



Comhairle Cathrach Chorcaí Cork City Council

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

Ted Healy,
c/o Eric Corkery,
DL Group Consulting Engineers,
1 Hodder's Villas,
Ballincollig,
Cork.

19/07/2023

RE: Section 5 Declaration R791/23 No. 6 Rochelle, Old Blackrock Road, Cork.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 03rd July 2023, I wish to advise as follows:

In view of the above and having regard to:

- The particulars received by the Planning Authority on 03/07/2023
- The provisions of the Planning and Development Act (as amended),
- The provisions of the Planning and Development Regulations,

The Planning Authority considers that –


the conversion of an existing window on the rear elevation of a first floor apartment to a proposed door at No. 6 Rochelle, Old Blackrock Road, Cork, **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, 19th July 2023.



We are Cork.

Is mise le meas,



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



SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference:	R791/23
Description:	Whether the conversion of an existing window on the rear elevation of a first floor apartment to a proposed door that leads onto an existing balcony can be considered an exempt development?
Applicant:	Eric Corkery
Location:	No. 6 Rochelle, Old Blackrock Road
Site inspection:	14/07/23

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 site is located at No. 6 Rochelle, Old Blackrock Road within a long-established residential estate/complex where there are a large mix of apartments, terraced houses and duplexes in place. The site and apartment is located to the south of the Old Blackrock Road and is accessed via an existing front door and stairway that faces on to the public road to the north. An internal vehicle driveway is also in place that provides access through security gates to the wider complex when entering directly off the public road to the north. The apartments front elevation faces on to the public road to the north and the rear faces on to the private parking area/courtyard area where private car parking and circulation areas for the adjacent apartments within the complex are located.

The Question before the Planning Authority

Whether the conversion of an existing window on the rear elevation of a first floor apartment to a proposed door that leads onto an existing balcony can be considered an exempt development?

Is the conversion of an existing window on the rear elevation of a first floor apartment (No.6) to a proposed door that lead on to an existing balcony an a development, and if so could it be considered an exempt development?

Land Use Zoning

Cork City Development Plan 2022-2028

Land-Use Zoning

The site is situated in an area zoned as **ZO 01 Sustainable Residential Neighbourhoods** with the objective to *protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.*

Planning History

01/25036

Permission GRANTED to demolish former school & ancillary buildings & construct 75 no. residential units with new entrance & associated site works.

00/23978

Demolish former school & ancillary bldgs & construct 89 no. Residential units with new entrance & associated site works. Granted with Conditions.

Planning legislation

Planning and Development Act, 2000 as amended

Section 2(1),

“exempted development” has the meaning specified in section 4.

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1),

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4(3),

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or*
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

Planning and Development Regulations, 2001 as amended

Article 6(1),

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 sets out restrictions on exemptions specified under article 6.

Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including (a) if the carrying out of such development would:-

*9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—
(a) if the carrying out of such development would—*

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the

development plan or the draft development plan and the development would materially affect the character of the area,

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'.

As noted above Section 3 (1) of the Planning and Development Act states that: 'development' means, *except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.*

The removal of the existing window and replacement with a door clearly constitutes 'works', which is defined in section 2(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'.

As the proposal comprises 'works', it is clearly therefore 'development' within the meaning of the Act.

CONCLUSION — is development

Assessment of Exempted Development

The next issue for consideration is whether or not the proposal is exempted development.

The proposed development consists of works that would materially alter the external appearance of the existing structure and building by removing an existing window and replacing it with a door. The proposed works would also create an additional living area/space in terms of a new balcony area that is external to the existing building. This area was not intended to be used as a balcony area as part of the original construction on site. This new balcony area, if directly accessed from the apartment via a new door may provide direct overlooking of adjacent third party properties and therefore may well create residential amenity issues for adjacent property owners. Furthermore, the applicant states that there is an "existing" balcony in place to the rear of the apartment but this is not correct. There is an existing flat roof area in place that is external to the existing window with a safety rail in place at the edge of it. This existing flat roof area cannot be accessed as there is no door serving it and therefore to call it an existing balcony is not a correct definition it is considered.

It should also be noted that some of the submitted details including the submitted existing elevations show a window that is much larger than the actual window that is in place when viewed on the day of inspection (14/07/23). Therefore, the submitted details are considered to be inaccurate also it is considered.

In any event it is further considered that the proposed works do not fall under any Class of exemption set out within Schedule 2 Part 1 for exempted development within the curtilage of a house that is set out in the Planning and Development Regulations it is noted. The proposed development would also not fall under any of the limitations set out in the Planning and Development Regulations or in any of the Sections that are set out in the Planning and Development Act (as amended).

There may also be conditions and limitations attached to the parent permission on site that could well prevent the extension to and/or alteration to any of the development granted without the benefit of planning permission having been received first.

Environmental Assessment & Restrictions on Exemption

A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 9 of the Regulations.

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.

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.

Recommendation

From the details submitted it is considered that the works proposed namely the conversion of an existing window on the rear elevation of a first floor apartment to a proposed door is not considered to be exempt development.

Having regard to:

- The particulars received by the Planning Authority on 03/07/23
- The provisions of the Planning and Development Act (as amended)
- The provisions of the Planning and Development Regulations

