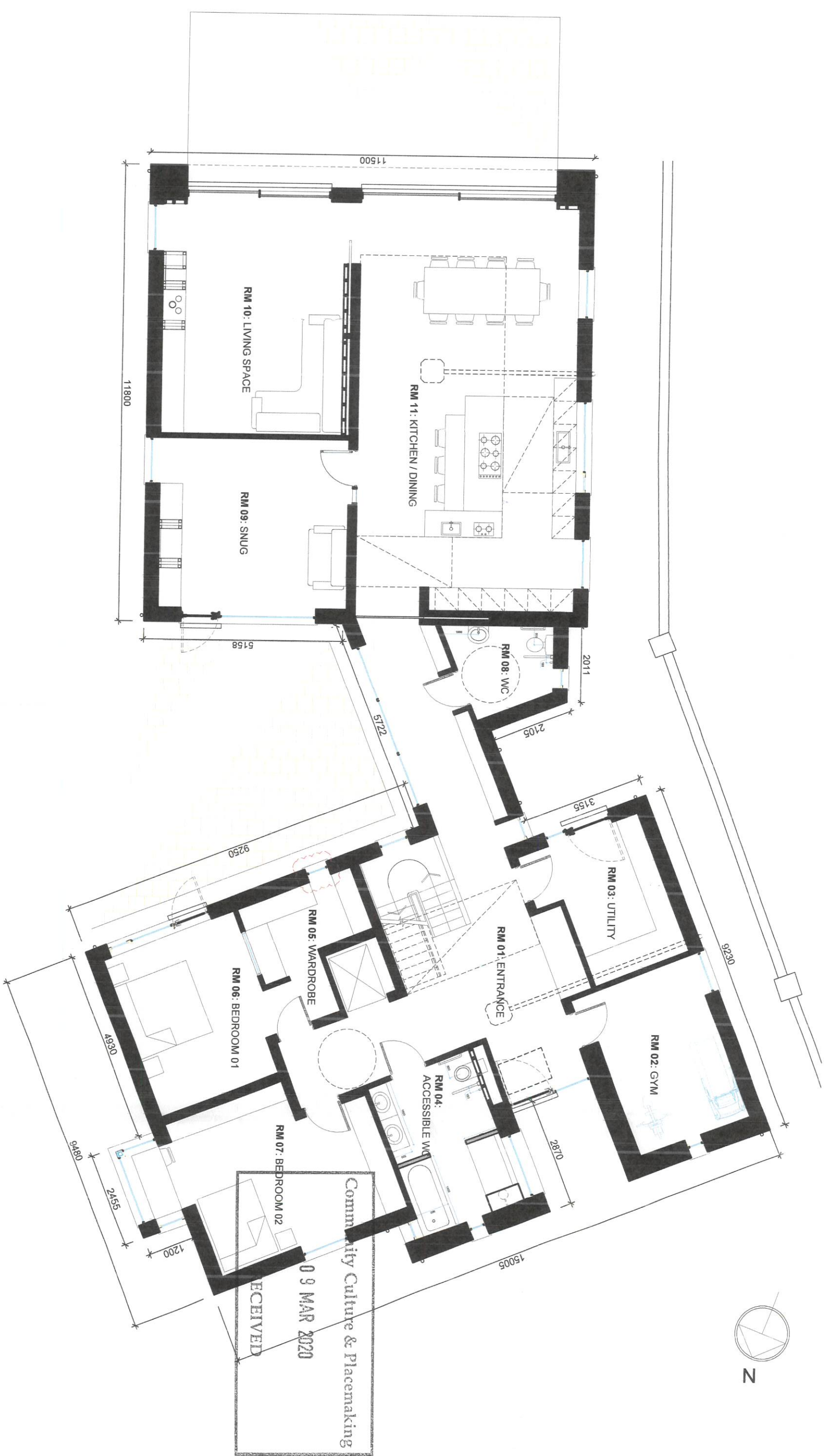
SIMPLY ARCHITECTURE

18A Washington St. Cork W: www.simplyarchitecture.com
T: +353 (0)21 242 9457 E: studio@simplyarchitecture.com

PROJECT: CARRIGANARRA CARRIGROHANE CLIENT: M. & S. FITTON
DRAWING: AS BUILT FLOOR PLAN DRAWN BY: G.S.

