

Comhairle Cathrach Chorcaí Cork City Council

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

Christine Daly



11/10/2024

RE: Section 5 Declaration R877/24 115 Elm Park, Sarsfield Road,
Wilton, Cork, T12VNP6

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 25th September 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
- Articles 6, and 9 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 115 Elm Park, Sarsfield Road, Wilton, Cork, T12VNP6

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, 11th October 2024.

Is mise le meas,


David Foley

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



We are Cork.

PLANNER'S REPORT Ref. R877 /25		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>See section 2 below</i>	
Location	115 Elm Park, Sarsfield Road, Wilton, T12 VNP6	
Applicant	Christine Daly	
Date	11/10/2024	
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 Q3 of the application form:

I seek a declaration to determine whether converting the grassed area in front of my house at 115 Elm Park into a drive way is exempt from requiring planning permission. The proposed development involves widening the existing footpath to create a driveway, where in time I can safely install an electric vehicle (EV) charger. There is no parking available outside my property and several neighbours have already made their grass areas into driveways, as attached images.

In the 'Additional Details' section the application states:

The proposed works involve converting the grassed area in front of my property into a driveway, carefully designed to ensure it integrates seamlessly with the existing landscape & infrastructure. The existing footpath which currently provides access from the road to the front door would be widened to provide vehicular access.

The primary reason for this development is the lack of available parking within the housing estate, which is a significant inconvenience for residents. The issue is demonstrated in the attached photos and the precedent set by neighbouring houses that have already converted their grassed areas to driveways. The provision of a driveway on my property would help avoid excessive on-street parking, which can restrict vehicle movement & pose safety risks. It will also enable me to install an EV charger. The proposed work seemed to balance practicality & preserve the residential character of the area. The development will be positive addition to the neighbourhood as well as addressing the critical need for parking + safety.

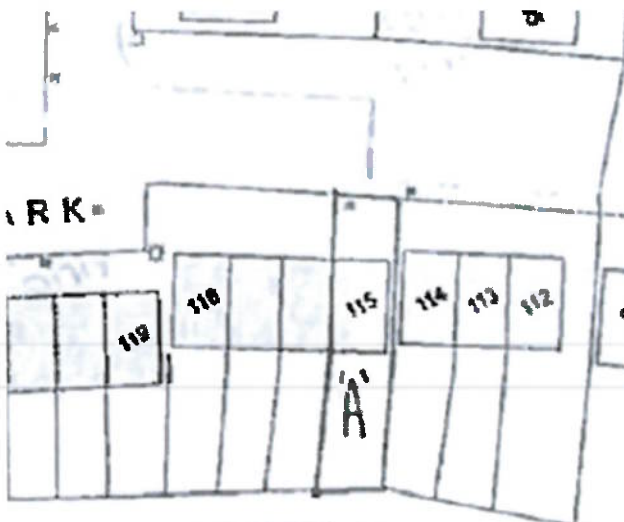
I note that no precise question has been posed in the application. I consider it expedient to summarise the query to read as follows:

Is the construction of a driveway at 115 Elm Park, Sarsfield Road, Wilton. development and, if so, is it exempted development?

I note that the application refers to the future installation of an EV charger. As it does not explicitly form part of the proposal set out in the application it has not been assessed in this report.

3. Site Description

The property in question is an end of terrace two storey dwelling. The front of the house is accessed by a footpath, flanked by grassed / landscaped areas. There is no driveway currently serving the property.



The northern boundary of the property is with both an existing shared carriageway / car parking area, approximately 9 metres in width, and a footpath on the southern side of grassed public open space.

4. Planning History

There is no recent planning history associated with the subject site. Permission was granted under application ref. no. 19/38904 for a new vehicular entrance at 117 Elm Park. A photograph of this development was submitted by the applicant in support to their Section 5 query.

