



Comhairle Cathrach Chorcaí Cork City Council

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

Diarmuid Shorthall



04/02/2019

RE: Section 5 R497/19 23 Earlwood Estate

Dear Sir/Madam,

I am asked by Mr. Patrick Ledwidge, Director of Services, Strategic Planning & Economic Development to refer to your request for a section 5 Declaration at the above named property.

Having regard to:

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended;
- (b) Section 3(1) of the Planning and Development Act, 2000;
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended;
- (d) Article 6(1) and article 9(1) of the Planning and Development Regulations 2001, as amended; and
- (e) Class 1, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

The proposed development is considered to be development and **not exempted** development.

Yours Faithfully,

Paul Hartnett
Assistant Staff Officer
Strategic Planning & Economic
Development
Cork City Council



We are Cork.

PLANNER'S REPORT Ref. R 497/19	Cork City Council
	Development Management
	Strategic Planning and Economic Development

Application type	Section 5 Declaration
Description	<p>Whether the following works are considered to be development and if so are they exempted development?</p> <p>Is the construction of a rear and side extension for domestic use at the address above exempted development if:</p> <ul style="list-style-type: none"> - The principle side extension for domestic use consists of the conversion of a garage; - A further addition of a 5sqm garage at the front of the converted garage doesn't protrude further than the front of the main house; - The total development (42.8 meters squared) slightly exceeds the 40 sqm allowed.
Location	'Alcantara', 23 Earlswoor Estate, The Lough, Cork
Applicant	Diarmaid Shortall

REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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.¹

¹ In this report 'the Act' refers to the Planning and Development Act 2000 (as amended) and 'the Regulations' refers to the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

THE QUESTION BEFORE THE PLANNING AUTHORITY

Whether the following works are considered to be development and if so are they exempted development?

Is the construction of a rear and side extension for domestic use at the address above exempted development if:

- The principle side extension for domestic use consists of the conversion of a garage;
- A further addition of a 5sqm garage at the front of the converted garage doesn't protrude further than the front of the main house;
- The total development (42.8 meters squared) slightly exceeds the 40 sqm allowed.

SITE LOCATION AND DESCRIPTION

The subject site comprises a two storey semi-detached dwelling house located at 23 Earlwood Estate, The Lough. The property include a garage which is detached to the main dwelling house, but located immediate to the east. The garage is set back from the front building lined.

RELEVANT LEGISLATION AND PLANNING POLICY

Planning and Development Act, 2000, as amended:

Section 2(1) of the Act defined "works" as follows:

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes –

(i) the interior of the structure,

(ii) the land lying within the cartilage of the structure,

(iii) any other structures lying within the cartilage and their interiors, and

(iv) all fixture and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (ii)*.

"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.

"alteration" includes—

(a) *plastering or painting or the removal of plaster or stucco, or*

(b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

Section 3(1) of the Planning and Development Act, 2000, as amended, states as follows:

"Development" in this Act 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 use of any structures or other land.

Section 4(1) The following shall be exempted developments for the purposes of this Act—

(h) 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;

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

Planning and Development Regulations, 2001, as amended:

Article 6(1) provides that 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 mention of that class in the said column 1. Column 1 of Class 1 of Part 1 of Schedule 2 to Article 6 of the aforementioned Regulations, states the following:

*"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." [my emphasis]*

Column 2 of the aforementioned Class sets out the following conditions and limitations:

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

(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 sqm.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 sqm.

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.

(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.

(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.

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

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.

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.

(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.

7. The roof of any extension shall not be used as a balcony or roof garden.

Column 1 of Class 3 of Part 1 of Schedule 2 to Article 6 of the aforementioned Regulations, states the following:

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

Column 2 of the aforementioned Class sets out the following conditions and limitations:

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.

2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.

4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.

5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.

6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

Cork City Development Plan 2015-2021

The subject site is located within an area zoned ZO4 Residential, Local Services and Institutional Uses, where it is an objective of the Council to –

"To protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3."

