



Comhairle Cathrach Chorcaí Cork City Council

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

Peter & Sinead O'Donovan,
c/o Simon Forrest,
22 The Courtyard,
Abbeywood, Middleton,
Co. Cork.

24/04/2024

RE: Section 5 Declaration R840/24 Ballincolly Road, Ballyvolane, Cork, T23 X638.

A Chara,

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

The Planning Authority, in review of the above and having regard to –

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6 of the Planning and Development Regulations 2001 (as amended),

It is considered that *the construction of a rear extension with a balcony terrace on the roof and storerooms to the rear at the dwelling house at Ballincolly Road, Cork, T23 X268* **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.

Is mise le meas,



We are Cork.

David O'Regan

Assistant Staff Officer,
Community, Culture &
Placemaking Directorate

PLANNER'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R840/24		
Application type	Section 5 Declaration	
Description	Is the construction of a rear extension with a balcony/terrace on the roof and store rooms to the rear at the dwelling house at Ballincolly Road, Cork, T23 X268 development and if so, is it exempted?	
Location	Ballincolly Road, Cork, T23 X268	
Applicant	Simon Forrest	
Date	19/04/2024	
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:

Is the construction of a rear extension with a balcony/terrace on the roof and store rooms to the rear at the dwelling house at Ballincolly Road, Cork, T23 X268 development and if so, is it exempted?

Under additional details the applicant has included the following details:

- 1) *The rear garden is not less than 25.0m²*
- 2) *No window is directly facing the boundary or within 1mtr of the boundary.*
- 3) *The storerooms have a head height of 1.56m and cannot be classified as habitable rooms.*
- 4) *We were extension is located below finished floor level of granted dwelling due to sloping site.*

3. Site Description

The property in question is a two storey dwelling in its own grounds. The site is on the eastern side of the Ballincolly road and slopes downward towards the rear (east).

4. Planning History

11/4093 Demolition in their entirety, of one existing single storey dwelling, an associated domestic garage and one associated store. The subsequent erection of a single, two storey, dwelling-house and associated domestic garage. The works will include the replacement of an existing septic tank with a proprietary wastewater treatment unit and the upgrading

Outcome of an existing bored well along with all the associate site works, including the setting back and re-construction of the front boundary wall/entrance
 Granted 13/06/2011

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 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.

SCHEDULE 2, ARTICLE 6, PART 1, Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i> CLASS 1 The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres. (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres. (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</p>

<p>other similar structure attached to the rear or to the side of the house.</p>	<p>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</p> <p>(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</p> <p>(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</p> <p>5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>
--	---

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 extension described constitutes development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The question to be answered is as follows:

Is the construction of a rear extension with a balcony/terrace on the roof and store rooms to the rear at the dwelling house at Ballincolly Road, Cork, T23 X268 development and if so, is it exempted?

The rear extension as constructed may be exempt if it accords with the exemption set out in Class 1 in Schedule 2 of the *Planning and Development Regulations 2001* (as amended). The following is a review of the proposal against the conditions / limitations set out in Class 1.

The following is a review of the development against the conditions / limitations set out in Class 1.

<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</p>	<p>(a) Total extension is stated to be less than 40sq.m (b) n/a (c) n/a This condition / limitation is met</p>
<p>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been</p>	<p>(a) cumulative extensions are less than 40sq.m (b) n/a (c) n/a This condition / limitation is met</p>

obtained, shall not exceed 20 square metres.	
3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.	N/a
4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house. (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house. (c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.	(a) The single storey extension will not exceed the height of the rear wall of the house (b) n/a (c) The height does not exceed the height of the eaves or parapet This condition / limitation is met.
5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.	The rear garden remains over 25sq.m
6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces. (c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.	(a) There are no ground floor windows less than 1 metre from a boundary. (b) n/a (c) n/a This condition / limitation is not met.
7. The roof of any extension shall not be used as a balcony or roof garden.	The roof is stated to be used as a balcony/terrace. This limitation is not met.

I consider that the existing extension with roof terrace, as shown in the plans provided, does not accord with the exempted development provisions set out in the Regulations. As the extension does not accord with this class of development no review of the limitations thereto as set out in Article 9 have been undertaken.

I note that the application does not include any detail of what is stored in the storage areas mentioned. The plans provided only show the store and the rear extension. As limited plans have been provided it is not possible to compare the development as constructed with the permission under which permission was granted. No details have been provided regarding when the extension was constructed, whether it was in tandem with the construction of the dwelling or later. If the extension did comply with the exemption further information would be required to aid in the wider assessment of the query.