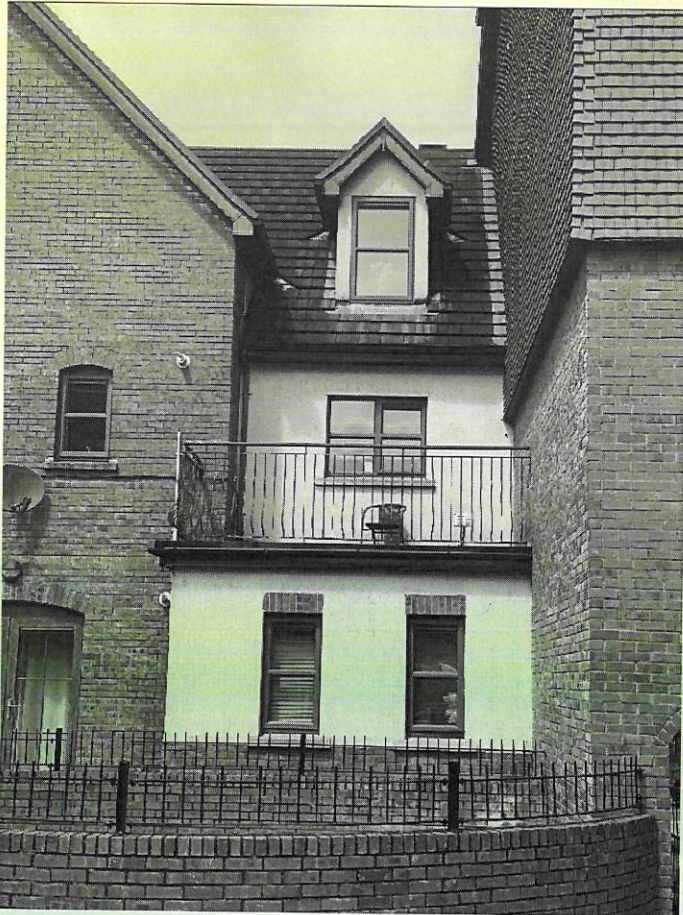
the Planning Authority considers that –

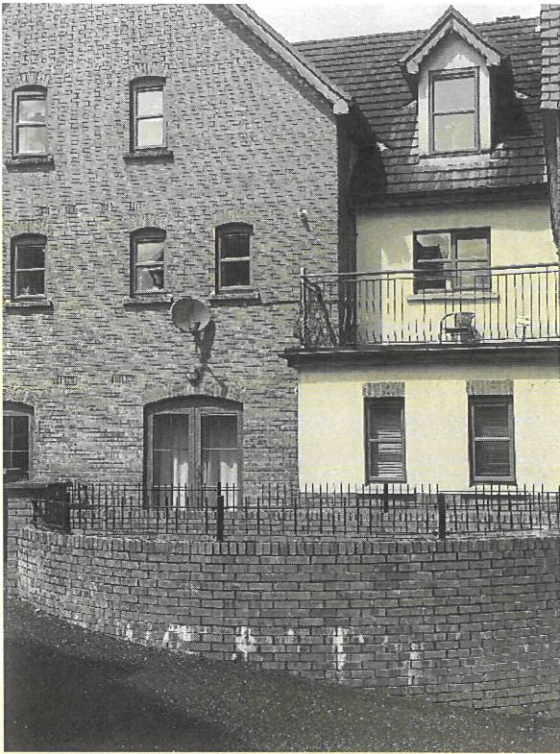
the conversion of an existing window on the rear elevation of a first floor apartment to a proposed door at No. 6 Rochelle, Old Blackrock Road, Cork – **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

Tadhg Hartnett
Executive Planner
Planning Department
Community Culture & Placemaking Directorate
17th July 2023

Appendix (photos taken on 14/07/23)









**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

Strategic Planning & Economic Development Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.



R-Phost/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924564/4321
Líonra/Web: www.corkcity.ie

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

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

No.6 Rochelle,
Old Blackrock road,
Cork

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 conversion of an existing window on the rear elevation of a first floor apartment (No.6) to a proposed door that lead on to an existing balcony an a development, and if so could it be considered an exempt development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

On the same housing estate Rochelle Lawn there are buildings with existing balcony doors to the front and rear elevations.

The proposed conversion from window to door at No.6 Rochelle will not result in any changes to the existing opening width.

Please refer to enclosed drawings.

Please find enclosed letter of confirmation for planning file No.01/25036.

3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	128.33m2
(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) _____ _____ _____

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Ted Healy
Applicants Address	
Person/Agent acting behalf of the Applicant (if any):	
Should all correspondence be sent to the Applicant's address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>	

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 <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 and address of the owner if available		

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

Signature: Eric Corkery

Date: 29.06.23

.....

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

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

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

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution



Comhairle Cathrach Chorcaí Cork City Council

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

Eric Corkery
DL Group Consulting Engineers
1 Hodders Villa's,
Ballincollig,
Cork

23/6/2023

Re: Planning File No. 01/25036 – Rochelle, Old Blackrock Road, Cork.

Dear Sirs,

I wish to acknowledge receipt of the request for planning file 01/25036 by Eric Corkery on 9/06/2023

I can confirm that the above file was permanently removed from Cork City Council's storage facility, therefore is unavailable for viewing.

My sincere apologies for this inconvenience.

Warm regards

Rob Keating
Clerical Officer
Community, Culture and Placemaking



Planning Pack Map



Tailte
Éireann

**CENTRE
COORDINATES:**
ITM 568484,571346

PUBLISHED: 26/06/2023
ORDER NO.: 50342345_1

MAP SERIES: 1:1,000
MAP SHEETS: 6383-11
1:1,000 6383-16

COMPILED AND PUBLISHED BY:
National Mapping Division of
Tailte Éireann,
Phoenix Park,
Dublin 8,
Ireland.
D08F6E4