ENVIRONMENTAL ASSESSMENT

Section 4 (4) of the Planning and Development Act (as amended) sets out that:

"Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required."

Environmental Impact Assessment

Pursuant to Article 103(1) of the Planning and Development regulations 2001 as amended, having regard to the nature and scale of the proposed development and following a preliminary examination of the nature, size and location of the development, it is considered that there is no real likelihood of significant effects on the environment and it is consequently concluded that EIA is not required.

Appropriate Assessment

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

PLANNING ASSESSMENT

Is or is not development

By reference to the definition of "works", as set out in Section 2, Planning and Development Act 2000, includes 'construction' and 'extension', it is clear that the proposed works constitute development.

Is or is not exempted development

The overall question raised by the applicant is whether the construction of a rear and side extension for domestic use at the above address is exempted development, this is based on three individual factors as presented by the applicant. Taking each of the elements of the proposed development as described by the applicant in turn, my assessment is as follows.

- The principle side extension for domestic use consists of the conversion of a garage.

In respect to the conversion of the garage, I note that Class 1 provides for exempted development status to rear extensions or conversions of attached structures to the rear or side of a dwelling. The subject garage, although located to the side of the house, is not attached and therefore Class 1 exempted development is not considered to apply in this instance.

- A further addition of a 5sq. garage at the front of the converted garage doesn't protrude further than the front of the main house.

In respect to the extension of 5sq.m to the garage following conversion, the primary exemption in respect to the extension to a garage would be included under Class 3 of the Planning and Development Regulations 2001 (as amended). In this regard the overall garage and extension could not exceed 25sq.m to benefit from said exemption. Notwithstanding same, the applicant's specific question relates to an extension to 'the converted garage', within the context of the overall extension to the side and rear of the property. In this regard Class 3 does not apply, and similarly Class 1 does not apply as outlined in respect to the first query addressed above and the third query addressed hereunder.

- The total development (42.8 meters squared) slightly exceeds the 40sqm allows.

The 40sq.m to which the applicant refers is considered to be in respect to Class 1 (2)(a) which states.

"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."

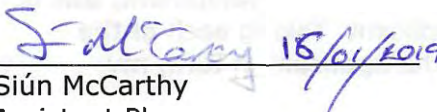
Class 1 in respect to the extension of a house, by construction or erection of an extension relates solely to those located to the rear of the house. In this respect the proposed development is considered not to come within the scope of Class 1 Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), because the proposal is positioned partly to the side projecting beyond the side wall of the house by a distance of 1.2m and a further 2.57m in respect to the proposed garage conversion. On this basis I submit that the proposed development is not exempted development.

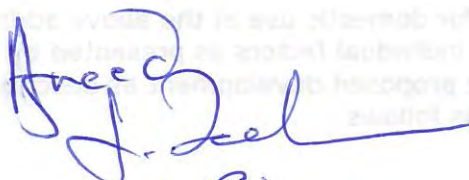
RECOMMENDATION

Having regard to:

- Section 2(1) of the Planning and Development Act, 2000, as amended;
- Section 3(1) of the Planning and Development Act, 2000;
- Section 4(1)(h) of the Planning and Development Act, 2000, as amended;
- Article 6(1) and article 9(1) of the Planning and Development Regulations 2001, as amended; and
- Class 1, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

The proposed development is considered to be development and not exempted development.


Siún McCarthy
Assistant Planner


SEP.
16/1/2019.

