

Comhairle Cathrach Chorcaí Cork City Council

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

Daniel McAuliffe,
c/o Nigel O'Sullivan for and on behalf of
Building Design Lab Ltd.,
7 Dundanion Terrace,
Blackrock Road,
Cork T12 C9T0.

22/12/2023

RE: Section 5 Declaration R816/23 Building adjacent to Marlboro
Mews, Sidney Mews, Cork T23 X562.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 24th November 2023, 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).
- Articles 6, and 9 of the Planning and Development Regulations, 2001 (as amended).

The Planning Authority considers that --


proposed alteration to the plans as granted permission under ABP Ref. No. 313628 and Cork City Council Application Ref. 21/40145 at Building adjacent to Marlboro Mews, Sidney Mews, Cork T23 X562 **IS DEVELOPMENT AND IS NOT EXEMPTED DEVELOPMENT.**

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 22nd December 2023.



We are Cork.

Is mise le meas,



Kate Wagner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



PLANNER'S REPORT Ref. R816/23		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<p><i>The proposed development work includes a minor alteration to the site boundary (northwest corner). The site has a being granted planning permission (PL Ref No: 21/40145 & ABP 313628-22).</i></p> <p><i>There is no change to the internal layout / areas. There is a minor change to the North Elevation (reduction of the external balcony size) as outlined in blue on the attached drawings.</i></p>	
Location	Building adjacent to Marlboro Mews, Sidney Mews, Cork T23 X562	
Applicant	Daniel McAuliffe	
Date	06/12/2023	
Recommendation	<i>Is Development and Is Not Exempted Development</i>	

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

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

In framing the question to the planning authority, the applicant states in Q3 of the application form:

The proposed development work includes a minor alteration to the site boundary (northwest corner). The site has a being granted planning permission (PL Ref No: 21/40145 & ABP 313628-22).

There is no change to the internal floor layout / areas. There is a minor change to the North Elevation (reduction of the external balcony size) as outlined in blue on the attached drawings.

3. Site Description

The subject site is located on Sidney Mews, to the rear of Scoil Mhuire, on the northern side of Wellington Road. It is adjoined, on its western boundary by Marlboro Mews, an apartment building of three storeys. Its northern boundary is with the Sidney Park roadway.

There is an existing vacant building of two storeys on the site. This appears to have been constructed on land that has been cut into the site. While the subject site appears to be relatively level it is located on the southern side of the Montonette Ridge that extends from east to west across north eastern section of

the inner city. Sidney Park, to the rear of the site is at a higher level such that the existing structures on site significantly lower than the roadway.

The site is located within the Wellington Road / St. Luke’s Architectural Conservation Area.

4. Planning History

Planning Reference: 21/40145

Permission for partial demolition of existing mews structure and incorporation of front façade into new construction of 1 no. 1 bedroom and 2 no. 2 bedroom apartments in a 3 storey building with balconies to rear and associated site works.

Council Decision – Notice of decision to grant issued 27/04/2022

3rd Party Appeal to An Bord Pleanála – ABP Appeal Ref. No. 316328

Outcome ABP issued grant on 05/09/2023

Note: Condition No. 1 states:

The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on 31st day of March, 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

Planning Reference: 07/32586

Partial demolition of existing mews structure and incorporation of front façade into new development of 6 no. 1 bedroom apartments in a 3 storey building with balconies to rear

Outcome: Granted 30/06/2008 but never constructed

Planning Reference: 05/30103

Demolition of existing warehouse & the construction of a three-storey structure consisting of a ground floor car park & two 2-storey dwellings

Outcome: Refused 23/08/2006 – Not appealed

Reason for refusal:

The proposed development by reason of its height, scale and massing and design is considered an inappropriate infill development to replace the existing coach house / mews on the site. In addition it is considered that an insufficient case has been made for demolition of the existing structure on the site which is located within an Area of Special Character. As such the proposed development would seriously injure the amenities of the area and of proposed in the vicinity and would be contrary to the proper planning and sustainable development of the area.

