



Comhairle Cathrach Chorcaí Cork City Council

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

Brian Twomey



25/10/2024

RE: Section 5 Declaration R880/24 2 Saint Finbarr's Place, Proby's Quay, Cork, T12F2H7

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 02nd October 2024, I wish to advise as follows:

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

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 9 and of the Planning and Development Regulations 2001 (as amended),
- Class 1 and Class 50 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended)

It is considered that *the specific question for which a declaration is sought* **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT** at 2 Saint Finbarr's Place, Proby's Quay, Cork, T12F2H7.

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, 25th October 2024.



We are Cork.

Is mise le meas,

David Foley

David Foley

Development Management Section

Community, Culture and Placemaking Directorate

Cork City Council

PLANNER'S REPORT Ref. R880/24		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>Is the "reconstruction" of a previously existing single storey rear extension development where the residual space in yard is 8.7 sq.m. Total floor area of ground floor proposed rear extension is 3.5 sq.m.</i>	
Location	No. 2 St. Finbarr's Place, Proby's Quay	
Applicant	Brian Twomey	
Date	24/10/2024	
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 Q2 of the application form:

Is the "reconstruction" of a previously existing single storey rear extension development where the residual space in yard is 8.7 sq.m. Total floor area of ground floor proposed rear extension is 3.5 sq.m.

3. Site Description

The property in question is an existing 2 storey mid-terrace dwelling with first floor accommodation over a ground floor level archway for vehicular access to a rear property (No. 3 St. Finbarr's Place).

4. Planning History

No known planning history.

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.

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*

Schedule 2 Part 1 of the Planning and Development Regulations 2001

Class 1	
<i>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.</i>	<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>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. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p>

6. DEFINITION OF WORKS/DEVELOPMENT

The question "Is the "reconstruction" of a previously existing single storey rear extension development where the residual space in yard is 8.7 sq.m. Total floor area of ground floor proposed rear extension is 3.5 sq.m" informs that the former rear extension has been demolished and the applicant wishes to construct a new single story rear extension of 3.5sq.m. This building is not a protected structure, nor listed on the NIAH, but is located within the designated South Parish Architectural Conservation Area (Sub Area A).

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.'

The question refers to the “re-construction” of a rear extension i.e. its demolition and construction of a new 3.5sq.m single storey extension.

New structural works are being proposed. Thus, the proposal can be defined as works. As a follow on, such works do come under the definition of development. The proposal is therefore “development” as per the definition of the Planning and Development Act 2000 (as amended).

6.2 Exempted development

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

The proposed extension comes under Schedule 2 Part 1, Class1 which states:

“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.

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

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.

The remaining rear yard space is 8.75sq.m which falls far short of the required 25sq.m condition/limitation relating to extensions.

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. ASSESSMENT

The site is zoned as Z05 City Centre. It is located within Flood Zone B. It is not protected nor listed on the NIAH but is located within the South Parish Architectural Conservation Area. The question relates to the reconstruction of a single storey extension in its place. There is one window proposed at ground level and this is approx. 2 m from the boundary it faces which meets the exemption criteria. The site layout and floor plan submitted show there will be a rear yard of 8.75sq.m which is less than the minimum 25sq.m required to be exempt.

9. CONCLUSION

As the proposed extension will leave a rear yard space of 8.75sq.m, the proposed works do not meet the minimum requirements to be exempt under Class 1. It is considered that *the "reconstruction" of a previously existing single storey rear extension development where the residual space in yard is 8.7sq.m. Total floor area of ground floor proposed rear extension is 3.5sq.m.* is development and is not exempted development.

10. 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
- Article 9 and of the Planning and Development Regulations 2001 (as amended),
- Class 1 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended),

It is considered that *the "reconstruction" of a previously existing single storey rear extension development where the residual space in yard is 8.7 sq.m. Total floor area of ground floor proposed rear extension is 3.5 sq.m* **Is Development and is Not Exempted Development.**



Mary Doyle
Executive Planner

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

1. NAME OF PERSON MAKING THE REQUEST

BRIAN TOOMEY

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

2 St. Finbarrs Place, Probys Quay Cork
T12 FZ17

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 reconstruction of a previously existing single story rear extension development or not where the residual space in yard is 8.7m²
Total floor area of ground floor proposed rear extension is 3.5m²

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The property is located within an architectural conservation area and in close proximity to St. Finbarrs Cathedral and Elizabeth Fort.