As unauthorised development has occurred on site, through the construction of the extension with roof terrace, any exemption under which store rooms have been created, may have ceased to apply and this is considered to not to be exempted development.

I recommend that a declaration be issued to stated that the proposed development is development and 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 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 development site relative to these European sites and related watercourses and to the nature and scale of the development it is considered that the 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:

Is the construction of a rear extension with a balcony/terrace on the roof and store rooms to the rear at the dwelling house at Ballincolly Road, Cork, T23 X268 development and if so, is it exempted?

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered the construction of the rear extension, with balcony terrace on roof, is development and is not exempted development. As unauthorised development has occurred on site any exemption under which store rooms have been created, would cease to apply and this to is considered to not to be 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 of the Planning and Development Regulations 2001 (as amended),

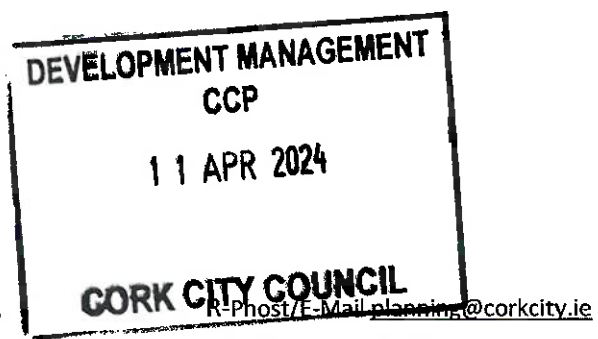
It is considered that *the construction of a rear extension with a balcony terrace on the roof and store rooms to the rear at the dwelling house at Ballincolly Road, Cork, T23 X268* **Is Development and is Not Exempted Development.**



Martina Foley
A/ Senior Executive Planner

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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



Fón/Tel: 021-4924029

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

SIMON FORREST

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

BALLINCOLLY ROAD, BALLYVOLANE,
CORK, T23 X638

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.

Is the construction of a rear extension with a balcony/terrace on the roof and store rooms to the rear at the dwelling house at Ballincolly Road, Cork, T23 X638 development and if so, is it exempted?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

- 1) The rear garden is not less than 25.0m²
- 2) No window is directly facing the boundary or within 1mtr of the boundary.
- 3) The store rooms have a head height of 1.56m and cannot be classified as habitable rooms.
- 4) REAR Extension is located below finished floor level of granted dwelling due to sloping site.

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

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?
 If so please supply details:

11/4093 → GRANTED 12/4260 → WITHDRAWN

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		
(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 checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) DWELLING = 298.7m ² STORE ROOMS = 55.5m ² REAR EXTENSION = 38.4m ² BALCONY = 45.8m ²
(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	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	AGENT	
If you are not the legal owner, please state the name of the owner if available	PETER & SINEAD O'DONOVAN	

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

Signature: Simon Forrest

Date: 11/04/2024

ADVISORY NOTES:

The application must be accompanied by the required fee of €80. Payment may be made at the Cork City Council cash desk, by cheque, by telephone with a credit/debit card, or by electronic fund transfer.

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.**

Please email planning@corkcity.ie with any queries.

- 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 protection 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.

