



Comhairle Cathrach Chorcaí Cork City Council

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

Denis and Bridget Collins
Farm Business Advisors Ltd.
c/o Martin Hurley
Lispatrick Upper
Old Head
Kinsale
Co.Cork

08/11/2024

**RE: Section 5 Declaration R886-24 5 Rosenheim, Magazine Road,
Cork T12VOC1**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 17th October 2024, I wish to advise as follows:

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

- the particulars received by the Planning Authority on 17/10/2024.
- Sections 2 and 3 of the Planning and Development Act, 2000 (as amended).
- Classes 1 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 5 Rosenheim, Magazine Road, Cork, T12VOC1.

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, 08th November 2024.

Is mise le meas,


David Foley



We are Cork.

SECTION 5 DECLARATION – PLANNER'S REPORT

File Reference: R 886/24

Description: Is the proposed extension to the rear of the property exempted development under Class 1?

Applicant: Denis and Bridget Collins Farm Business Advisors

Location: 5 Rosenheim, Magazine Road, Cork City

Date: 08/11/2024

SUMMARY OF RECOMMENDATION

Is development; is not exempted development

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 & Description

The residential property is located on the corner of Magazine Road and Highfield West in the southwest suburbs of Cork City. The property is a two storey end of terrace dwelling. The curtilage of the property contains a walled front garden area and walled rear garden area.

Proposed Development

The existing development subject to this Section 5 declaration request asks the following question of the Planning Authority: *Is the proposed extension to the rear of the property exempted development under Class 1?*

The submitted documentation for this Section 5 application is as follows:

- A completed Section 5 declaration application form,
- Cover letter detailing the submitted drawings,
- Site location map (no scale),
- Site Layout map (scale 1:1000),
- Site Layout Plan (scale 1:250),
- Proposed Site Layout Plan Map and Existing Site Layout map (scale 1:100),
- Existing and Proposed Elevation Drawings (scale 1:100).

It is noted from the submitted details of the application that the existing dwelling has a stated floor area of 82 sqm. The floor area of the proposed single storey rear extension is 40sqm.

Land Use Zoning

CORK CITY DEVELOPMENT PLAN 2022-2028

The site is situated in an area zoned **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.

Paragraph ZO 1.1 of the plan states that the provision and protection of residential uses and residential amenity is a central objective of this zoning and that the vision for sustainable residential development in Cork City is one of sustainable residential neighbourhoods where a range of residential accommodation, open space, local services and community facilities are available within easy reach of residents.

Paragraph ZO 1.2 of the plan states that development in this zone should generally respect the character and scale of the neighbourhood in which it is situated.

Paragraph ZO 1.3 of the plan states that *"the primary uses in this zone include residential uses, crèches, schools, home-based economic activity, open space and places of public worship."*

Paragraph ZO 1.7 of the plan states that *"many green areas of open space in residential estates in Cork City are included in this zone. There will be a presumption against development on all open space in residential estates including any green area or public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation or amenity open space, including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes."*

The site is also located in an **Architectural Conservation Area**. In Volume 3 of the City Development Plan, full details of this ACA are set out.

The key objective for new development in ACA's is in Chapter 8 of the City Plan and is as follows:

Objective 8.23 Development in Architectural Conservation Areas

Development in Architectural Conservation Areas should have regard to the following:

- a. Works that impact negatively upon features within the public realm, such as stone setts, cobbles or other historic paving, railings, street furniture, stone kerbing etc. shall not be generally permitted;*
- b. Design and detailing that responds respectfully to the historic environment in a way that contributes new values from our own time. This can be achieved by considering layout, scale, materials and finishes and patterns such as plot divisions in the surrounding area;*
- c. Historic materials and methods of construction should be retained and repaired where this is reasonable, e.g., historic windows and doors, original roof coverings, metal rainwater goods should be retained along with original forms and locations of openings etc;*
- d. Repairs or the addition of new materials should be appropriate and in keeping with the character of the original structures.*

Planning History

E7825 – Planning Enforcement file, closes in 2018.

