

Comhairle Cathrach Chorcaí Cork City Council

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

Christopher Collins,
14 Ballinure Place,
Mahon,
Cork T12 KX4C.

19/04/2023

RE: Section 5 Declaration R772/23 3 Capwell Avenue, Cork T12 H9Y1

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 30th March 2023, I wish to advise as follows:

The Planning Authority, having regard to:

- Sections 2 and 3 of the Planning and Development Act 2000 (as amended),
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended), and
- *Schedule 2, Part 1, Class 1* of the Planning and Development Regulations 2001 (as amended),

It is considered that *the demolition of existing extension and construction of a new single storey 10m² extension to the rear* as per plans and particulars submitted with the Section 5 declaration application to the Planning Authority on the 30/03/2023 **IS DEVELOPMENT** and is **IS 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 April 2023.

Is mise le meas,

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



We are Cork.

PLANNER'S REPORT Ref. R772/23		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>Whether the demolition of existing extension and construction of a new single storey 10m2 extension is considered exempted development.</i>	
Location	3 Capwell Avenue, Cork. T12 H9Y1	
Applicant	Christopher Collins	
Date	19/04/2023	
Recommendation	Is development and is exempted development.	

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 Q2 of the application form:

"Whether the demolition of existing extension and construction of a new single storey 10m2 extension is considered exempted development"

3. Site Description

The subject property is a two-storey md-terrace house located in an established residential neighbourhood. The front of the property is an open driveway.

4. Planning History

22/41176: Permission granted for demolition of existing single storey extension and construction of a new part one/part two storey extension, elevational alterations including 2 no. new rooflights all to the rear of existing dwelling and removal of first floor window to the front of existing dwelling, overall refurbishment works and changes to internal layout in the original 1920s house, all ancillary site, drainage and ground works.

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,*

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned*

Planning and Development regulations 2001 (as amended)

Schedule 2, Part 1, Class 1 Development within the curtilage of a house

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 other similar structure attached to the rear or to the side of the house.

Provided:

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.*

3. *Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.*

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.*

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.*

6. ASSESSMENT

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.’

6.2 Exempted development

The proposal is for a single storey extension to the rear of a mid-terrace house. The single storey extension has an area of 10sq.m and has a rear window and a side sliding back door. The window to the rear is 13m from the rear boundary; while the sliding door is 2.5m from the common party boundary wall. The overall height of the external wall is 3.4m. It is being built on the party boundary wall but such building on common party boundary walls is outside the remit of the assessment of the planning authority with regard to development – it is a civil matter between parties. The design and scheme as presented complies with the limitations and conditions specified under the exempted development and is therefore considered exempt.

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 demolition of existing extension and construction of a new single storey 10m2 extension is considered exempted development.*”

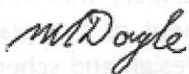
Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed 10sq.m single storey extension to the rear as per the plans and particulars submitted with the Section 5 declaration application on the 30/03/2023 is development and is exempted development.

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2 and 3 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended), and
- *Schedule 2, Part 1, Class 1* of the Planning and Development Regulations 2001 (as amended)

It is considered that the demolition of existing extension and construction of a new single storey 10m2 extension to the rear as per the plans and particulars submitted with the Section 5 declaration application to the Planning Authority on the 30/03/2023 is development and is exempted development.



Mary Doyle
Executive Planner
18/04/2023

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

REQUIRED FOR
VACANT HOMES GRANT.

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**

CHRISTOPHER COLLINS

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

3 CAPWELL AVENUE, CORK
T12 H9Y1

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.

PLEASE CAN YOU CONFIRM THAT THE DEMOLITION OF EXISTING EXTENSION AND CONSTRUCTION OF A NEW SINGLE STOREY 10M² EXTENSION IS CONSIDERED EXEMPTED DEVELOPMENT.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).

REFER TO PLANS + ELEVATIONS.
A CERTIFICATE OF EXEMPTION IS REQUIRED
TO APPLY FOR FUNDING UNDER THE
VACANT PROPERTY REFURBISHMENT SCHEME.
EXISTING EXTENSION IS SEVERELY SUBSIDING,
HENCE THE NEED TO REPLACE.

DEVELOPMENT MANAGEMENT
CCP

30 MAR 2023

CORK CITY COUNCIL

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? 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? N/A

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

REF: 22/41176

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) 10.9M² EXTENSION PROPOSED.

(a) Floor area of existing/proposed structure/s	<u>EXISTING TOTAL: 87.8m²</u> <u>PROPOSED TOTAL: 75.3m²</u>
(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) <u>(10 BE DEMOLISHED)</u> <u>21.4M²</u>
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) <u>RESIDENTIAL</u>	Proposed/existing use (please circle) <u>RESIDENTIAL.</u>

7. 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	<u>N/A</u>	
If you are not the legal owner, please state the name of the owner if available	<u>N/A</u>	

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

Signature: C. Collins

Date: 26/3/2023



Map Reference: Copyright Ordnance Survey Ireland, 2022
 Map Series | Map Sheets
 1:1,000 | 6382-20
 1:1,000 | 6383-16
 Projection= IRENET95_Irish_Transverse_Mercator
 Centre Point Coordinates: X,Y= 568063.2169,570852.0238