5. Legislative Provisions

5.1 The Act

Section 2(1),

“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),

The following shall be exempted developments for the purposes of this 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;

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 2001-2013.

Section 5(1),

(See section 1 of this report)

~~**Section 177U(9) (screening for appropriate assessment)**~~

~~*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.*~~

5.2 The Regulations

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,*

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

6.1 Development

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.

'Works' is defined in section 2(1) of the Act as 'the carrying out of any works on, in, over, or under land' including '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’.

I consider that the changes to the permitted scheme on site will require works during construction and therefore is development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development.

I note that there are no specific provisions in the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2001 (as amended), that expressly exempts from the requirement for permission changed to permitted development.

Section 4(1)(h) of the Act does allow some changes to the interior of buildings and exterior that do not impact on character. This however only applies to constructed buildings. To avail of this exemption construction would need to be completed and the use of the building established prior to the start of works. Additionally I note that the proposal would reduce the private open space on site. The lack of public open space was a key consideration in the assessment of the proposed development.

Condition no. 1 applied to the extant permission on site (Cork City Council Ref. No. 21/40145 and An Bord Pleanála Ref. No. 316328) requires that the development accord with prescribed plans and particulars, unless to comply with the other conditions set out. There are no conditions relating to the change proposed in this Section 5 application.

There are no exemptions set out that expressly exempt changes to permitted plans. Further there are no conditions that would allow the red line boundary to be changed, elevational changes or a reduction in private open space. Accordingly it is concluded that the development proposed is not exempted development.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) 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 environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. 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 the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. Conclusion

The question has been asked whether the following is exempted development:

a minor alteration to the site boundary (northwest corner). The site has a being granted planning permission (PL Ref No: 21/40145 & ABP 313628-22).

Where:

There is no change to the internal layout / areas. There is a minor change to the North Elevation (reduction of the external balcony size) as outlined in blue on the attached drawings.

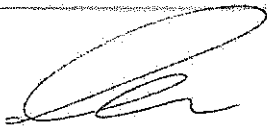
Having considered the particulars submitted with the application and the relevant legislation, it is considered that the proposed altered layout is development and is not exempted development

9. 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, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed alteration to the plans as granted permission under TP 21/40145 Is **Development and is Not Exempted Development.**



Martina Foley
Executive Planner

**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: 021-4924709

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Daniel McAuliffe

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Building adjacent to Marlboro Mews, Sidney Mews, Cork T23 X562

3. 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.

The proposed development work includes a minor alteration to the site boundary (northwest corner). The site has a being granted planning permission (PL Ref No: 21/40145 & ABP 313628-22).

There is no change to the internal floor layout / areas. There is a minor change to the North Elevation (reduction of the external balcony size) as outlined in blue on the attached drawings.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

4. Are you aware of any enforcement proceedings connected to this site?
If so please supply details:

No

5. Is this a Protected Structure or within the curtilage of a Protected Structure?

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

6. Was there previous relevant planning application/s on this site? Yes
If so please supply details:

PL Ref No: 21/40145 & ABP 313628-22

7. 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	344.00 m ² There is no change to the internal floor layout / areas
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)

