



Comhairle Cathrach Chorcaí

Cork City Council

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

Pat.osullivan@kioskarchitects.com

28/04/2021

RE: R654/21– Section 5 Declaration
Property: 18 Monfort Park, Mardyke Walk, Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise, having regard to –

- the particulars received by the Planning Authority on 21.04.2021
- the provision of Schedule 2, Part 1, Class 1 and Class 3 of the Planning and Development Regulations, 2001(as amended)

the planning authority considers that –

the proposed replacement of the garage at 18 Monfort Park, Mardyke Walk, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Yours faithfully,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R654/21
Description: Replacement of a garage
Applicant: Michelle O’Sullivan
Location: 18 Monfort Park, Mardyke Walk
Date: 28.04.2021

SUMMARY OF RECOMMENDATION

Constitutes development; is exempted development

Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Site Location

The property is a semi-detached property located on the southern side of Mardyke Walk. It benefits from vehicular access from Mardyke Walk.

Subject Development

The development subject to this Section 5 declaration request asks the following question of the Planning Authority: whether the demolition of the existing shed and replacement with a new shed as shown exempted development, having regard to Class 3 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended).

Land use zoning

The site is predominantly zoned Z05 *‘Residential, Local Services and Institutional Uses’*. The provision and protection of residential uses and residential amenity is a central objective of this zoning.

Planning History:

None

Relevant Legislation

Planning and Development Act, 2000

Section 3 (1) of the Act defines *“Development”* as, *‘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 of the Act refers to 'Exempted Development' and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (2) (a) states the following:

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development

Planning and Development Regulations 2001 (as amended)

Schedule 2, Part 1 of the above regulations relates to general exempted development.

Classes 1- 8 refer to development within the curtilage of a house.

Specifically, Class 3 refers 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.

Definitions

The definition of "Structure" in Section 2 of the 2000 Act is as follows:

"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 situated, 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 (ii)"

Assessment

Sub-threshold EIS

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that an EIS is not required to be submitted.

Appropriate Assessment

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly, it is considered that a

Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

It is noted that the property is not a Protected Structure as per RPS of the current Cork City Development Plan 2015-2021 but it is located within a the Mardyke Architectural Conservation Area of the City Plan.

Assessment

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3) (1) comprises two possible chief components: ‘the carrying out of any works on, in, over or under land’, or ‘the making of any material change in the use of any structures or other land’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

As per definition of “Structure” in Section 2 of the Planning and Development Act, 2000, the proposed shed is considered to be a structure.

As per definition of “development” in Section 3 (1) of the Planning and Development Act 2000 (as amended), it is considered that the erection of this replacement shed constitutes works, and as such, is ‘development’ and that the remaining question therefore is whether it is ‘exempted development’.

Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) relates to exempted development. As noted above, Class 3 relates to the construction, erection or placing within the curtilage of a house a tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

Class 3 goes on to set out distinctive categories for exempted development within the curtilage of a dwelling’. The proposal before the Council under this Section 5 application have been assessed against each in turn in the table below.

Conditions and Limitations	Assessment
1. No such structure shall be constructed, erected or placed forward of the front wall of a house.	Drawings have been provided by the applicant which clearly show that the replacement shed structure is located to the rear of the property. This condition is satisfied.
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.	According to the figures provided on the application form, the structure would have an area of 25 square metres. A plan reflecting this has been provided and so this condition has been satisfied.
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.	According to the information provided on the application form, the garden would not be reduced to less than 25 square metres. A plan reflecting this has been provided and so this condition has been satisfied.

<p>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.</p>	<p>According to the information provided on the submitted drawings the structure would not have a tiled or slate roof and as can be seen from the submitted plan, is not placed to the side of the house. This condition is satisfied.</p>
<p>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.</p>	<p>Noted in the applicant's covering letter that the height of the 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. Drawings reflecting this have been provided. This condition is satisfied.</p>
<p>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.</p>	<p>According to the information provided on the application form, the shed is for uses incidental to the main dwelling house and so this condition is satisfied.</p>

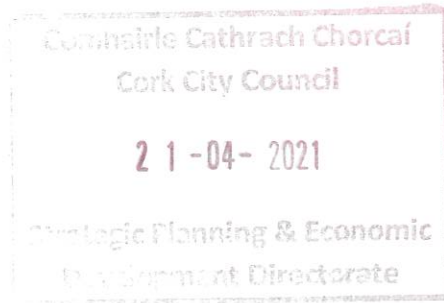
Recommendation

Having regard to:

- the particulars received by the Planning Authority on 21.04.2021
- the provision of Schedule 2, Part 1, Class 1 and Class 3 of the Planning and Development Regulations, 2001(as amended)

the planning authority considers that —

the proposed replacement of the garage at 18 Monfort Park, Mardyke Walk, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.



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wellington rd
cork

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www.kioskarchitects.com

19.04.21

The Development Management Section,
Community, Culture & Placemaking Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork.

Dear Sir/Madam

Re – Section 5 Declaration Application in relation to replacement of a garage at 18 Montfort Park, Mardyke Walk, Cork – T12T9K5

Please find attached Section 5 Declaration application form for the above proposed works along with drawings illustrating the existing as well as proposed layouts with proposed demolition highlighted.

The current shed structure was built prior to 1964, at the same time as the dwelling. Similar structures seem to have been built at the time with each of the 4 houses [2 pairs of semi-d's] that were built together but these have since been removed. Ground conditions in the area are quite poor and this structure is showing the signs of subsidence leading to the need for replacement.

The existing shed sits on the western and southern boundaries of the site but to minimise disruption the proposal is to retain the southern wall and a portion of the western wall so that the new works only engage with one neighbouring property to the west. This will allow for an area south of the proposed building that will be used as an open yard for bin storage and will limit the internal area of the new build to 25m².

The current building is approximately 2.5m high on the shared boundary with a low pitch dropping towards the garden leading to very compromised head heights. The proposal is for a structure that is 2.6m high approx. on the boundary and climbs to a maximum of 3.0m on the garden side. The total area would be 25m² with 160m² of open space remaining. It is understood by the applicant that permission of the adjoining neighbour will be required to facilitate the works.

Can you please clarify if these works are deemed exempted development under the planning legislation?

We trust that the information submitted is sufficient to adjudicate on this application, but please do not hesitate to contact us if you have any queries.

Yours sincerely,


Pat O'Sullivan dip arch b arch sc mriai
kiosk Architects

enc.

cc. applicant

directors

tony kelly ba[hons] dip arch mriai
pat o'sullivan dip.arch b.arch.sc mriai

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924564/4321

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

18 montfort park, mardyke walk, cork - t12t9k5

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 demolition of the existing shed and replacement with new shed as shown exempted development.

the existing shed [27sqm] was constructed prior to 1964, proposed replacement shed [25sqm], max ridge height 3.0m, remaining open space 160sqm approx.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

please see attached existing, demolition and proposed drawings.

the existing shed structure sits on a shared boundary with 3 adjoining neighbours. to minimise disruption the existing walls will be retained at the southern end of the garden meaning a shared boundary with one neighbour only will be involved. the space at the south of the proposed shed will form an un-covered yard for bin storage.

the new structure will be approximately 100mm taller than the existing on the shared boundary to the west, rising towards the east to a maximum of 3.0m.

it is understood that agreement will need to be reached with affected neighbours to facilitate the works.