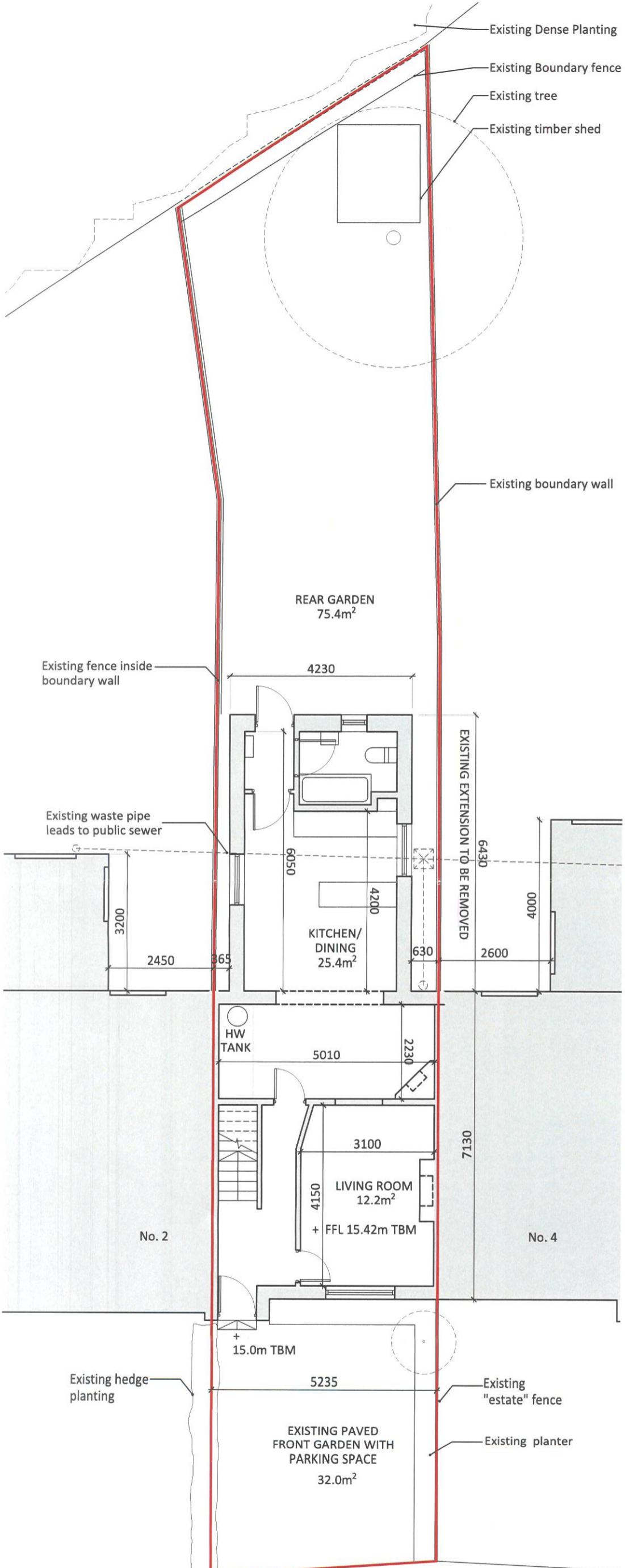


Red line indicates Site Boundary

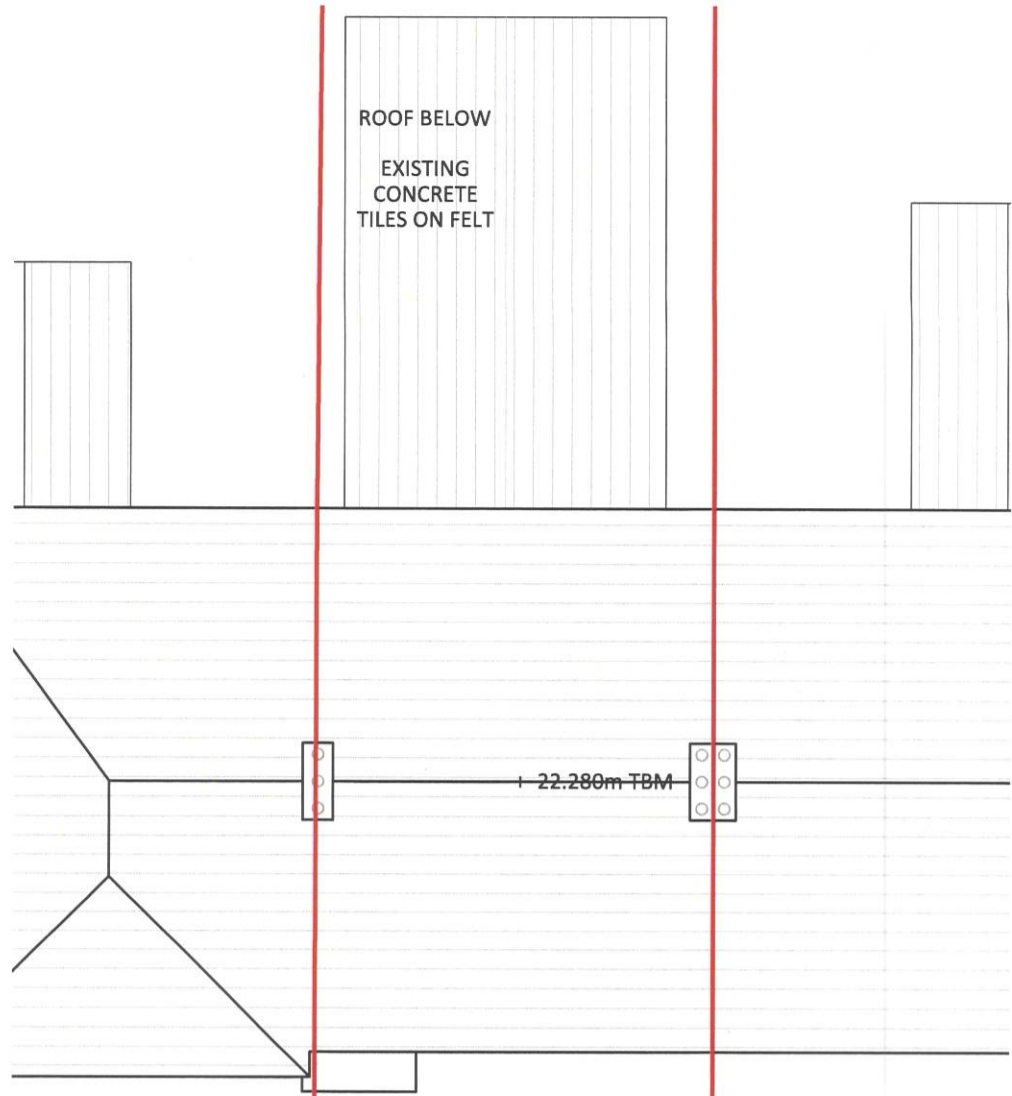
Revision Description	Date	Rev. No.	Issued by
Planning Issue	25.05.2022	C01	CC

