



# Comhairle Cathrach Chorcaí Cork City Council

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

Stacey Bowen & James Loughlin  
57 Lower Kent Road  
Ballypnehane  
Cork  
T12H7X8

25<sup>th</sup> August 2020

**RE: Section 5 Declaration R588/20 – 57 Lower Kent Road,  
Ballypnehane, Cork**

Dear Ms Bowen & Mr. Loughlin,

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

having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the upgrade of the roof of the existing ground floor extension at 57 Lower Kent Road, Ballypnehane, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Yours sincerely

**Kerry Bergin**  
Community, Culture and Placemaking Directorate  
Cork City Council



**We are Cork.**

**PLANNER'S REPORT**  
**Ref. R 588/20**

Cork City Council  
Development Management  
Strategic Planning and  
Economic Development

Application type	<b>SECTION 5 DECLARATION</b>
Question	<i>Is the upgrade of the roof of the existing ground floor extension considered development, and if so, is it exempted development?</i>
Location	57 Lower Kent Road, Ballyphehane, Cork
Applicant	Stacey Bowen and James Loughlin (owner)
Date	21/08/2020
Recommendation	<b>Is development and is exempted development</b>

This report is to be read in conjunction with previous planning report, dated 22/07/2020, which requested further information.

### 1. FURTHER INFORMATION ASSESSMENT

Further Information was requested on 28/07/2020. A response to same was received on 18/08/2020. There was 1 (one) No. item of further information requested.

- 1. The applicant is requested to submit drawings which clearly show the extents of the proposed works and to clarify the location of the works. Drawings should be provided to show the elevations of the dwelling following completion of the work, should indicate the alterations proposed and be clearly dimensioned (including all heights) and should show whether the works will be visible from the public road.***

The applicant has submitted drawings and details showing the extents of the proposed works. The proposed works are to the single storey element to the rear of the dwelling and do not include the single storey element to the side of the dwelling house. While a minor portion of the proposed works will be visible from the public roadway to the front, it is considered that this will not materially affect the external appearance of the structure which is in accordance with Section 4(1)(h) below.

Section 4(1)(h) of the Planning and Development Regulations relates to:

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

The proposed pitched roof will be to a height of approximately 950mm higher than the existing flat roof. This reasonably corresponds with existing extensions constructed in the location. This response is considered acceptable.

## 2. ADDITIONAL 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—*

*(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.*

### **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 response to the further information relating to 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.**

### **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 response to the further information relating to the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required.**

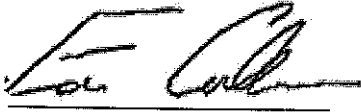
## 3. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the upgrade of the roof of the existing ground floor extension at 57 Lower Kent Road, Ballyphehane, Cork IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.



Eoin Cullinane  
Assistant Planner  
18/08/2020

**RE: Section 5 Declaration R588/20**  
**- 57 Lower Kent Road, Ballyphehane, Cork, T12 H7X8**

Community Culture & Placemaking

18 AUG 2020

RECEIVED

Dear K Bergin,

Thank you for your response dated 28th July 2020.

Please find attached, as requested, drawings which show the extent of the proposed works, and which also clarify the location of the works proposed to take place at our above address.

A note to mention that the existing extension is currently visible from the public road, so any replacement of the roof, whether pitched or flat, will be visible from the public road.

It is also the case that due to the non-linear construction of dwellings on Lower Kent Road, it is possible to see many rear/side/combination extensions from the public road. I have attached several examples to demonstrate.

We do hope that our application will fall under Section 4.1.h of the Planning and Development act.

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

The neighbouring structures on Lower Kent Road with extensions to the rear/side have pitched roofs, so our necessary upkeep, due to leaks, would render the appearance consistent with the local character.

Thank you for your time,

Best regards,

Stacey Bowen and James Loughlin.



Front elevation existing dwelling. Scale 1:100

Height of existing extension with current flat roof 2900 mm.  
Shown above with red stripe highlight.

Community Culture & Placemaking  
18 AUG 2020  
RECEIVED



Proposed front elevation. Scale 1:100

Height of existing extension with proposed pitched roof approximately 3830 mm.  
Shown above with red stripe highlight.