7. LEGAL INTEREST

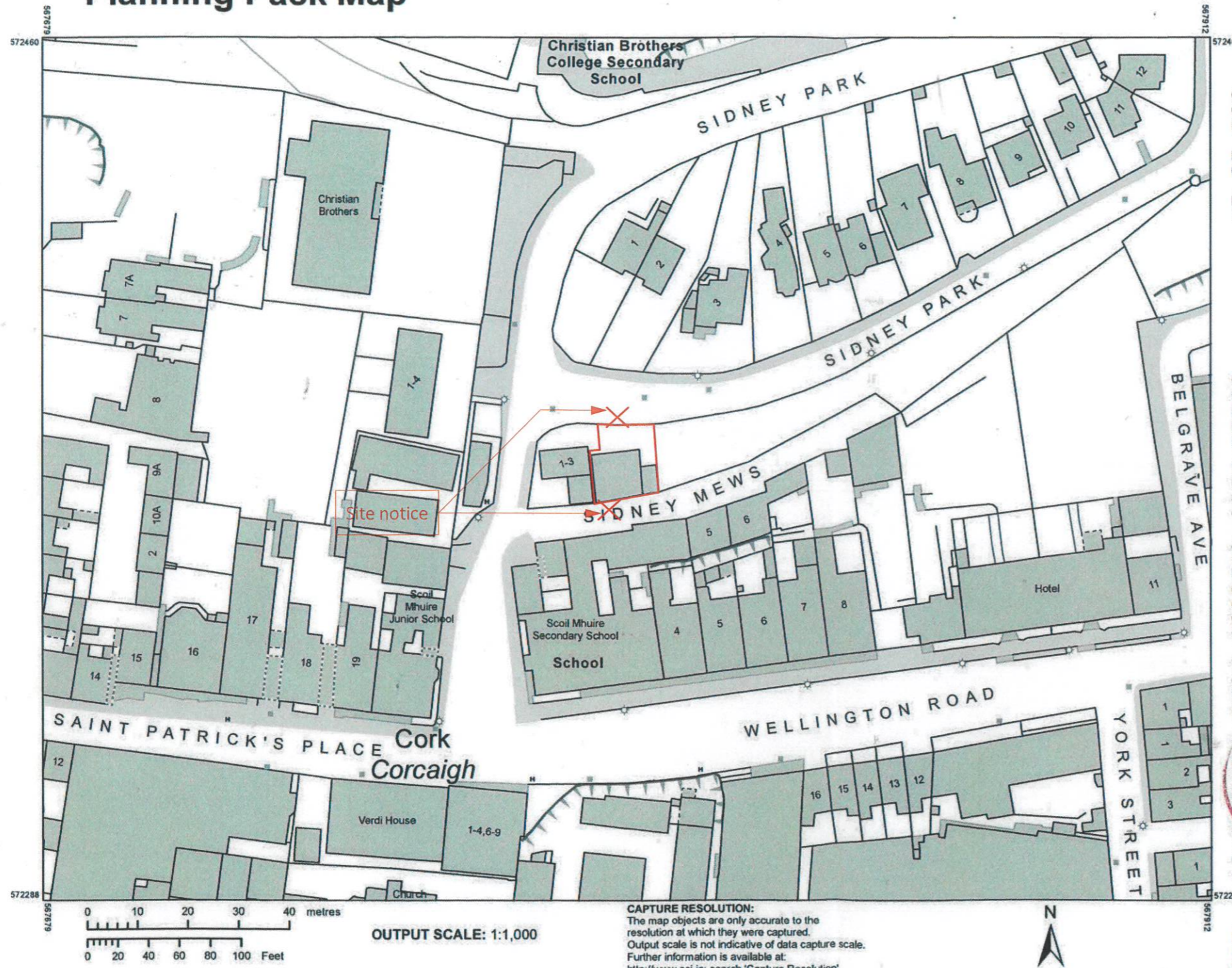
Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/> Yes	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name of the owner if available		

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

Signature: 

Date: 27.11.2023

Planning Pack Map



CENTRE COORDINATES:
ITM 567796,572374

PUBLISHED: 07/08/2020
ORDER NO.: 50134119_3

MAP SERIES: 1:1,000
MAP SHEETS: 6382-10

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Note

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Stage Abbreviations

CD - Concept Design, PP - Preplanning, PL - Planning Application, FI - Further Information, AP - Appeal, RC - Response to Conditions, TE - Tender, FC - Fire Cert, LE - Legal, CN - Construction, AB - As Built

— Site Boundary

Rev	Info	Date	By
3	Issued for discussion	15.03.21	IRS

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Cork, T12 D3 H0.