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: no.



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	existing - 27sqm	proposed - 25sqm
(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 checked="" 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)	
_____	_____	
n/a	n/a	
_____	_____	
_____	_____	

7. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		michelle o'sullivan
Applicants Address	18 montfort park, mardyke walk, cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	pat o'sullivan
	Address:	kiosk architects 18 st. patricks place, wellington road, cork
	Telephone:	
	Fax:	
	E-mail address:	
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		
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: Michelle O'Sullivan Michelle O'Sullivan [applicant]

Date: 20 - April - 2021 -

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, Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.**

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>.

We request that you read these as they contain important information about how we process personal data.

Description:

Historic 6" Latest Edition

Publisher / Source:

Ordnance Survey Ireland (OSi)

Data Source / Reference:

CK074

Revision Date = Survey Date = 31-Dec-1928 Levelled Date = 31-Dec-1956

File Format:

Tagged Image File Format (TIFF)

File Name:

R_50183645_1.tif

Clip Extent / Area of Interest (AOI):

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ULX,ULY= 563054.0,573259.0 URX,URY= 567976.0,573259.0

Projection / Spatial Reference:

IRENET95_Irish_Transverse_Mercator

Centre Point Coordinates: -- X,Y = 565515.0,571442.0

Data Extraction Date: -- 08-Apr-2021

Product Version: --1.3

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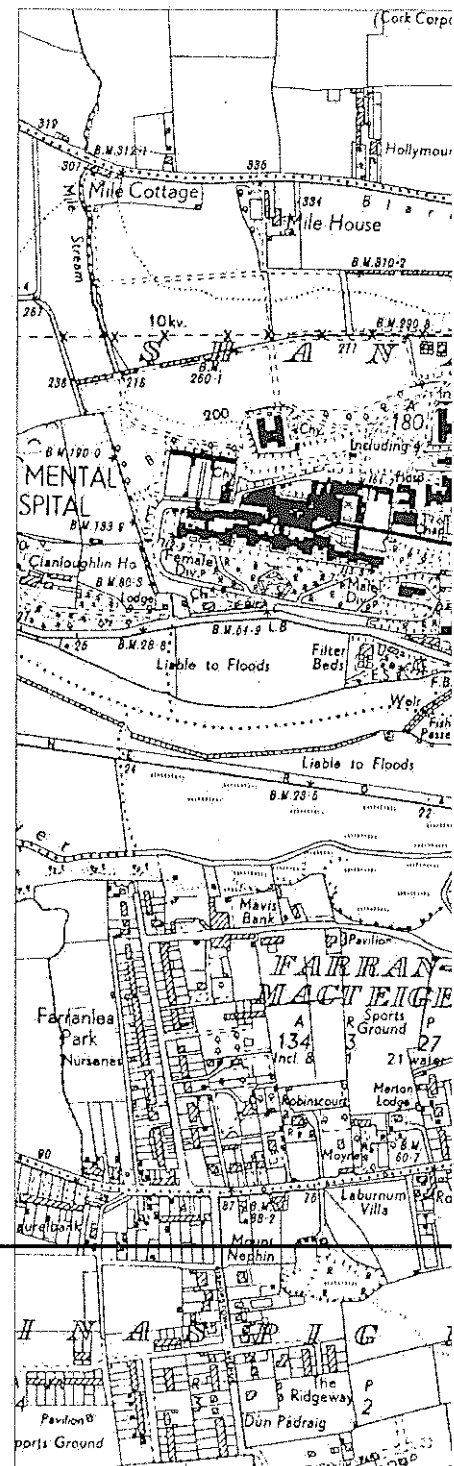
Arna thiomsú agus arna fhoilsiú ag Suirbhéireacht Ordanáis Éireann, Páirc an Fhionnuisce, Baile Átha Cliath 8, Éire.

Sáraíonn atáirgeadh neamhúdaraithe cóipcheart Shuirbhéireacht Ordanáis Éireann agus Rialtas na hÉireann.

Gach cead ar cosnamh. Ní ceadmhach aon chuid den fhoilseachán seo a chóipeáil, a atáirgeadh nó a tharchur in aon fhoirm ná ar aon bhealach gan cead i scríbhinn roimh ré ó úinéirí an chóipchirt.

Ní hionann bóthar, bealach nó cosán a bheith ar an léarscáil seo agus fianaise ar chead slí.

Ní thaispeánann léarscáil de chuid Ordanáis Shuirbhéireacht na hÉireann teorann phointí dleathúil de mhaoin riamh, ná úinéireacht de ghnéithe fhisiciúla.



Description:

Digital Cartographic Model (DCM)

Publisher / Source:

Ordnance Survey Ireland (OSi)

Data Source / Reference:

PRIME2

File Format:

Autodesk AutoCAD (DWG_R2013)

File Name: --v_50183645_1.dwg

Clip Extent / Area of Interest (AOI):

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ULX,ULY = 565398.5,571528.0 URX,URY = 565631.5,571528.0

Projection / Spatial Reference:

Projection= IRENET95_Irish_Transverse_Mercator

Centre Point Coordinates: --X,Y= 565515.0,571442.0

Reference Index:

Map Series | Map Sheets

1:1,000 | 6382-12 1:1,000 | 6382-13

Data Extraction Date:

Date= 08-Apr-2021

Source Data Release: --DCLMS Release V1.138.111

Product Version: --Version= 1.3

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Arna thionsú agus arna fhoilsiú ag Suirbhéireacht Ordánáis Éireann, Páirc an Fhionnuisce, Baile Átha Cliath 8, Éire.

Sártaonn a dtáirgeadh neamhdaraithe cóipcheart Shuirbhéireacht Ordánáis Éireann agus Rialtas na hÉireann.

Gach cead ar cosnamh. Ní ceadmhach aon chuid den fhoilseachán seo a chóipeáil, a atáirgeadh nó a tharchur in aon fhoirm ná ar aon bhealach gan cead i scríbhinn roimh ré ó úinéirí an chóipchirt.