1. Rear Elevation



2. Rear Elevation



3. Boiler Room/Store Room 1

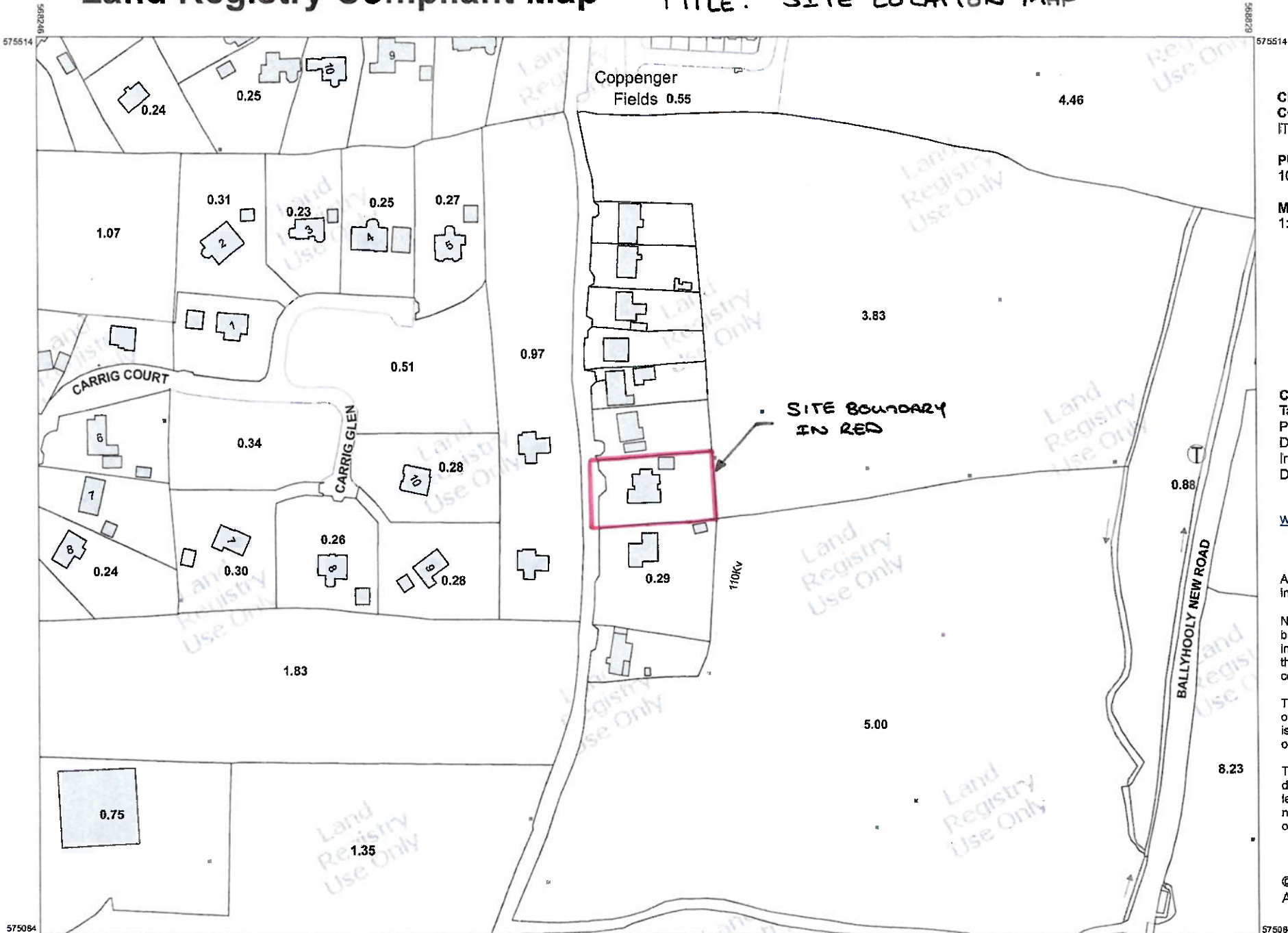


Land Registry Compliant Map

F2426-01-A DATE: 11/04/24
TITLE: SITE LOCATION MAP



Tailte
Éireann



CENTRE COORDINATES:
ITM 568538,575299

PUBLISHED: 10/04/2024
ORDER NO.: 50393514_1

MAP SERIES: 1:2,500
MAP SHEETS: 6336-A

COMPILED AND PUBLISHED BY:
Tailte Éireann,
Phoenix Park,
Dublin 8,
Ireland.
D08F6E4

www.tailte.ie

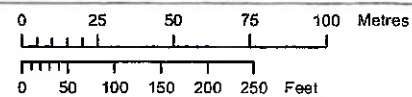
Any unauthorised reproduction
infringes Tailte Éireann copyright.

No part of this publication may
be copied, reproduced or transmitted
in any form or by any means without
the prior written permission of the
copyright owner.

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

This topographic map
does not show
legal property boundaries,
nor does it show
ownership of physical features.

©Tailte Éireann, 2024.
All rights reserved.