www.tailte.ie

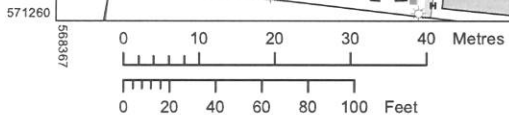
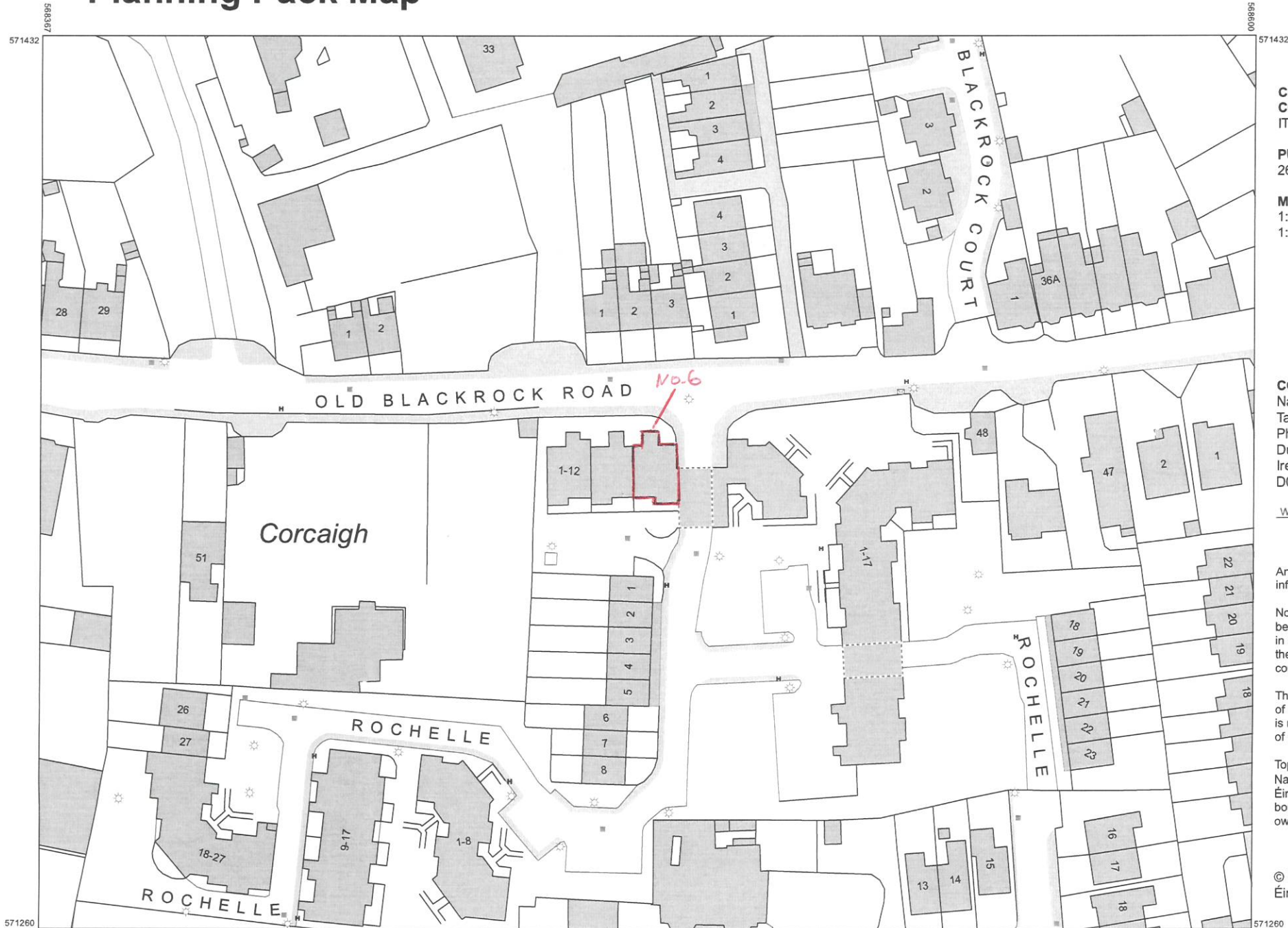
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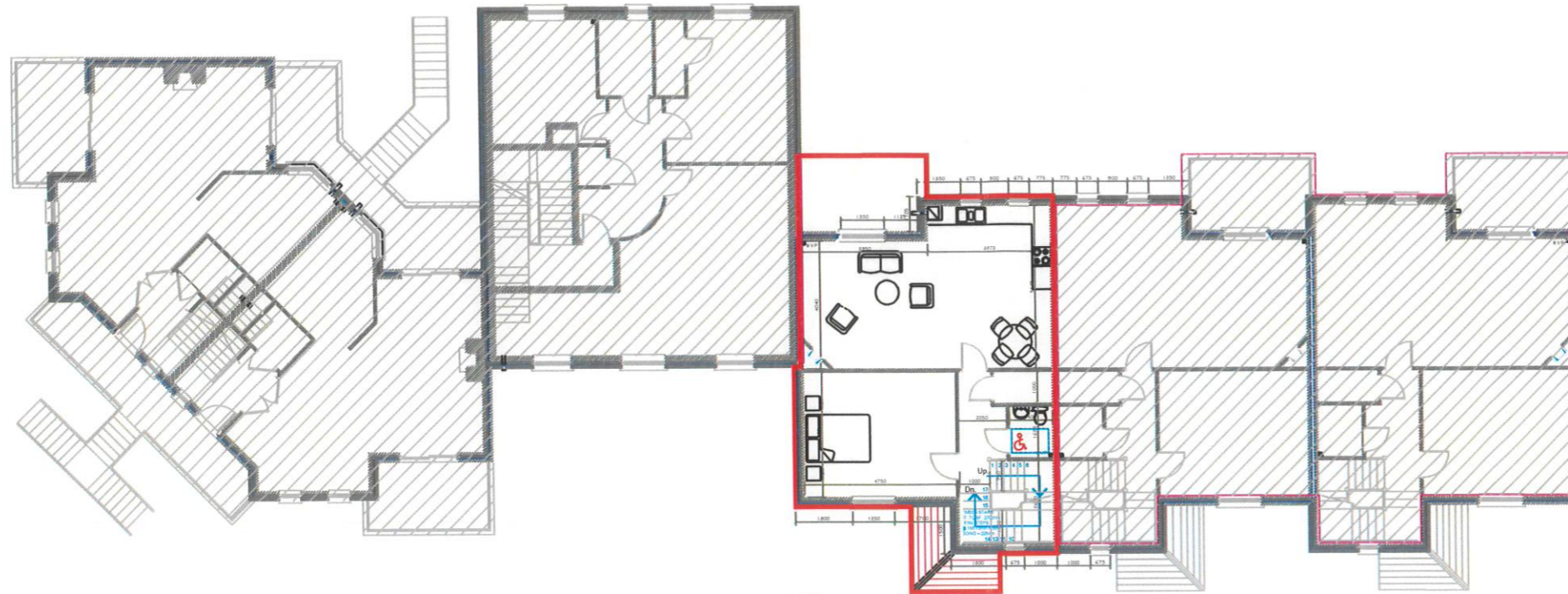
OUTPUT SCALE: 1:1,000

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.osi.ie; search 'Capture Resolution'