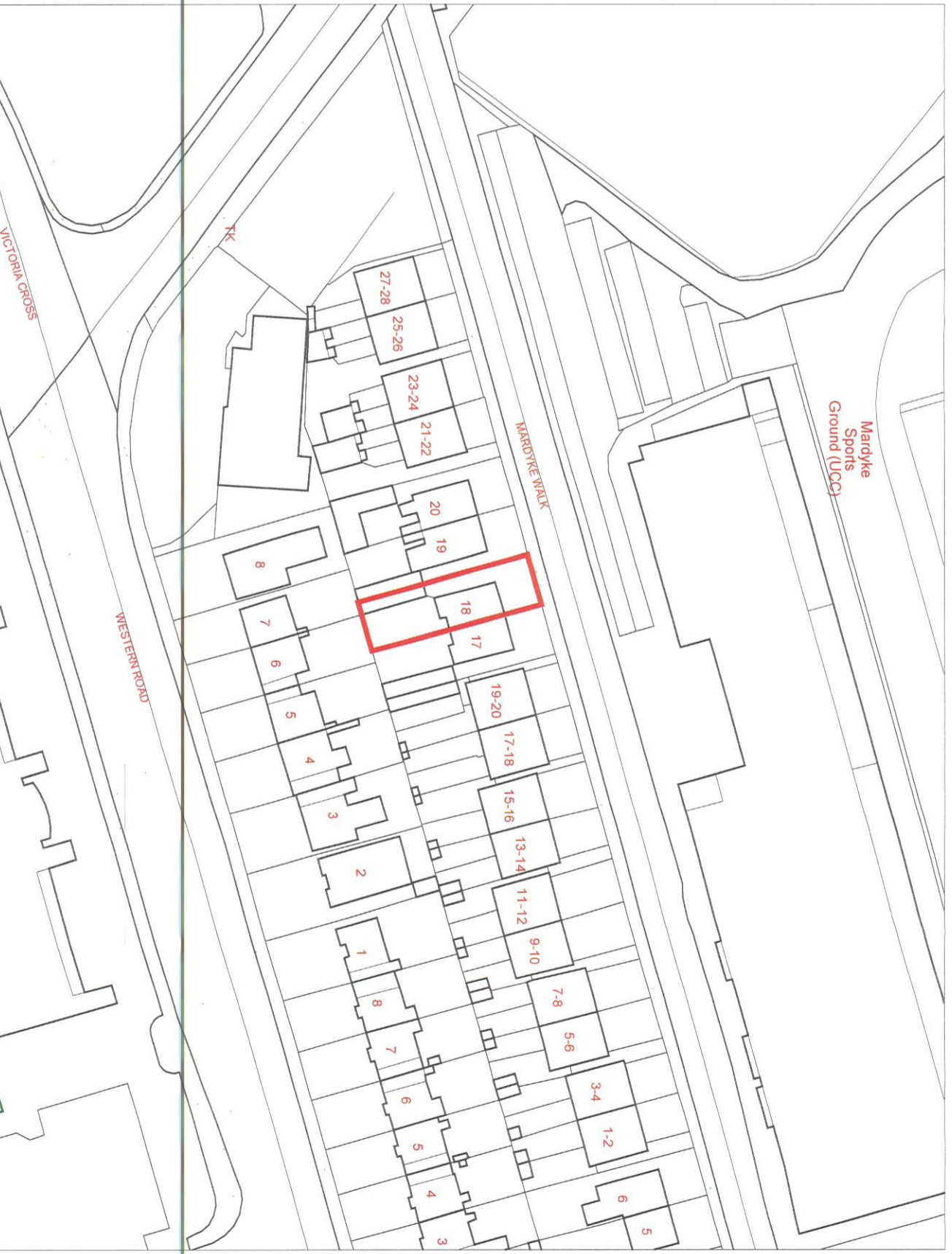
Ní hionann bóthar, bealach nó cosán a bheith ar an léarscáil seo agus fianaise ar chead sli.

Ní thaispeánann léarscáil de chuid Ordánáis Shuirbhéireacht na hÉireann teorann phointe cleathuill de mhaoin riamh, ná úinéireacht de ghnéithe fhisiciúla.

do not scale, use figure dimensions only - © copyright kiosk architects ltd

section 5 declaration 20.04.21 a

Issued for: rev:



montfort park

18 st. patricks place, wellington road, cork +353 (0)21 4552329

kiosk architects

montfort park project title

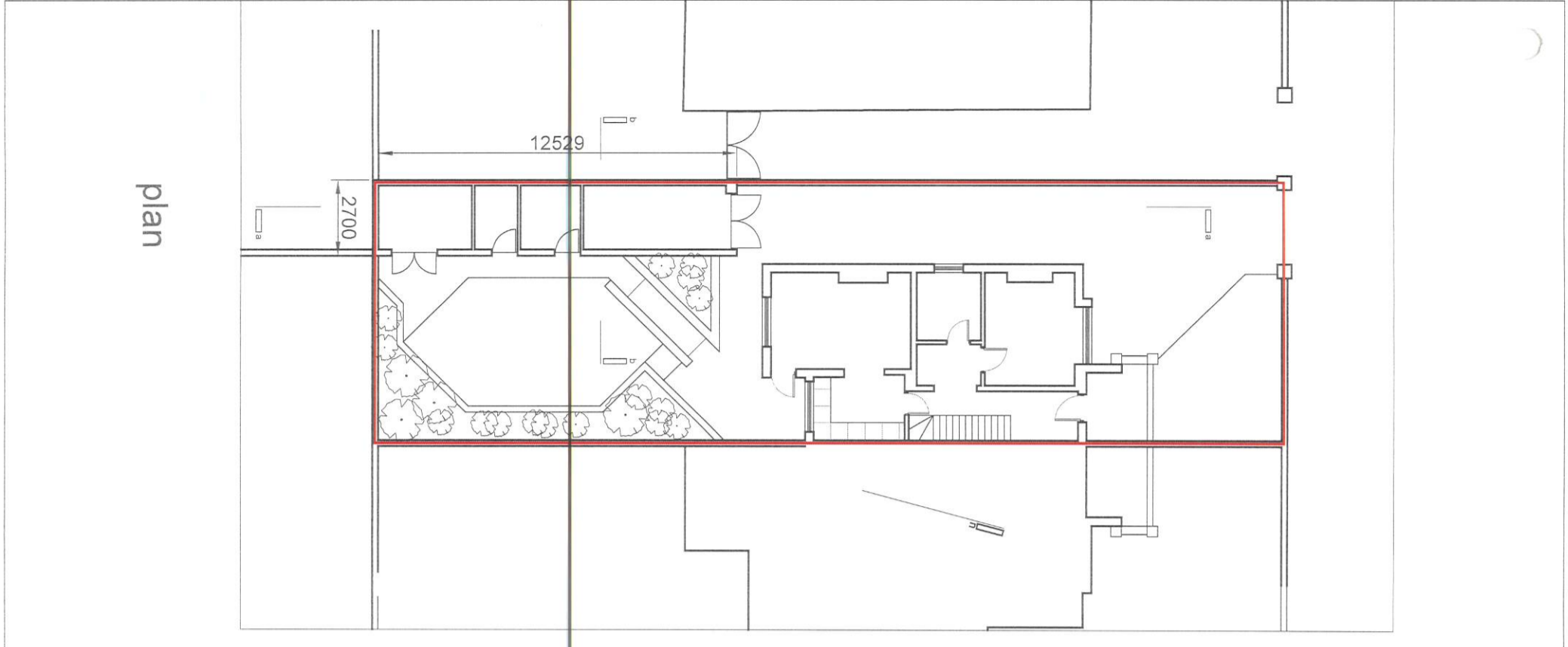
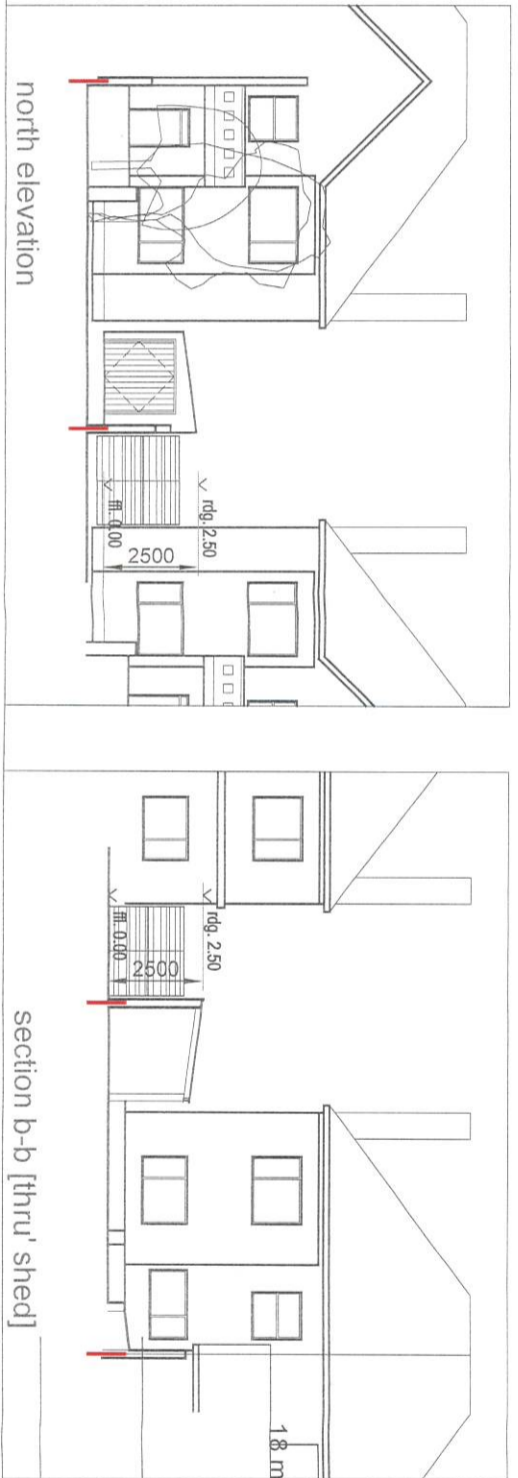
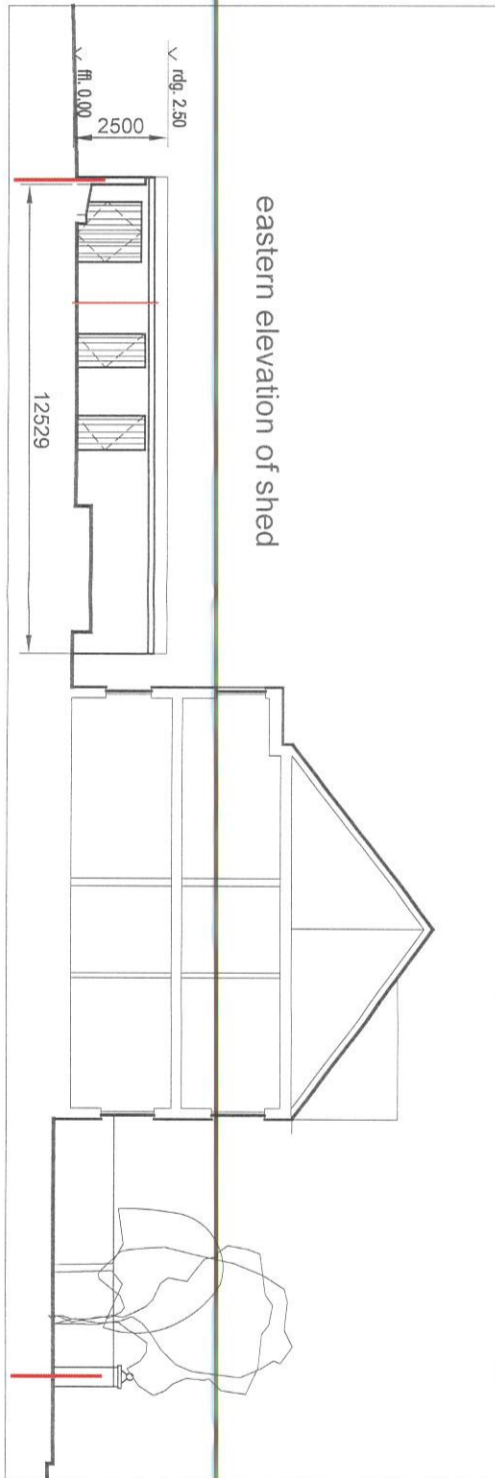
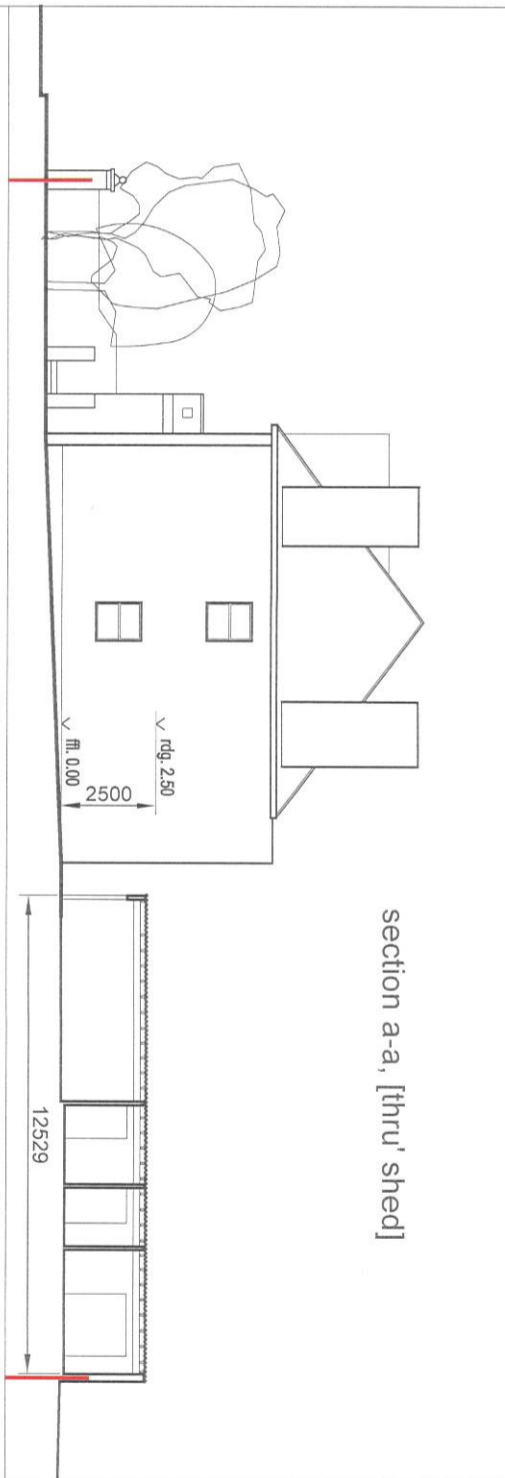
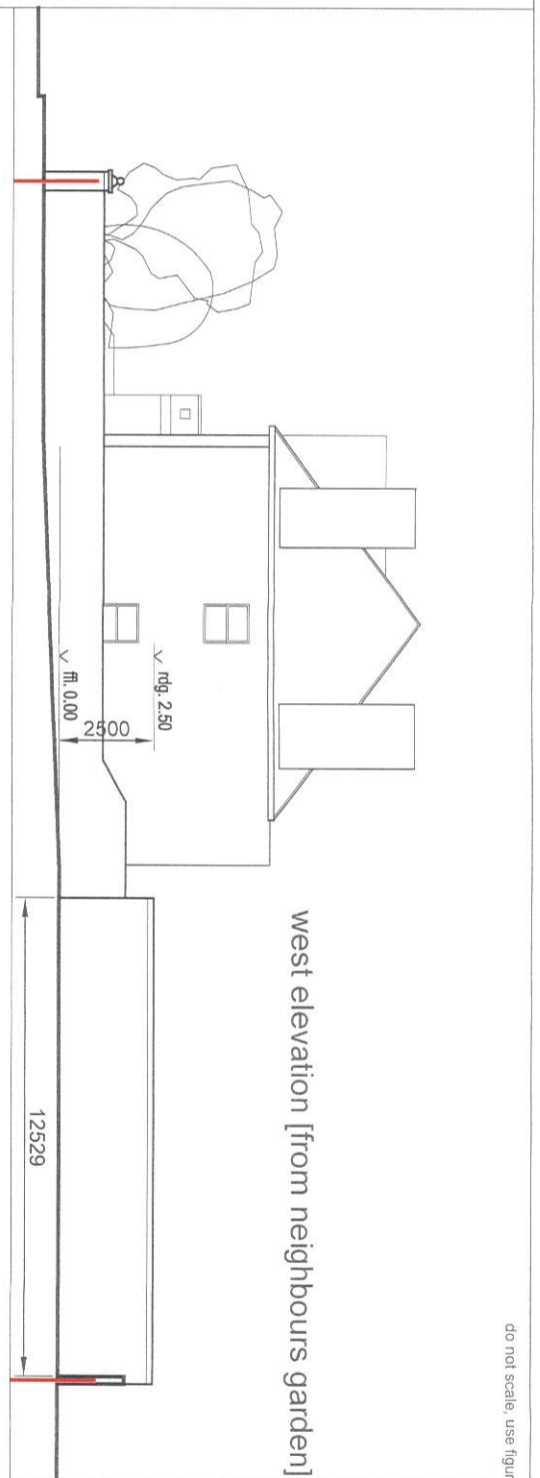
18 montfort park, martyke walk, cork address