Project: Proposed Extension	Drawing Title: Site Location Map
Location: 3 Capwell Avenue	Drawing No.: EX 1000
Current Rev.: C01	Scale @ A3: 1:1000
Purpose: PLANNING	Date Printed: 25.05.2022

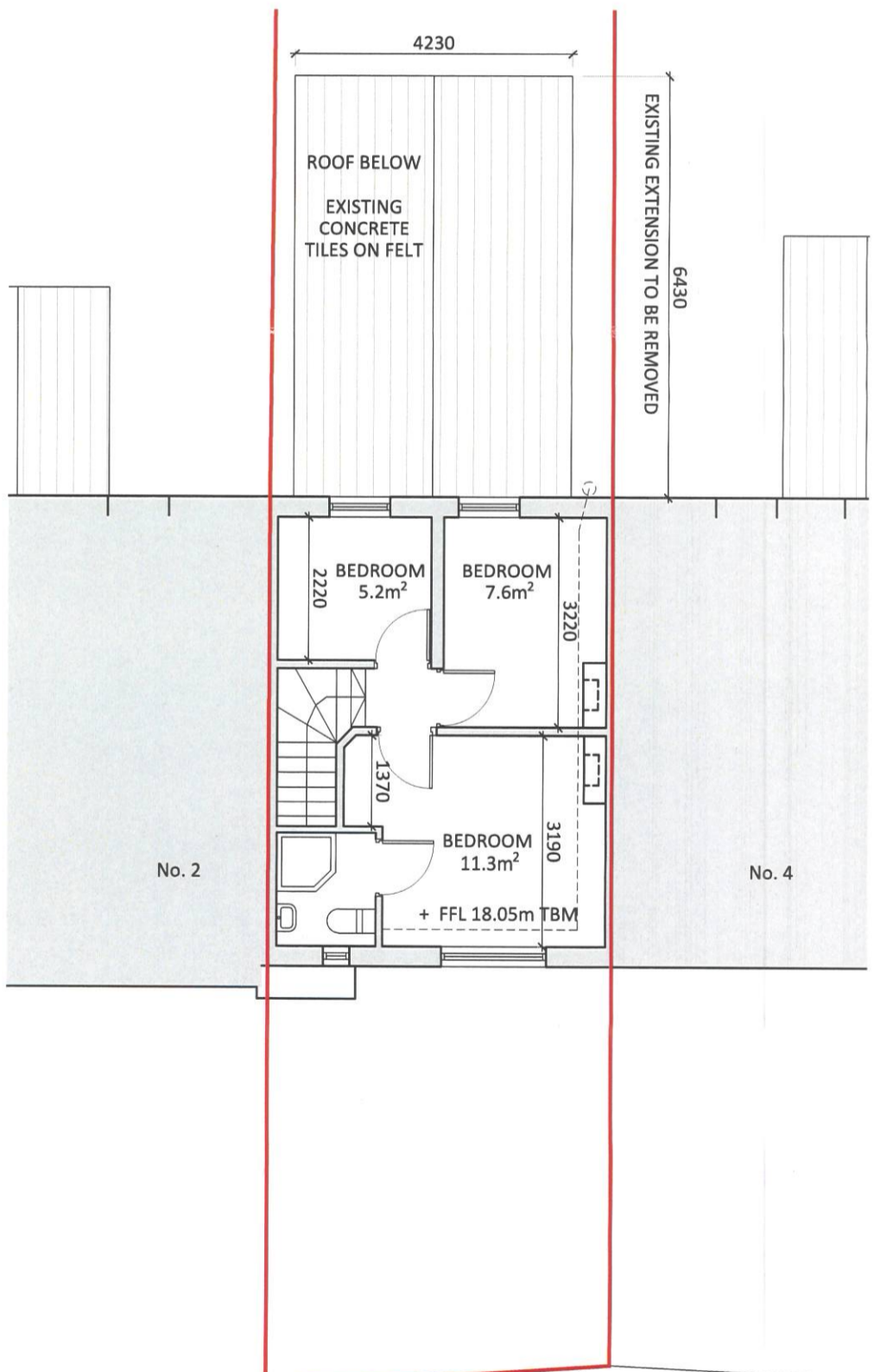
Chris Collins MRIA
 3 Capwell Avenue - Cork - T12 H9Y1