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



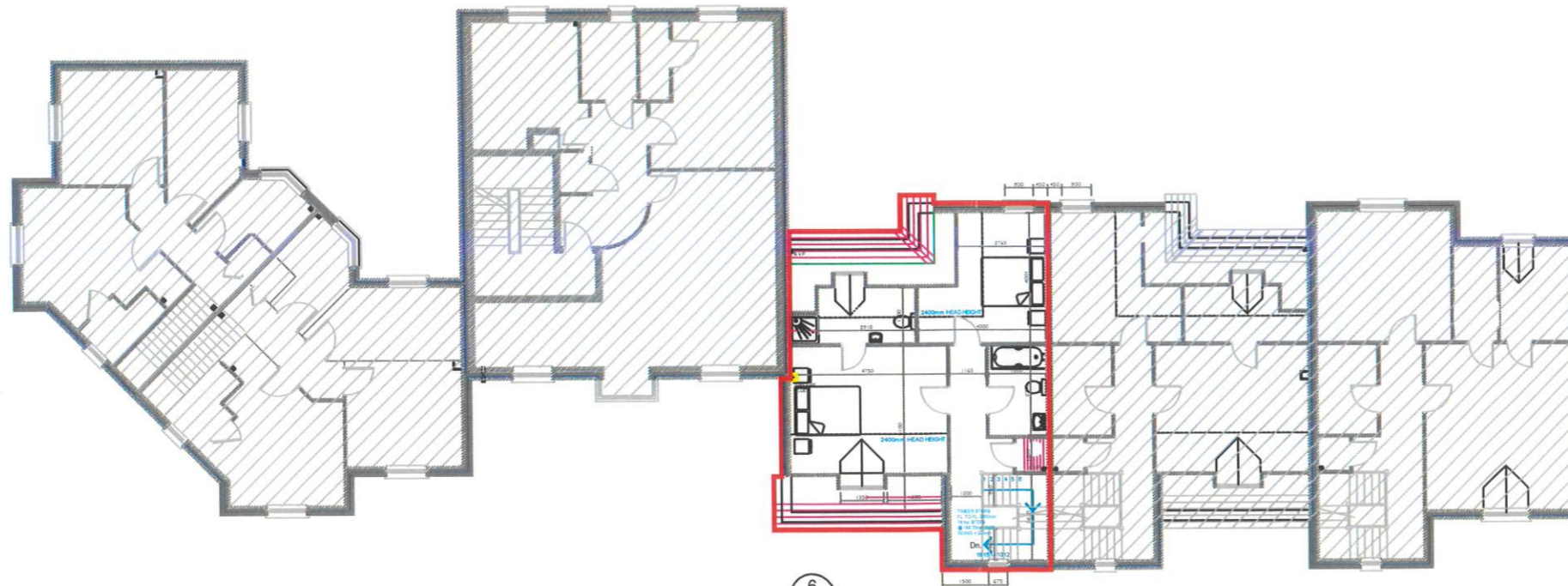
This map was produced by
the National Mapping Division
of Tailte Éireann, formerly
Ordnance Survey Ireland (OSI)



6
Rochelle

EXISTING FIRST FLOOR PLAN

SCALE 1:200
GROUND FLOOR AREA = 72.09m²
TOTAL FLOOR AREA = 128.33m²



6
Rochelle

EXISTING SECOND FLOOR PLAN

SCALE 1:200
FIRST FLOOR AREA = 56.24m²
TOTAL FLOOR AREA = 128.33m²

NOTES:

For Approval	A	28.06.23	EC
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Revision	Issue	Date	By
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	1 Hodders Villas Ballincollig Co. Cork
	phone: (021) 4876650 fax: (021) 4876651 e-mail: info@dlgroup.ie