18mp - job number

site location - 1000

1:1,000 @ a3 scale of X sheets

101



site boundary outlined in red
 site area - 294m²
 existing shed - 27m²
 proposed shed - 25m²

montfort park

18 st. patricks place, wellington road, cork +353 (0)21 4552329

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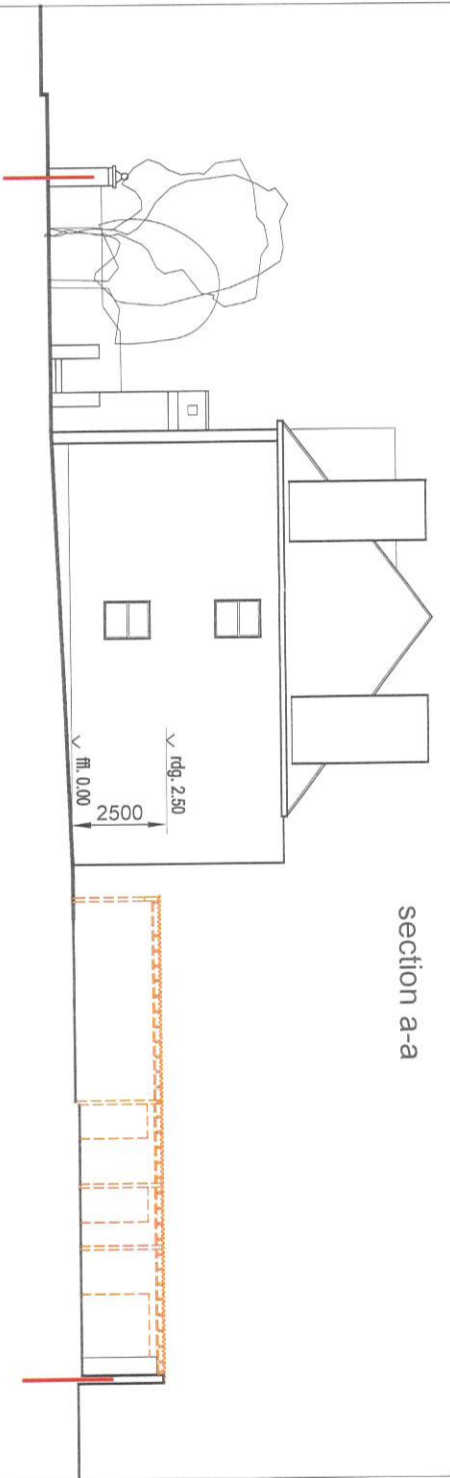
kioskarchitects
 project title
 montfort park
 address
 18mp - 18mp -
 job number

existing
 drawing title drawing number
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west elevation [from neighbours garden]