APPENDIX 1 – SITE PHOTOS



Image 1 – Front Elevation 23 Earlwood Estate 11.01.2019

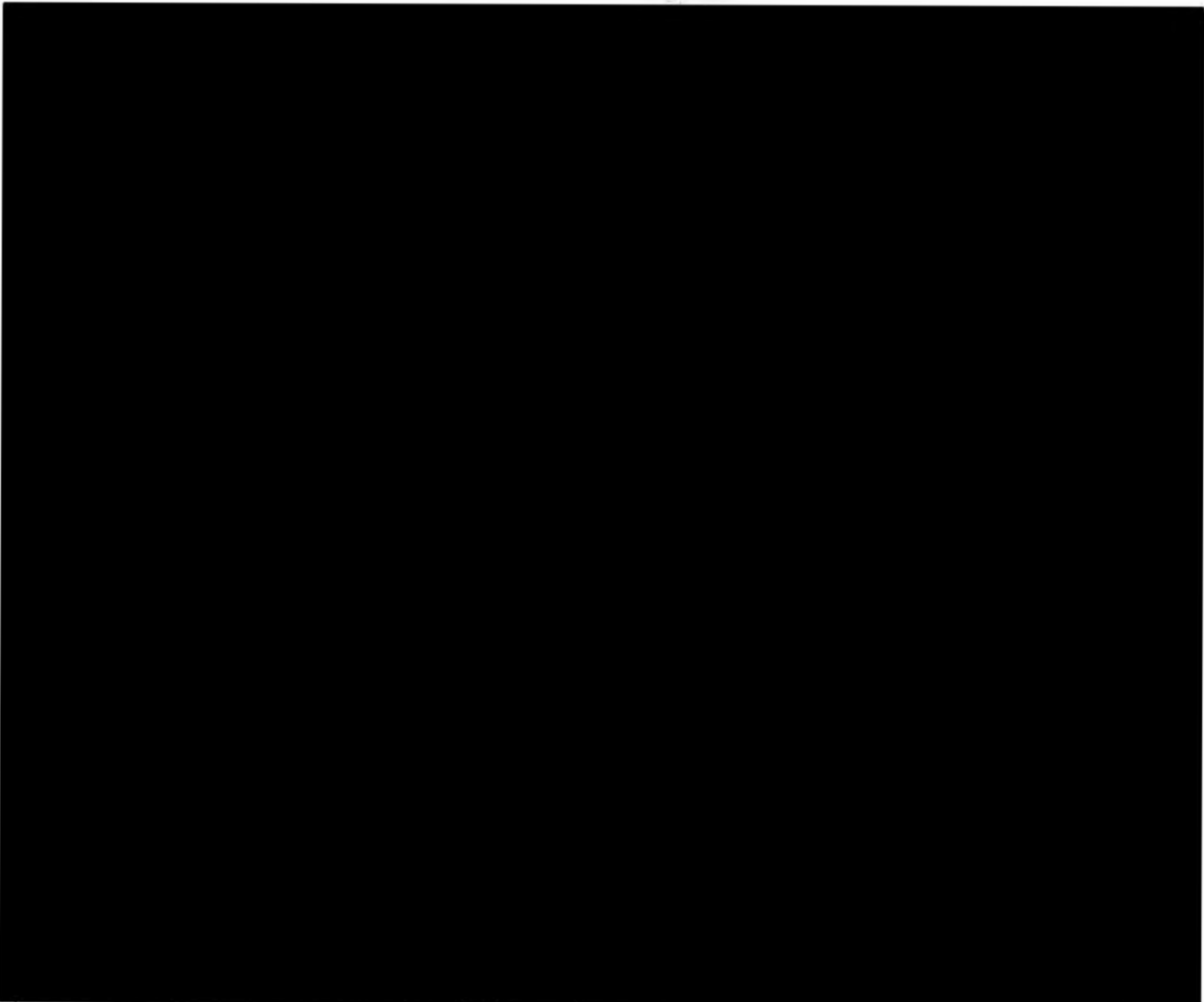


Image 2 – Rear Elevation 23 Earlwood Estate 11.01.2019

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	
(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) 4.5 sq m This will be demolished for proposed extension
(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)
Garage	Play room/Guest room with en-suite