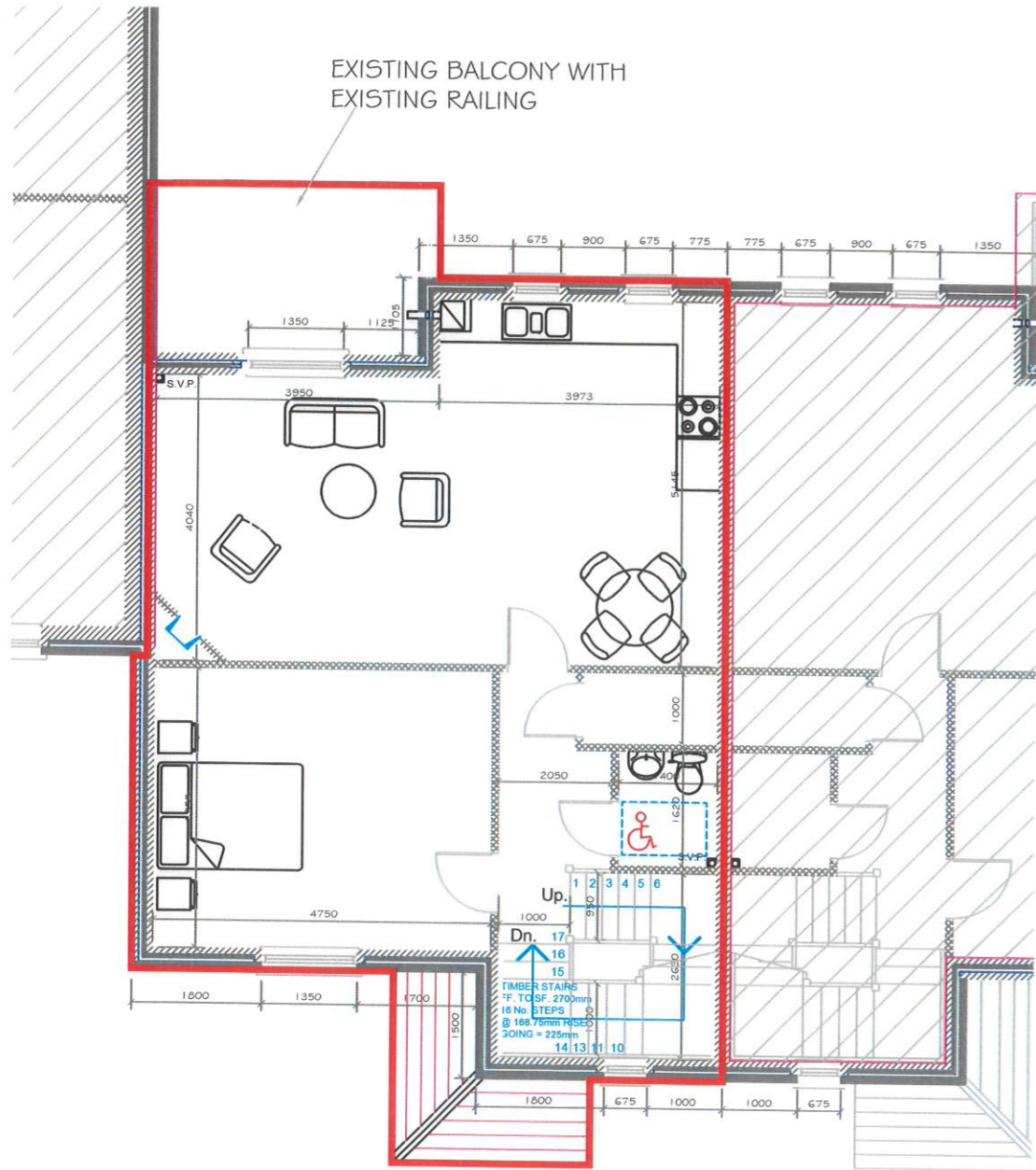
Client:
TED FOLEY

Project:
**No. 6 ROCHELLE,
OLD BLACK ROCK ROAD.**

Drawing:
**EXISTING FIRST & SECOND
FLOOR PLAN**

job no.	drawing no.	date
24623/H	01	28.6.23

scale	drawn by	checked by	drawing type
1:200	EC	CD	A3



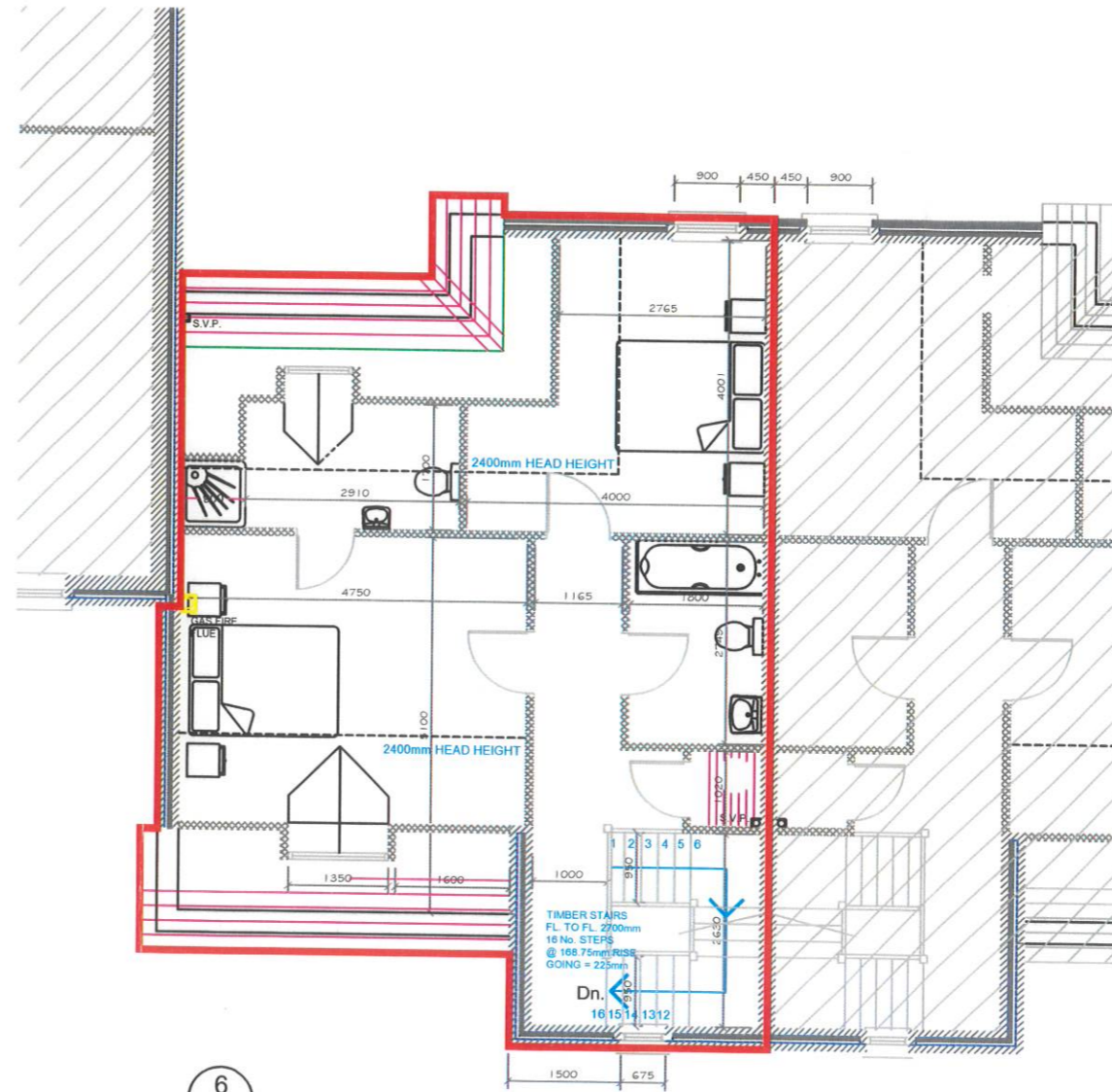
6
Rochelle

EXISTING FIRST FLOOR PLAN

SCALE 1:100

GROUND FLOOR AREA = 72.09m²

TOTAL FLOOR AREA = 128.33m²



6
Rochelle

EXISTING SECOND FLOOR PLAN

SCALE 1:100

FIRST FLOOR AREA = 56.24m²

TOTAL FLOOR AREA = 128.33m²

NOTES:

For Approval A 28.06.23 EC

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DL GROUP CONSULTING ENGINEERS