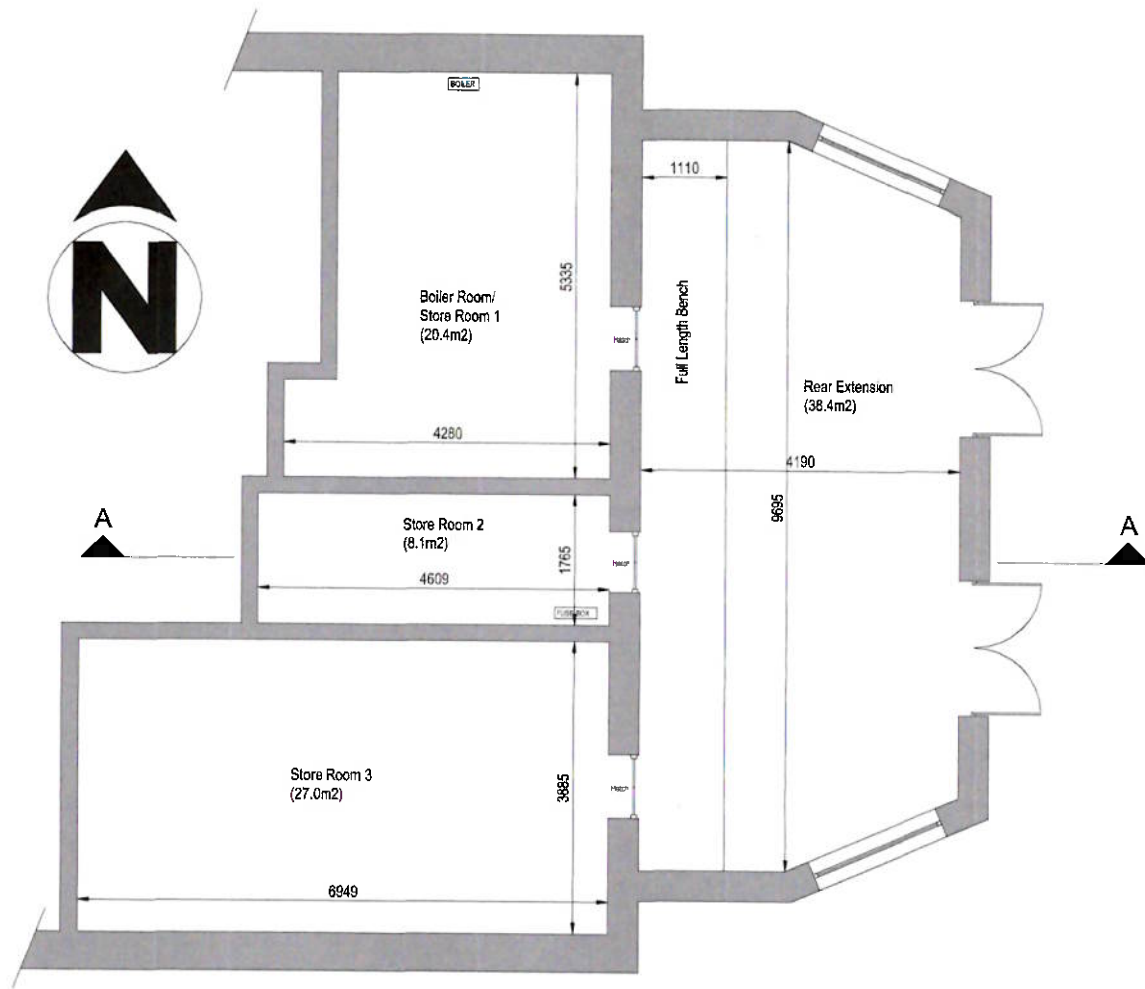


OUTPUT SCALE: 1:2,500

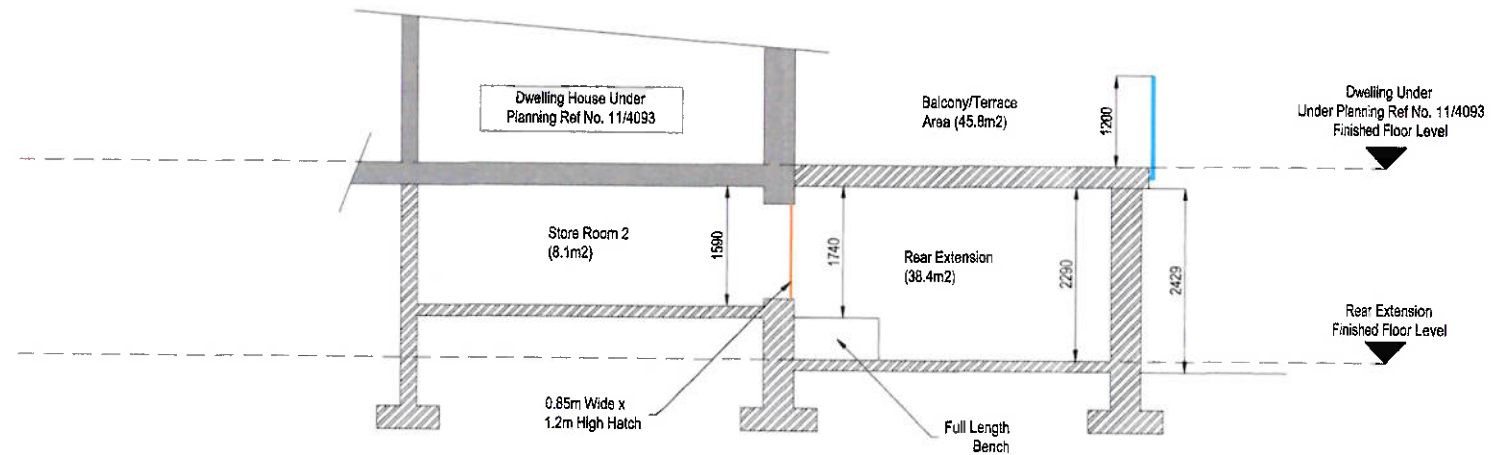
CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at
www.tailte.ie; search 'Capture Resolution'

