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7 January 2019

An Bord Pleanála
64 Marlborough Street
Dublin 1
DO1 V902

ABP Reference: ABP-303124-18
PA Reg Reference: Ref 11618

Whether Roof lights at Site Adjacent to 24 Ardbrough Road, Dalkey, Co
Dublin is or is not Exempt Development
Site Adjacent to 24 Ardbrough Road

Dear Sirs

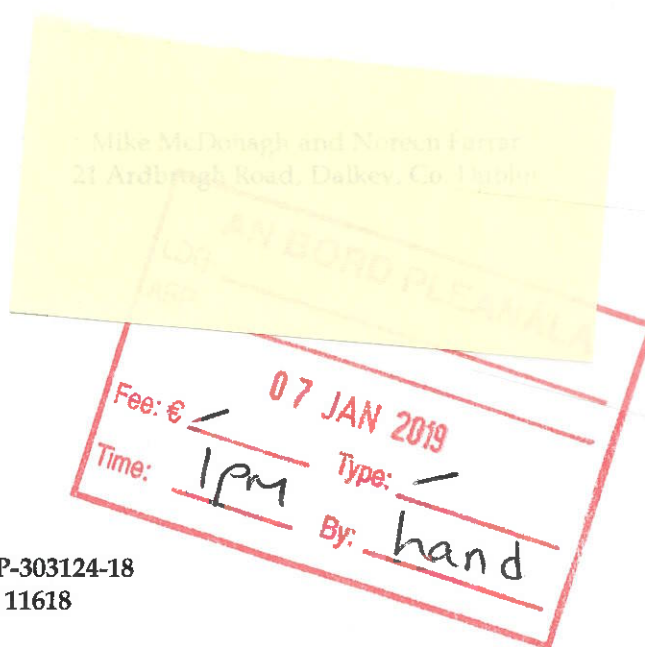
We refer to your letter of 3 December last in relation to the referral made by Mr Daragh Fegan, bearing ABP Reference: ABP-303124-18 (the "Referral"), to the above mentioned determination by Dun Laoghaire Rathdown County Council ("DLRCC"), bearing PA Reg Reference Ref 1168 (the "Determination"), made pursuant to Section 5 of the Planning and Development Acts and to the original referral made by Mr Fegan to DLRCC on 15 October 2018 (the "Original Referral").

Background

We are not "*developers*", but a married couple with two young children seeking to build a modest 1,000 square foot home on the Site. The Site is not an easy site to construct upon and is bordered by the Mr Fegan's Home, Shamrock Cottage, to the rear, which itself is a sub-division of a house, part of which is derelict and the Local Authority has erected steel girders on the Site to support the derelict cottage.

During the course of the construction of our house we had some interaction with Mr Fegan and his wife in relation to the carrying out of the construction. Early on in the construction, once our contractor took delivery of steel and laid out block work of our house, Mr Fegan pointed out that if we constructed as proposed that we would block the north facing window of Shamrock Cottage. We immediately took steps to remedy this, redesigned an element of the house to ensure that this did not occur and agreed a position for the location of our gable wall with Mr Fegan and his wife, though this is now disputed by Mr Fegan.

Mr Fegan then, we subsequently discovered, spent a considerable amount of time making complaints to DLRCC Planning Enforcement that we were carrying out the construction of our house in breach of our planning permission(s). Mr Fegan did not approach us in relation to any concerns that he had, but rather engaged solicitors, a planning consultant and surveyor to "monitor and record his concerns". As the house was reaching completion he had his solicitors write to us threatening proceedings. We sought a meeting on the Site to discuss their concerns which they rejected and, in the week before Christmas 2017, Mr Fegan caused plenary proceedings to be issued for a myriad of remedies including the removal of our house.



By Hand

We continued on to finalise the construction of the house and as we were making arrangements to move in Mr Fegan, in April 2018, caused Section 160 proceedings to be issued in the High Court seeking various reliefs including the removal of our house. We had to instruct solicitors, Senior and Junior Counsel, a planning consultant and a surveyor to address the allegations made in the proceedings. With mounting costs in highly emotive proceedings, and where reaching agreement was highly unlikely, our solicitors on our instructions issued a "Calderbank Letter" along the lines of the High Court Order, without an admission of any liability. The "Calderbank Letter" placed a costs risk of the Section 160 proceedings with Mr Fegan in certain circumstances, should he have not accepted it. Mr Fegan accepted the Calderbank Letter and Judge Noonan ruled it as a consent order prior to the hearing of the case. The costs have yet to be taxed at a circuit court scale and Mr Fegan's summary of the events and costs are not accurate, as again he unfortunately misstates.

We cannot speculate as to why Mr Fegan accepted the terms of the Calderbank Letter and consented to the High Court Order, rather than to proceed to hearing for reliefs that he sought in the Section 160 Proceedings (which included his application for orders to remove significant parts of our house).

Personal Impact

The personal impact on us has been very significant. We have incurred very significant costs in defending aggressive proceedings, delaying construction works due to the proceedings and earlier complaints made by Mr Fegan to DLRCC. In addition to the stress and costs incurred, we have suffered a significant delay in moving into our new home. We are in the unhappy position of finding ourselves having had to address and dispose of court proceedings from Mr Fegan on the one hand and then to address Mr Fegan's Referral where he has portrayed us, again, in a wildly inaccurate and offensive light. None of this is how we envisaged our first Christmas in our new home.

The Section 5 Submission/The Original Referral

The Section 5 application conflates many issues which are not pertinent to the actual submission itself and, aside from the comments Mr Fegan makes against us personally (which we refute), Mr Fegan has misstated key facts, unfortunately for his own purposes, and have very selectively quoted from Mr Martin Dunbar's affidavit.

The underlying premise of Mr Fegan's Submission is that the roof lights cannot be exempt because, as Mr Fegan puts it:

"The roof lights are sitting on an unauthorised extension and flat roof built in 2017. We can be certain the extension and flat roof are unauthorised because your department refused the developers a grant of permission for a smaller extension and flat roof in D15A/0363."

Fundamentally Mr Fegan is in error on this point. DLRCC has now, on several occasions, expressed its view, having inspected the Site, that the as built house is substantial in compliance with the relevant planning consents D07A/0507 and D15A/0750 and that any deviations are minor and not necessitating a retention application. DLRCC has so inspected the Site on several occasions and Mr Fegan has not produced anything to the contrary, other than a planning report of Mr Kieran O'Malley (that was not used in the proceedings) which we will refer to below.

Mr Fegan then proceeds to list a number of "material deviations" to illustrate "how the developers viewed your department and An Bord Pleanála" in a crude attempt to continue to depict us as wrongdoers. He states that:

"These points cannot be credibly argued against as they have been verified in expert sworn affidavits and many even being admitted to in the in the developer's own expert's sworn affidavits"

Again a misstatement of the detailed exchanges in relation to the Section 160 Proceedings and wholly ignores the detailed enforcement investigations carried out by DLRCC though, for the sake of completeness, we feel compelled to address each:

I. **A misleading Planning Application Filed**

This is factually incorrect and the application was not misleading.

II. **Breach of planning refusal D15A/0363**

This is a refusal and the balcony was not constructed. The development is governed by the permissions granted and not those refused.

III. **Breach of Condition 1 of D15A/0750**

Again Dun Laoghaire Rathdown County Council has determined the development to be in substantial compliance.

IV. **Breach of Condition 2 of D15A/0750**

Again Dun Laoghaire Rathdown County Council has determined the development to be in substantial compliance.

V. **Breach of Condition 3 of D15A/0750**

Again, we had frosted glass in one window which we said to Mr Fegan and his wife that we would change to the High Level window (now closed). The mid window is now frosted.

VI. **Breach of Condition 10 (Note 2) of D15A/0750**

Mr Fegan objected to part of the roof "*over sailing*" the boundary wall and part of his roof which over sails our property, which we cut back during construction to seek to appease him in advance of the two sets of proceedings that he ultimately issued.