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Client:
TED FOLEY

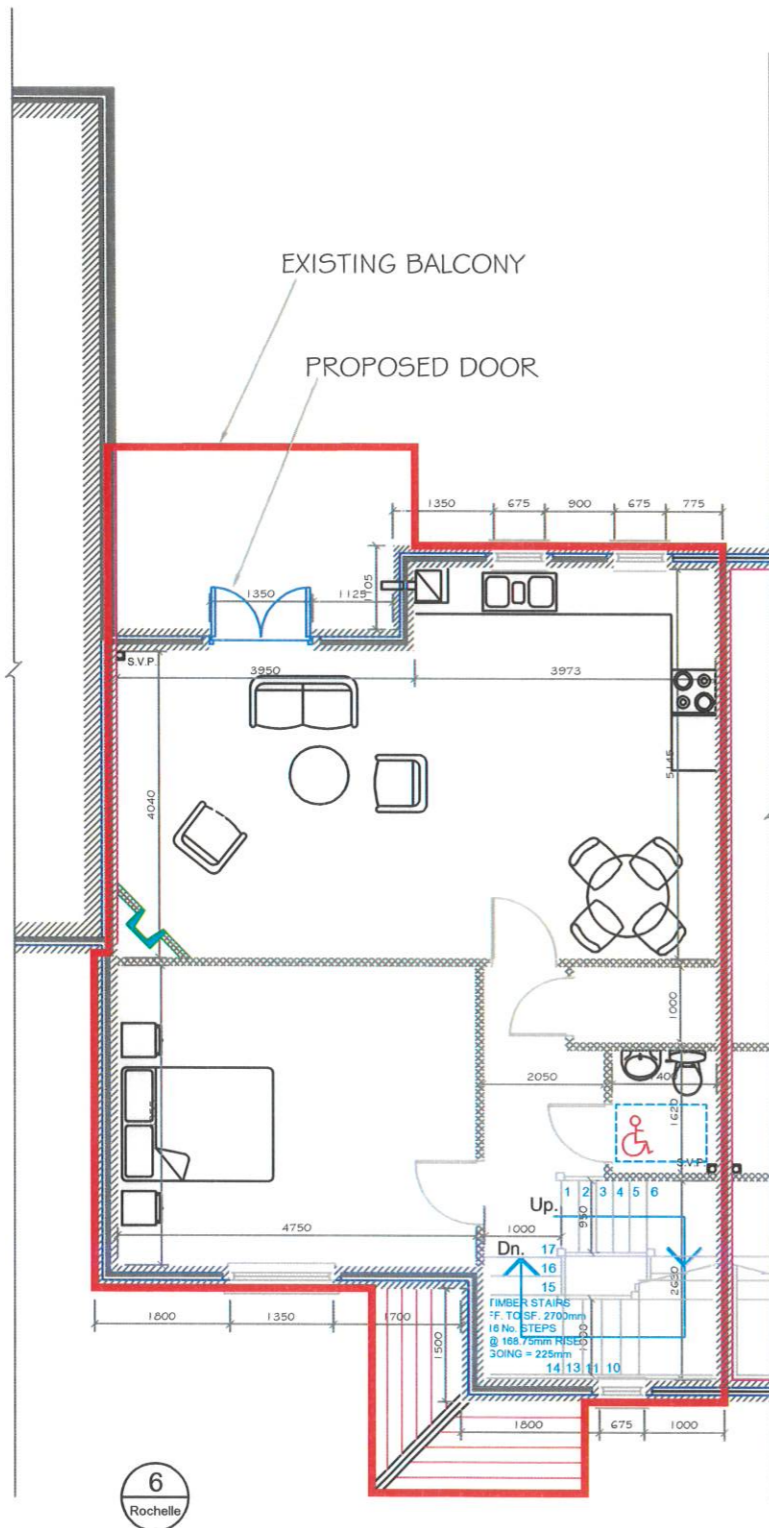
Project:
No. 6 ROCHELLE,
OLD BLACK ROCK ROAD.

Drawing:
EXISTING FIRST & SECOND
FLOOR PLAN

job no.	drawing no.	date
24623/H	02	28.6.23

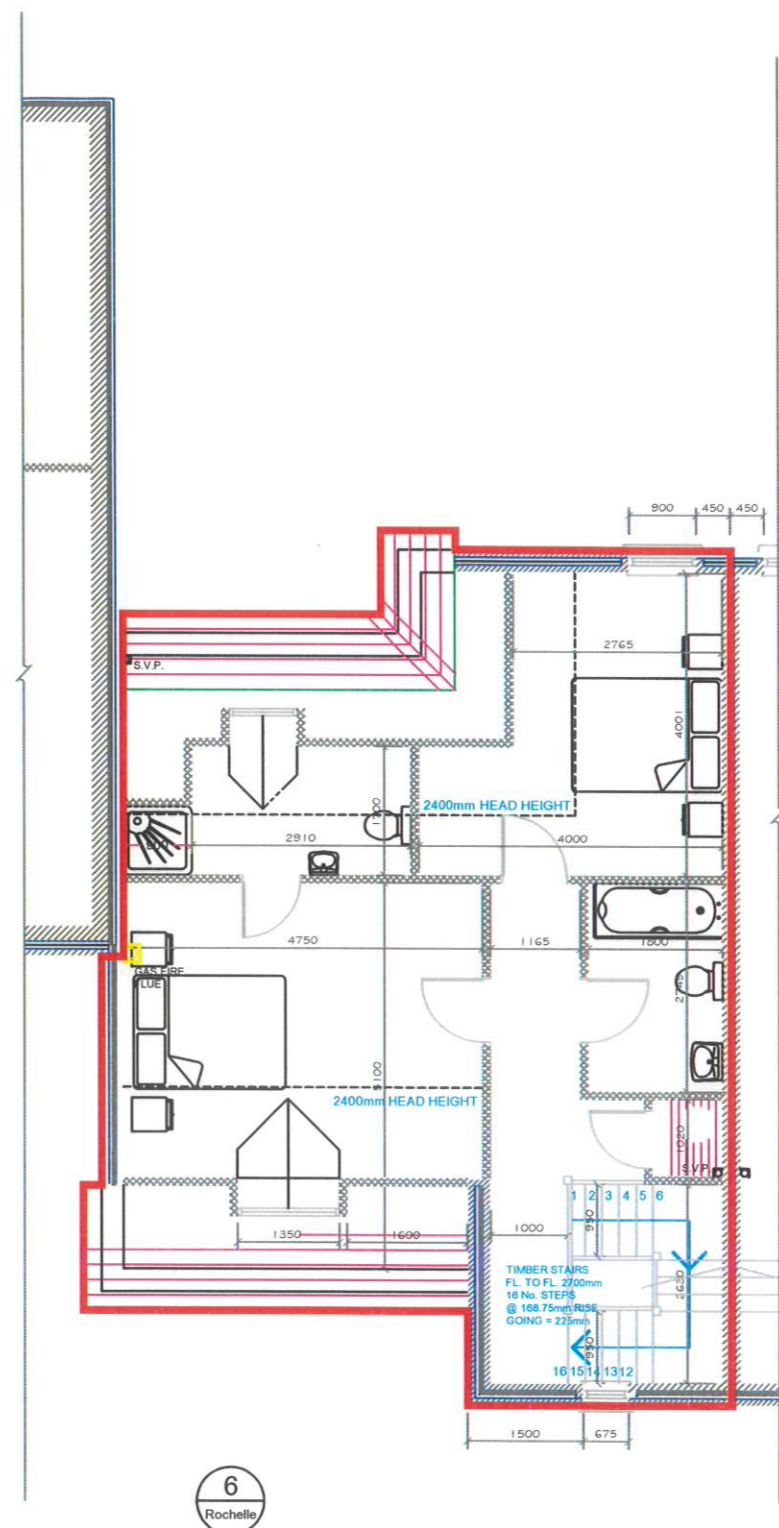
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1:100	EC	CD	A3