LEGEND:
To view the legend visit
www.tailte.ie and search for
'Large Scale Legend'

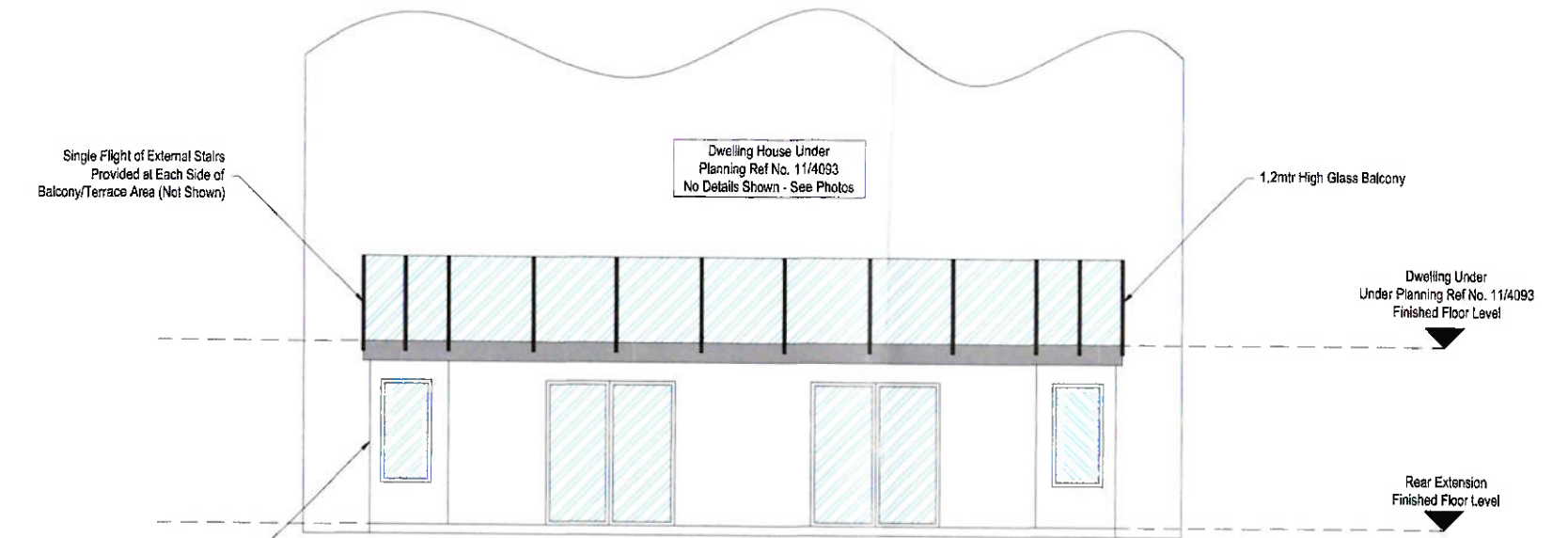




EXISTING FLOOR PLAN



SECTION A-A



EXISTING REAR ELEVATION

EAST FACING



t: 085-2069712
e: simon@forrestce.ie
w: www.forrestce.ie

CLIENT:
Peter & Sinead O'Donovan

PROJECT:
F2426 Rear Extension - Ballincolly Road, T23 X638

DRAWING TITLE:
Existing Rear Elevation, Floor Plan & Section

DRAWING NO:
F2426-02-A

REV:
A

SCALE:
1:100 (A3)

REV	DATE	ISSUE
A	11.04.24	Issued for Section 5 Declaration