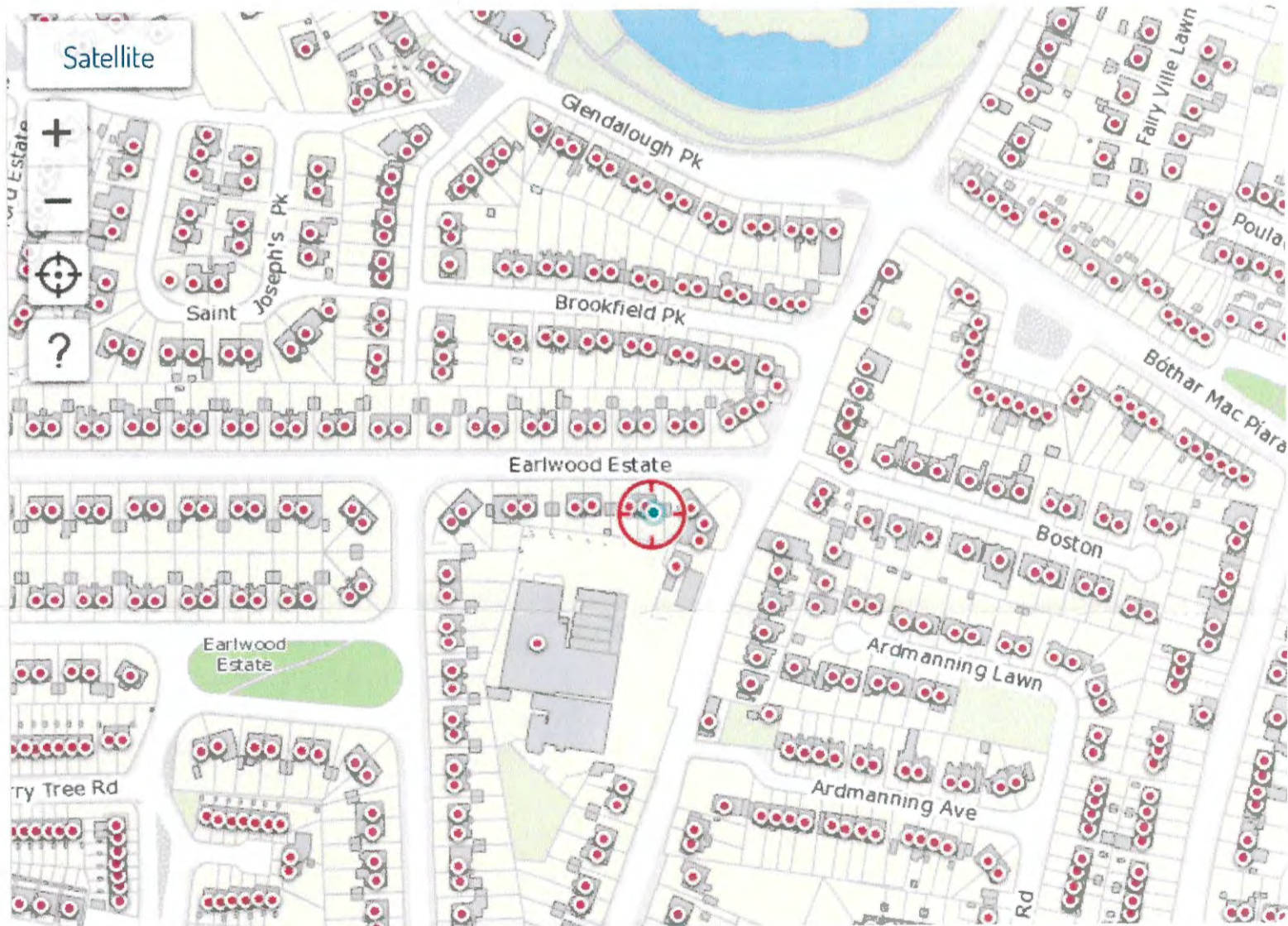
name and address of the owner if available