DEVELOPMENT MANAGEMENT
CDP

02 OCT 2024

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 but one located nearby
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? ☐ No, but previous declaration sought, see N/A
If so please supply details: R828/24

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	Existing 85.46 sqm / Proposed 86.96
(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)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) N/A	Proposed/existing use (please circle) N/A

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 <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: _____

2/10/24



View of laneway



Aerial view of yard from the south looking north



North rear elevation of property



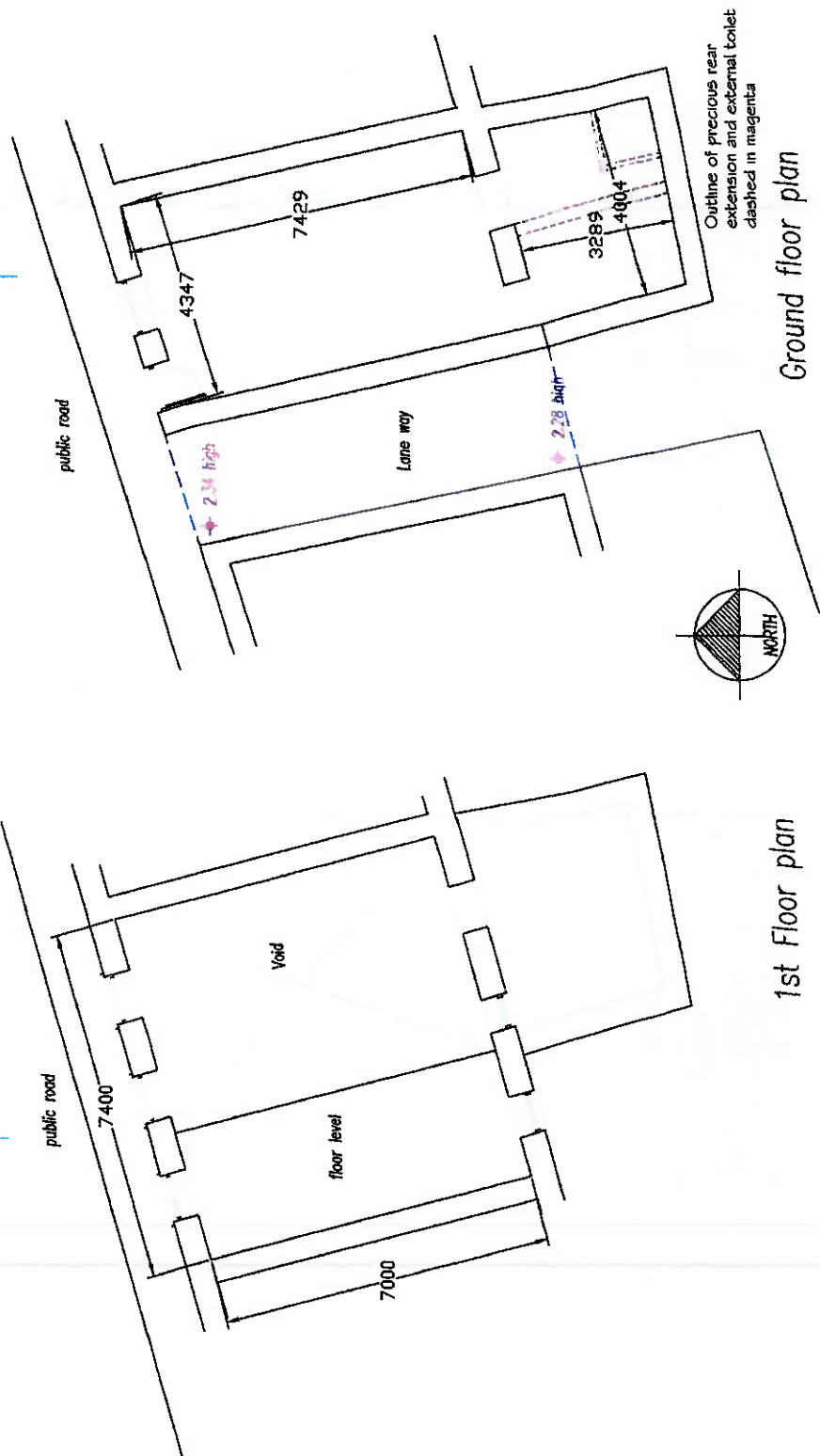
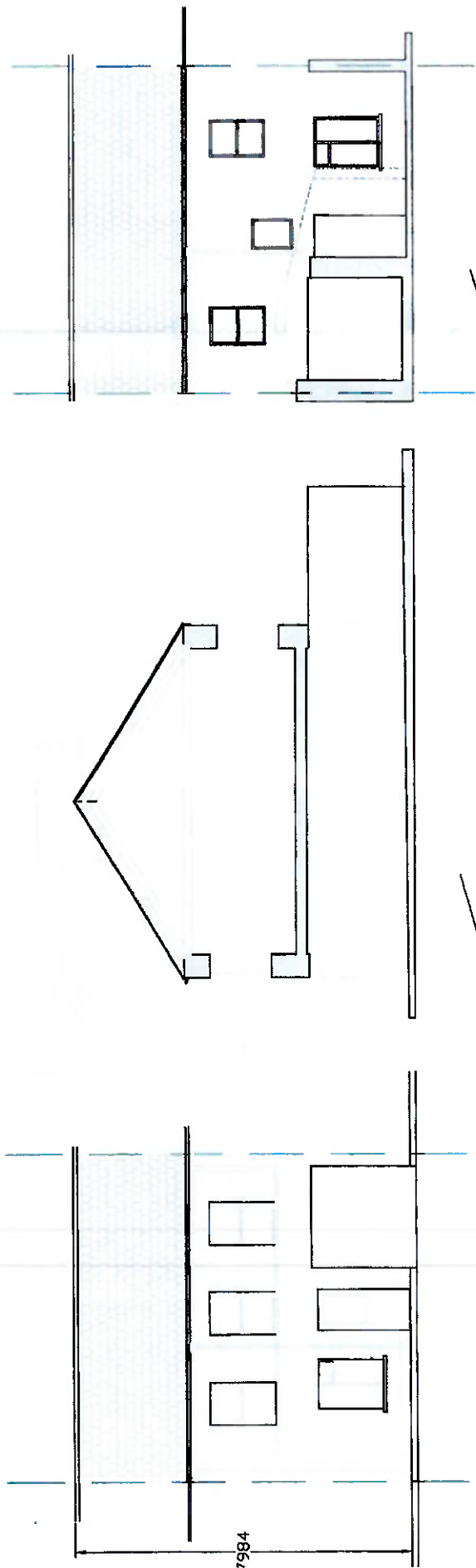
East view of boundary to No 2