Rear elevation existing dwelling. Scale 1:100

Height of existing extension with current flat roof 2900 mm.  
Shown above.



Proposed rear elevation. Scale 1:100

Height of existing extension with proposed pitched roof approximately 3830 mm.  
Shown above.

**Selection of Lower Kent Road properties with ground storey extensions visible from public road, circled in red.**



57 Lower Kent Road



55 Lower Kent Road



66 Lower Kent Road



73 Lower Kent Road

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18 AUG 2020  
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76 Lower Kent Road



85 Lower Kent Road





# Comhairle Cathrach Chorcaí Cork City Council

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

Stacey Bowen & James Loughlin  
57 Lower Kent Road  
Ballypéhane  
Cork  
T12H7X8

28<sup>th</sup> July 2020

**RE: Section 5 Declaration R588/20 – 57 Lower Kent Road,  
Ballypéhane, Cork**

Dear Ms Bowen & Mr. Loughlin,

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

It is recommended that the following further information be sought:

1. The applicant is requested to submit drawings which clearly show the extents of the proposed works and to clarify the location of the works. Drawings should be provided to show the elevations of the dwelling following completion of the work, should indicate the alterations proposed and be clearly dimensioned (including all heights) and should show whether the works will be visible from the public road.

Yours sincerely

**Kerry Bergin**  
Community, Culture and Placemaking Directorate  
Cork City Council



**We are Cork.**

Application type	<b>SECTION 5 DECLARATION</b>
Question	<i>Is the upgrade of the roof of the existing ground floor extension considered development, and if so, is it exempted development?</i>
Location	57 Lower Kent Road, Ballyphehane, Cork
Applicant	Stacey Bowen and James Loughlin (owner)
Date	22/07/2020
Recommendation	<b>Further Information Required</b>

#### INTERPRETATION

In this report 'the Act' means the Planning and Development Act, 2000 as amended and 'the Regulations' means the Planning and Development Regulations, 2001 as amended, unless otherwise indicated.

#### 1. REQUIREMENTS FOR A SECTION 5 DECLARATION 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:

*"Is the upgrade of the roof of the existing ground floor extension considered development, and if so, is it exempted development?"*

#### 3. SITE DESCRIPTION

The subject property is a two storey, semi-detached dwelling in the Residential, Local Services and Institutional Uses zoning area. The area is predominantly residential in nature.

#### 4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the replacement of the existing flat roof to the single storey extension to the rear and side of the existing dwelling with a pitched roof.

#### 5. RELEVANT PLANNING HISTORY

TP 90/16182 Permission GRANTED for retention of extension at 57 Kent Road, Cork

#### 6. LEGISLATIVE PROVISIONS

##### 6.1 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(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.*

**Section 5(1)**

See section 1 of this report.

**6.2 Planning and Development Regulations 2001 to 2018 as amended**

**Article 5(2)**

*In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose "ground level" means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.*

**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.

**7. ASSESSMENT**

**7.1 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' is defined in section 3(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. In relation to proposed replacement of a flat roof with a pitched roof, it is clear that a pitched roof constructed to the single storey element to the side and rear of the dwelling house comprises 'works'. As the proposal comprises 'works', it is clearly therefore 'development' within the meaning of the Act.

**CONCLUSION**  
**Is development**

**7.2 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).

I consider that the proposal comes within **subsection (1) of section 4**, i.e. the Regulations, and not subsection (2).

**Section 4(1)**

Section 4(1)(h) of the Planning and Development Regulations relates to:

*"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”*

It is considered that the proposed works would be assessed under this criteria as there is no additional floor area proposed, as stated in the application form.

From reviewing the details submitted, and from carrying out on-line research, it is unclear whether the works proposed are to the rear of the property only or if they include the single storey element to the side of the existing dwelling.

It would be considered important to clarify the extents of the works proposed and to ensure drawings are submitted to clearly indicate the proposed works.

Further information is required to clearly show the extents of the proposed works and to clarify the location of the works. Drawings should be provided to show the elevations of the dwelling following completion of the work, should indicate the alterations proposed and be clearly dimensioned (including all heights) and should show whether the works will be visible from the public road.