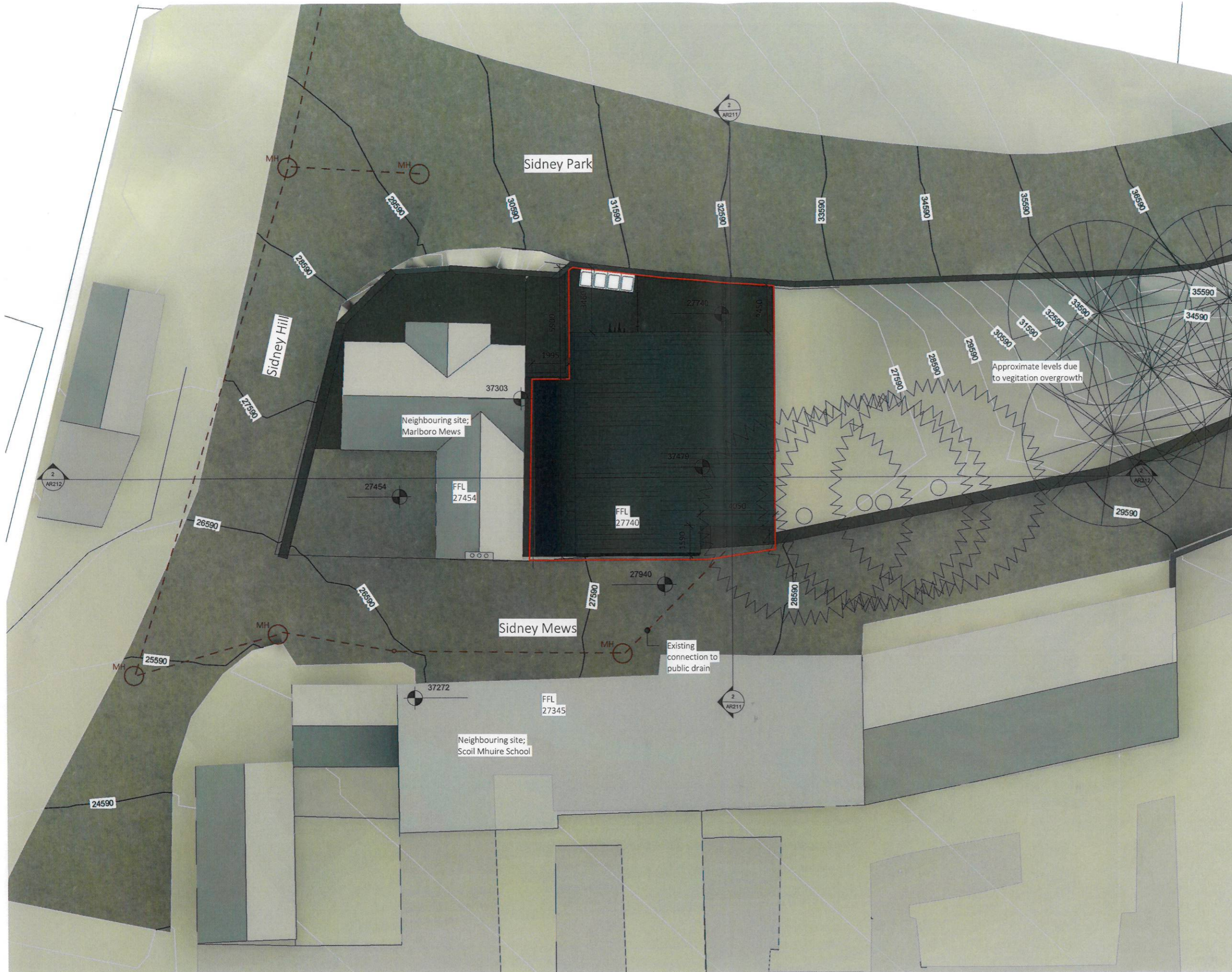
Client: Dan McAuliffe

Project: The Mews Apartments
4 Sidney Mews,
Wellington Road, Cork

Sheet: OSI Map

Job No: 20058

Author:	Checked:	Sheet scale:	Drawing Number:	Revision:	Stage:
IRS	NOS	A3	AR002		CD



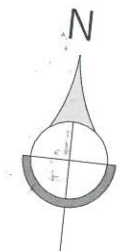
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- Site Boundary
- - - Existing Public Drain