VII. **Breach of Condition 10 (Note 3) of D15A/0750**

There is no breach of the condition and again Mr Fegan fails to set out the alleged breach.

VIII. **Breach of Condition 1 of D07A/0507**

The premises are being used as a single dwelling.

IX. **Breach of Condition 12 (Note A DLRCC) of D07A/0507**

This is a repeat of the alleged breach of Condition 10 Note 2 above.

X. **Breach of Condition 12 (Note B DLRCC) of D07A/0507**

This is a repeat of the alleged breach of Condition 10 Note 3 above.

XI. **Breach of Condition 5 Bord Pleanála D07A/0507**

Materials were agreed with the planning authority.

XII Built on Incorrect Location on Site

Again, there is been a minor movement in the location of the house of between 110mm's from the Western Boundary to in total 345mms to the Eastern boundary. Again DLRCC have determined (as have our engineer and planning consultant opined) that the house is in substantial compliance with the relevant planning permissions.

XIII First Floor goes well past Building Line of Shamrock Cottage

Again there is a minor movement in the location of the house of between 110mm's from the Western Boundary to in total 345mms to the Eastern boundary. Again DLRCC have determined (as have our engineer and planning consultant opined) that the house is in substantial compliance with the relevant planning permissions. Early in the construction of our house our contractor agreed the first floor line with Mr Fegan, though he now refutes that such agreement was reached.

XIV 2 X Unauthorised Windows

There are two windows that face onto a solid granite wall at the rear of the house and again DLRCC Enforcement has viewed these as not requiring a retention application.

XV 3 x Unauthorised Roof Lights

This is the subject of the Original Referral and the Referral.

XVI Developers have "no problem" turning the Semi-Detached Development into a Detached Dwelling at the great expense of Shamrock Cottage

This is misleading. In accordance with the planning permission, we sought in construction to get as close to the adjoining property Ardrugh House as possible. The planning did not require the houses to be "attached". Due to the old and uneven lateral and horizontal elevation of Ardrugh House, the step back from its boundary wall is between 110mm and 295mm. Again DLRCC confirmed that no retention action is required.

XVI Ignoring Section 34 (13) of the Planning and Development Act 2000 (as amended)

Again this is a repeat of VII and X above.

Mr Fegan, despite the duplication in this list of breaches, has failed to point out how the House is not in substantial compliance. He is merely seeking to create an impression of multiple planning breaches, though fails to address that these have been subject to DLRCC Enforcement inspections that have correctly determined otherwise.

Drawings Submitted

Mr Fegan has furnished a drawing prepared by Mr Val O'Brien seeking to set out in measurement the deviations in measurements in relation to our "as built house". We are surprised that he continues to do so as a considerable amount of doubt was cast on the measurements that Mr O'Brien arrived at (albeit Mr O'Brien had no access to the Site nor requested same) when he prepared the drawing.

We attach a sworn affidavit of Mr Rob Merry (Appendix 1), a chartered surveyor, following an accurate survey of the Site for your reference. A joint inspection of the site was carried out during course of the proceedings though Mr Merry's measurements were not challenged.

Report of Mr O'Malley

The report from Mr O'Malley that Mr Fegan exhibits what appears to be prepared in contemplation of the Section 160 proceedings (separate plenary proceedings had issued at this time), continues to rely on inaccurate measurements set out in Val O'Brien's drawing. To the extent that the entire report is submitted by the Mr Fegan it is done so we submit with the desire to seek to show the house being "unauthorised", though fundamentally not benefitting from an accurate site survey. The report is unchallenged and we refer in response to this, to the extent that it is in any way relevant to the affidavits of Mr Gavin Lawlor and Mr Martin Dunbar, below.

The North Facing Window

What Mr Fegan fails to mention in the submission is that the North Facing Window of his living room does not have the benefit of a planning permission. Our solicitors caused an OSI aerial map to be purchased which shows that in 1996 there was no north facing window evident from the picture. Mr Fegan contends that there were two windows which, following renovation works they created one window in circa 2000. There is no planning permission for building onto the boundary of Shamrock Cottage nor, we are advised, would such development constitute "exempt development". This is more particularly set out in Gavin Lawlor's Supplemental Affidavit in Appendix 5.

Mr Fegan received a warning letter from DLRCC on 30 July 2007 (attached to Mr Gavin Lawlor's affidavit referred to below). His response is not available, though DLRCC subsequently closed the file on 23 August 2007 following a response to say that they understand that the window has been there for some years and no further action would be taken at that time (per the copy attached).

We are advised that the North Facing Window is unauthorised, though immune from further action from the planning authority.

Other Inaccuracies/Omissions of Mr Fegan

The other key misstatements in the submission are:

- (a) The roof light does not look into a bathroom as is incorrectly stated, though without comment appears to have sought to correct in the Referral
- (b) The Drawings submitted by Val O'Brien, proved to be less than accurate (as Val O'Brien when he produced them had no access to the House) and our surveyor Rob Merry (and on a joint inspection of the site for the purpose of the proceedings produced the following drawings which were acknowledged by Mr Fegan's professional team. Despite this, the Mr Fegan seeks to persist in what he knows are inaccurate drawings to seek to exaggerate the extent of minor deviations to seek to argue that the first floor roof is "unauthorised" and accordingly by consequence the roof lights must be also. The Planning Enforcement Officer had the benefit of taking accurate measurements of our house and location on the Site in its totality and hence the closure of the Enforcement Files.
- (c) Mr Fegan seeks to impute some acknowledgement on our part that our House is not in compliance with planning on the basis of their acceptance of the Calderbank letter to dispose of the Section 160 proceedings and we refute this.
- (d) There are no "other reparations" on foot of the court order.

The Decision

The premise of Mr Fegan's submission is that the Roof lights, because (as he submits) are on a roof that is unauthorised, that the roof lights themselves de facto cannot be exempt development. This is an attempt to reopen his complaint to DLRCC Enforcement that the roof (and our house) is

unauthorised development. This has categorically been determined by DLRCC Enforcement not to be the case, and much of Mr Fegan's submission on whether or not the roof is authorised should fail on that basis as having been so determined and being irrelevant to the Section 5 Submission.

Mr Fegan, despite his lengthy submissions has failed to set this out. As far as the House is concerned DLRCC whom have had the opportunity to inspect the property on many occasions (and under the threat of litigation from Mr Fegan) have formed the view that the House is in substantial compliance with planning and that any deviations are minor in nature. A long and confusing submission to seek to "blight" planning compliance is only important for Mr Fegan in the context of the Referral that, in his view, as the entire house is non-compliant, the roof lights must be also.

The Section 5 submission by Mr Fegan, while not without exaggeration and misstatement, provided the Planning Authority with adequate detail to make its decision and we believe and are advised that the decision that it has made is correct within the meaning of Section 4(1)(h) of the Planning and Development Act. The Planning Officer was correct to have regard to the Planning History as set out and the Enforcement Files (as Mr Fegan alleged non-compliance in the Original Submission) and the reference to the previous refusal to the "wraparound balcony" evidence the full consideration that the Planning Officer gave to the submission.

The Referral

The referral by Mr Fegan again, in a long narrative style, seeks to misrepresent our actions and motives and characterise the determination of the Section 160 proceedings in a manner that is wholly inaccurate and misleading and suffice to say that we do not agree with it and in the interests of brevity we have set same out above.

Mr Fegan chooses to attach the first affidavits of Mr John O'Malley and Mr Val O'Brien, which were the first affidavits prepared on his behalf for the Section 160 proceedings. Mr Fegan makes no reference to the replying affidavits furnished on our behalf by Mr Gavin Lawlor (which we attach in Appendix 2 and Mr Martin Dunbar in Appendix 3 and to subsequent affidavits.