Relevant Legislation

Planning and Development Act, 2000

Section 3 (1) of the Act defines “*Development*” as, ‘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 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.

The definition of “*Structure*” in Section 2 of the 2000 Act is as follows:

“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 curtilage of the structure

iii. any other structures lying within that curtilage and their interiors, and

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

Planning and Development Regulations 2001 (as amended)

Schedule 2, Part 1 of the above regulations relates to general exempted development.

Classes 1- 8 refer to development within the curtilage of a house.

Specifically, *Class 1* refers to an *extension* of a house and is as follows:

Description of Development	Conditions and Limitations
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</i>	<i>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</i> <i>(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.</i>

the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

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

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.

Environmental Assessments

Sub-threshold EIS

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) 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 EIS is not required to be submitted.

Appropriate Assessment

The subject site is located west of an existing Special Protection area, namely Cork Harbour SPA (Site Code: 004030) and proposed NHA, namely Douglas River Estuary (Site Code: 001046).

The potential for this development to have significant impacts on any Natura 2000 site has been ruled out because it is of a type and scale of development which will not result in any impact on the habitats or species for which the Nature 2000 site is designated.

Planning Assessment

As per definition of "Structure" in Section 2 of the Planning and Development Act, 2000, the proposed extension is a structure.

As per definition of "*development*" in Section 3 (1) of the Planning and Development Act 2000 (as amended), it is considered that the erection of this extension constitutes works, and as such, is '*development*' and that the remaining question therefore is whether it is '*exempted development*'.

Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) relates exempted development.

As noted above, Class 1 refers to the extension of a house. Class 1 sets out 7 conditions and limitations for such extensions as set out above. The following table sets out the assessment of the proposed extension as per the conditions and limitations of Class 1 as set out above:

Conditions and Limitations of Class 1:	Particular of the proposed development:
<i>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</i>	The property has not been extended. While in the application form it is stated that the extension is 40sqm, I note from the submitted documentation that the proposed extension exceeds 50 sqm. -In the Site Layout Plan (Scale 1:250), the extension is 49.5 sqm in area -In the proposed Site Layout Plan (scale 1:100) the extension is 48.9sqm in area -In the proposed elevation drawings (Scale 1:100) the extension is 49sqm in area.

	The floor area of the proposed extension exceeds 40sqm. This condition is not met.
<i>(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.</i>	Not applicable. Proposed development is ground floor only.
<i>(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</i>	Not applicable. Proposed development is ground floor only.
<i>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.</i>	The property has not been previously extended, but the proposed extension exceeds 40sqm in floor area. This condition is not met.
<i>(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.</i>	Not applicable. Proposed development is ground floor only.
<i>(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.</i>	Not applicable. Proposed development is ground floor only.
<i>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</i>	Not applicable. Proposed development is ground floor only.

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.	The height of the rear walls of the proposed extension does not exceed the height of the rear wall of the house. Condition met.
(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.	The height of the walls of the proposed extension does not exceed the height of the side wall of the house. Condition met.
(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.	The height of the highest part of the roof of the proposed extension does not exceed the height of the eaves or parapet of the highest part of the roof of the dwelling. Condition met.
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.	It is stated on the submitted proposed site layout plan (scale 1:100) that there is 43 sqm of remaining "rear yard area" space. This area is a total of the area surrounding the proposed extension. The area to the rear of the new extension is 15.2 sqm. This area does not meet the minimum criteria of 25 sqm to the rear of the house. Condition not met.
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 windows of the proposed extension are located on the west (side elevation) and are 1.1m from the boundary they face. Condition met.
(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.	Not applicable. Proposed development is ground floor only.
(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.	Not applicable. Proposed development is ground floor only.
7. The roof of any extension shall not be used as a balcony or roof garden.	Noted.