EXISTING GROUND FLOOR PLAN
GIA = 55.3m²



EXISTING ROOF PLAN



EXISTING FIRST FLOOR PLAN
GIA = 32.7m²

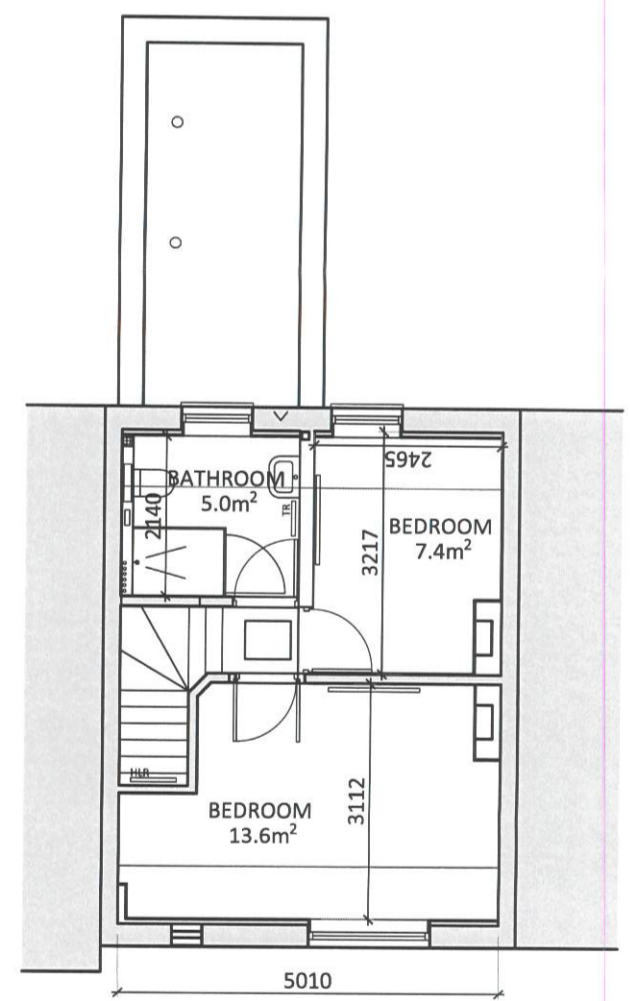
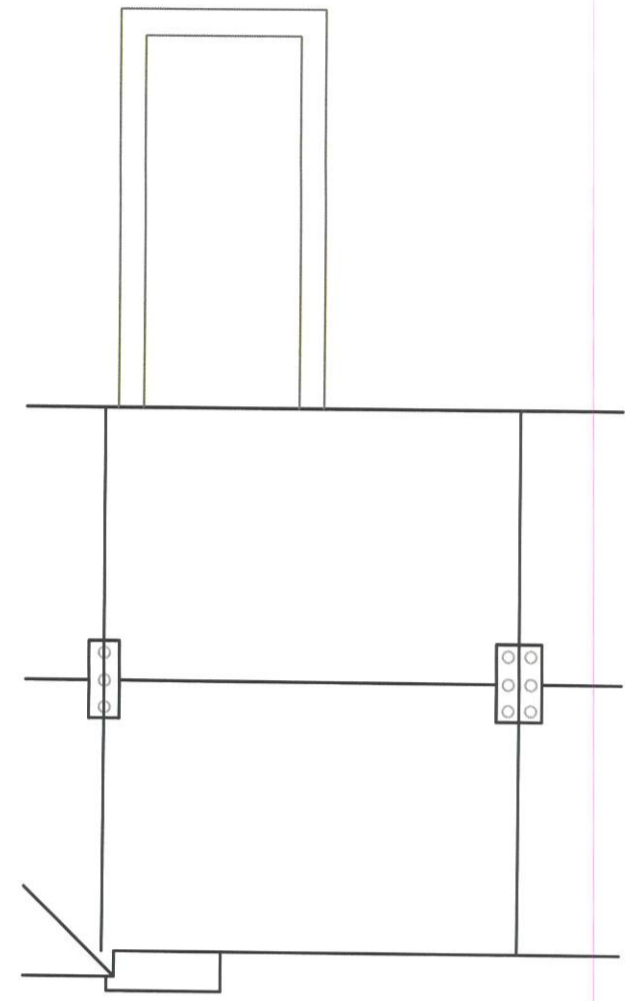
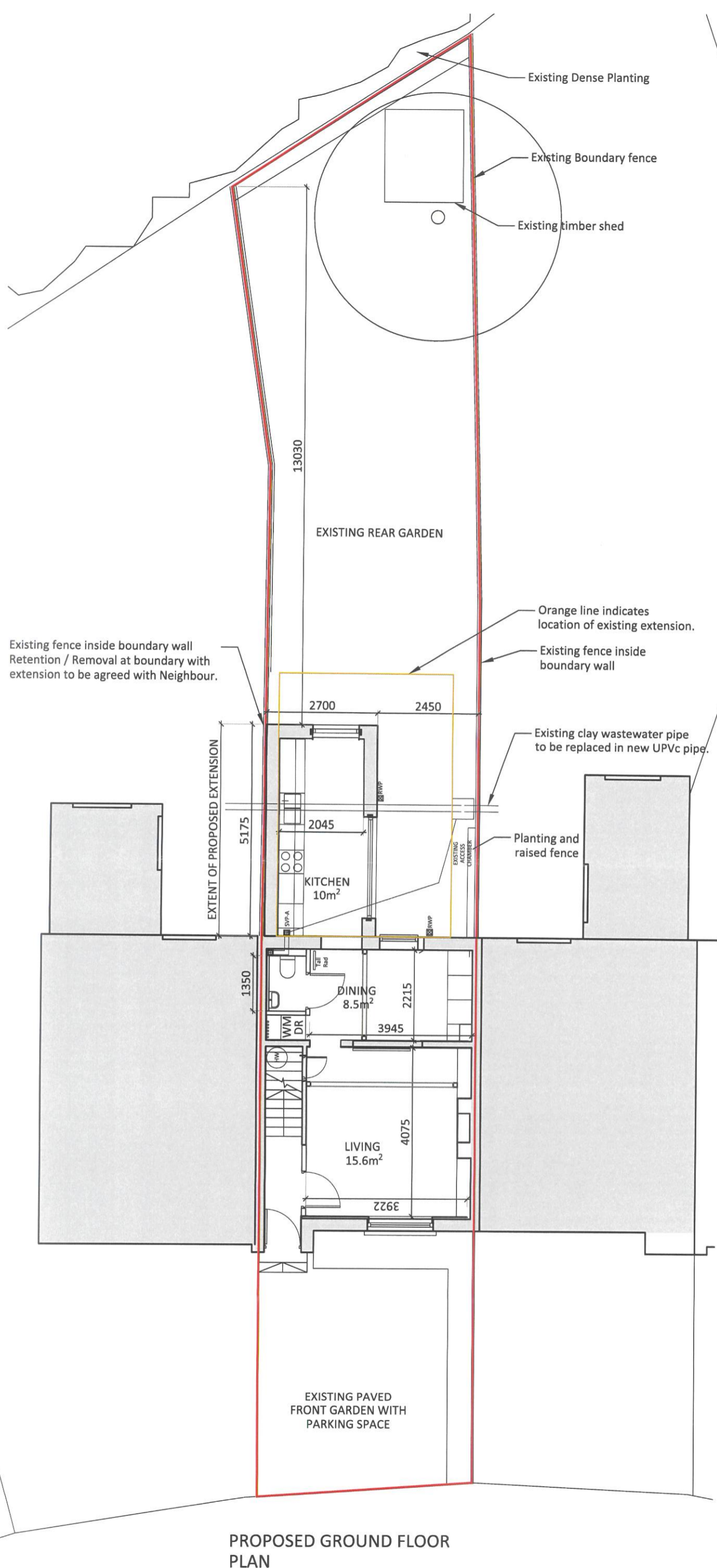