In addressing each of the comments of Mr Fegan, as set out in the Referral and following his numbering:

1. We attach a survey drawing of the Roof Lights in Appendix 4 in ease of the Board. The Decision correctly determines that there is no material change to the external appearance of the structure of the roof from the streetscape, a point which Mr Fegan acknowledges. Mr Fegan does not submit that the alteration makes the roof inconsistent with the character of the structure with neighbouring properties. As the Decision alludes to there are a mix of house types along Ardbrough Road, many with roof lights, and DLRCC has correctly set out that the roof lights are exempt within the meaning of Section 4(1)(h) of the Planning and Development Act 2000.

Mr Fegan alleges that the Decision should have considered the impact of the change in appearance to the roof from his window and that the appearance has changed. Again there is no mention in the Decision that they did not take such a view in account considering DLRCC's review of the Enforcement File as mentioned in the Decision and the details set out in the lengthy Original Referral. The Roof Lights are not inconsistent with the external appearance of the roof merely because they are visible to him, which is what he submits.

As mentioned earlier, it would appear that a house has been on the site of Shamrock Cottage for a long time though the alterations carried out by Mr Fegan in circa 2000 in creating the North Facing Window and other boundary alterations have not been.

2. The roof lights do not materially affect the external appearance of the roof. The mere fact that light can “spill” from the roof light in itself is not a material alteration otherwise no roof light could never be constituted to be exempted development.

The lights that we are using are not “on a dimmer switch”, as Mr Fegan points out and represent the full light from the roof lights (prior to same being covered over in accordance with the court order) and Mr Fegan has had adequate time to gather such photographic evidence (as he has consistently done since 2016) of the levels of light from the roof lights. In fact Mr Fegan’s photos, particularly the first one, sets out that there is no light pollution into Mr Fegan’s living room, which remains dark despite the light coming from the roof light. Clearly the light spill is illuminating our wall and not the North Facing Window and the only potential light spill from the reflected light off our wall which Mr Fegan has clearly evidenced in his photo’s is imperceptible.

Mr Fegan then goes onto recite the relevant planning permission and refusals but carefully avoids the key points:

- (a) that the existing windows are permitted;
 - (b) that the refusal relates to the wraparound balcony; and
 - (c) that the roof lights, previously found to be compliant by DLRCC Enforcement, have the benefit of the Decision.
3. Having first referenced in the Original Submission that Mr Fegan can look into a bathroom (which is incorrect) he is now stating, for the first time to our knowledge in these lengthy submissions and previous proceedings that his children are now looking into “an adult bedroom” with all the connotations that this new argument introduces. Firstly this is simply not possible from the angle that he alleges. The differences in height and the angle from the North Facing window would not allow a child an angle of view through the roof lights unless that child was standing on a ladder with a specific intention to look into the roof lights. The angles of the photographs submitted by Mr Fegan in fact bear this out (other than Exhibit 4 where he appears to be standing on our roof to take the photograph). In any event the net point is even if there was a view that would not constitute the roof lights to be other than exempt. Parties acting reasonably will typically close blinds and curtains at night to preserve privacy as required. The fact that a window horizontally or vertically is visible to another is not unusual in planning terms and particularly within tightly developed areas. To follow Mr Fegan’s argument to its conclusion (even if the North Facing Window was an authorised structure which it is not), is that this rear window on his house can prevent any other window being in view of this window (but not blocking it) on our house which in itself conflicts with the proper and sustainable planning.
 4. This argument again is a repetition that our house is unauthorised and we have addressed this above. Mr Fegan again uses measurements that have been shown to be inaccurate to seek to illustrate a point that our house is unauthorised (I refer to Rob Merry’s measurement and affidavit). The roof was always going to be partially under the North Facing Window. DLRCC has already determined that our house and all aspects of it are compliant with the permissions granted. DLRCC is the prescribed body in the Planning Acts for determining if a structure, or any part of it is authorised or unauthorised and DLRCC. DLRCC came to their determination with the benefit of continued visits to our house during the course of construction, which we understand is in itself unusual. We are advised that An Bord Pleanála does not have an enforcement function and as such is not the prescribed body to determine the planning status of our house. In this regard the attempt by Mr Fegan to see to have An Bord Pleanála revisit and re opine on such issues is flawed.

We have set out the background of the High Court Order above. We are not privy to what James Connolly SC has said to Mr Fegan, other than Mr Fegan accepted the terms of the

Calderbank letter in the form of the High Court Order. As set out above the High Court Order on consent was made without the admission of liability.

5. Again we refer you to our comments above in relation to the High Court Order but again refute the constant description by Mr Fegan of us as "offending developers". Mr Fegan's subsequent comment that:

"Ruling that these roof lights are not exempt in this special case would be complying with what was agreed to in the High Court Order and with what the offending developers agreed to do so that they could avoid a conviction and fines and worse"

is wholly misleading. We are advised that ABP can determine Mr Fegan's Referral without reference to the High Court Order which speaks for itself. Again we have to refute that we consented to the High Court Order to "... avoid a conviction and fines and worse".

We would ask the Board to entirely disregard this commentary as it is both vexatious and we are advised libellous having particular regard to Mr Fegan's comments that the "...developers may be attempting to have these roof lights made exempt through their relationship with the Local Authority".

6. It is not clear why Mr Fegan references this condition which is not in question in the Referral. The condition de-exempts extensions to our house (Class 1) and the provision of a tent, awning, shade or other object, greenhouse, garage, store shed or other similar structure. None of these specific items relate to the subject of the Reference, the three roof lights.

While Mr Fegan may be unsatisfied with the Decision, there is nothing to indicate that his concerns were not properly considered by DLRCC. Mr Fegan fails to acknowledge that in planning terms that the Planning Acts there is no protection for private views over private property (as recognised in par 8.6 of the Inspectors report on PL.06D.213210) and that is his fundamental objection to the roof lights. Section 4 1(h) does not allow for consideration of Development Plan Objectives in the determination of whether development falls under this provision and as such the provisions of Section 15 of the Act are of no relevance in this case, nor is the Development Plan. An Board Pleanála should it determine the Referral in accordance with the Decision, such a determination would be consistent with previous similar Section 5 referrals:

<http://www.pleanala.ie/casenum/RI.2996.htm>;

<http://www.pleanala.ie/casenum/RL.2451.htm>;

and

<http://www.pleanala.ie/casenum/RL.3396.htm>.

7. This may be Mr Fegan's view though we strongly disagree with them and we refute each of the allegations that Mr Fegan seeks to refer to in this paragraph which again goes far beyond the actual Referral. It is worth noting that the affidavits that Mr Fegan refers to relate to a total of 6 alleged elements of unauthorised development, all of which are refuted. Mr O'Malley in his affidavit exhibited, in his 130 paragraphs, addresses the roof lights in three paragraphs (99-101). The key complaints set out in these paragraphs of the affidavit are that the roof lights were not specifically permitted and that the roof lights were installed in a roof that deviates from what was permitted.

Mr Fegan has adopted an aggressive litigious approach to what he sees are breaches of the Planning Acts, and the alleged impact that these have on his North Facing Window, irrespective of its planning status. Mr Fegan again maintains that we "lost" the high court case and we refute this as set out above.

We strongly urge An Board Pleanála to disregard the statements made by Mr Fegan as being frivolous and vexatious in nature. In addition An Bord Pleanála does not have jurisdiction to determine the point raised by Mr Fegan.

8. Mr Fegan has sought to focus on Mr Cassidy decision making in a very damaging manner and while this is also a matter for Mr Cassidy, we have to strongly refute that we (or our lawyers) saw any difficulty in his decision making whatsoever and for Mr Fegan to so state is grossly misleading which we refute out of hand.

Mr Fegan, where his submission addresses the actual Section 5 decision, as opposed to merely inaccurate recital of all of our alleged wrongdoings and his misrepresentation of the court proceedings and the High Court Order, chooses not to address the key point of the Section 5, whether the roof lights are constitute development, and if so whether they are exempt.