REV: - DESCRIPTION: PLANNING DATE: 09/03/2020

DATE: MAR 2020 SCALE: 1:100 @ A3
DWG. N°: 218-E20-P 1006 REVISION: -



1 Approved Floor Plan
SCALE: 1:100 at A3

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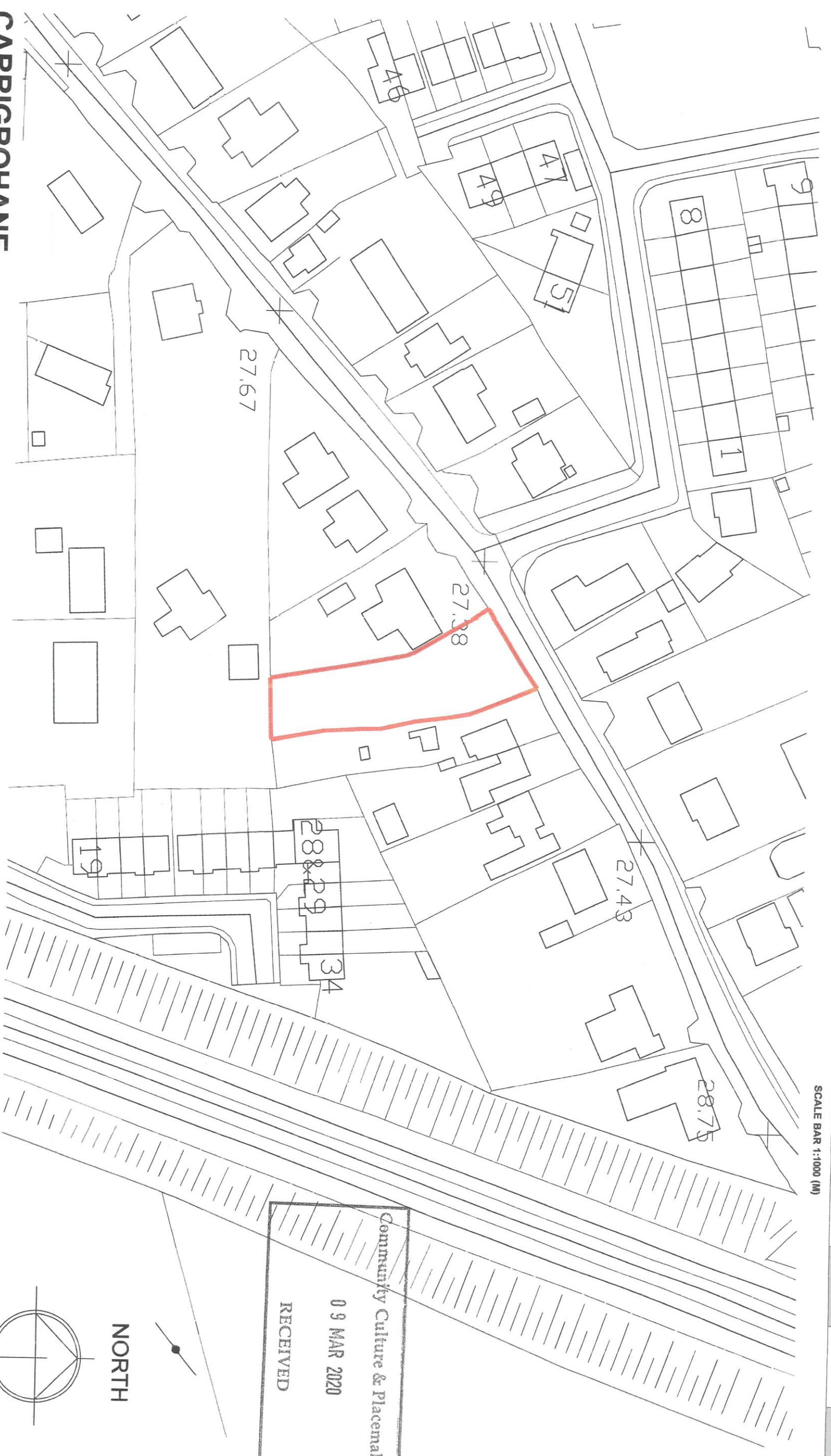
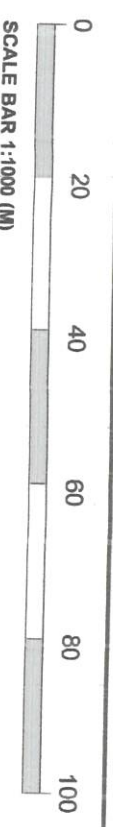
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PROJECT: CARRIGANARRA CARRIGROHANE CLIENT: M. & S. FITTON
DRAWING: APPROVED FLOOR PLAN DRAWN BY: G.S.