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
CLASS 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone,	<ol style="list-style-type: none"> 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block

blocks with decorative finish, other concrete blocks or mass concrete.	(other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.
<p>CLASS 6</p> <p>(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.</p> <p>(b) Any works within the curtilage of a house for –</p> <p>(i) the provision to the rear of the House of a hard surface for the youth for any purpose incidental to the enjoyment of the house as such, or,</p> <p>(ii) The provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for the purposes incidental to the enjoyment of the house as such.</p>	<p>The level of the ground should not be altered by more than 1 metre above or below the level of the adjoining ground</p> <p>Provided is that the area of the heart surface is less than 25 square meters or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is smaller,</p> <p>or</p> <p>if the area of the hard surface is 25 square meters or greater area comprises more than 50% of the area of the going forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, That's the case may be, it shall be constructed using permeable materials are otherwise allowed for rainwater to soak into the ground.</p>

Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act

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- (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,
(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
(iii) endanger public safety by reason of traffic hazard or obstruction of road users, ...
(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 construction of a driveway requires works and therefore constitutes development.

6.2 Exempted development

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

At the outset it should be noted that the applicant is proposing works, that are likely to require alterations to lands outside of their control, possibly in their neighbours garden and in a public open space / or the associated footpath.

Works in the public road can only be undertaken by the relevant authorities. Any works required in to the adjoining property could negate exempted development provisions, which apply to dwellings and their curtilage only.

Further information regarding whether access / egress would require works to the adjoining property or in the public realm would normally be required to assess this aspect of the proposed development. However, as will be set out below, given that the development proposed is not considered exempted development, I do not recommend that this information is sought.

Class 5 in Schedule 2, as empowered by Article 6 of the Regulations, provides that the following is exempted development, subject to other limitations and conditions:

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

This provision can, in certain instances, be relied upon to allow new vehicular access to be provided for houses. It, however, implies that a gateway will be constructed. There is no existing wall / structure and no walls / gates are proposed as part of creation of this driveway. Accordingly this exemption does not apply to the current proposal.

Regarding the proposed change to the surface Class 6 (b)(ii) in Schedule 2, as empowered by Article 6 of the Regulations, provides that the following is exempted development, subject to other limitations and conditions:

The provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for the purposes incidental to the enjoyment of the house as such.

The conditions and limitations set out in Column 2 state that the hard surface area proposed should be less than 25 square metres or less than 50% of the area of the garden forward of the front building line, whichever is the lesser. If the area is greater than 25 square meters or 50% of the area of the garden forward of the front building line, whichever is the lesser, then the materials should be permeable.

Based on the query posed it is concluded that the area proposed will more than 50% of the area of the garden forward of the front building line. The applicant has not indicated what type of materials are proposed but it implies that the materials, which is stated will follow the precedent set by neighbouring houses, will not be permeable.

Further information regarding the materials proposed would be required to assess this aspect of the proposed development. As will be set out below, given that the development is not considered exempted development, I do not recommend that this information is sought.

The proposal is to create a driveway, where currently there is none. Article 9 of the regulations set out overriding limitations to development that may normally be exempted under Article 6. Part (1)(a)(ii), of Article 9, states that development shall not be exempted development if it would *consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.*

The carrigeway, from which vehicular access will be made, is over 9 metres in width,. This Article 9 overarching limitation makes further discussion mute as collectively the works will materially widen the means of access to a public road that exceeds 4 metres in width.

In summary, the applicant has not demonstrated to the satisfaction of council that the proposed development will not extend outside of their property or that the extent or works or materials proposed accord with Class 6 (b)(ii) in Schedule 2, as empowered by Article 6 of the Regulations. Substantively however, in accordance with Article 9(1)(a)(ii), as the proposal would provide access to a carriageway of over 4 metres in width, any exemptions under Article 6 do not apply.

To conclude the proposed work are development and are 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 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 following, re-worded, question has been asked:

Is the construction of a driveway at 115 Elm Park, Sarsfield Road, Wilton, development and, if so, is it exempted development?

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed construction of a driveway is development and is not 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, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that the construction of a driveway at 115 Elm Park, Sarsfield Road, Wilton is development and is not exempted development.



Martina Foley
Acting Senior Executive Planner

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Strategic Planning & Economic Development Directorate,
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Fón/Tel: 021-4974564/4321

Lionra/Web: www.corkcity.ie

DEVELOPMENT MANAGEMENT
CCP

25 SEP 2024

CORK CITY COUNCIL

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

115 ELM PARK, SARRSFIELD ROAD, WILTON, CORK, T12 VN P6.

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.