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

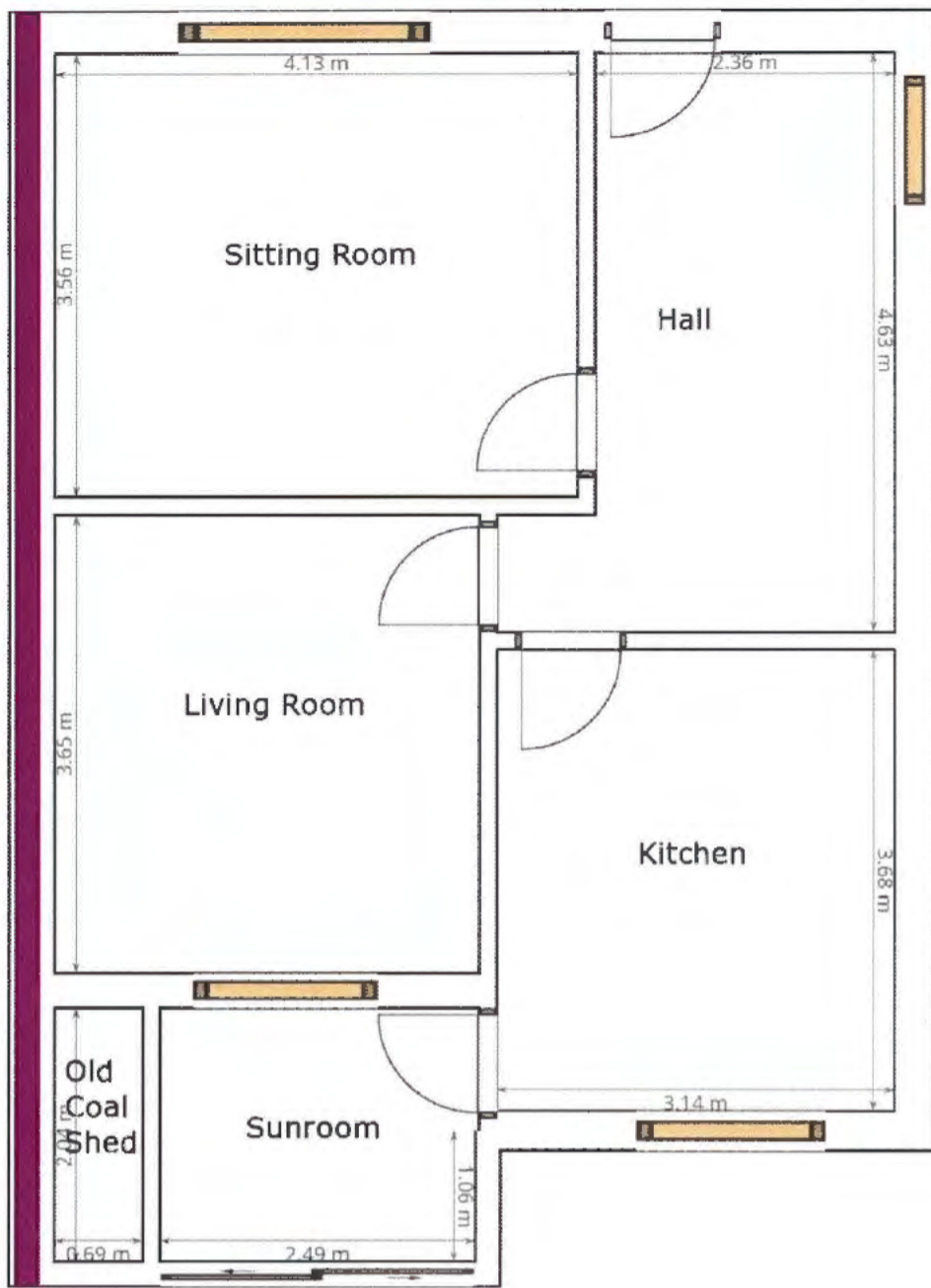


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Site Location