REV:	DESCRIPTION:	DATE
-	PLANNING	09/03/2020

DATE: MAR 2020 SCALE: 1:100 @ A3
DWG. N°: 218-E20-P 1005 REVISION: -

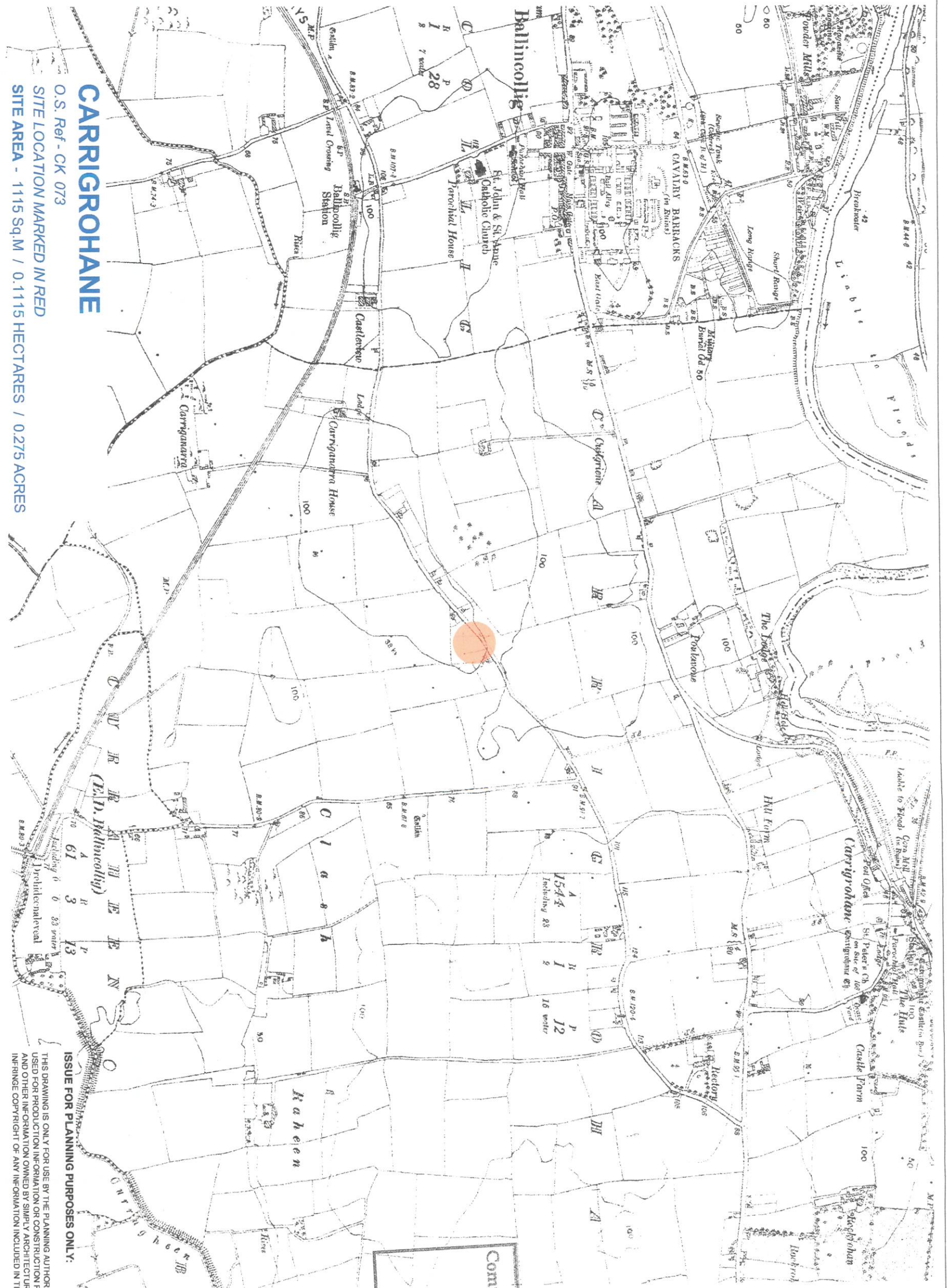


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CARRIGROHANE
 SITE CO-ORDINATES: 560632 570570
 SITE BOUNDARY OUTLINED IN RED
 SITE AREA - 1115 Sq.M / 0.1115 HECTARES / 0.275 ACRES

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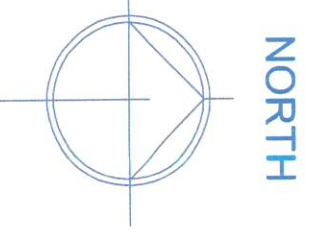
SIMPLY ARCHITECTURE		PROJECT: CARRIGANARRA CARRIGROHANE		CLIENT: M. & S. FITTON		REV: -		DESCRIPTION: PLANNING		DATE: 09/03/20		DATE: MAR 2020		SCALE: 1:1000 @ A3	
18A Washington St. Cork T: +353 (0)21 242 9457 W: www.simplyarchitecture.com E: studio@simplyarchitecture.com		DRAWING: SITE LOCATION MAP		DRAWN BY: (c) O.S.I.								DWG. N°: 218-E20-P001		REVISION: -	



CARRIGROHANE

O.S. Ref - CK 073
 SITE LOCATION MARKED IN RED
 SITE AREA - 1115 Sq.M / 0.1115 HECTARES / 0.275 ACRES

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PROJECT: CARRIGANARRA CARRIGROHANE
CLIENT: M & S. FITTON
DRAWING: SITE LOCATION MAP
DRAWN BY: (c) O.S.i

REV: PLANNING
DATE: 09/03/2020

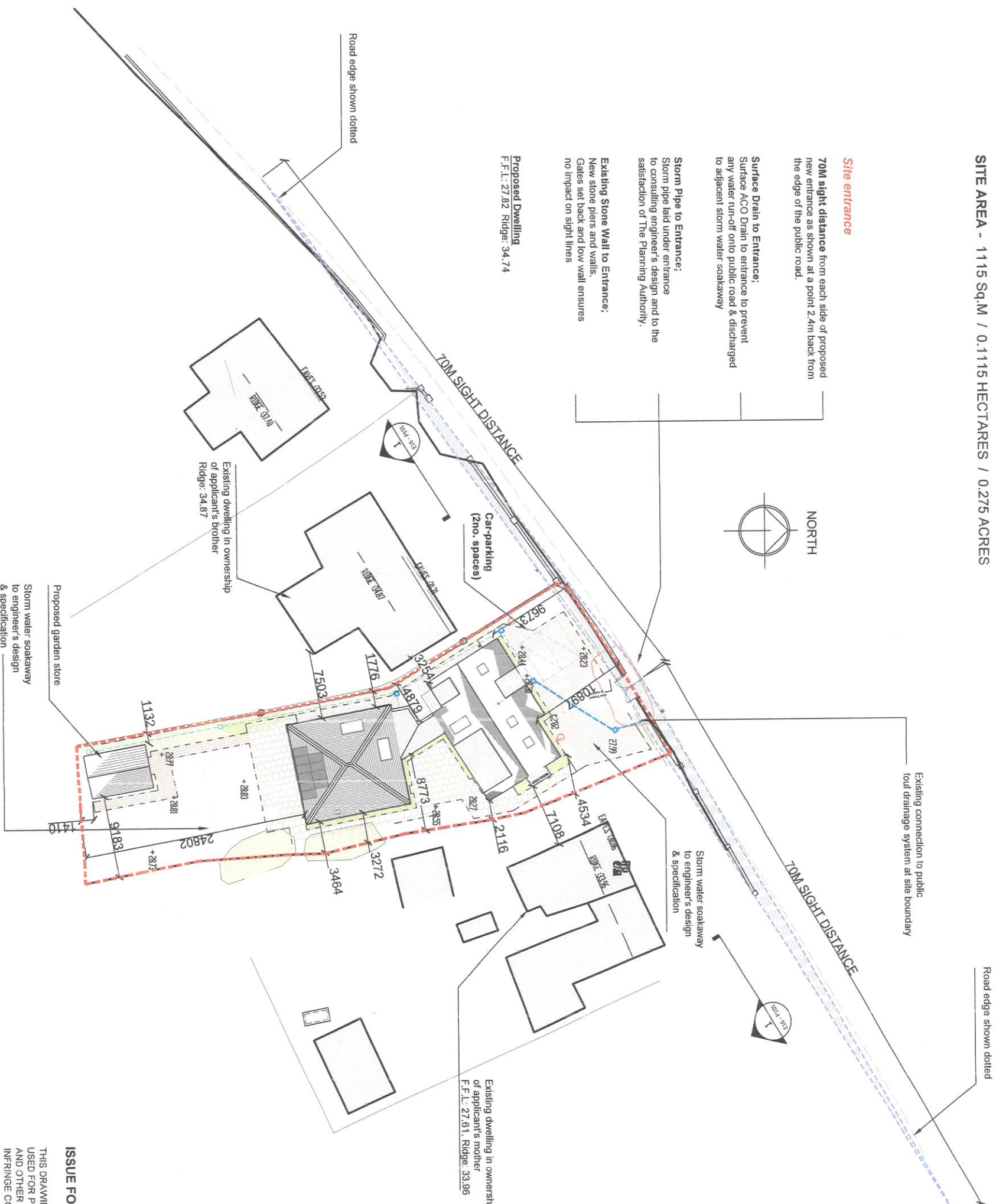
DATE: MAR 2020
DWG. N°: 218-E20-P 002
SCALE: 1:10560 @ A3
REVISION:

CARRIGROHANE

O.S. Ref - CK 073

SITE BOUNDARY OUTLINED IN RED

SITE AREA - 1115 Sq.M / 0.1115 HECTARES / 0.275 ACRES



Site entrance

70M sight distance from each side of proposed new entrance as shown at a point 2.4m back from the edge of the public road.

Surface Drain to Entrance:
Surface ACO Drain to entrance to prevent any water run-off onto public road & discharged to adjacent storm water soakaway

Storm Pipe to Entrance:
Storm pipe laid under entrance to consulting engineer's design and to the satisfaction of The Planning Authority.

Existing Stone Wall to Entrance:
New stone piers and walls. Gates set back and low wall ensures no impact on sight lines

Proposed Dwelling
F.F.L.: 27.82 Ridge: 34.74

Storm water soakaway
to engineer's design & specification

Existing connection to public foul drainage system at site boundary

Drainage Key:
Storm drainage to engineer's design:
Foul drainage to engineer's design:

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NOTE:

This drawing applies to entrance details approved under planning application.
For detailed drawings of the approved entrance refer to 218-E20-1000

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SIMPLY ARCHITECTURE 18A Washington St. Cork W: www.simplyarchitecture.com T: +353 (0)21 242 9457 E: studio@simplyarchitecture.com	
PROJECT:	CARRIGANARRA CARRIGROHANE
DRAWING:	APPROVED SITE PLAN
CLIENT:	M. & S. FITTON
REV:	-
DESCRIPTION:	PLANNING
DATE:	09/03/20
DATE:	MAR 2020
SCALE:	1:500 @ A3
DWG. N°:	218-E20-P 100
REVISION:	-

Surface Drain to Entrance;
Surface ACO Drain between piers to prevent any water run-off onto public road & discharged to adjacent storm water soakaway

Storm drain to soakaway

Kerbs
New concrete kerbs to parking area at front of dwelling

Hedgerow to be cut back behind sight lines & strengthened with native species

New cast in situ concrete capping to wall

Hedgerow behind wall to be cut to 1M to ensure adequate sight lines maintained

ACO drain to entrance

Existing stone wall to be retained.
New opening formed and wall edges to be re-built using natural stone to match

70M sight distance line (Shown purple)

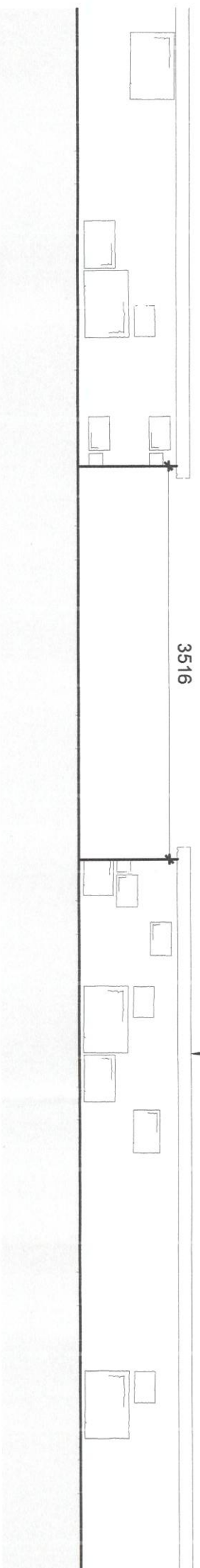
Existing road edge shown green

1 Entrance Plan
SCALE : 1:50 at A3

Storm Pipe to Entrance;
storm pipe laid under entrance to consulting engineer's design and to the satisfaction of The Planning Authority.

Proposed Entrance;
Existing stone wall to be retained.
New opening formed and wall edges to be re-built using natural stone to match (Wall at road edge to be in accordance with heights stipulated by Local Authority)

New cast in situ concrete capping to wall



2 Entrance Elevation
SCALE : 1:50 at A3

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E: studio@simararchitecture.com

SIMPLY ARCHITECTURE

PROJECT: CARRIGANARRA CARRIGROHANE
DRAWING: BOUNDARY DETAILS

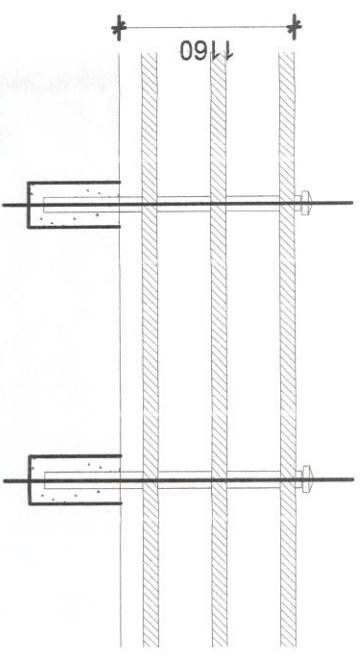
CLIENT: M. & S. FITTON

DRAWN BY: G.S.