Rather, Mr Fegan now adopts a conspiracy theory of a planning authority seeking to protect itself with unattributed quotes from persons seeking to prove his proposition. This is simply not appropriate in the context of the Referral to make such outlandish allegations against the Planning Authority and ourselves and we must reserve our position in relation to same.

Planning History

The Local Authority refers to planning application D13A/0031 in their response which immediately abuts our site the subject of the Referral. The planning application is not immediately relevant for the Section 5 other than presumably as part of the deliberations viewing the adjoining planning permissions.

While this has been considered above by us in detail above, fundamentally Mr Fegan has for a long period of time objected to development on the Site. He chooses the refusal of D15A/0363 (re a wraparound balcony) as a key decision to seek to further prevent any development near the North Facing Window and seeks to avail of a protection for the North facing Window which is not afforded by the Planning Acts. We note the inequity of the position that Mr Fegan goes to extraordinary lengths to “protect” his North Facing Window notwithstanding that it is unauthorised but immune from enforcement. It is a difficult position that we find ourselves where Mr Fegan adopts a millimetric approach to planning compliance which is an unreal standard not recognised by the Planning Acts which permits minor deviations. While Mr Fegan clearly remains upset by the construction of our house, he has sought to conflate a large number of arguments to seek to maintain that our house remains unauthorised and hence the roof lights cannot be exempt. We firmly believe and are advised that our House is in substantial compliance with the relevant planning permissions and this is supported by DLRCC Enforcement.

Mr Fegan seeks to grant to himself a planning right to protect the North Facing Window in a manner which it does not enjoy under the Planning Acts, even if the erection of the North Facing Window constituted authorised development.

Overall Summary

We are conscious that the within Submission is voluminous due to the responses required to the Original Referral and the Referral.

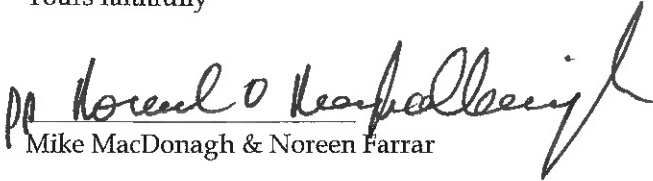
The point raised in the Submission is net, however Mr Fegan seeks to colour the argument, our “wrongdoing” the decisions of DLRCC or to seek to recast the High Court Order. Mr Fegan has despite all of the material furnished has not set out that the roof is unauthorised which is his key premise. DLRCC has determined that the roof is in substantial compliance and DLRCC is in the best position to determine this. The Decision, while perhaps unwelcome from Mr Fegan, is, we are advised, wholly in accordance with the Planning Acts.

We are now two years addressing indirectly and directly the complaints of Mr Fegan in relation to our house and we cannot over emphasise the toll financially and emotionally that it has taken to date, especially in circumstances where DLRCC Enforcement has confirmed that we have built in substantial compliance. We have sought to keep this submission as neutral as possible as Mr Fegan

has a separate set of proceedings issued against us and, per the Referral is likely to embark on some further proceedings (against us and/or of DLRCC) so we have deliberately restrained ourselves in relation to some of the comments Mr Fegan has made in the Original Referral and the Referral but naturally have to reserve our position re same.

We have covered over the roof lights in accordance with the Court Order with a temporary roof due to time and cost constraints.

Yours faithfully


Mike MacDonagh & Noreen Farrar

Appendix One

Affidavit of Mr Rob Merry

Appendix 2

Affidavit of Mr Gavin Lawlor

Appendix 3

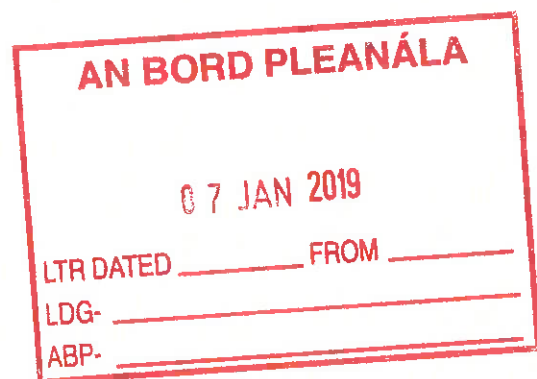
Affidavit of Martin Dunbar

Appendix 4

Drawing of Roof Lights by Rob Merry

Appendix 5

Supplemental Affidavit of Gavin Lawlor



ABP Reference: ABP-303124-18

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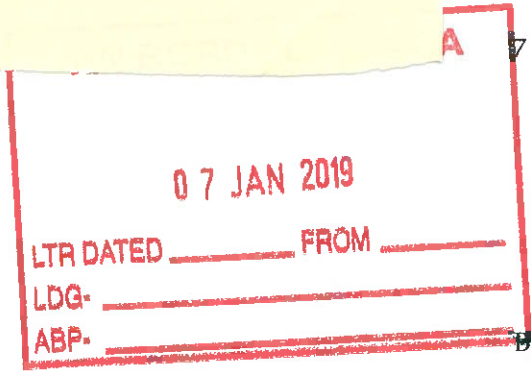
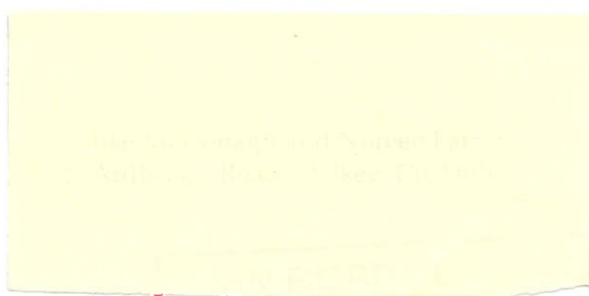
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By Hand

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AM BORD CLEANSALA
17 JAN 1938
THE DATED _____ FROM _____
TID _____
AGB _____

[Faint, mostly illegible text body consisting of several paragraphs of a document.]

We continued on to finalise the construction of the house and as we were making arrangements to move in Mr Fegan, in April 2018, caused Section 160 proceedings to be issued in the High Court seeking various reliefs including the removal of our house. We had to instruct solicitors, Senior and Junior Counsel, a planning consultant and a surveyor to address the allegations made in the proceedings. With mounting costs in highly emotive proceedings, and where reaching agreement was highly unlikely, our solicitors on our instructions issued a "Calderbank Letter" along the lines of the High Court Order, without an admission of any liability. The "Calderbank Letter" placed a costs risk of the Section 160 proceedings with Mr Fegan in certain circumstances, should he have not accepted it. Mr Fegan accepted the Calderbank Letter and Judge Noonan ruled it as a consent order prior to the hearing of the case. The costs have yet to be taxed at a circuit court scale and Mr Fegan's summary of the events and costs are not accurate, as again he unfortunately misstates.

We cannot speculate as to why Mr Fegan accepted the terms of the Calderbank Letter and consented to the High Court Order, rather than to proceed to hearing for reliefs that he sought in the Section 160 Proceedings (which included his application for orders to remove significant parts of our house).

Personal Impact

The personal impact on us has been very significant. We have incurred very significant costs in defending aggressive proceedings, delaying construction works due to the proceedings and earlier complaints made by Mr Fegan to DLRCC. In addition to the stress and costs incurred, we have suffered a significant delay in moving into our new home. We are in the unhappy position of finding ourselves having had to address and dispose of court proceedings from Mr Fegan on the one hand and then to address Mr Fegan's Referral where he has portrayed us, again, in a wildly inaccurate and offensive light. None of this is how we envisaged our first Christmas in our new home.

The Section 5 Submission/The Original Referral

The Section 5 application conflates many issues which are not pertinent to the actual submission itself and, aside from the comments Mr Fegan makes against us personally (which we refute), Mr Fegan has misstated key facts, unfortunately for his own purposes, and have very selectively quoted from Mr Martin Dunbar's affidavit.