Based on the details in the submitted documentation, as the proposed extension exceeds 40sqm in floor area and the remaining garden area to the rear of the house is less than 25 square metres, the proposed development does not meet the Conditions and Limitations of Class 1 and is not exempted development.

Conclusion

Having regard to:

- the particulars received by the Planning Authority on 17/10/2024.
- Sections 2 and 3 of the Planning and Development Act, 2000 (as amended)
- Classes 1 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)

it is considered that,

- rear extension to the existing dwelling is development and is not exempted development.



Gwen Jordan McGee
Senior Executive Planner

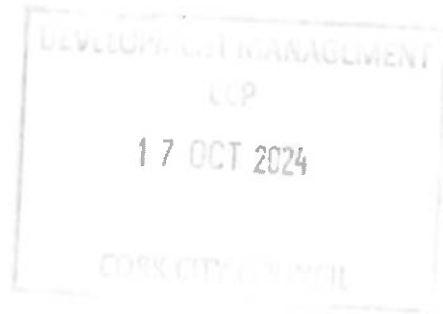
MJH



Martin Hurley, Lispatrick, Old Head, Kinsale, Co. Cork

Mobile:- 086-8055984 E-mail:- mjhdesigns@gmail.com

The Development Management Section,
Community, Culture & Placemaking Directorate,
Cork City Council, City Hall,
Anglesea Street,
Cork.



Denis and Bridget Collins
Farm Business Advisors Ltd,
5 Rosenheim
Magazine Road,
Cork
T12VOC1

30th September 2024

Re- SECTION 5 DECLARATION APPLICATION to existing dwelling house

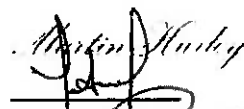
at 5 Rosenheim, Magazine Road, Cork T12VOC1"

Attachments Schedule

1 No Cover Letter
2no Copies of Complete Cork City Council Section 5 Application
2no Copies of Drawings 282-48-DR-001 Rear & Side Elevations
2no Copies of Drawings 282-48-DR-002 Plans and Elevations
2no Copies of Drawings 282-48-DR-003 Site Plans & OS Map
2no Copies of Drawings 282-48-DR-004 Location OS Map
1no €80.00 Fee
2no Copies of Complete Cork City Council Section 5 Application

Should you have any further comments or queries please don't hesitate to contact me at the above number.

Yours Sincerely


Martin Hurley
Bsc (Hons)

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.



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Fón/Tel: 021-4924029

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

Denis and Bridget Collins Farm Business Advisors Ltd

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

5 Rosenheim, Magazine Road, Cork T12VOC1

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question:

Proposed construction of extension to rear of property, 2 Hollyview, Magazine Road, Cork T12PP5F as an exempted development under Class 1

Class 1

- 1 a) Extension will not exceed 40 square meters*
- 1 b) & c) n/a No extension above ground floor level extension*
- 2 a) & b) House has not been extended previously after 1 October 1964*
- 3 c) n/a No extension above ground floor level*
- 4 a) Height of rear extension shall not exceed existing rear wall of house*
- 4 b) Height of rear walls of extension shall not exceed existing side wall of house*

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Class 1 (contd)

- 4 c) Height of the highest point of extension shall not exceed the highest point of the existing house*
- 5 Erection of extension shall not reduce private open space at rear of dwelling to below 25 Sq Mtrs*
- 6 a) Any ground floor windows proposed shall be not be less than 1mtr from the boundary faces.*
- 6 b) n/a No extension above ground floor level*
- 6 c) n/a No extension above ground floor level*
- 7 No balcony included in proposal*

Attached Documents

- OS Maps,
- Plans & Elevation drawings
- €80.00 Fee

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? ☐

6. Was there previous relevant planning application/s on this site? ☒ no

If so please supply details:

n/a

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 = 82m ² / Proposed = 40m ²
(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 ☐ No ☒ no If yes, please provide floor areas. (sq m) n/a
(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