REV: -
DESCRIPTION: PLANNING
DATE: 09/03/2020

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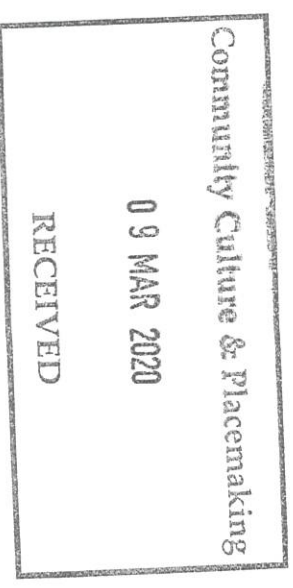


Site Boundary Fence Elevation;
Timber post and rail fencing backplanted with new hedgerow

3 Typical Fence Boundary
SCALE : 1:50 at A3

NOTE:

This drawing applies to entrance details approved under planning application

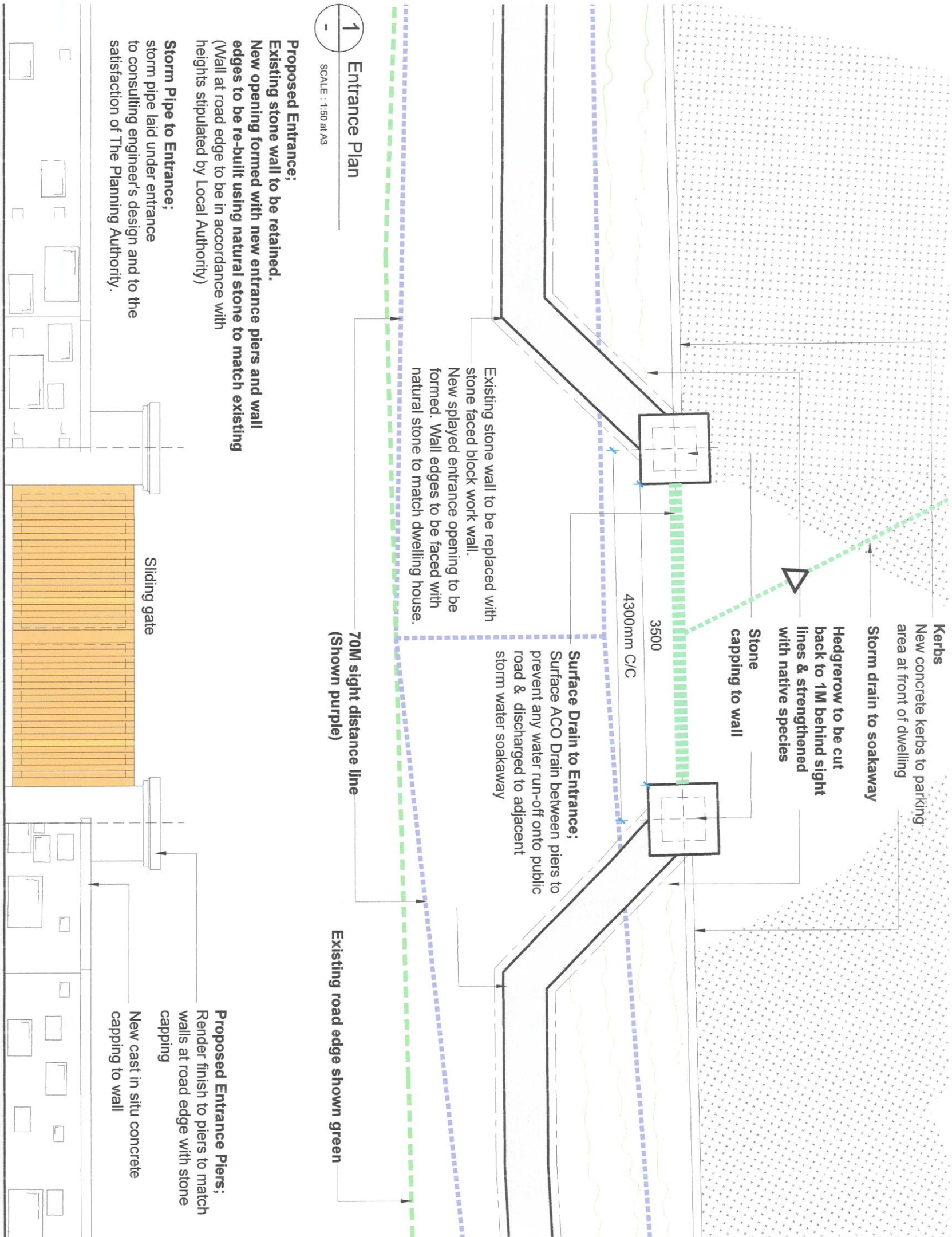


DATE: MAR 2020

DWG. N°: 218-E20-P 1000

SCALE: 1:50 @ A3

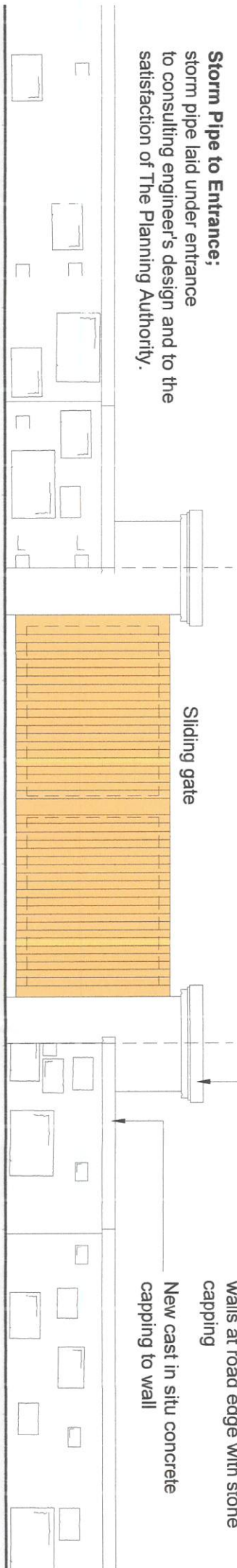
REVISION: -



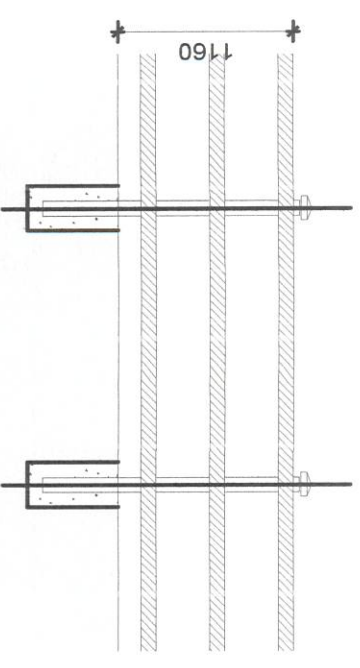
1 Entrance Plan
SCALE : 1:50 at A3

Proposed Entrance;
Existing stone wall to be retained.
New opening formed with new entrance piers and wall edges to be re-built using natural stone to match existing (Wall at road edge to be in accordance with heights stipulated by Local Authority)