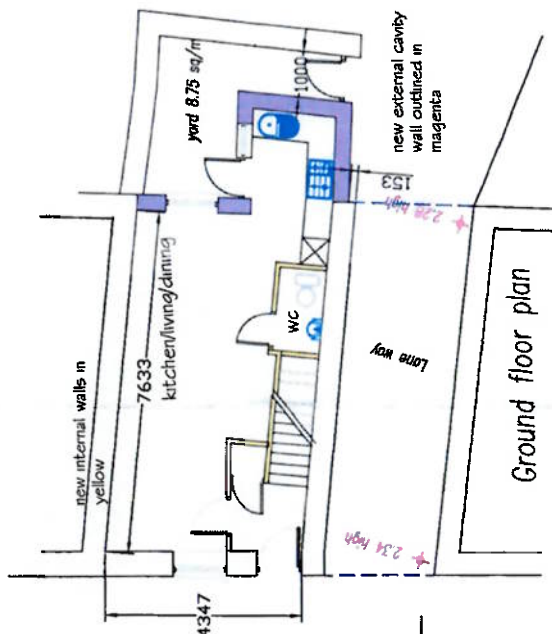


South view of rear yard boundary

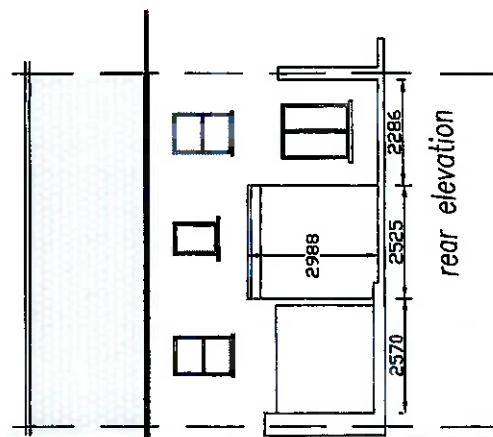


West view to laneway boundary





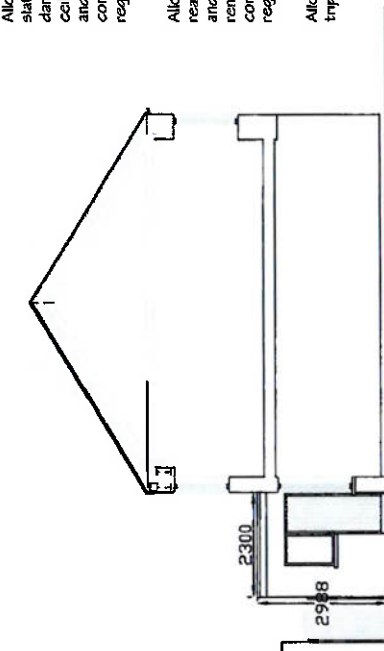
Allow for constructing new single storey rear extension with cavity wall to comply with current regulations. New extension roof to be constructed to suit new proprietary flat roofing system



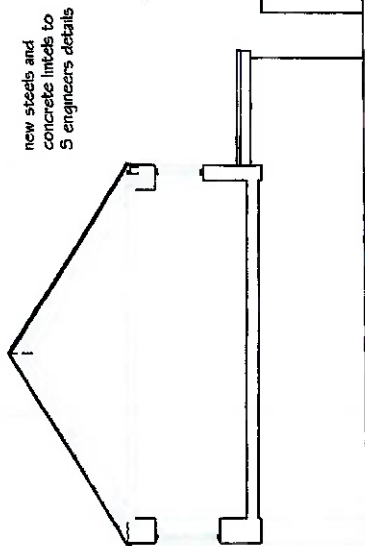
Allow for replacing existing slate roof, replacing damaged and rotten roof and ceiling timbers as required and inserting insulation to comply with current regulations

Allow for replacing existing rear external masonry wall and replacing with new rendered cavity wall to comply with current regulations

Allow for all new selected triple glazed windows



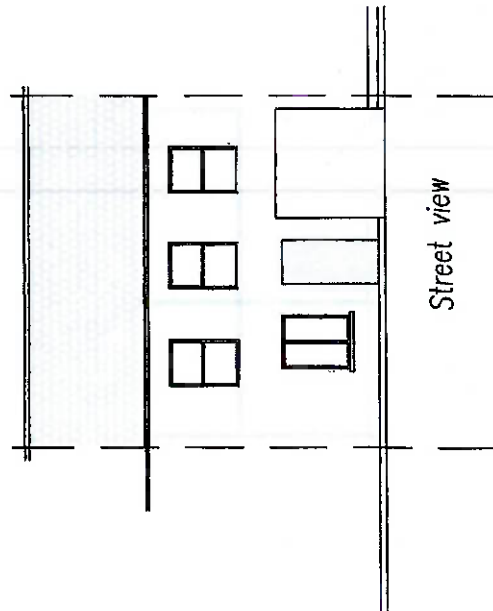
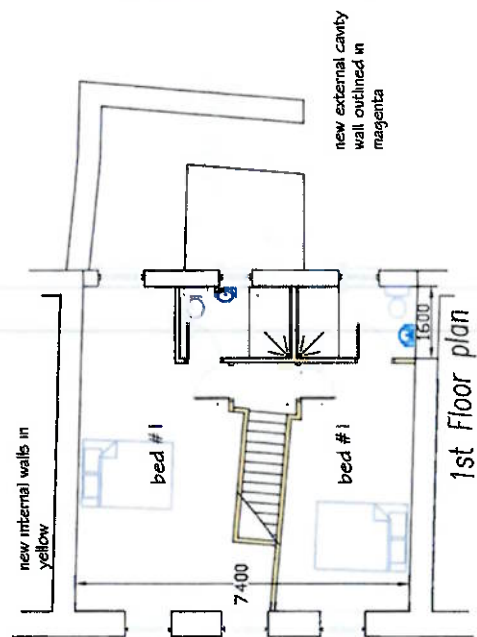
typical section



Allow for replacing existing ground floor and replacing with new insulated concrete slab with radon barrier to comply with current regulations

Allow for new sound proof timber stud partitions, doors, skirtings etc and timber first floor to suit new layout

Allow for removing existing masonry wall to lane way and replace with new insulated cavity wall.