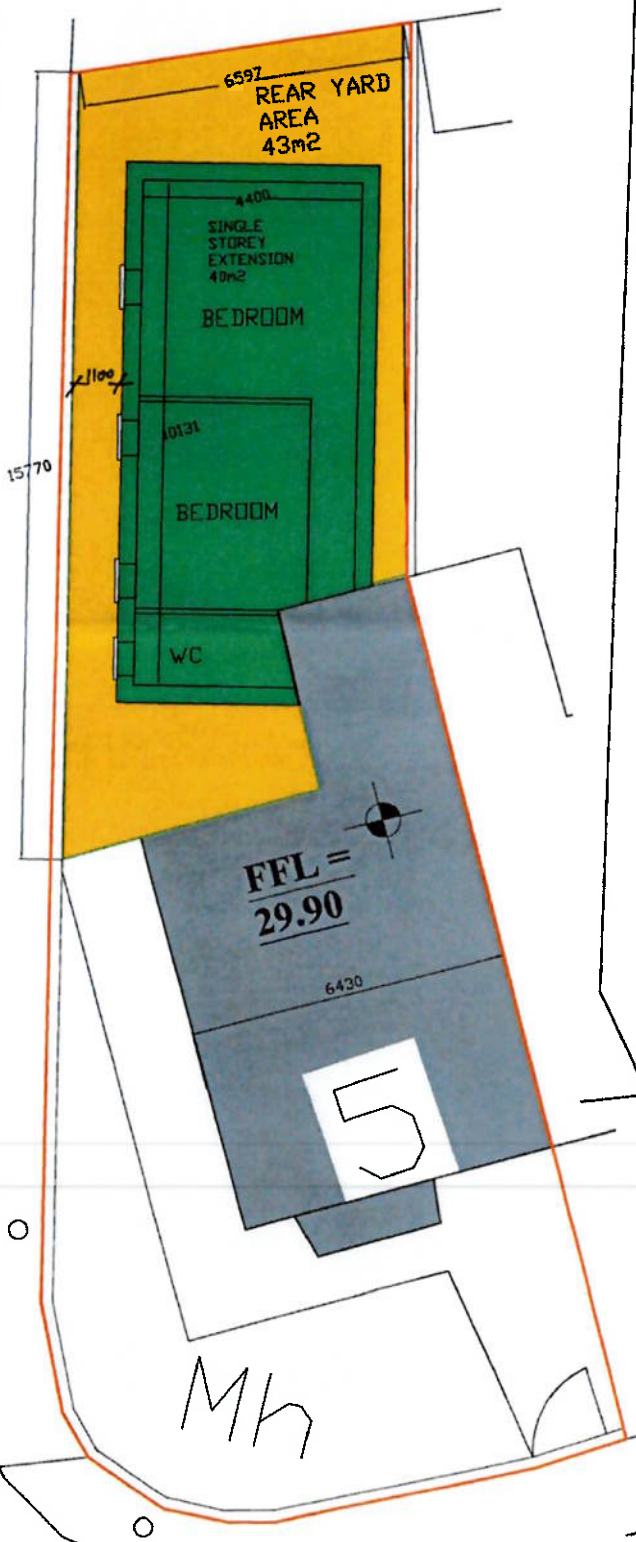
7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	☒ A. Owner	☐ 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 of the owner if available	n/a	