Storm Pipe to Entrance;
storm pipe laid under entrance to consulting engineer's design and to the satisfaction of The Planning Authority.



2 Entrance Elevation
SCALE : 1:50 at A3



Site Boundary Fence Elevation;
Timber post and rail fencing backplanted with new hedgerow

3 Typical Fence Boundary
SCALE : 1:50 at A3

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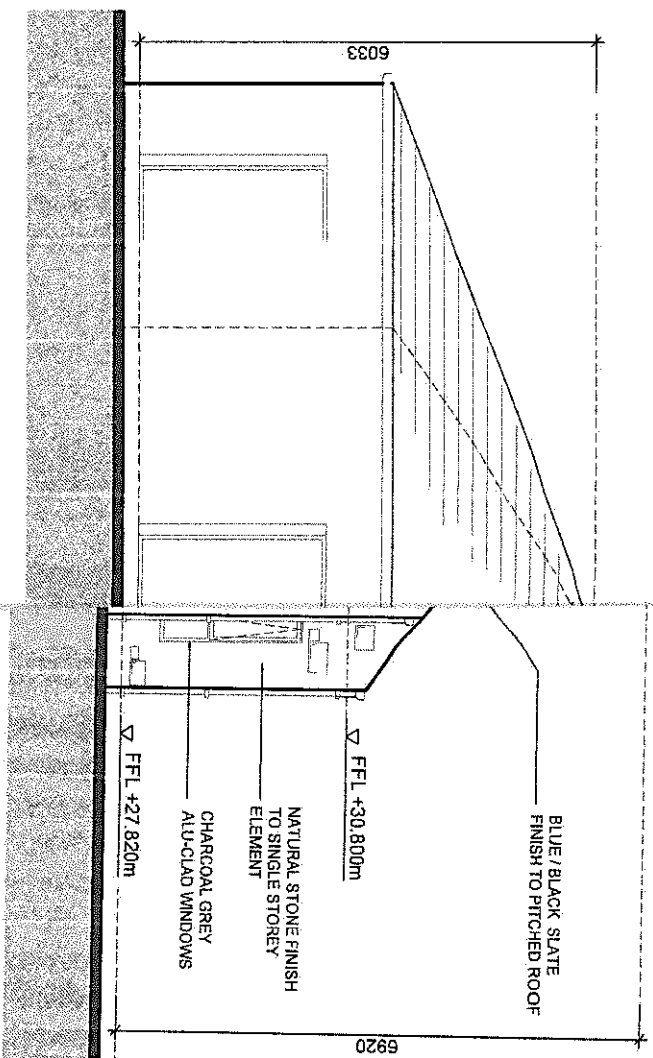
AS-BUILT ENTRANCE ARRANGEMENT
(Location of entrance as per approved application)

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T: +353 (0)21 242 9457 E: studio@simplyarchitecture.com

PROJECT: CARRIGANARRA CARRIGROHANE CLIENT: M. & S. FITTON
DRAWING: AS BUILT BOUNDARY DETAILS DRAWN BY: G.S. / A.K.