Levels are to temporary benchmark TBM

Revision Description	Date	Rev. No.	Issued by
Issue for neighbour consult.	05.05.2022	P01	CC
Planning Issue	25.05.2022	C01	CC

Project: Proposed Extension	Drawing Title: Existing Plans
Location: 3 Capwell Avenue	Drawing No.: EX-1200
Current Rev.: C01	Scale @ A3: 1:100
Purpose: PLANNING	Date Printed: 25.05.2022

Chris Collins MRIAI
3 Capwell Avenue - Cork - T12 H9Y1



Revision Description	Date	Rev. No.	Issued by
Issue for Certificate of Exemption Application	26.03.2023	C01	CC

Project: Proposed Extension
 Location: 3 Capwell Avenue

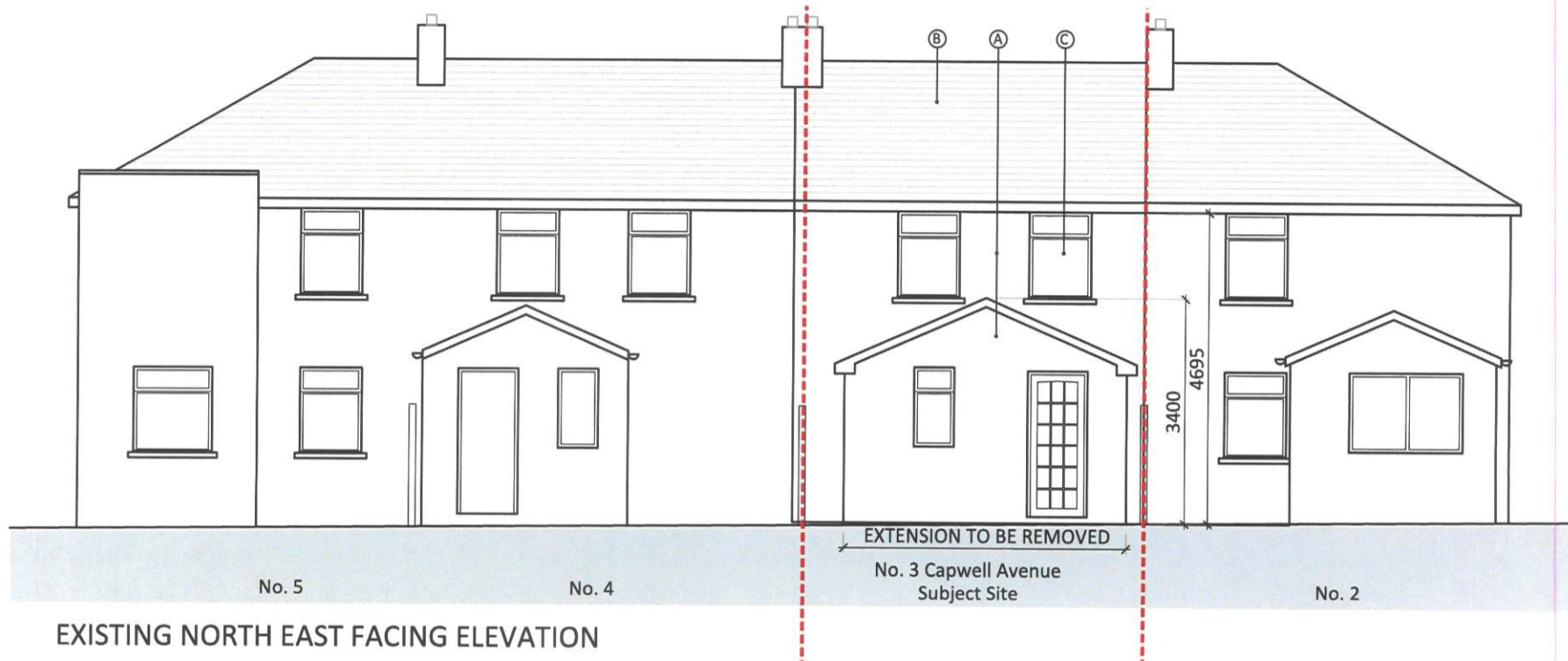
Drawing Title: Proposed Plans
 Drawing No.: PR-COE-1200

Current Rev.: C01
 Purpose: COE_APPLICATION

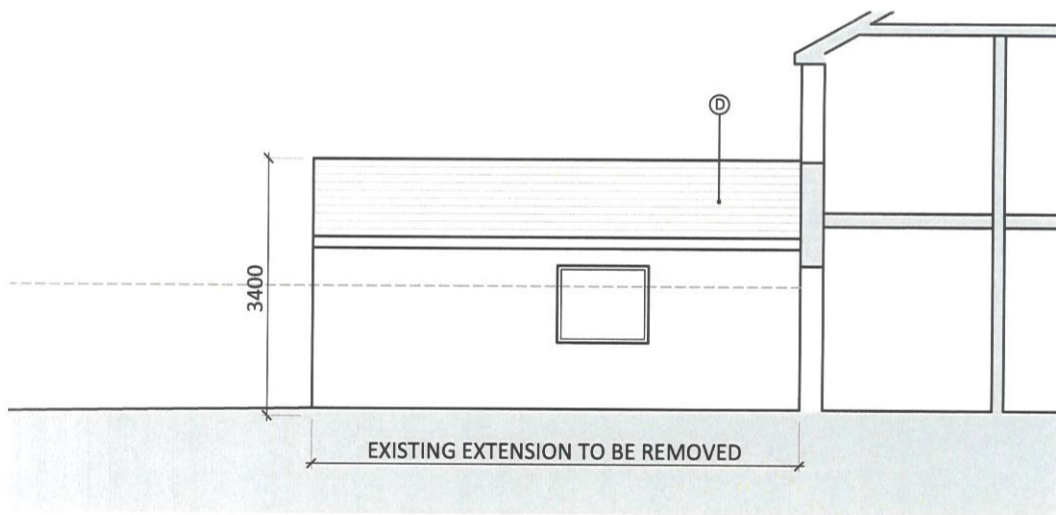
Scale @ A3: 1:100
 Date Printed: 26.03.2023