I seek a declaration to determine whether converting the grassed area in front of my house at 115 Elm Park into a drive way is exempt from requiring planning permission. The proposed development involves widening the existing footpath to create a driveway, where in time I can safely install an electric vehicle (EV) charger. There is no parking available outside my property and several neighbours have already made their grass areas into driveways as attached images.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).


The proposed works involve converting the grassed area in front of my property into a driveway, carefully designed to ensure it integrates seamlessly with the existing landscape & infrastructure. The existing footpath which currently provides access from the road to the front door will be widened to provide vehicular access. The primary reason for this development is the lack of available parking within the housing estate, which is a significant inconvenience for residents. The issue is demonstrated in the attached photos and the precedent set by neighbouring houses that have already converted their grassed areas to driveways. The provision of a driveway on my property would help avoid excessive on-street parking, which can restrict vehicle movement & pose safety risks. It will also enable me to install an EV charger. The proposed works aim to balance practicality & preserve the residential character of the area. The development will be a positive addition to the neighbourhood as well as addressing the critical need for parking & safety.

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	20 foot 4" x 8 foot 4"
(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)
Grass / garden area	Driveway.

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Christine Daly
Applicants Address		
Person/Agent acting on behalf of the Applicant (if any):	Name:	N/A
	Address:	
	Telephone:	
	Fax:	
	E-mail address:	
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

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
Where legal interest is 'Other', please state your interest in the land/structure in question	N/A	
If you are not the legal owner, please state the name and address of the owner if available	N/A	

6.1 / We confirm that the information contained in the application is true and accurate:

Signature: _____

Date: 23-09-2024

.....

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

Land Registry Compliant Map



Tailte
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CENTRE
COORDINATES:
ITM 585351,568869