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

Signature: AP

Date: 30 Sept 2024



PROPOSED SITE LAYOUT PLAN 1:100

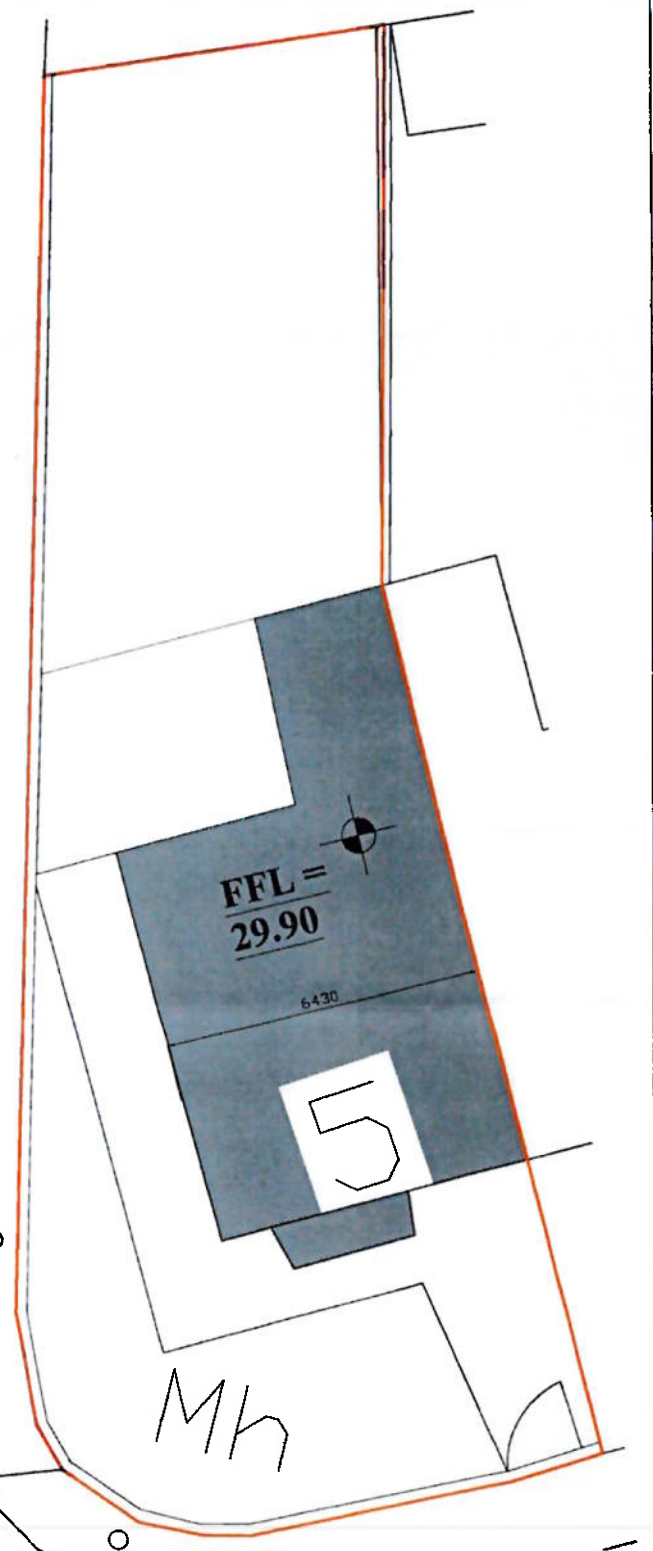
SITE BOUNDARY
AREA = 248m²

NEW PROPOSED

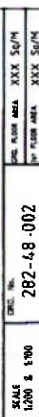
REAR YARD AREA

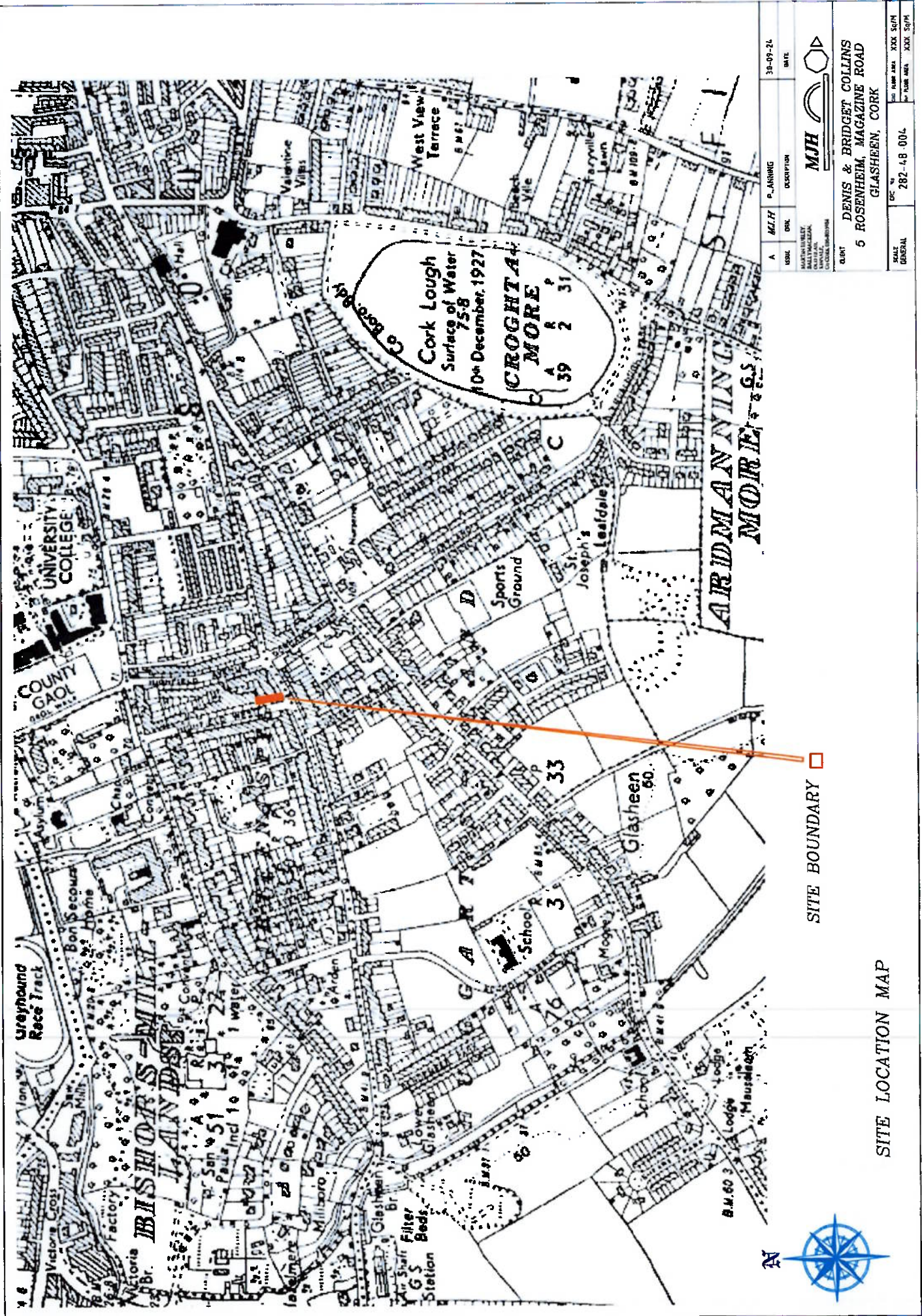


EXISTING SITE LAYOUT PLAN 1:100



A	M.J.H.	PLANNING	30-09-24
ISSUE	DATE	DESCRIPTION	DATE
HANLEY BUILDERS, 10011 VICTORIA ROAD, OLD LEIGH, DUBLIN 15. (01-855-1944)			
MJH  			
CLIENT: DENIS & BRIDGET COLLINS 6 ROSENHEIM, MAGAZINE ROAD GLASHEEN, CORK			
SCALE 1:100	DRG. No. 282 48 001	2D FLOOR AREA XXX Sq/M	3D FLOOR AREA XXX Sq/M





SITE LOCATION MAP

SITE BOUNDARY ☐

A	MLH	P. ANN	DATE
USE	ORL	DESCRIPTION	DATE
CLIENT DENIS & BRIDGET COLLINS 5 ROSENHEIM, MAGAZINE ROAD GLASHEEN, CORK			
SCALE GENERAL 282-48.000			
DATE 30-09-24			