Rev	Info	Date	By
3	Issued for discussion	15.03.21	IRS

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Client: Dan McAuliffe

Project: The Mews Apartments
 4 Sidney Mews,
 Wellington Road, Cork

Sheet: Proposed Site Plan

Job No: 20058

Author	Checked	Sheet scale	Drawing Number	Revision	Stage
IRS	NOS	A3	AR004		CD
Scale:	1 : 200				

1 Proposed Site Plan
 1 : 200

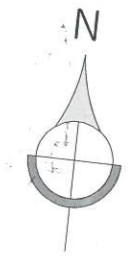
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- - - Areas subject to Section 5 Declaration of Exemption Application

Rev	Info	Date	By
3	Issued for discussion	15.03.21	IRS

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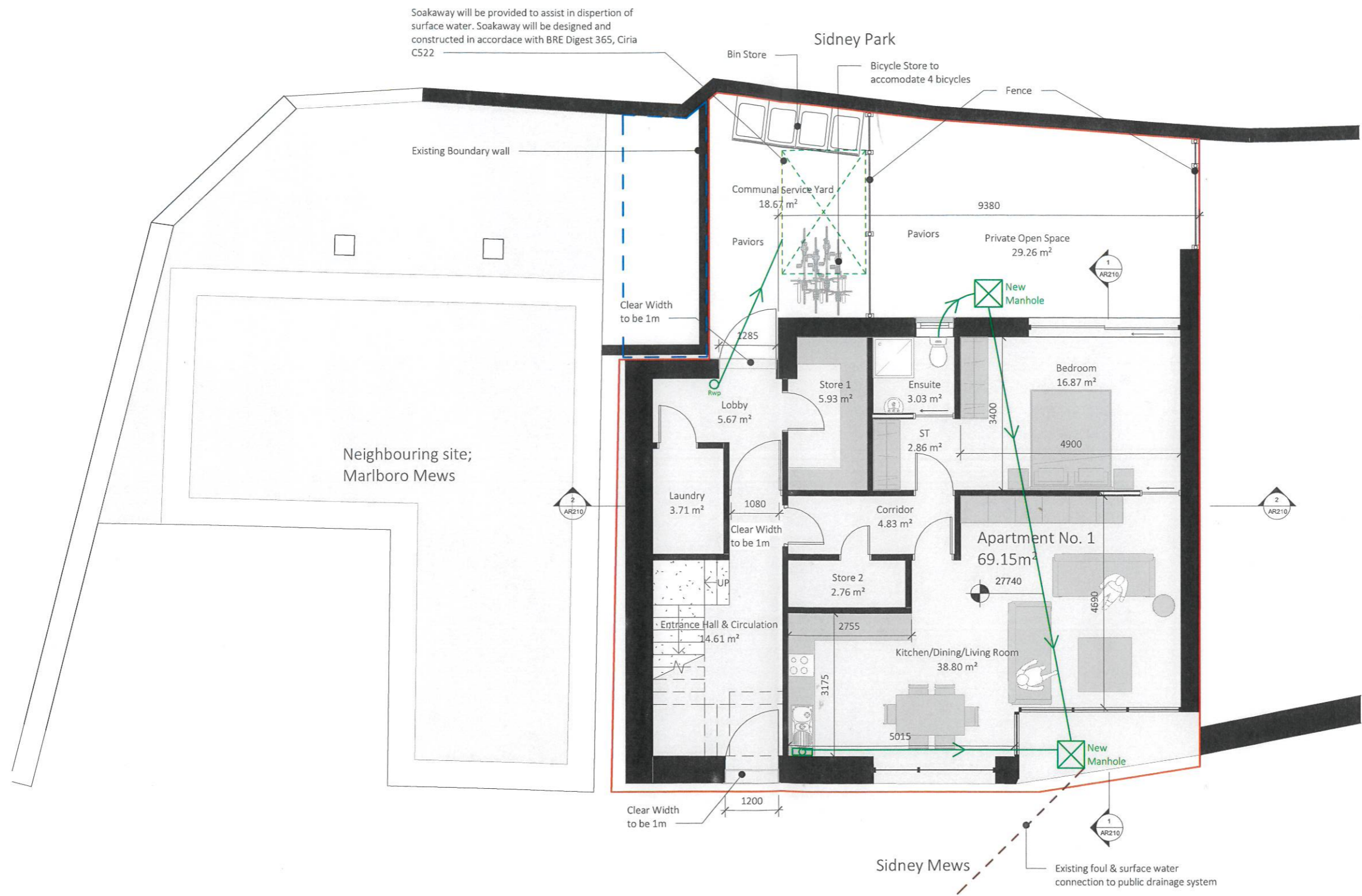
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Client: Dan McAuliffe