The underlying premise of Mr Fegan's Submission is that the roof lights cannot be exempt because, as Mr Fegan puts it:

"The roof lights are sitting on an unauthorised extension and flat roof built in 2017. We can be certain the extension and flat roof are unauthorised because your department refused the developers a grant of permission for a smaller extension and flat roof in D15A/0363."

Fundamentally Mr Fegan is in error on this point. DLRCC has now, on several occasions, expressed its view, having inspected the Site, that the as built house is substantial in compliance with the relevant planning consents D07A/0507 and D15A/0750 and that any deviations are minor and not necessitating a retention application. DLRCC has so inspected the Site on several occasions and Mr Fegan has not produced anything to the contrary, other than a planning report of Mr Kieran O'Malley (that was not used in the proceedings) which we will refer to below.

Mr Fegan then proceeds to list a number of "material deviations" to illustrate "how the developers viewed your department and An Bord Pleanála" in a crude attempt to continue to depict us as wrongdoers. He states that:

"These points cannot be credibly argued against as they have been verified in expert sworn affidavits and many even being admitted to in the in the developer's own expert's sworn affidavits"

Again a misstatement of the detailed exchanges in relation to the Section 160 Proceedings and wholly ignores the detailed enforcement investigations carried out by DLRCC though, for the sake of completeness, we feel compelled to address each:

I. **A misleading Planning Application Filed**

This is factually incorrect and the application was not misleading.

II. **Breach of planning refusal D15A/0363**

This is a refusal and the balcony was not constructed. The development is governed by the permissions granted and not those refused.

III. **Breach of Condition 1 of D15A/0750**

Again Dun Laoghaire Rathdown County Council has determined the development to be in substantial compliance.

IV. **Breach of Condition 2 of D15A/0750**

Again Dun Laoghaire Rathdown County Council has determined the development to be in substantial compliance.

V. **Breach of Condition 3 of D15A/0750**

Again, we had frosted glass in one window which we said to Mr Fegan and his wife that we would change to the High Level window (now closed). The mid window is now frosted.

VI. **Breach of Condition 10 (Note 2) of D15A/0750**

Mr Fegan objected to part of the roof "*over sailing*" the boundary wall and part of his roof which over sails our property, which we cut back during construction to seek to appease him in advance of the two sets of proceedings that he ultimately issued.

VII. **Breach of Condition 10 (Note 3) of D15A/0750**

There is no breach of the condition and again Mr Fegan fails to set out the alleged breach.

VIII. **Breach of Condition 1 of D07A/0507**

The premises are being used as a single dwelling.

IX. **Breach of Condition 12 (Note A DLRCC) of D07A/0507**

This is a repeat of the alleged breach of Condition 10 Note 2 above.

X. **Breach of Condition 12 (Note B DLRCC) of D07A/0507**

This is a repeat of the alleged breach of Condition 10 Note 3 above.

XI. **Breach of Condition 5 Bord Pleanála D07A/0507**

Materials were agreed with the planning authority.

XII Built on Incorrect Location on Site

Again, there is been a minor movement in the location of the house of between 110mm's from the Western Boundary to in total 345mms to the Eastern boundary. Again DLRCC have determined (as have our engineer and planning consultant opined) that the house is in substantial compliance with the relevant planning permissions.

XIII First Floor goes well past Building Line of Shamrock Cottage

Again there is a minor movement in the location of the house of between 110mm's from the Western Boundary to in total 345mms to the Eastern boundary. Again DLRCC have determined (as have our engineer and planning consultant opined) that the house is in substantial compliance with the relevant planning permissions. Early in the construction of our house our contractor agreed the first floor line with Mr Fegan, though he now refutes that such agreement was reached.

XIV 2 X Unauthorised Windows

There are two windows that face onto a solid granite wall at the rear of the house and again DLRCC Enforcement has viewed these as not requiring a retention application.

XV 3 x Unauthorised Roof Lights

This is the subject of the Original Referral and the Referral.

XVI Developers have "no problem" turning the Semi-Detached Development into a Detached Dwelling at the great expense of Shamrock Cottage

This is misleading. In accordance with the planning permission, we sought in construction to get as close to the adjoining property Ardrugh House as possible. The planning did not require the houses to be "attached". Due to the old and uneven lateral and horizontal elevation of Ardrugh House, the step back from its boundary wall is between 110mm and 295mm. Again DLRCC confirmed that no retention action is required.

XVI Ignoring Section 34 (13) of the Planning and Development Act 2000 (as amended)

Again this is a repeat of VII and X above.

Mr Fegan, despite the duplication in this list of breaches, has failed to point out how the House is not in substantial compliance. He is merely seeking to create an impression of multiple planning breaches, though fails to address that these have been subject to DLRCC Enforcement inspections that have correctly determined otherwise.

Drawings Submitted

Mr Fegan has furnished a drawing prepared by Mr Val O'Brien seeking to set out in measurement the deviations in measurements in relation to our "as built house". We are surprised that he continues to do so as a considerable amount of doubt was cast on the measurements that Mr O'Brien arrived at (albeit Mr O'Brien had no access to the Site nor requested same) when he prepared the drawing.

We attach a sworn affidavit of Mr Rob Merry (Appendix 1), a chartered surveyor, following an accurate survey of the Site for your reference. A joint inspection of the site was carried out during course of the proceedings though Mr Merry's measurements were not challenged.

Report of Mr O'Malley

The report from Mr O'Malley that Mr Fegan exhibits what appears to be prepared in contemplation of the Section 160 proceedings (separate plenary proceedings had issued at this time), continues to rely on inaccurate measurements set out in Val O'Brien's drawing. To the extent that the entire report is submitted by the Mr Fegan it is done so we submit with the desire to seek to show the house being "unauthorised", though fundamentally not benefitting from an accurate site survey. The report is unchallenged and we refer in response to this, to the extent that it is in any way relevant to the affidavits of Mr Gavin Lawlor and Mr Martin Dunbar, below.

The North Facing Window

What Mr Fegan fails to mention in the submission is that the North Facing Window of his living room does not have the benefit of a planning permission. Our solicitors caused an OSI aerial map to be purchased which shows that in 1996 there was no north facing window evident from the picture. Mr Fegan contends that there were two windows which, following renovation works they created one window in circa 2000. There is no planning permission for building onto the boundary of Shamrock Cottage nor, we are advised, would such development constitute "exempt development". This is more particularly set out in Gavin Lawlor's Supplemental Affidavit in Appendix 5.

Mr Fegan received a warning letter from DLRCC on 30 July 2007 (attached to Mr Gavin Lawlor's affidavit referred to below). His response is not available, though DLRCC subsequently closed the file on 23 August 2007 following a response to say that they understand that the window has been there for some years and no further action would be taken at that time (per the copy attached).

We are advised that the North Facing Window is unauthorised, though immune from further action from the planning authority.

Other Inaccuracies/Omissions of Mr Fegan

The other key misstatements in the submission are:

- (a) The roof light does not look into a bathroom as is incorrectly stated, though without comment appears to have sought to correct in the Referral
- (b) The Drawings submitted by Val O'Brien, proved to be less than accurate (as Val O'Brien when he produced them had no access to the House) and our surveyor Rob Merry (and on a joint inspection of the site for the purpose of the proceedings produced the following drawings which were acknowledged by Mr Fegan's professional team. Despite this, the Mr Fegan seeks to persist in what he knows are inaccurate drawings to seek to exaggerate the extent of minor deviations to seek to argue that the first floor roof is "unauthorised" and accordingly by consequence the roof lights must be also. The Planning Enforcement Officer had the benefit of taking accurate measurements of our house and location on the Site in its totality and hence the closure of the Enforcement Files.
- (c) Mr Fegan seeks to impute some acknowledgement on our part that our House is not in compliance with planning on the basis of their acceptance of the Calderbank letter to dispose of the Section 160 proceedings and we refute this.
- (d) There are no "other reparations" on foot of the court order.