#### **Section 4(2)**

I do not consider that the proposal comes within the scope of section 4(2) of the Act.

#### ***Restrictions on exemption***

I do not consider that any apply in this instance.

### **CONCLUSION**

#### **Further Information Required**

#### **8. 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—*

*(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.*

**8.1 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**.

**8.2 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**.

**9. RECOMMENDATION**

It is recommended that the following further information be sought:

1. The applicant is requested to submit drawings which clearly show the extents of the proposed works and to clarify the location of the works. Drawings should be provided to show the elevations of the dwelling following completion of the work, should indicate the alterations proposed and be clearly dimensioned (including all heights) and should show whether the works will be visible from the public road.



Eoin Cullinane  
Assistant Planner  
22/07/2020

**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**

57 Lower Kent Road, Ballyphehane, Cork City, T12 H7X8.

**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 upgrade of the roof of the existing ground floor extension considered development, and if so, is it exempted development?

Comhairle Cathrach Chorcaí  
Cork City Council

09 -07- 2020

Strategic Planning & Economic  
Development Directorate

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required).*

The ground floor extension to the back and side of the house has an internal floor measurement of 26 square metres. This was granted retention in 1990, T.P. Ref. 16,182/90.

The existing flat roof is now leaking, and in very poor condition. As the roof must be replaced due to these issues, we want to replace the damaged flat roof with a pitched tiled roof.

The existing ground floor extension and flat roof measure 290 cm in height. The proposed flat roof would add approximately ~95 cm in height to the total, but would continue to be significantly less in height than the total height of the rear wall of the original house building.

The neighbouring structures on Lower Kent Road with extensions to the rear have pitched roofs, so our necessary upkeep would render the appearance consistent with the local character.

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?  No.

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: Yes, retention granted in 1990, T.P. 16,182/90.

## 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	26 square metres.
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) <u>26 square metres.</u>
(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.

## 8. 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	N/A.	
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: Stacey Bowan James Longman

Date: 8 July 2020



## CONTACT DETAILS

### 10. Applicant:

<b>Name(s)</b>	Stacey Bowen and James Loughlin.
<b>Address</b>	57 Lower Kent Road, Ballyphehane, Cork City, T12 H7X8. ----- ----- -----

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

<b>Name(s):</b>	N/A.	
<b>Address:</b>	N/A. ----- ----- -----	
<b>Telephone:</b>	087 2939937	
<b>E-mail address:</b>	sbowen@redhat.com	
<b>Should all correspondence be sent to the above address?</b> <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"/>

### 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:

<p>The application must be accompanied by the required fee of €80</p> <p>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.</p> <p>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.</p> <p><i>The application should be sent to the following address:</i></p> <p style="text-align: center;"><b>The Development Management Section, Community, Culture &amp; Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.</b></p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

- 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.



Screenshot of Google Maps satellite overhead view 2020, showing existing flat roof ground floor extension, outlined in red, of 57 Kent Road, Ballyphehane, Cork City, T12 H7X8

567600 mE; 570160 mN



**The Property Registration Authority**  
 An tÚdarás Clárúcháin Maoinne  
 Folio: CK148086F

This map should be read in conjunction with the folio.

Registry maps are based on OSI topographic mapping. Where registry maps are printed at a scale that is larger than the OSI published scale, accuracy is limited to that of the original OSI map scale.

For details of the terms of use and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see [www.pra.ie](http://www.pra.ie).

This map incorporates Ordnance Survey Ireland (OSI) mapping data under a licence from OSI. Copyright © OSI and Government of Ireland.

- (centre-line of parcel(s) edged)
- Freehold
- Leasehold
- Subleasehold

- Burdens** (may not all be represented on map)
- Right of Way / Wayleave
  - Turbary
  - Pipeline
  - Well
  - Pump
  - Septic Tank
  - Soak Pit

A full list of burdens and their symbology can be found at: [www.landdirect.ie](http://www.landdirect.ie)

**The registry operates a non-conclusive boundary system.**  
 The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent. (see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.

**1:1000 Scale**