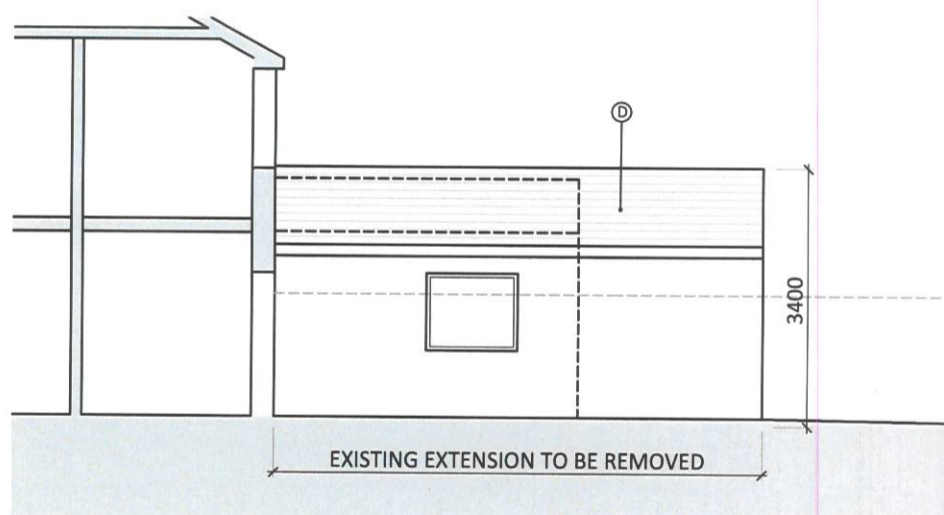
EXISTING SOUTH WEST FACING ELEVATION



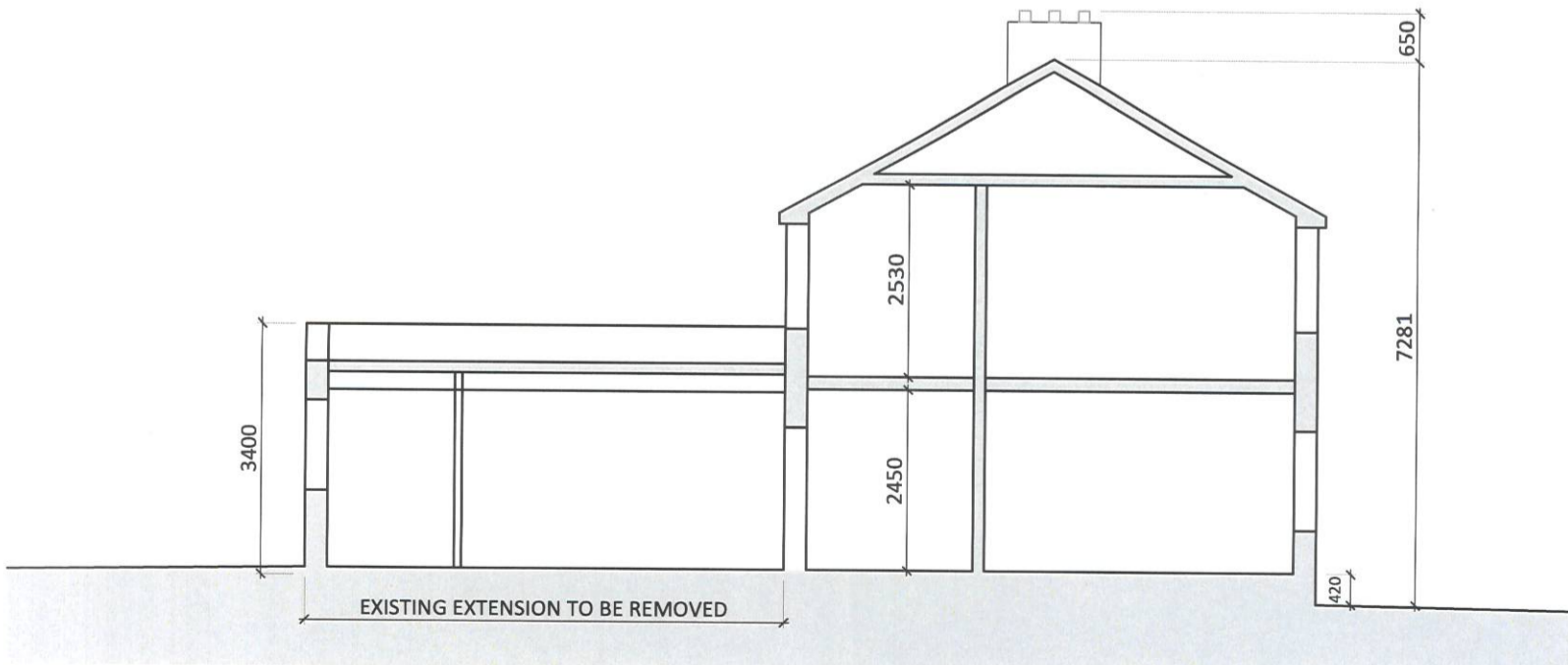
EXISTING NORTH EAST FACING ELEVATION



EXISTING NORTH WEST FACING ELEVATION



EXISTING SOUTH EAST FACING ELEVATION



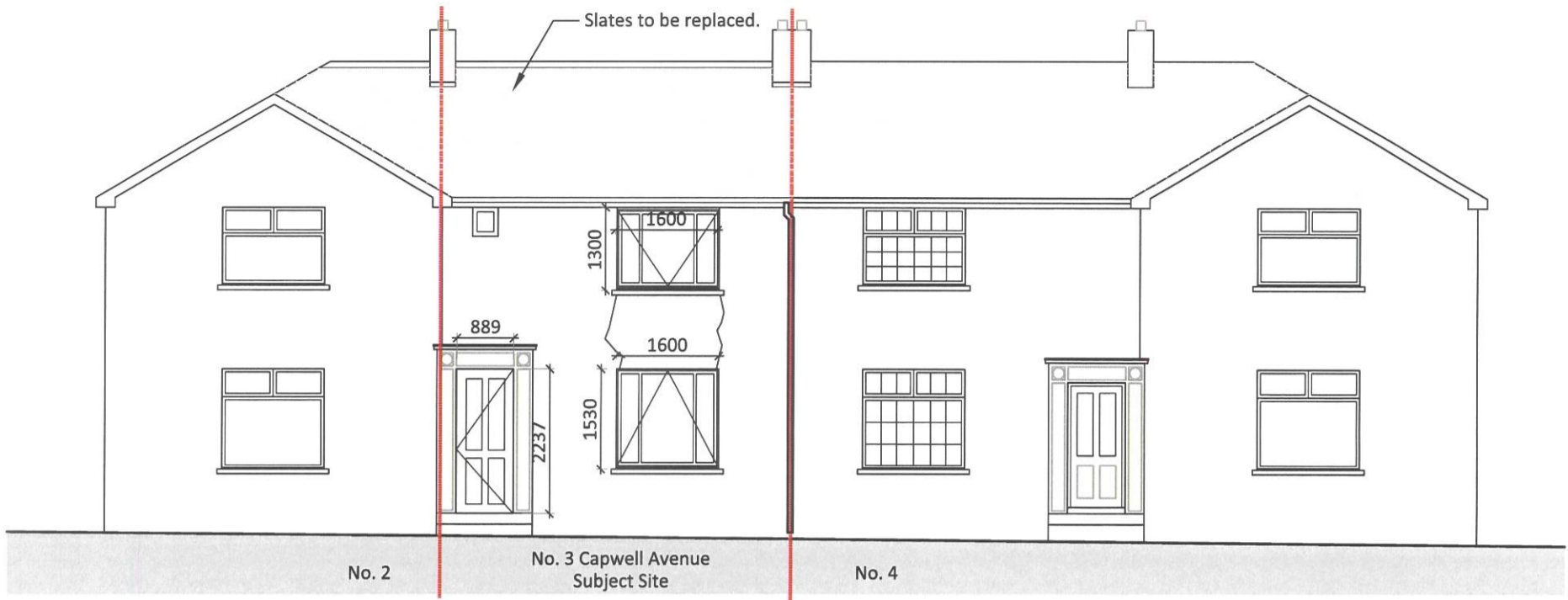
EXISTING SECTION

- Key - Existing Elevations & Sections