The Decision

The premise of Mr Fegan's submission is that the Roof lights, because (as he submits) are on a roof that is unauthorised, that the roof lights themselves de facto cannot be exempt development. This is an attempt to reopen his complaint to DLRCC Enforcement that the roof (and our house) is

unauthorised development. This has categorically been determined by DLRCC Enforcement not to be the case, and much of Mr Fegan's submission on whether or not the roof is authorised should fail on that basis as having been so determined and being irrelevant to the Section 5 Submission.

Mr Fegan, despite his lengthy submissions has failed to set this out. As far as the House is concerned DLRCC whom have had the opportunity to inspect the property on many occasions (and under the threat of litigation from Mr Fegan) have formed the view that the House is in substantial compliance with planning and that any deviations are minor in nature. A long and confusing submission to seek to "blight" planning compliance is only important for Mr Fegan in the context of the Referral that, in his view, as the entire house is non-compliant, the roof lights must be also.

The Section 5 submission by Mr Fegan, while not without exaggeration and misstatement, provided the Planning Authority with adequate detail to make its decision and we believe and are advised that the decision that it has made is correct within the meaning of Section 4(1)(h) of the Planning and Development Act. The Planning Officer was correct to have regard to the Planning History as set out and the Enforcement Files (as Mr Fegan alleged non-compliance in the Original Submission) and the reference to the previous refusal to the "wraparound balcony" evidence the full consideration that the Planning Officer gave to the submission.

The Referral

The referral by Mr Fegan again, in a long narrative style, seeks to misrepresent our actions and motives and characterise the determination of the Section 160 proceedings in a manner that is wholly inaccurate and misleading and suffice to say that we do not agree with it and in the interests of brevity we have set same out above.

Mr Fegan chooses to attach the first affidavits of Mr John O'Malley and Mr Val O'Brien, which were the first affidavits prepared on his behalf for the Section 160 proceedings. Mr Fegan makes no reference to the replying affidavits furnished on our behalf by Mr Gavin Lawlor (which we attach in Appendix 2 and Mr Martin Dunbar in Appendix 3 and to subsequent affidavits.

In addressing each of the comments of Mr Fegan, as set out in the Referral and following his numbering:

1. We attach a survey drawing of the Roof Lights in Appendix 4 in ease of the Board. The Decision correctly determines that there is no material change to the external appearance of the structure of the roof from the streetscape, a point which Mr Fegan acknowledges. Mr Fegan does not submit that the alteration makes the roof inconsistent with the character of the structure with neighbouring properties. As the Decision alludes to there are a mix of house types along Ardbrough Road, many with roof lights, and DLRCC has correctly set out that the roof lights are exempt within the meaning of Section 4(1)(h) of the Planning and Development Act 2000.

Mr Fegan alleges that the Decision should have considered the impact of the change in appearance to the roof from his window and that the appearance has changed. Again there is no mention in the Decision that they did not take such a view in account considering DLRCC's review of the Enforcement File as mentioned in the Decision and the details set out in the lengthy Original Referral. The Roof Lights are not inconsistent with the external appearance of the roof merely because they are visible to him, which is what he submits.

As mentioned earlier, it would appear that a house has been on the site of Shamrock Cottage for a long time though the alterations carried out by Mr Fegan in circa 2000 in creating the North Facing Window and other boundary alterations have not been.

2. The roof lights do not materially affect the external appearance of the roof. The mere fact that light can "spill" from the roof light in itself is not a material alteration otherwise no roof light could never be constituted to be exempted development.

The lights that we are using are not "on a dimmer switch", as Mr Fegan points out and represent the full light from the roof lights (prior to same being covered over in accordance with the court order) and Mr Fegan has had adequate time to gather such photographic evidence (as he has consistently done since 2016) of the levels of light from the roof lights. In fact Mr Fegan's photos, particularly the first one, sets out that there is no light pollution into Mr Fegan's living room, which remains dark despite the light coming from the roof light. Clearly the light spill is illuminating our wall and not the North Facing Window and the only potential light spill from the reflected light off our wall which Mr Fegan has clearly evidenced in his photo's is imperceptible.

Mr Fegan then goes onto recite the relevant planning permission and refusals but carefully avoids the key points:

- (a) that the existing windows are permitted;
 - (b) that the refusal relates to the wraparound balcony; and
 - (c) that the roof lights, previously found to be compliant by DLRCC Enforcement, have the benefit of the Decision.
3. Having first referenced in the Original Submission that Mr Fegan can look into a bathroom (which is incorrect) he is now stating, for the first time to our knowledge in these lengthy submissions and previous proceedings that his children are now looking into "an adult bedroom" with all the connotations that this new argument introduces. Firstly this is simply not possible from the angle that he alleges. The differences in height and the angle from the North Facing window would not allow a child an angle of view through the roof lights unless that child was standing on a ladder with a specific intention to look into the roof lights. The angles of the photographs submitted by Mr Fegan in fact bear this out (other than Exhibit 4 where he appears to be standing on our roof to take the photograph). In any event the net point is even if there was a view that would not constitute the roof lights to be other than exempt. Parties acting reasonably will typically close blinds and curtains at night to preserve privacy as required. The fact that a window horizontally or vertically is visible to another is not unusual in planning terms and particularly within tightly developed areas. To follow Mr Fegan's argument to its conclusion (even if the North Facing Window was an authorised structure which it is not), is that this rear window on his house can prevent any other window being in view of this window (but not blocking it) on our house which in itself conflicts with the proper and sustainable planning.
 4. This argument again is a repetition that our house is unauthorised and we have addressed this above. Mr Fegan again uses measurements that have been shown to be inaccurate to seek to illustrate a point that our house is unauthorised (I refer to Rob Merry's measurement and affidavit). The roof was always going to be partially under the North Facing Window. DLRCC has already determined that our house and all aspects of it are compliant with the permissions granted. DLRCC is the prescribed body in the Planning Acts for determining if a structure, or any part of it is authorised or unauthorised and DLRCC. DLRCC came to their determination with the benefit of continued visits to our house during the course of construction, which we understand is in itself unusual. We are advised that An Bord Pleanála does not have an enforcement function and as such is not the prescribed body to determine the planning status of our house. In this regard the attempt by Mr Fegan to see to have An Bord Pleanála revisit and re opine on such issues is flawed.

We have set out the background of the High Court Order above. We are not privy to what James Connolly SC has said to Mr Fegan, other than Mr Fegan accepted the terms of the

Calderbank letter in the form of the High Court Order. As set out above the High Court Order on consent was made without the admission of liability.

5. Again we refer you to our comments above in relation to the High Court Order but again refute the constant description by Mr Fegan of us as "offending developers". Mr Fegan's subsequent comment that:

"Ruling that these roof lights are not exempt in this special case would be complying with what was agreed to in the High Court Order and with what the offending developers agreed to do so that they could avoid a conviction and fines and worse"

is wholly misleading. We are advised that ABP can determine Mr Fegan's Referral without reference to the High Court Order which speaks for itself. Again we have to refute that we consented to the High Court Order to "... *avoid a conviction and fines and worse*".

We would ask the Board to entirely disregard this commentary as it is both vexatious and we are advised libellous having particular regard to Mr Fegan's comments that the "...*developers may be attempting to have these roof lights made exempt through their relationship with the Local Authority*".

6. It is not clear why Mr Fegan references this condition which is not in question in the Referral. The condition de-exempts extensions to our house (Class 1) and the provision of a tent, awning, shade or other object, greenhouse, garage, store shed or other similar structure. None of these specific items relate to the subject of the Reference, the three roof lights.

While Mr Fegan may be unsatisfied with the Decision, there is nothing to indicate that his concerns were not properly considered by DLRCC. Mr Fegan fails to acknowledge that in planning terms that the Planning Acts there is no protection for private views over private property (as recognised in par 8.6 of the Inspectors report on PL.06D.213210) and that is his fundamental objection to the roof lights. Section 4 1(h) does not allow for consideration of Development Plan Objectives in the determination of whether development falls under this provision and as such the provisions of Section 15 of the Act are of no relevance in this case, nor is the Development Plan. An Board Pleanála should it determine the Referral in accordance with the Decision, such a determination would be consistent with previous similar Section 5 referrals:

<http://www.pleanala.ie/casenum/RL2996.htm>;

<http://www.pleanala.ie/casenum/RL2451.htm>;

and

<http://www.pleanala.ie/casenum/RL3396.htm>.