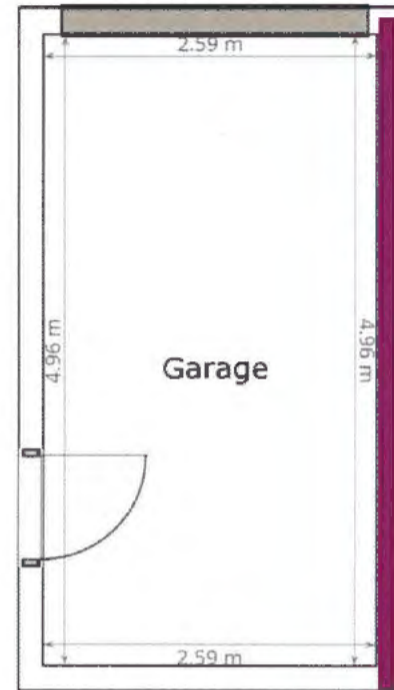


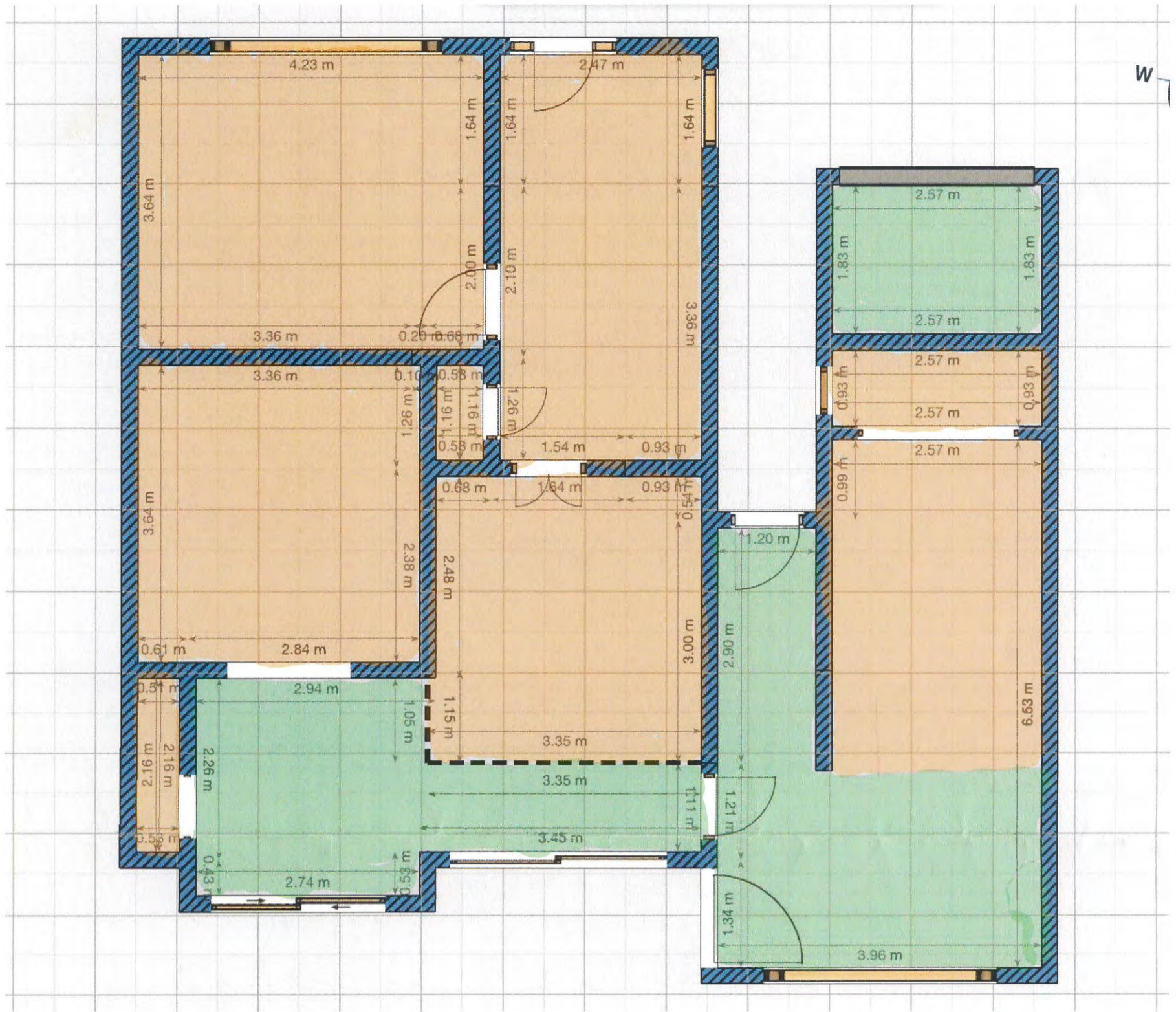
Google maps location: <https://goo.gl/maps/WVsRaN5qQVR2>