- A. Existing unpainted pebble dash render
 - B. Slate roof
 - C. White PVC Windows
 - D. Concrete roof tiles
- Note: Existing front fence / hedge not shown in elevation for clarity - refer to plans

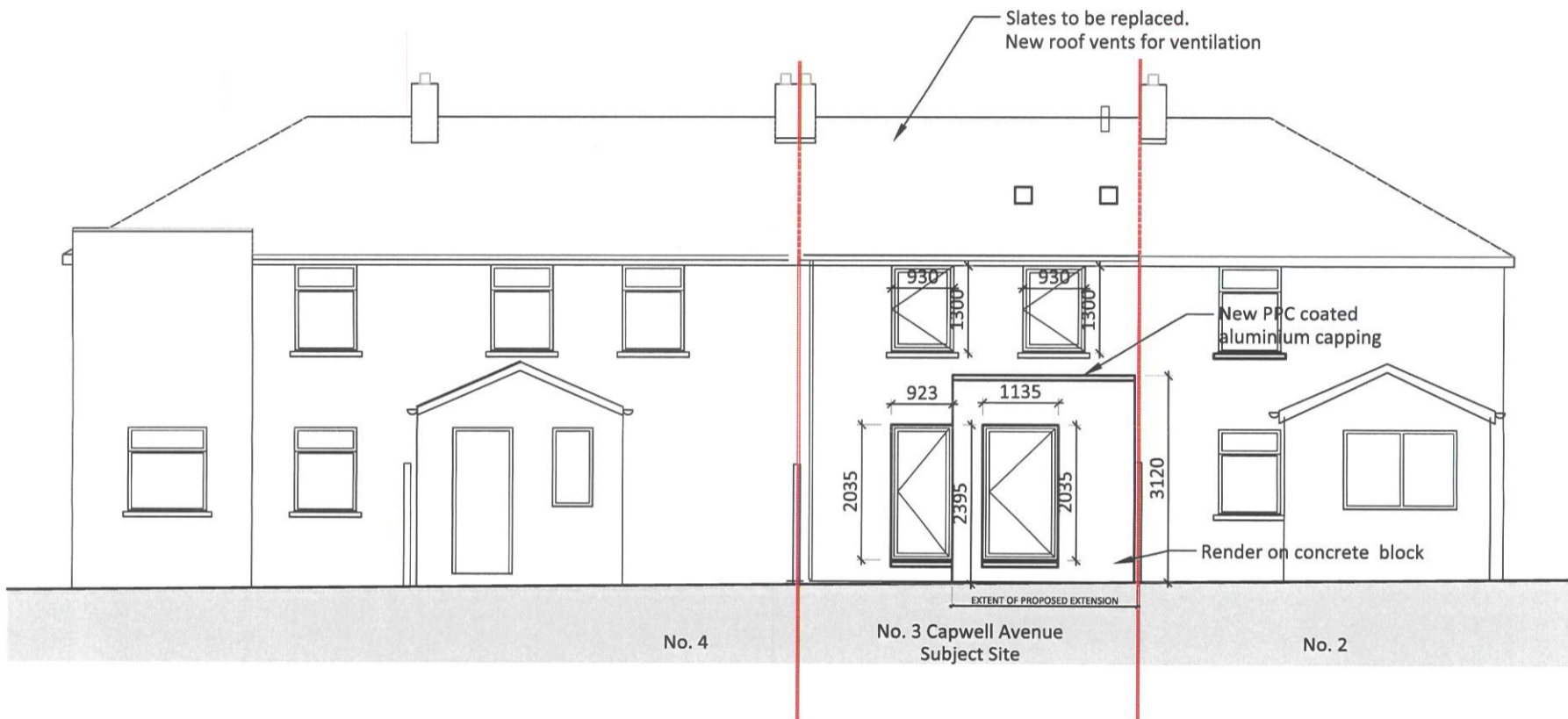
Revision Description	Date	Rev. No.	Issued by
Issue for neighbour consult.	05.05.2022	P01	CC
Planning Issue	25.05.2022	C01	CC