7. This may be Mr Fegan's view though we strongly disagree with them and we refute each of the allegations that Mr Fegan seeks to refer to in this paragraph which again goes far beyond the actual Referral. It is worth noting that the affidavits that Mr Fegan refers to relate to a total of 6 alleged elements of unauthorised development, all of which are refuted. Mr O'Malley in his affidavit exhibited, in his 130 paragraphs, addresses the roof lights in three paragraphs (99-101). The key complaints set out in these paragraphs of the affidavit are that the roof lights were not specifically permitted and that the roof lights were installed in a roof that deviates from what was permitted.

Mr Fegan has adopted an aggressive litigious approach to what he sees are breaches of the Planning Acts, and the alleged impact that these have on his North Facing Window, irrespective of its planning status. Mr Fegan again maintains that we "lost" the high court case and we refute this as set out above.

We strongly urge An Board Pleanála to disregard the statements made by Mr Fegan as being frivolous and vexatious in nature. In addition An Bord Pleanála does not have jurisdiction to determine the point raised by Mr Fegan.

8. Mr Fegan has sought to focus on Mr Cassidy decision making in a very damaging manner and while this is also a matter for Mr Cassidy, we have to strongly refute that we (or our lawyers) saw any difficulty in his decision making whatsoever and for Mr Fegan to so state is grossly misleading which we refute out of hand.

Mr Fegan, where his submission addresses the actual Section 5 decision, as opposed to merely inaccurate recital of all of our alleged wrongdoings and his misrepresentation of the court proceedings and the High Court Order, chooses not to address the key point of the Section 5, whether the roof lights are constitute development, and if so whether they are exempt.

Rather, Mr Fegan now adopts a conspiracy theory of a planning authority seeking to protect itself with unattributed quotes from persons seeking to prove his proposition. This is simply not appropriate in the context of the Referral to make such outlandish allegations against the Planning Authority and ourselves and we must reserve our position in relation to same.

Planning History

The Local Authority refers to planning application D13A/0031 in their response which immediately abuts our site the subject of the Referral. The planning application is not immediately relevant for the Section 5 other than presumably as part of the deliberations viewing the adjoining planning permissions.

While this has been considered above by us in detail above, fundamentally Mr Fegan has for a long period of time objected to development on the Site. He chooses the refusal of D15A/0363 (re a wraparound balcony) as a key decision to seek to further prevent any development near the North Facing Window and seeks to avail of a protection for the North facing Window which is not afforded by the Planning Acts. We note the inequity of the position that Mr Fegan goes to extraordinary lengths to "protect" his North Facing Window notwithstanding that it is unauthorised but immune from enforcement. It is a difficult position that we find ourselves where Mr Fegan adopts a millimetric approach to planning compliance which is an unreal standard not recognised by the Planning Acts which permits minor deviations. While Mr Fegan clearly remains upset by the construction of our house, he has sought to conflate a large number of arguments to seek to maintain that our house remains unauthorised and hence the roof lights cannot be exempt. We firmly believe and are advised that our House is in substantial compliance with the relevant planning permissions and this is supported by DLRCC Enforcement.

Mr Fegan seeks to grant to himself a planning right to protect the North Facing Window in a manner which it does not enjoy under the Planning Acts, even if the erection of the North Facing Window constituted authorised development.

Overall Summary

We are conscious that the within Submission is voluminous due to the responses required to the Original Referral and the Referral.

The point raised in the Submission is net, however Mr Fegan seeks to colour the argument, our "wrongdoing" the decisions of DLRCC or to seek to recast the High Court Order. Mr Fegan has despite all of the material furnished has not set out that the roof is unauthorised which is his key premise. DLRCC has determined that the roof is in substantial compliance and DLRCC is in the best position to determine this. The Decision, while perhaps unwelcome from Mr Fegan, is, we are advised, wholly in accordance with the Planning Acts.

We are now two years addressing indirectly and directly the complaints of Mr Fegan in relation to our house and we cannot over emphasise the toll financially and emotionally that it has taken to date, especially in circumstances where DLRCC Enforcement has confirmed that we have built in substantial compliance. We have sought to keep this submission as neutral as possible as Mr Fegan

has a separate set of proceedings issued against us and, per the Referral is likely to embark on some further proceedings (against us and/or of DLRCC) so we have deliberately restrained ourselves in relation to some of the comments Mr Fegan has made in the Original Referral and the Referral but naturally have to reserve our position re same.

We have covered over the roof lights in accordance with the Court Order with a temporary roof due to time and cost constraints.

Yours faithfully


Mike MacDonagh & Noreen Farrar

Appendix One

Affidavit of Mr Rob Merry

Appendix 2

Affidavit of Mr Gavin Lawlor

Appendix 3
Affidavit of Martin Dunbar

Appendix 4

Drawing of Roof Lights by Rob Merry

Appendix 5
Supplemental Affidavit of Gavin Lawlor

Appendix One
Affidavit of Mr Rob Merry

THE HIGH COURT

Record No. 2018/122MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT
2000, AS AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL McDONAGH & NOREEN FARRAR

Respondents

AFFIDAVIT OF ROBERT MERRY

McCann FitzGerald
Solicitors
Riverside One
Sir John Rogerson's Quay
Dublin 2
DOR\29426031.1

THE HIGH COURT

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AFFIDAVIT OF ROBERT MERRY

I, **ROBERT MERRY**, Civil Engineer and Managing Director of Techsol Ltd. having its registered office at Beech Road, Arklow, County Wicklow, aged 18 years and upwards **MAKE OATH** and say as follows:

1. I am a Civil Engineer of 21 years' experience and Managing Director of Land Surveying practice Techsol Ltd. since 2003. I am a member of the Society of Chartered Surveyors of Ireland and I hold an MBA from DIT.
2. Techsol Ltd. was requested by the Respondents' solicitors, McCann FitzGerald Solicitors, to carry out a site inspection and dimensional survey at 24 Ardrugh Road, Dalkey for the purposes of these proceedings involved.
3. To that end, I was supplied with copies of the plans and particulars under planning permission D07A/0507 and D15A/0750 as well as the Affidavit and exhibited drawings of Mr. Val O'Brien, the Applicant's surveyor and I confirm that I have reviewed same.

Date & Scope of Survey

4. Following a review of the planning drawings and Mr O'Brien's affidavit and drawings, I decided that the best course of action would be to carry out a survey of the site, its boundaries and adjoining buildings, using a 'total station' (Trimble S5 - 3 second accuracy) and to produce a digital plan from which relevant dimensions could be extracted. The survey was commenced on 17th May 2018 and full access to the site was provided. The aim of the survey was to collect enough data to produce a site plan with context to identify any deviations in plan positions, and also a street elevation to identify any deviations in vertical positions.
5. I beg to refer to a copy of the site plan(s) (the "Site Plans") produced on foot of the survey carried out by Techsol Ltd., upon which marked with the letters and number "RM1" I have signed my name prior to the swearing hereof.

Grid Position / Starting Point

6. It is now standard practice in the surveying sector to provide data referenced to the ITM (Irish Traverse Mercator) coordinate grid; this is the national grid for the country, to which Ordnance Survey (OS) mapping is also referenced. The starting point for this is to establish a baseline of 2 known points using a GNSS receiver which also receives corrections from the Trimble active network via a SIM card in the data logger. One would expect to achieve an accuracy of +/- 25mm for our baseline or starting point when compared to its true grid position.
7. In contrast to this, someone working from an OS map (as Mr O'Brien did for the purposes of preparing his drawings and affidavit) could not expect to achieve a grid position better than +/-1000mm as ITM coordinates on OS maps are rounded to the nearest metre.