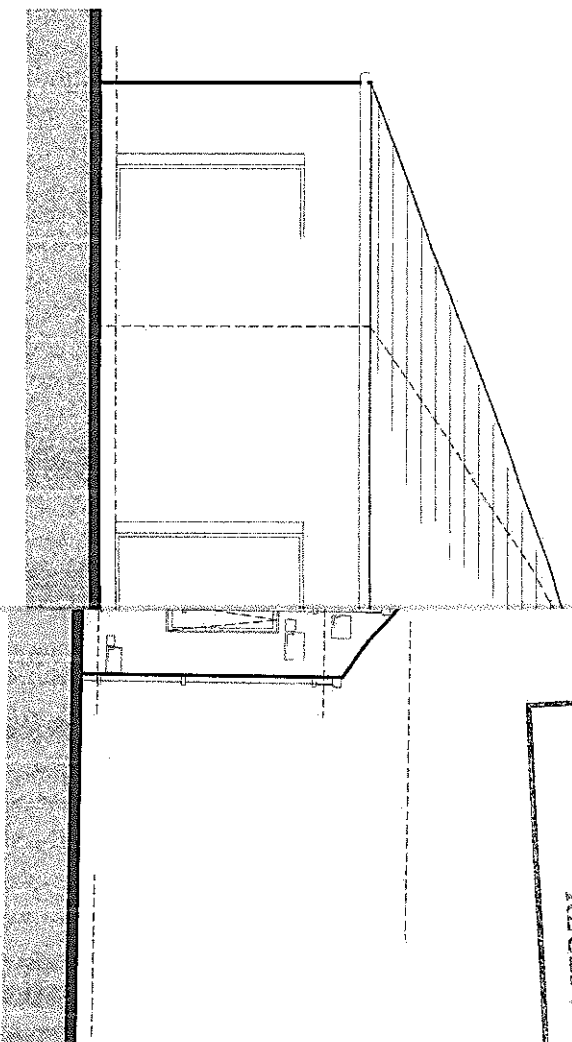
REV: - DESCRIPTION: PLANNING DATE: 09/03/2020

DATE: MAR 2020 SCALE: 1:50 @ A3
DWG. N°: 218-E20-P 1001 REVISION: -



Approved East Elevation

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As-built East Elevation
 - One window added next to bay window

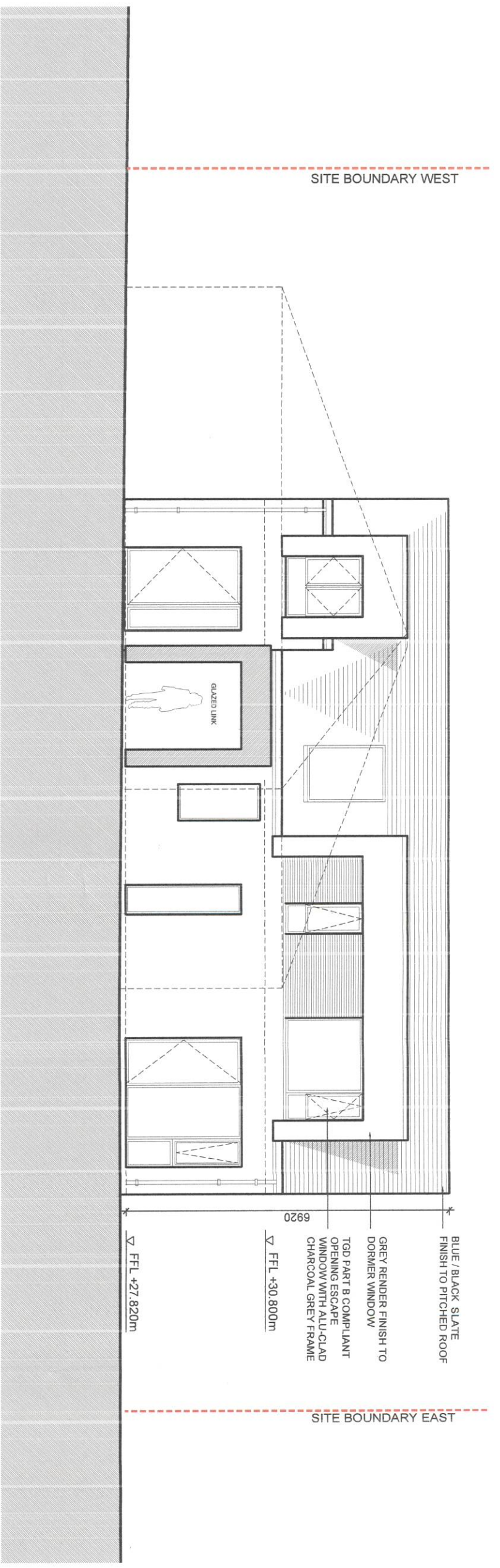
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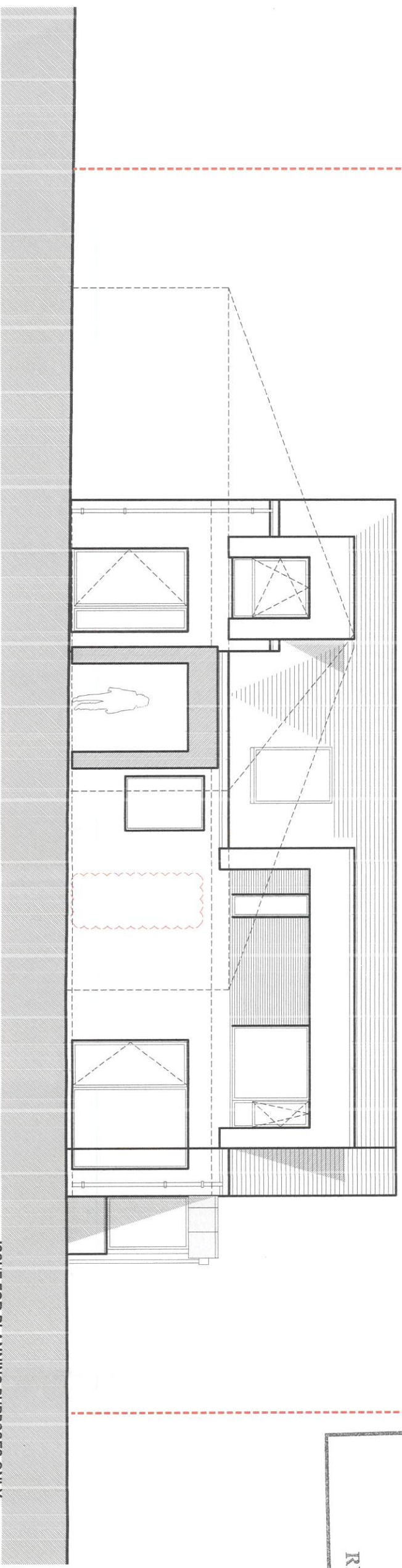
PROJECT:
CARRIG
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EAST EI