NOTES:



PROPOSED FIRST FLOOR PLAN

SCALE 1:100
 GROUND FLOOR AREA = 72.09m²
 TOTAL FLOOR AREA = 128.33m²



PROPOSED SECOND FLOOR PLAN

SCALE 1:100
 FIRST FLOOR AREA = 56.24m²
 TOTAL FLOOR AREA = 128.33m²
 NO CHANGES ARE PROPOSED

For Approval	A	28.06.23	EC
Revision		Issue	By

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TED FOLEY

Project:
**No. 6 ROCHELLE,
 OLD BLACK ROCK ROAD.**

Drawing:
**PROPOSED FIRST & SECOND
 FLOOR PLAN**

job no.	drawing no.	date	
24623/M	03	28.6.23	
scale	drawn by	checked by	drawing type
1:100	EC	CD	A3

NOTES:



EXISTING FRONT (NORTH FACING) ELEVATION
SCALE 1:200
NO CHANGES ARE PROPOSED



EXISTING REAR (SOUTH FACING) ELEVATION
SCALE 1:200

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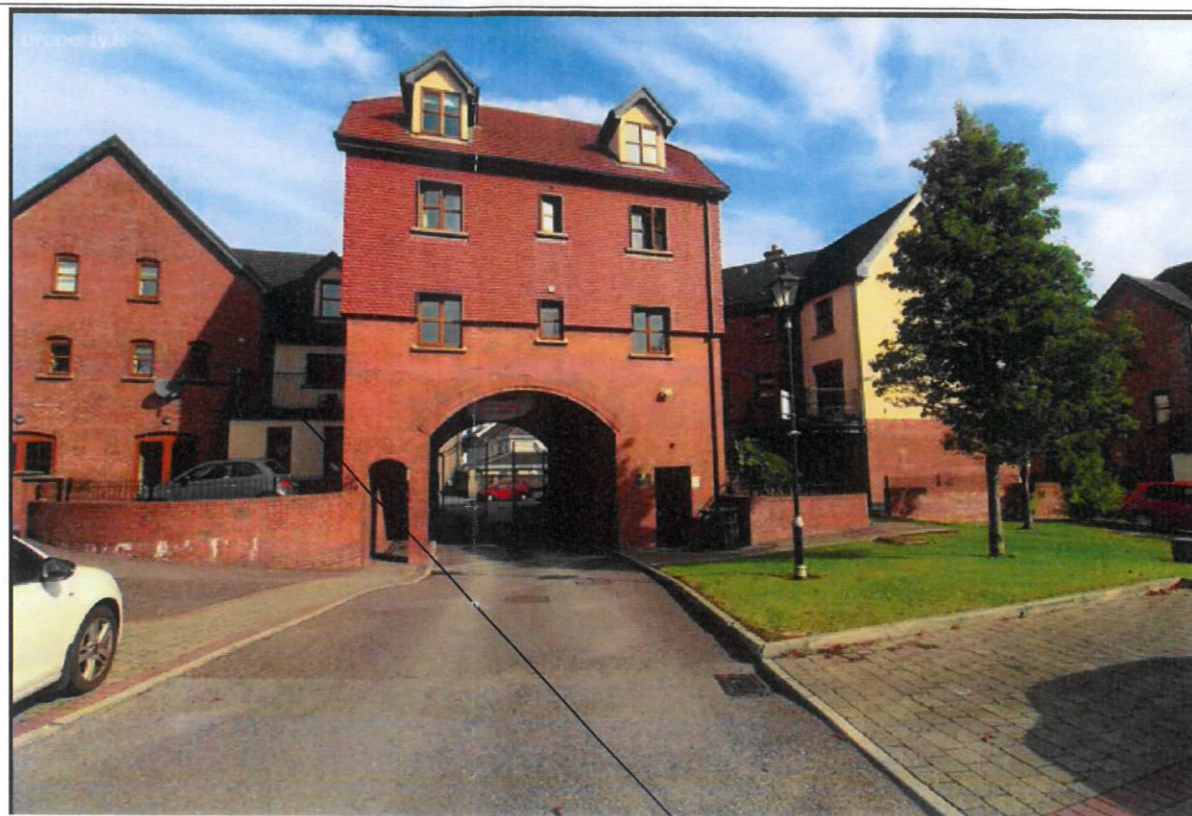
Project:
No.6 ROCHELLE,
OLD BLACK ROCK ROAD.