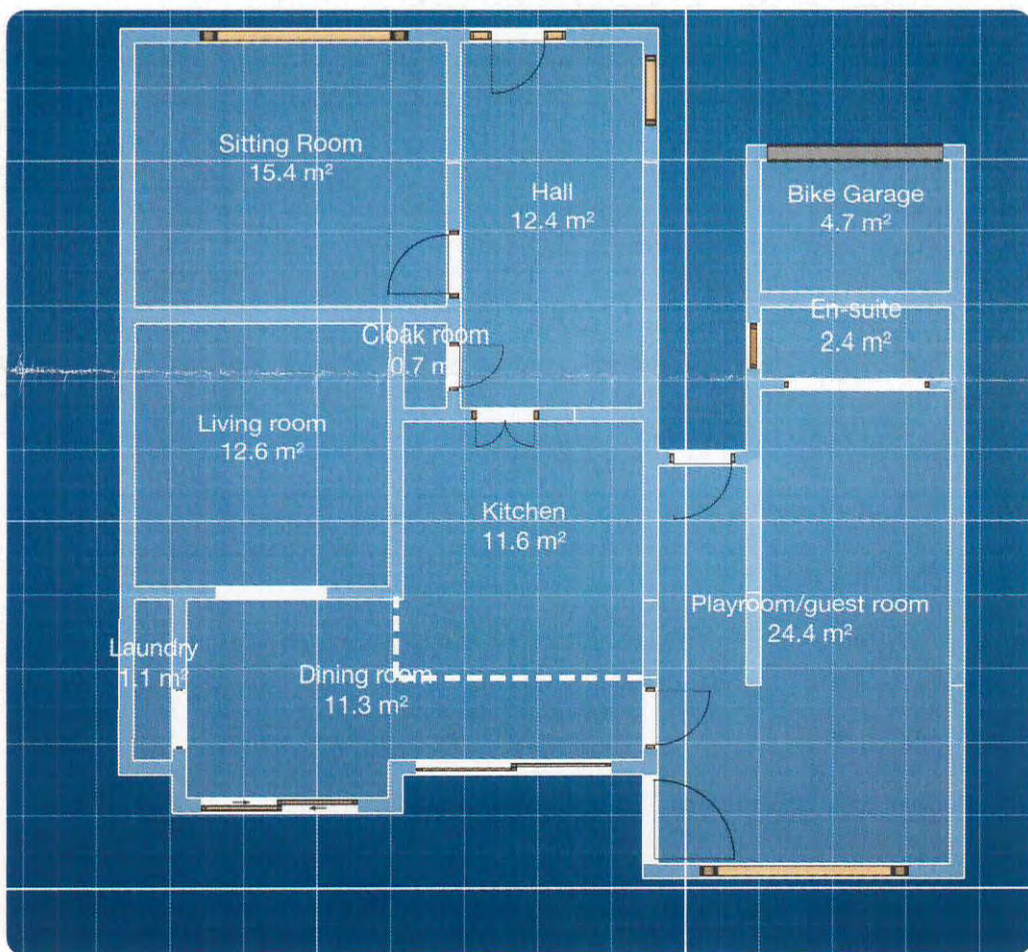
N

- Current House - Ground Floor
- Boundary Wall in Purple
- 3 Bedroomed-Semi Detached
- Built 1958/59
- Sun room is 80's addition
- Downstairs area - 60.1sqm
- Garage area - 12.9 sqm