DATE: **MAR 2020** SCALE: **1:100 @ A3**
 DWG. N°: **218-E20-P 1002** REVISION: **-**



Approved South Elevation

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As-Built South Elevation
 - One window removed

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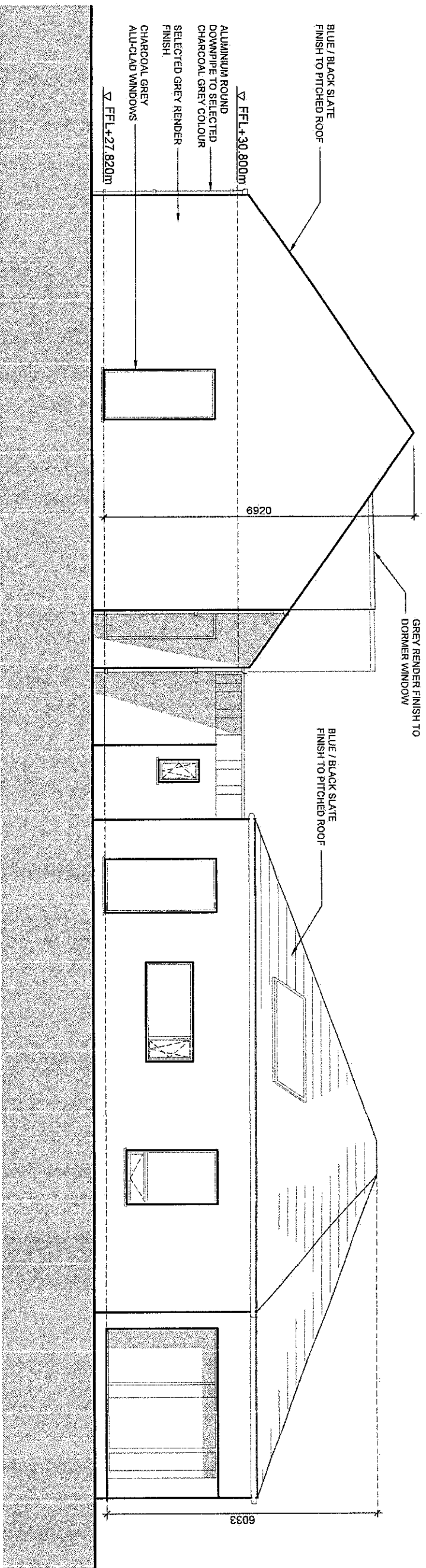
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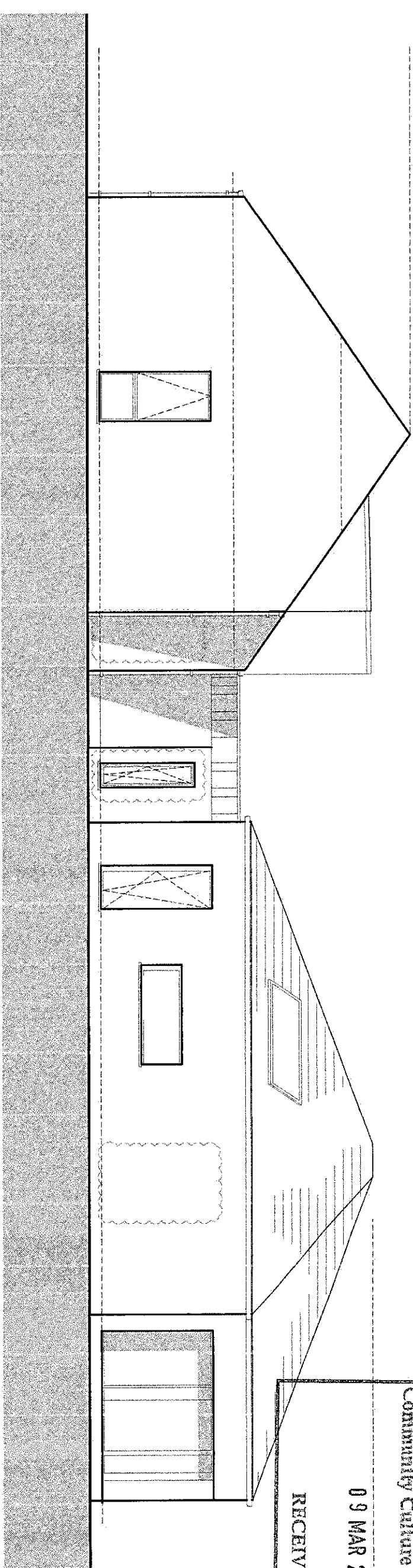
PROJECT: CARRIGANARRA CARRIGROHANE CLIENT: M. & S. FITTON
 DRAWING: SOUTH ELEVATION DRAWN BY: G.S./AK

REV: - DESCRIPTION: PLANNING DATE: 09/03/20

DATE: MAR 2020 SCALE: 1:100 @ A3
 DWG. N°: 218-E20-P 1003 REVISION: -



Approved West Elevation



As-Built West Elevation

- Small central window made longer
- Window to RHS removed
- Window to LHS removed

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PROJECT:	CARRIGANARRA CARRIGROHANE	CLIENT:	M. & S. FITTON
DRAWING:	WEST ELEVATION	DRAWN BY:	G.S./AK

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DATE	MAR 2020	SCALE	1:100 @ A3
DWG. N°	218-E20-P 1004	REVISION	-