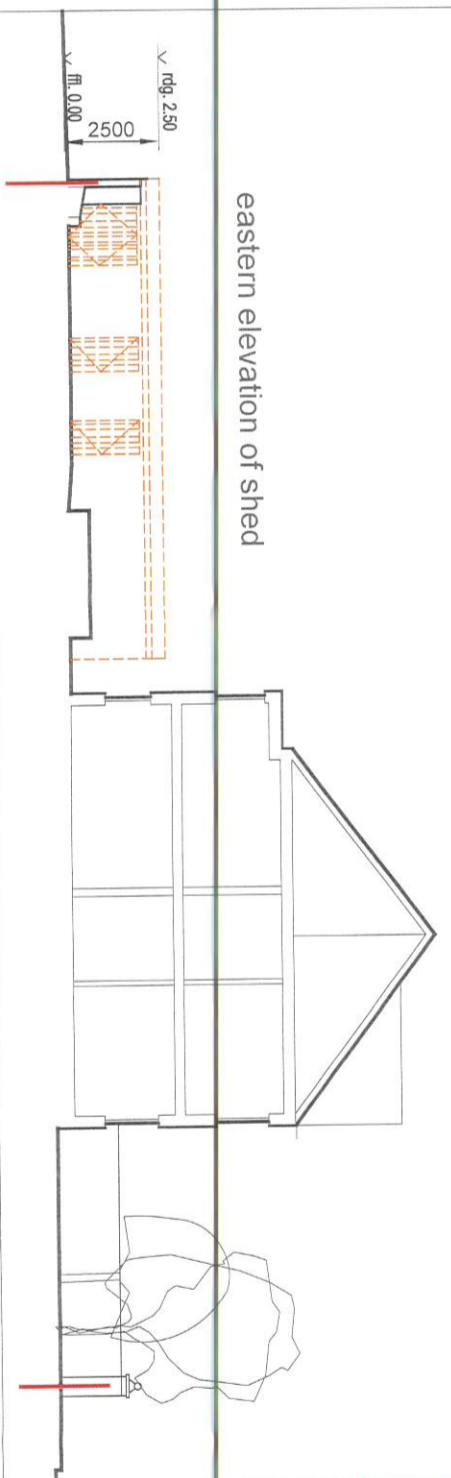
section a-a



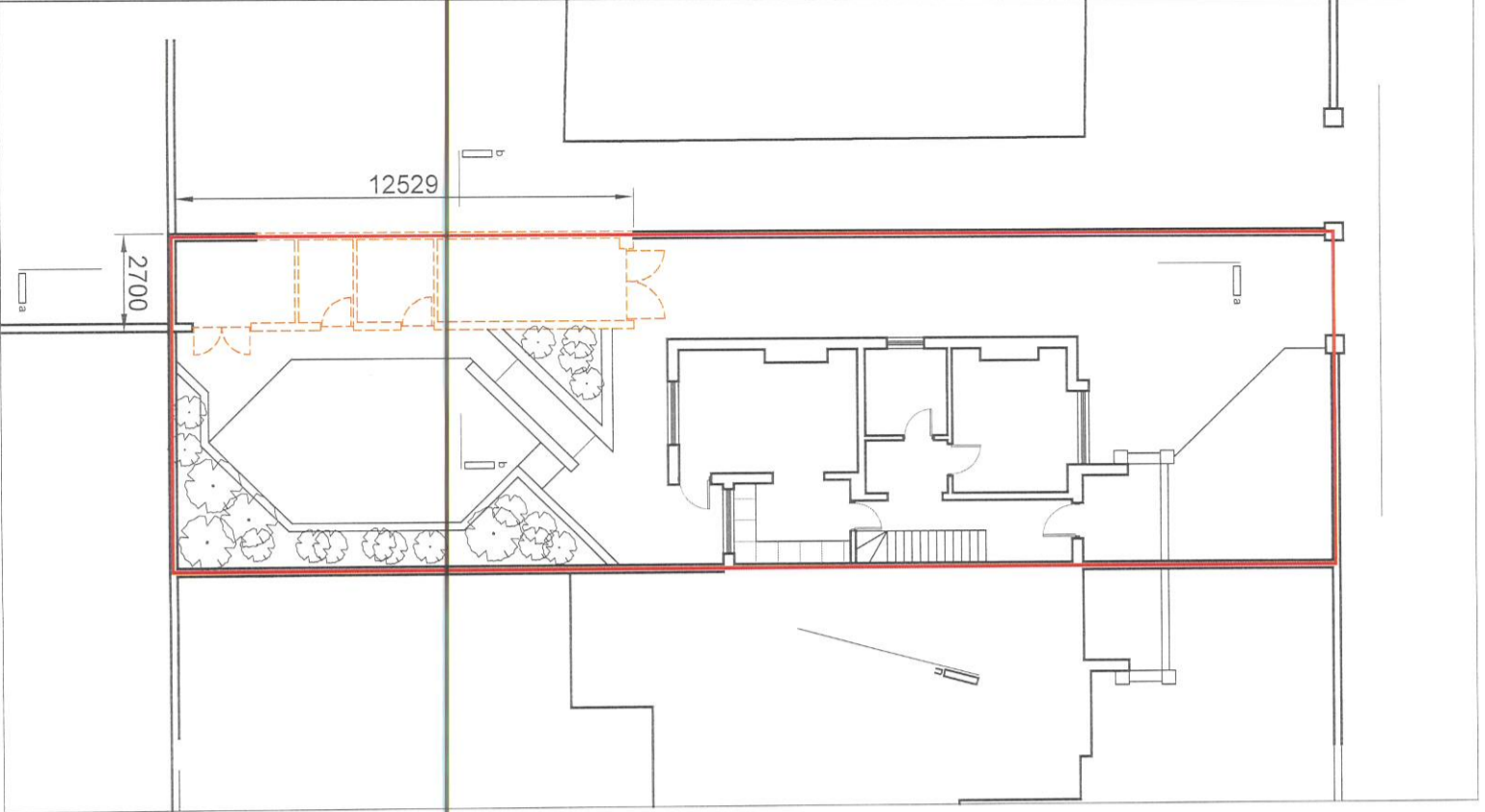
site boundary outlined in red
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 existing shed - 27m²
 proposed shed - 25m²

extent of demolition shown dashed

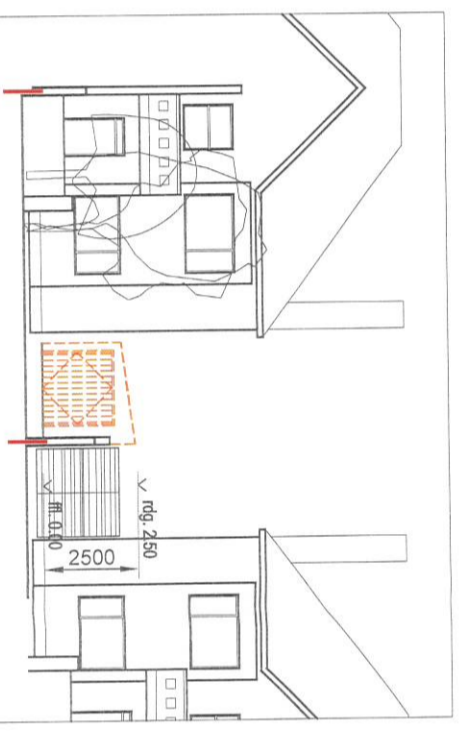
eastern elevation of shed



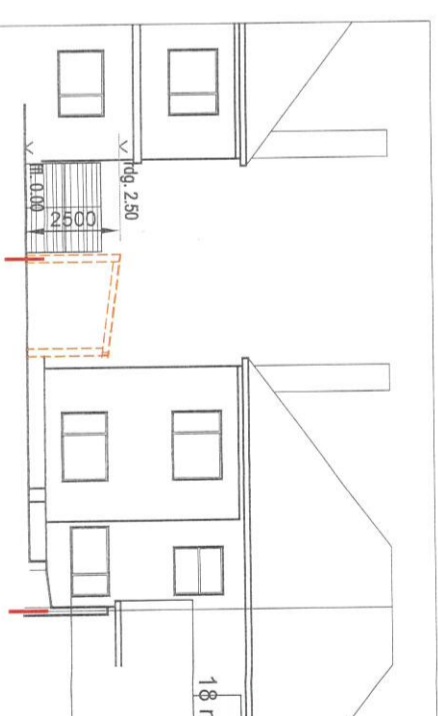
plan



north elevation



section b-b [thru' shed]