Drawing:
EXISTING ELEVATIONS

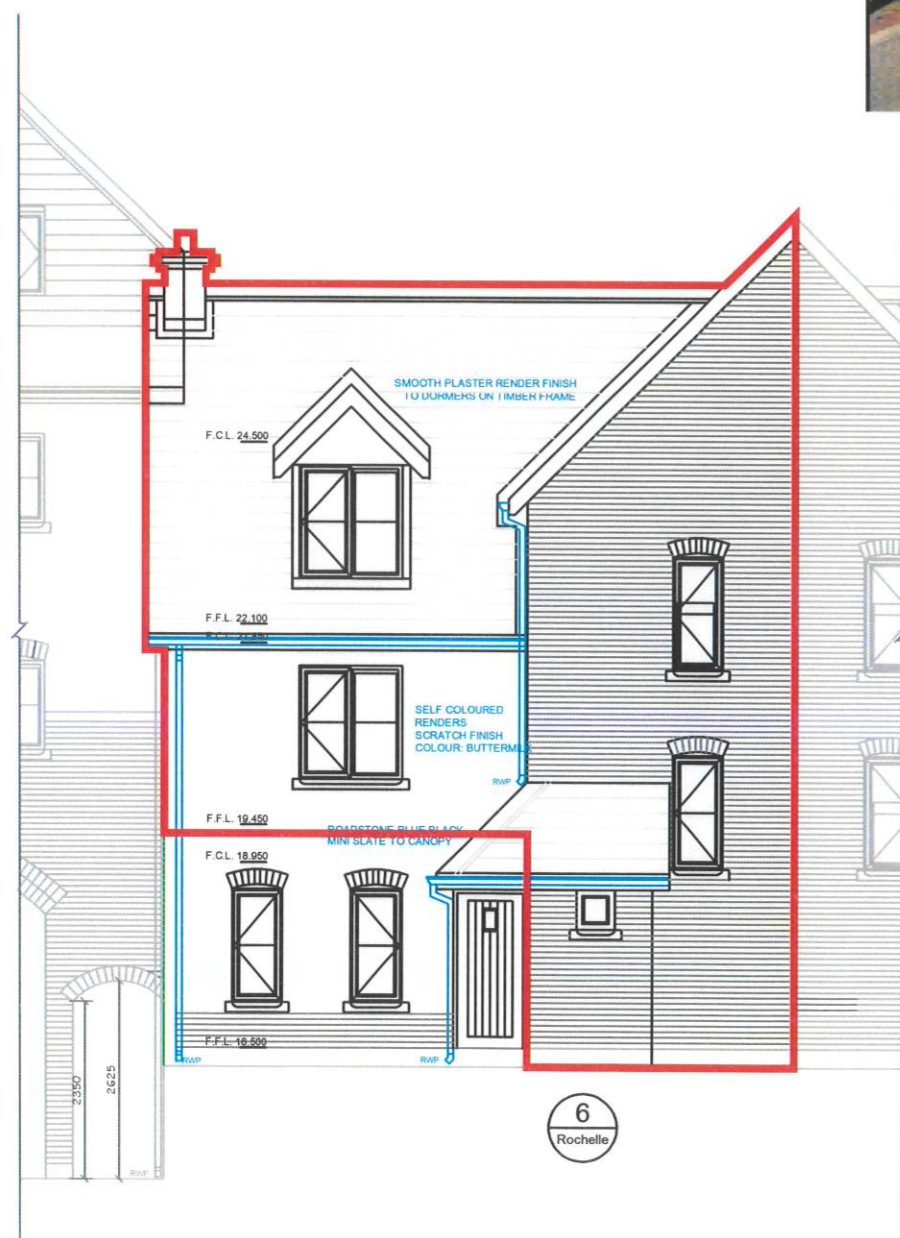
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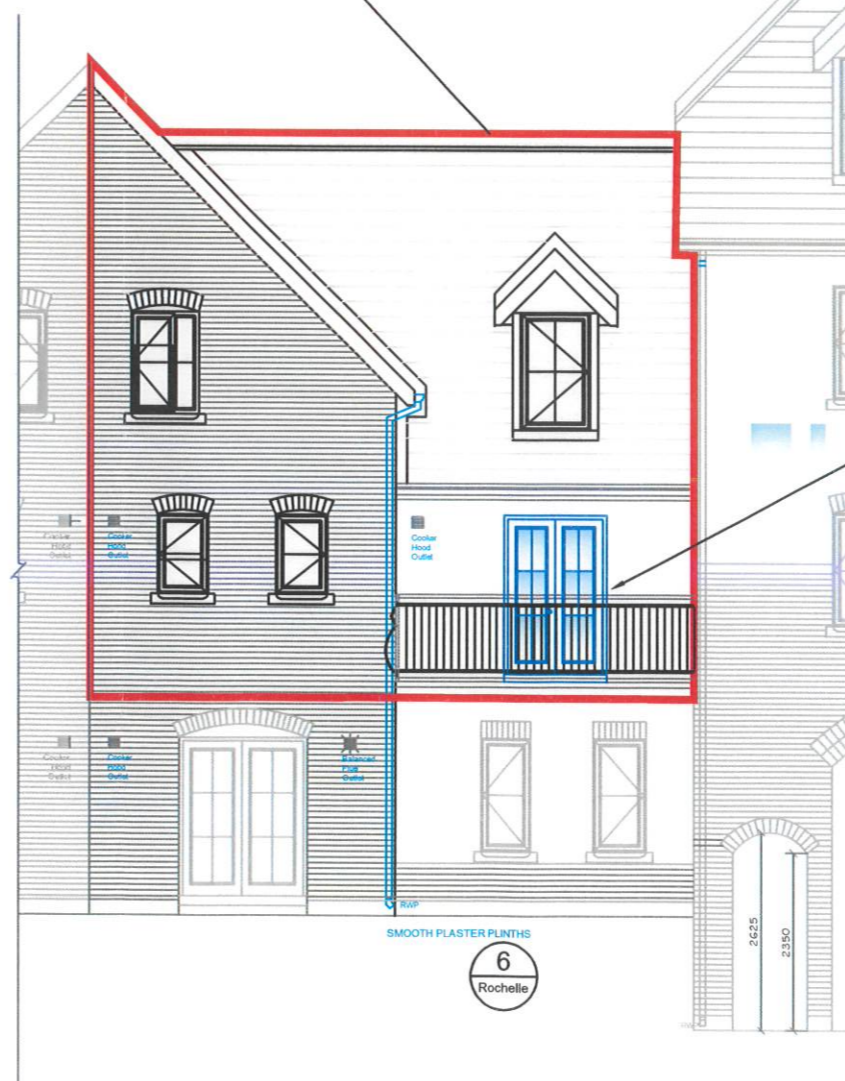
PHOTO OF EXISTING REAR ELEVATION



NOTES:



PROPOSED FRONT (NORTH FACING) ELEVATION
SCALE 1:100
NO CHANGES ARE PROPOSED



PROPOSED REAR (SOUTH FACING) ELEVATION
SCALE 1:100

For Approval	A	28.06.23	EC
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Project:
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Drawing:
PROPOSED ELEVATIONS

job no.	drawing no.	date
24G23/H	05	28.6.23
scale	drawn by	checked by
1:100	EC	CD
		drawing type
		A3