Land Registry Compliant Map

Property in red
adjoining ownership in blue

CENTRE COORDINATES:
ITM 567129.571546

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MAP SHEETS: 6382-14
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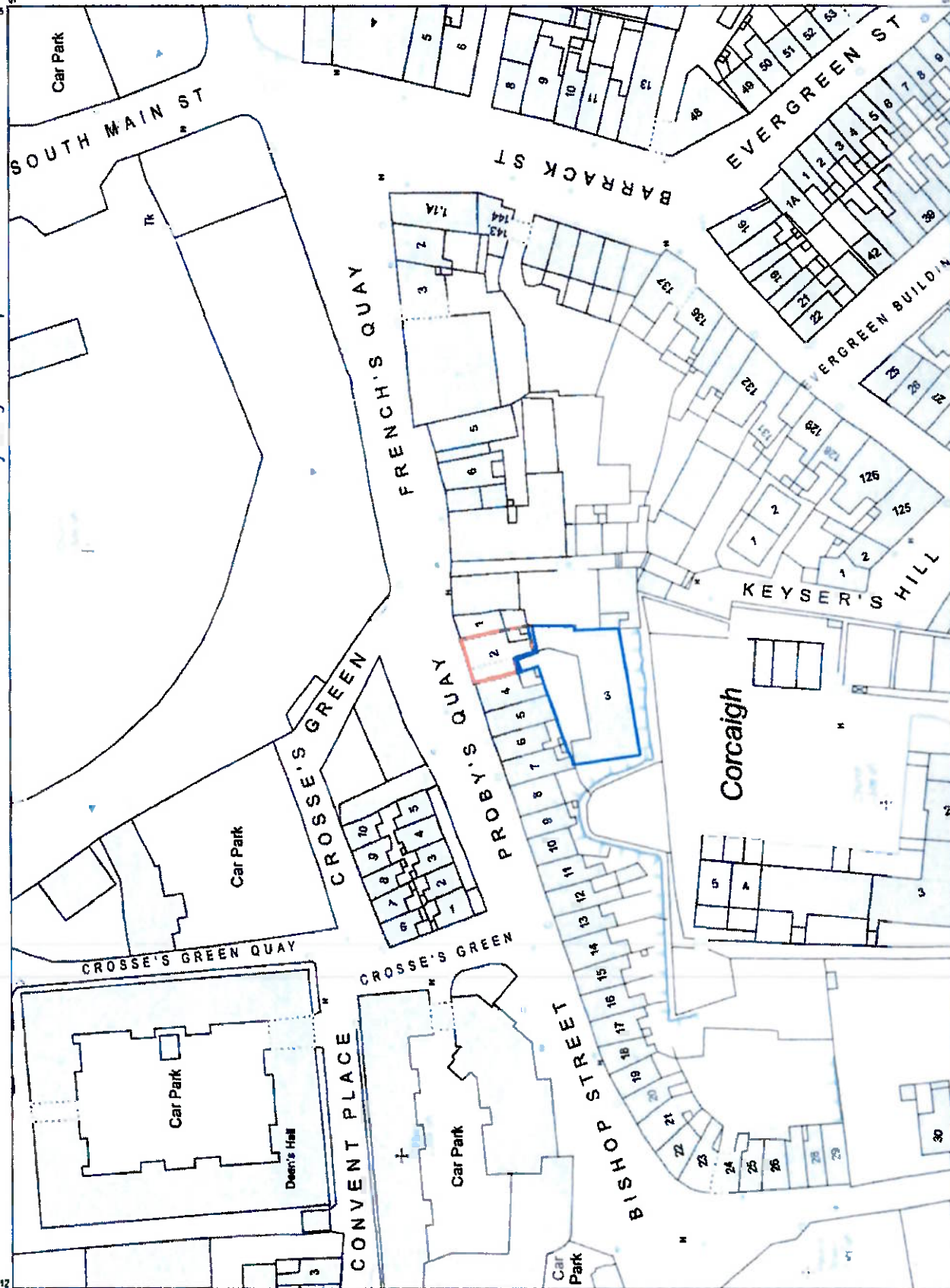
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