Proposed Extension

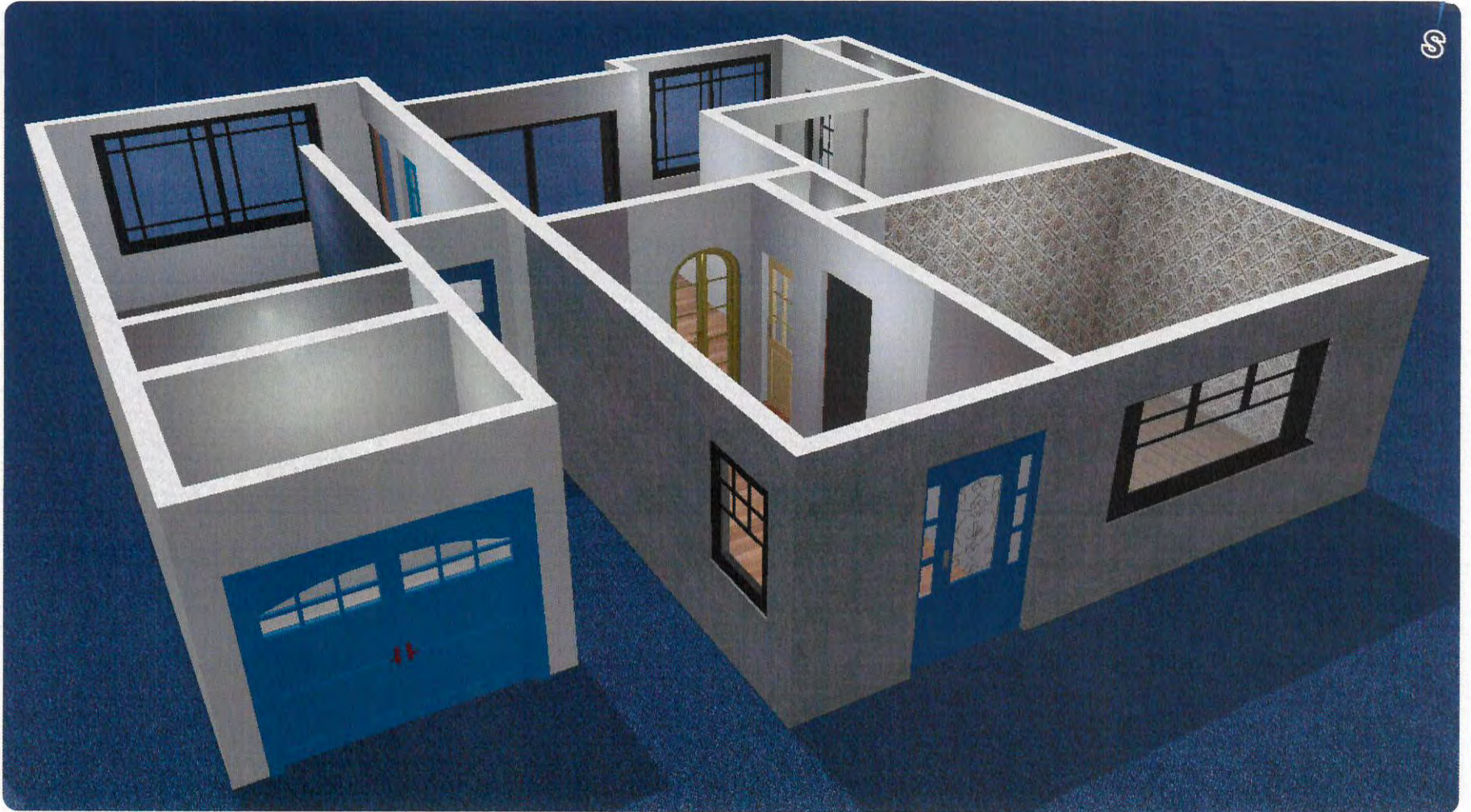


Dining room:	11.3 sqm
Playroom/guest room:	24.4 sqm
En-suite:	2.4 sqm
Bike garage:	4.7 sqm

Total: 42.8 sqm

Total proposed square meter development area includes demolished (current) sunroom and converted garage area.

Front view



Rear View



Roof will either be flat roof or lean-to roof dependent on cost or whichever is preferred by planning department. No skylights or velux windows included in plans.