Project: Proposed Extension
 Location: 3 Capwell Avenue
 Drawing Title: Existing Elevations & Sections
 Drawing No.: EX-2000

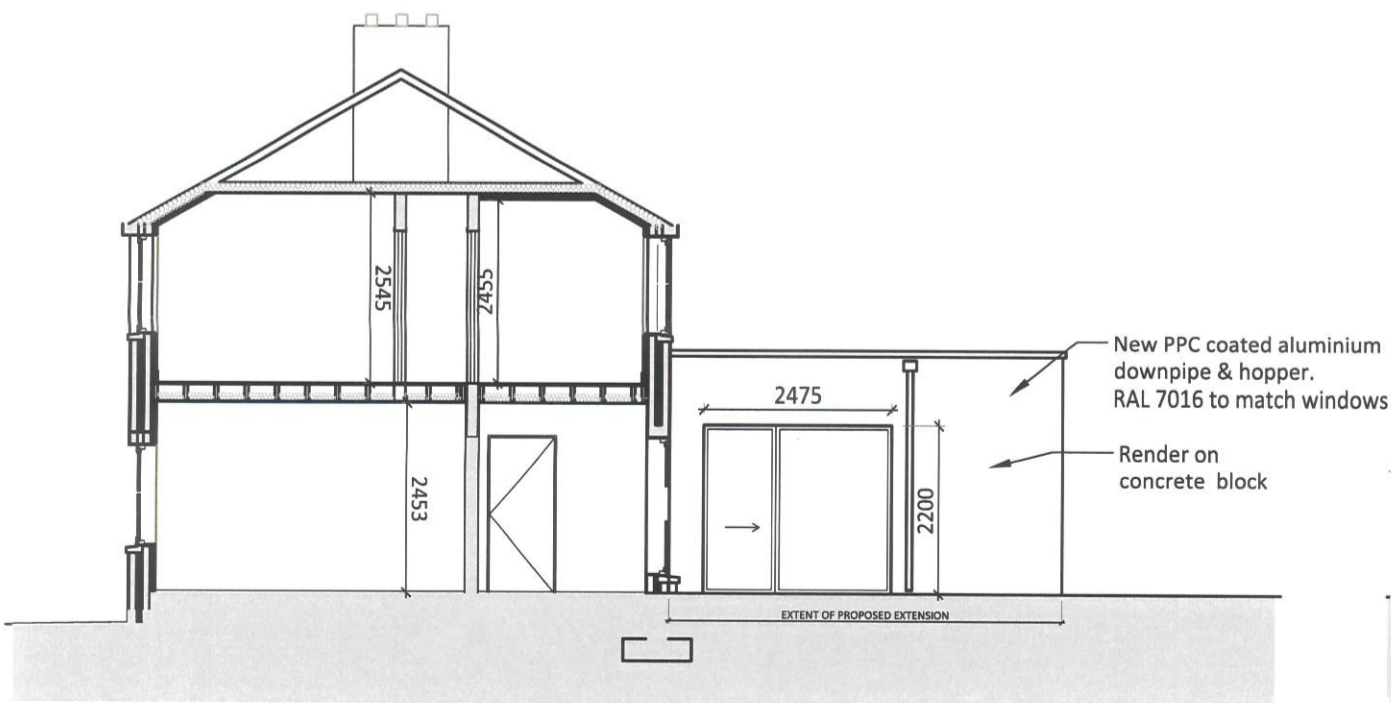
Chris Collins MRAI
 3 Capwell Avenue - Cork - T12 H9Y1
 Current Rev.: C01
 Purpose: PLANNING
 Scale @ A3: 1:100
 Date Printed: 25.05.2022



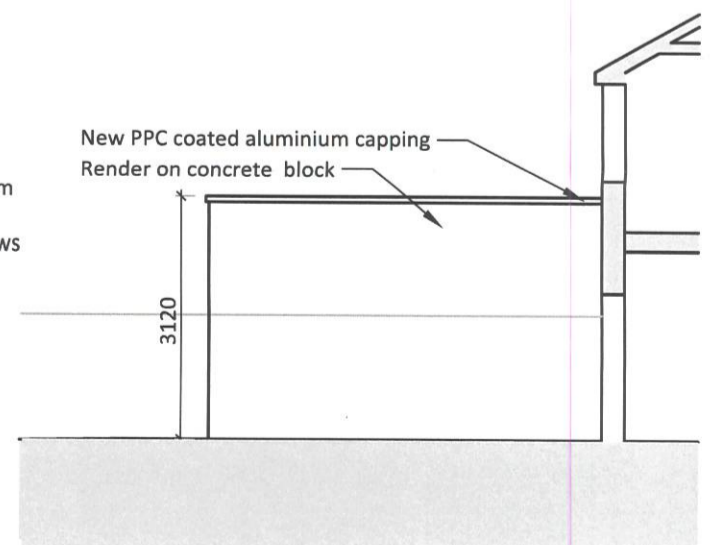
PROPOSED SOUTH WEST FACING ELEVATION



PROPOSED NORTH EAST FACING ELEVATION



PROPOSED SOUTH EAST FACING SECTIONAL ELEVATION



PROPOSED NORTH WEST FACING ELEVATION

Revision Description	Date	Rev. No.	Issued by
Issue for Certificate of Exemption Application	26.03.2023	C01	CC

Project: Proposed Extension
 Location: 3 Capwell Avenue
 Drawing Title: Proposed Front and Rear Elevations
 Drawing No.: PR-COE-2000
 Current Rev.: C01
 Purpose: COE_APPLICATION
 Chris Collins MRIAI
 3 Capwell Avenue - Cork - T12 H9Y1
 Scale @ A3: 1:100
 Date Printed: 26.03.2023