18 montfort park, mardyke walk, cork
 18mp - job number

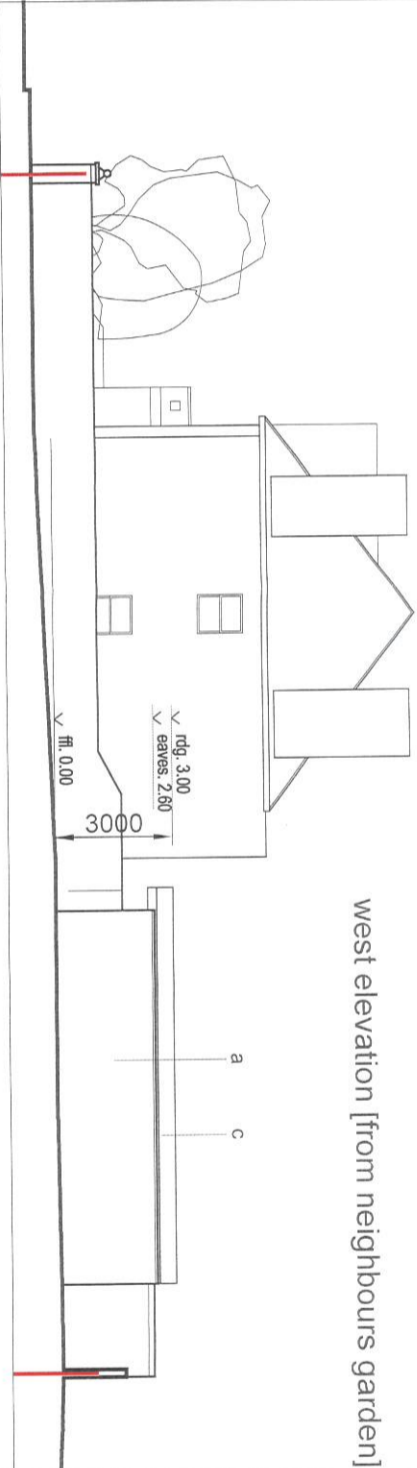
kiosk architects

demolition

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 drawing title drawing number sheets
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montfort park

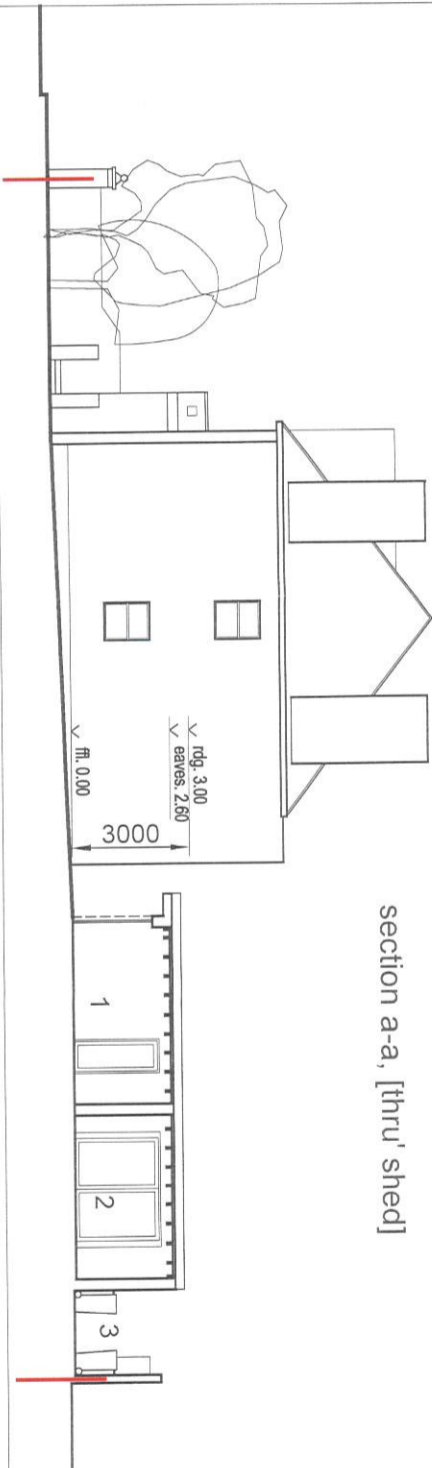
west elevation [from neighbours garden]



material key

- a painted render
- b timber/grey pvc doors
- c flat roof membrane system

section a-a, [thru' shed]