PUBLISHED: 12/04/2024 ORDER NO.: 50364140_1

MAP SERIES: 1,000 8427-07
1:2,500 8427-A

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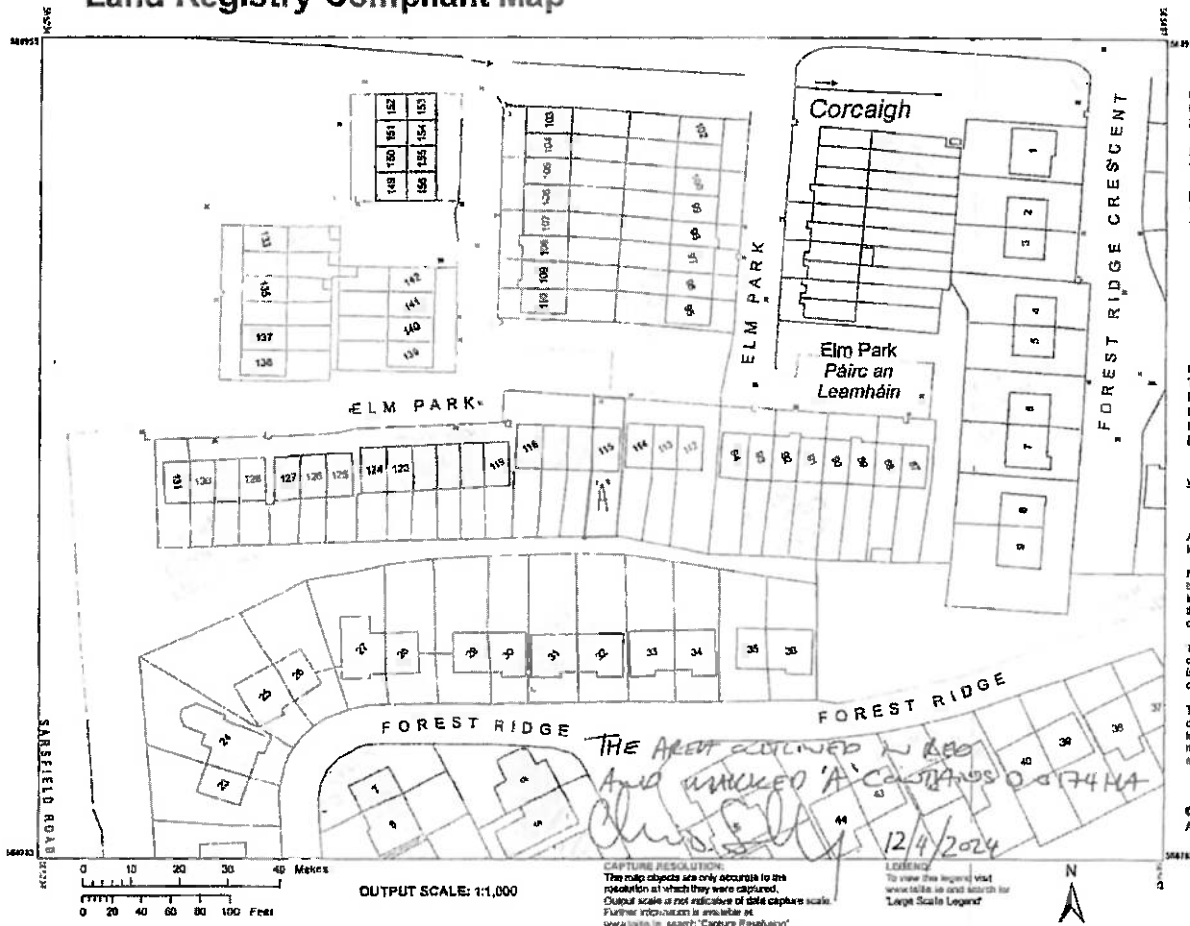
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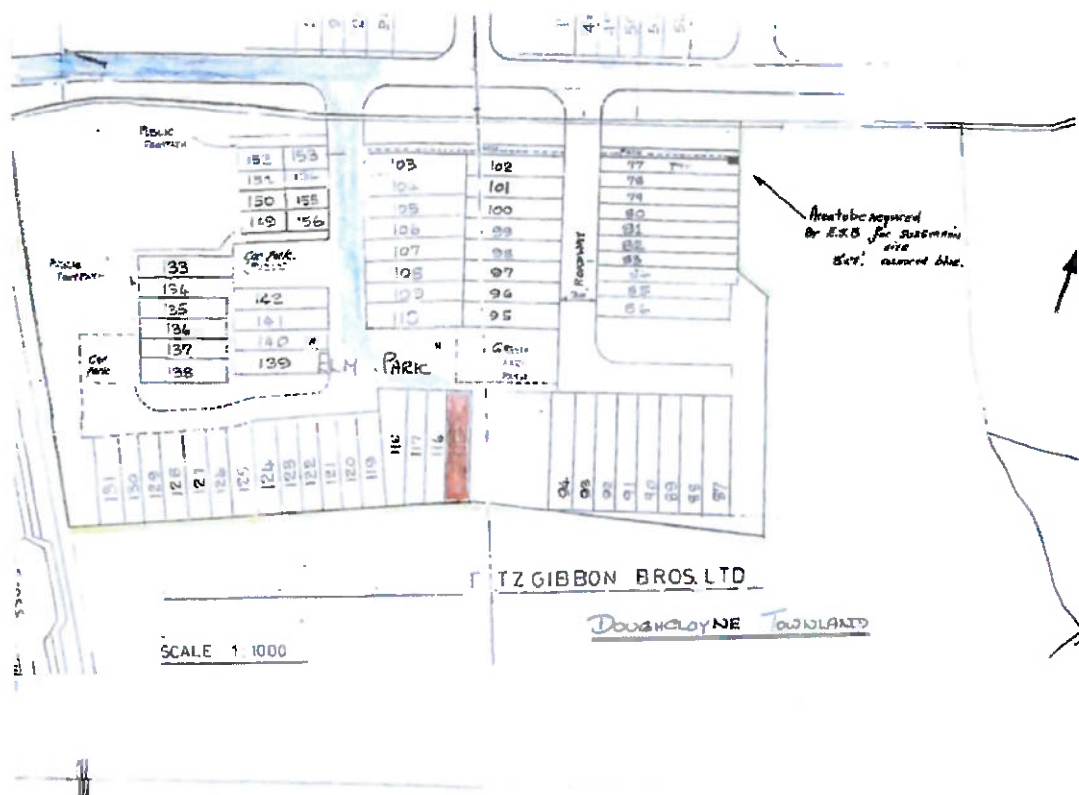
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Proposed Area.