Project: The Mews Apartments
4 Sidney Mews,
Wellington Road, Cork

Sheet: Proposed Ground Floor Plan
Job No: 20058

Author:	Checked:	Sheet scale:	Drawing Number:	Revision:	Stage:
IRS	NOS	A3	AR110		CD
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1 Proposed Ground Floor
1 : 100

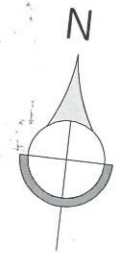
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Client: Dan McAuliffe

Project: The Mews Apartments
4 Sidney Mews,
Wellington Road, Cork

Sheet: Proposed First Floor Plan

Job No: 20058

Author:	Checked:	Sheet scale:	Drawing Number:	Revision:	Stage:
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Scale:	1:100				

Sidney Park



Sidney Mews

1 Proposed First Floor
1 : 100

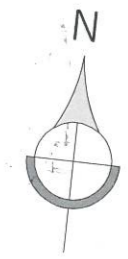
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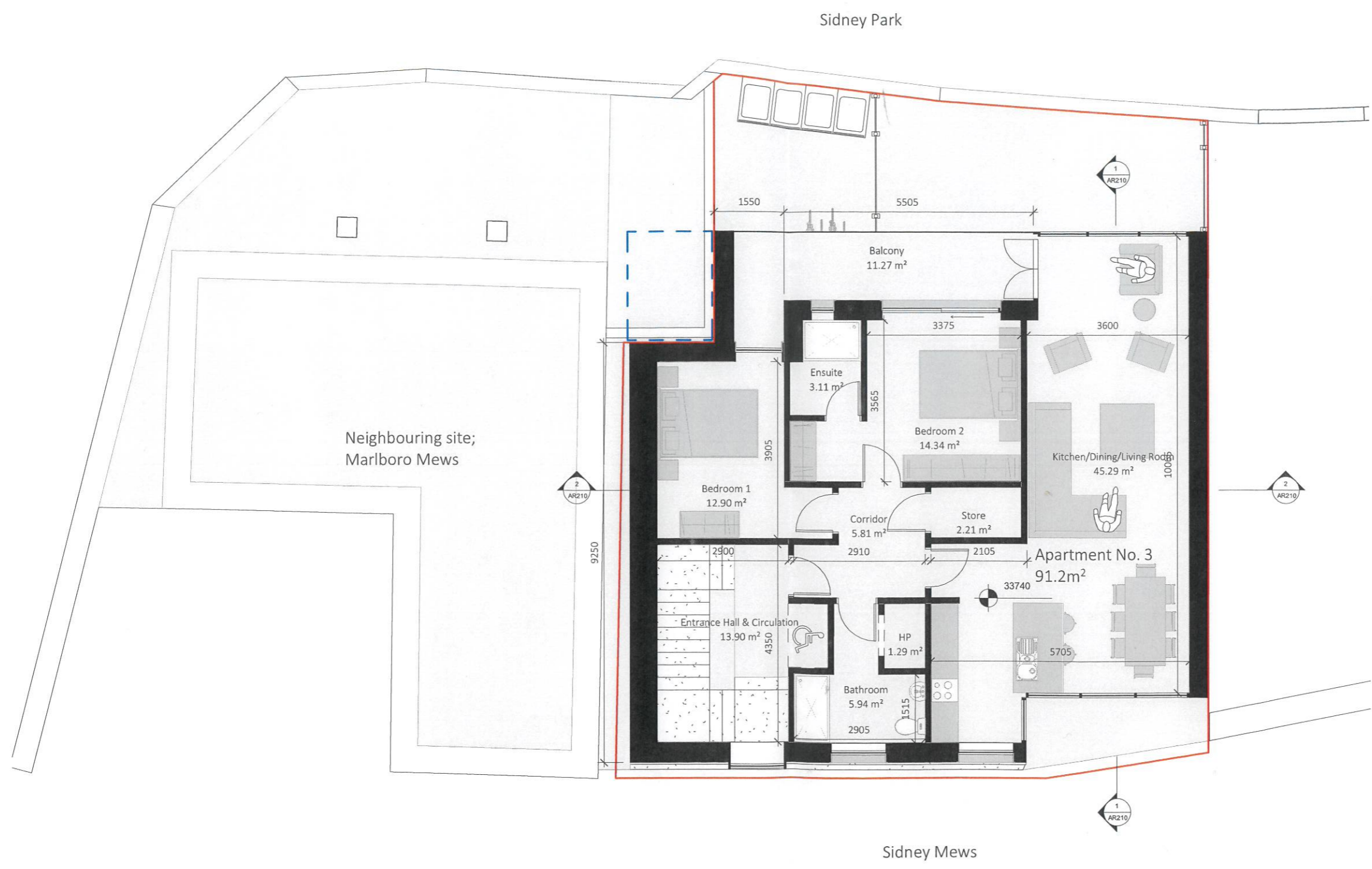
Client: Dan McAuliffe