site boundary outlined in red

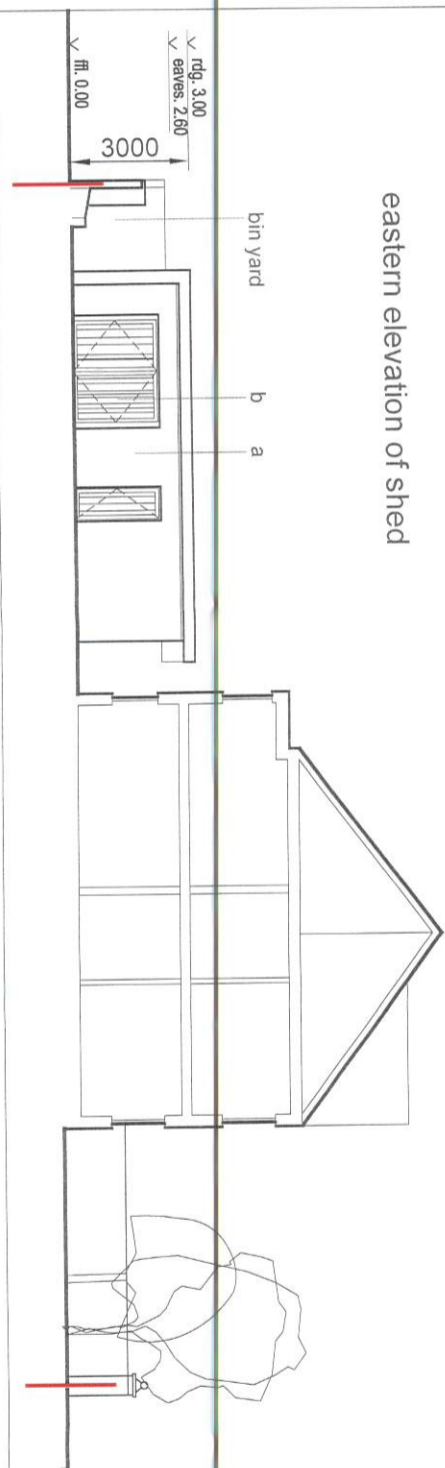
site area - 294m²

existing shed - 27m²

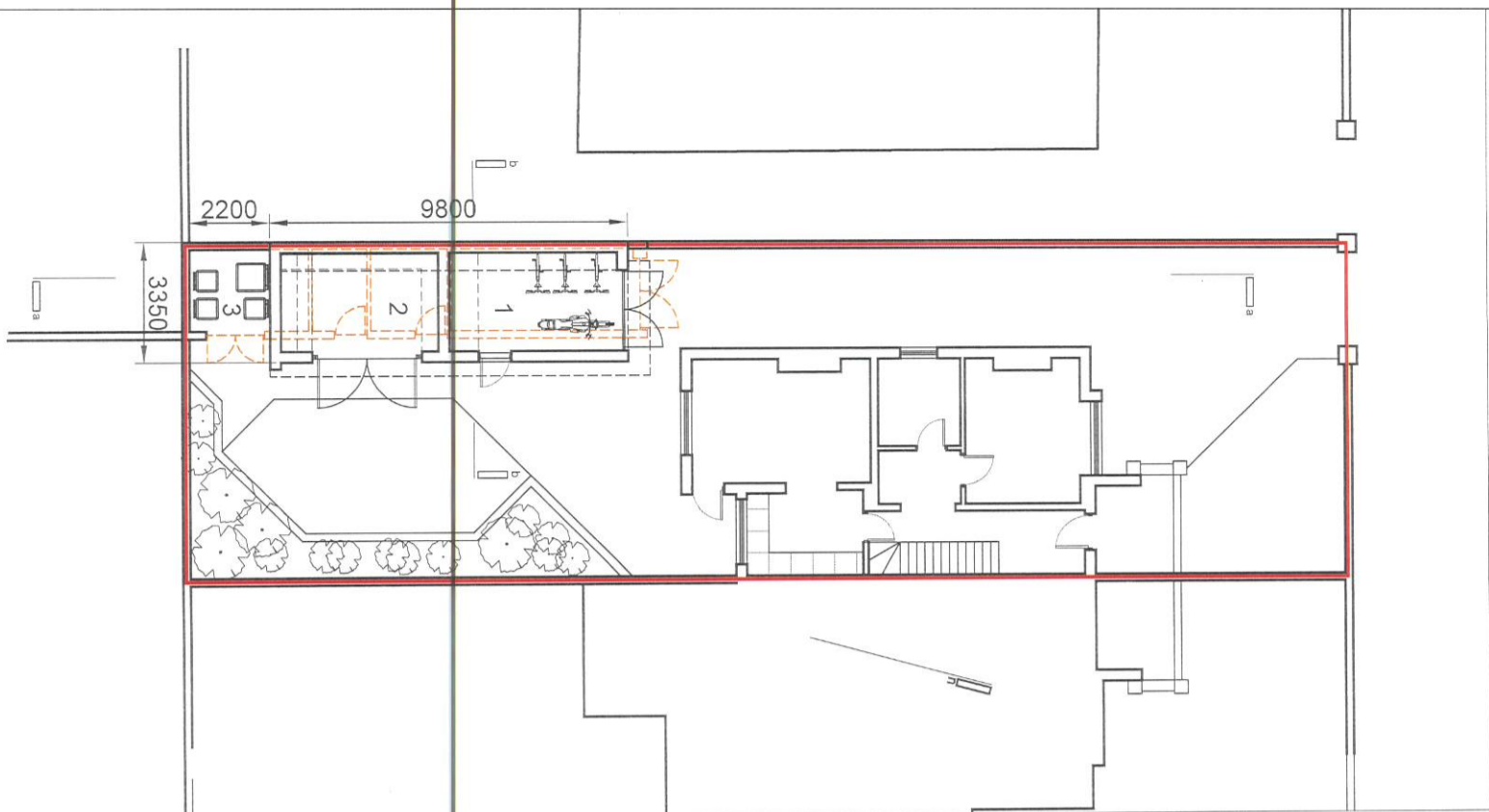
proposed shed - 25m²

extent of demolition shown dashed

eastern elevation of shed



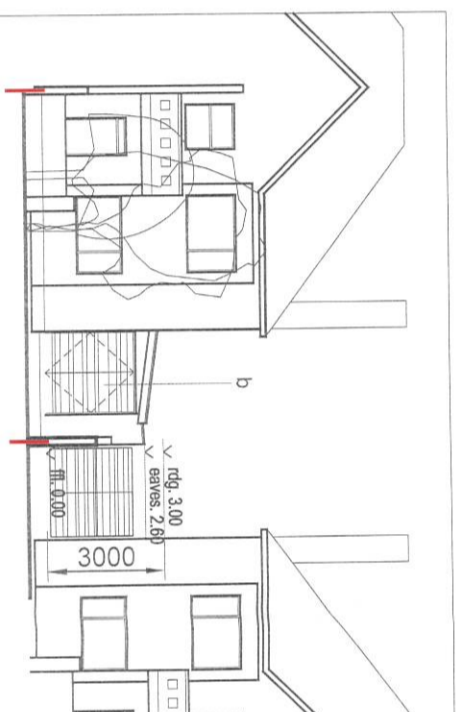
plan



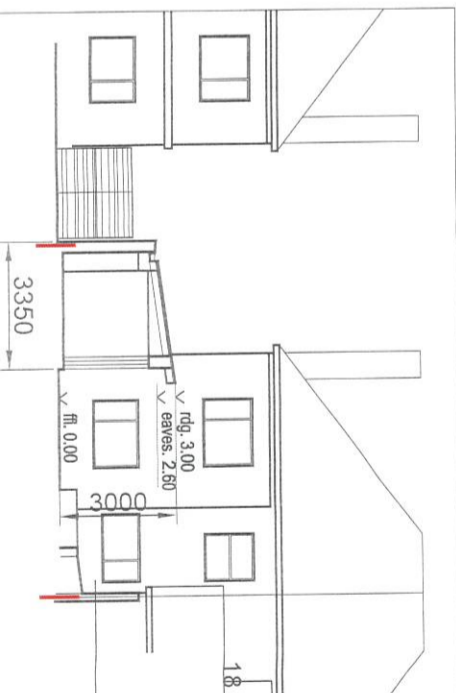
room key

- 1 storage
- 2 garden shed
- 3 bin yard [un-covered]

north elevation



section b-b [thru' shed]



montfort park

18 st. patricks place, wellington road, cork +353 (0)21 4552329

kiosk architects

montfort park project title

18 montfort park, mardyke walk, cork address

18mp - job number

proposed

1:200 @ a3 scale of

drawing title drawing number sheets

202