Project: The Mews Apartments
4 Sidney Mews,
Wellington Road, Cork

Sheet: Proposed Second Floor Plan

Job No: 20058

Author:	Checked:	Sheet scale:	Drawing Number:	Revision:	Stage:
IRS	Checker	A3	AR112		CD
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1 Proposed Second Floor
1 : 100

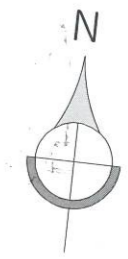
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Cork, T12 D3 H0.

Client: Dan McAuliffe

Project: The Mews Apartments
4 Sidney Mews,
Wellington Road, Cork

Sheet: Proposed Roof Plan
Job No: 20058

Author:	Checked:	Sheet scale:	Drawing Number:	Revision:	Stage:
IRS	Checker	A3	AR113		CD
Scale:					
1 : 100					



1 Proposed Roof Plan
1 : 100



Note

- All construction methods, materials, installations to be in accordance with all building regulations and codes of practice at the time of construction.
- All sub-contractors are ultimately responsible for ensuring compliance with regulations within their own trade.
- The user of this drawing shall cross-check dimensions shown on this drawing with relevant dimensions shown on other drawings issued by Archi Extracts Ltd and by other design consultants relevant to the project prior to any fabrication or construction on site. All errors, omissions and discovered inconsistencies to be reported to Building Design Lab Ltd immediately.
- All trades to check dimensions on site prior to fabrication.
- Drawings show design intent only.
- Do not scale dimensions from this A3 drawing.

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Stage Abbreviations

CD - Concept Design, PP - Preplanning, PL - Planning Application, FI - Further Information, AP - Appeal, RC - Response to Conditions, TE - Tender, FC - Fire Cert, LE - Legal, CN - Construction, AB - As Built

1 Proposed Front Elevation
1 : 100



2 Proposed Rear Elevation
1 : 100

- Site Boundary
- - - Existing Public Drain
- - - Areas subject to Section 5 Declaration of Exemption Application

Rev	Info	Date	By
3	Issued for discussion	15.03.21	IRS

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Client: Dan McAuliffe

Project: The Mews Apartments
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Sheet: Proposed Front and Rear Elevation

Job No: 20058

Author:	Checked:	Sheet scale:	Drawing Number:	Revision:	Stage:
IRS	NOS	A3	AR310		CD
Scale:	1 : 100				