Comparing Drawings

8. Given that both the planning drawings and Mr. O'Brien's drawings are based on an OS background map, use of a best-fit methodology was necessary when comparing Techsol's new survey data (as-built) to these.

Mr. O'Brien's Methodology

Equipment:

9. On reviewing Mr. O'Brien's affidavit, the methodology used to draw his conclusions is quite unclear. He refers to a number of site inspections and collection of accurate dimensions using "electronic equipment" (paragraph 19), without actually explaining what measurement equipment was used. 'Electronic equipment' could mean a high accuracy Total Station as employed by me; however, it may equally just refer to a handheld distometer which is akin to an electronic measuring tape. He also refers in his drawing to a number of "survey reference lines" which seem to form the basis for his 'best fit', but gives no explanation as to how these were established or if they relate to any specific grid system.

Starting Point:

10. On Mr O'Brien's comparison drawings he shows the NE corner of the Applicants Shamrock Cottage as his "overlay reference point". I understand this to be the corner of the existing derelict site on the OS map, however the Shamrock Cottage extension is not actually shown on the OS map and it is not clear whether this is the corner of the wall or the roof. In any case, it is a somewhat arbitrary point which renders dimensions referenced to it arbitrary in nature. As the Shamrock Cottage extension is not shown on the OS map the position of our structure on the planning drawings is not directly related to this point. A more sensible reference point would be the SE corner of the site, as this is on the OS map and is also where the SE corner of the permitted structure is shown on the Planning Drawings.

Accuracy:

11. The following text from OSi.ie relates to the stated accuracy of urban mapping:

The positional accuracy results of the quality assessment work from 2004 to 2014 are as follows:

In urban, suburban and periurban mapping, the results of testing 36,929 points of hard detail are that 93.2% of the points in the mapping are within 1 metre of their true ground position, and 99.1% of points are within 2 metres of their true ground position.

12. This means that the accuracy of Urban OS maps is in the region of +/-1000mm. For this reason, I say and believe that the use of an OS map augmented with additional dimensions collected by an unstated method is a flawed methodology where seeking to establish sub-metre variations.
13. I also note from Mr. O' Brien's comparison drawings that the blue "survey reference line" outline for Ardbrough house is clearly not shown parallel to the new structure. From our grid-referenced total station survey it is apparent that the new structure is approximately parallel to the gable of Ardbrough House.
14. Mr. O'Brien's affidavit states that "*The inspection was taken from the public road and adjoining properties and no access was gained to the new dwelling or its immediate environs on its own land*".
15. From this, I take it that remote measurements were taken, and in the absence of any technical data on how these were collected, or the achievable accuracies of the technology employed, I can only conclude that the accuracy of such data cannot be relied upon.

Techsol's As-Built Survey Drawings

16. The Site Plans (As-built drawing) confirms that the new structure is no bigger than that for which planning was granted (East-West almost identical width, North-South approx. 470mm shorter).
17. The gable wall of Ardbrough House is neither straight nor plumb as is apparent from the Site Plans. Because of the fact that the said gable wall of Ardbrough House is not in horizontal alignment with the block-built wall at the SE corner of the site this necessary offset from the gable resulted in the structure being at its closest point 110mm from Ardbrough House and at its farthest 230mm offset from Ardbrough House at the southern end. This lack of alignment also resulted in a gap of 295mm between

the new structure and the block built boundary wall with Ardrubh House at the south east corner of the site.

18. The new structure is 380mm from the south boundary wall, however as the structure is 470mm shorter in a NS direction than as granted; this does not give rise to any issue at the northern elevation.

19. At the SE corner of the site there is a significant batter at the base of the rear boundary wall, as can be seen on Section A-A on the Site Layout drawing. To avoid interfering with the stability of the boundary wall the new structure was constructed at a distance of 110mm from the base of the wall. This resulted in a gap of approximately 380mm from the plumb section of the wall. Similarly, as can be seen from Section B, there is also a batter at the bottom of the Ardrubh house gable. Again, to avoid structural interference, the new structure was constructed no closer than 100mm from the base of this gable. The distance between the new structure and the gable varies considerably in both the horizontal and vertical planes as the gable is neither plumb nor straight in plan.

20. The Street Elevation of Techsol's as-built drawing shows 220mm clearance from the first floor western gable of the new structure to the reveal of the shamrock cottage window. The equivalent elevation on the planning drawings shows a clearance of 565mm.

21. This discrepancy of 345mm arises as follows:

A Although the new structure at its closest point is 110mm from Arbrugh House, given the undulations of the gable wall of Ardrubh House the gap at the southern end corner is 210mm from the gable of Ardrubh House, which leaves it 295mm from the Ardrubh block-built boundary wall at the southern end of the eastern boundary.

It is the same width at first floor level, which means that if it is 295mm off the eastern boundary wall, it is 295mm closer to the Shamrock Cottage window.

22. **Shamrock Cottage Roof Overhang**

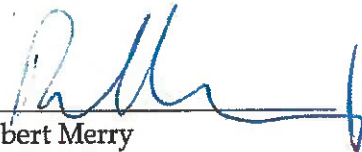
As can be seen from the breakout drawing on the Site Layout the extension to Shamrock cottage is partially built on the boundary wall. The dashed red line indicates the roof overhang, which clearly oversails the boundary wall and also oversails the site by approximately 190mm.

23. **High-level window**

The position of the frosted high-level window relative to the Shamrock Cottage window is indicated on the Elevations Overlay. The window head is 170mm higher than the Shamrock Cottage window head. The internal sill is 1.73m above first floor level. Given the height of the window above floor level and the fact that the glazing is opaque it's difficult to see how the privacy of Shamrock Cottage might be impacted.

24. Long middle slit window

The Shamrock Cottage window is not visible from this window. The line of sight is obscured by the window reveals.


Robert Merry

SWORN by the said ROBERT MERRY

and I personally know the Deponent *cm*

the Deponent has been identified to me
by _____ whom I personally *cm*
know

the identity of the Deponent has been
established to me by the Deponent by
reference to his passport/driver's
licence no. *270107657*

which contains a photograph of the
Deponent

on *15th June* 2018

at *Riverside One, Sir John Rogerson's Quay*

in the City of Dublin before me a
Practising Solicitor


Practising Solicitor/Commissioner for
Oaths *cm*

(CIARA MURPHY)

This affidavit is filed on behalf of the defendants by McCann FitzGerald Solicitors, Riverside
One, Sir John Rogerson's Quay, Dublin 2.

Filed the day of 2018

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT
2000, AS AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

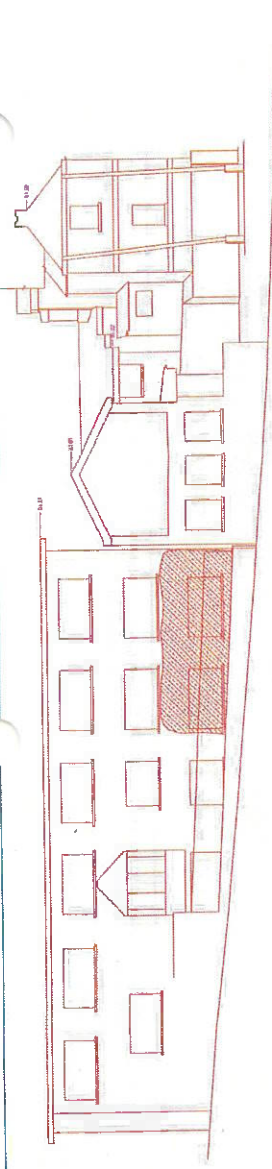
EXHIBIT "RM1"
AFFIDAVIT OF ROBERT MERRY

Exhibit "RM1" as referred to in the Affidavit of Robert Merry sworn ^{15th} day
of June 2018

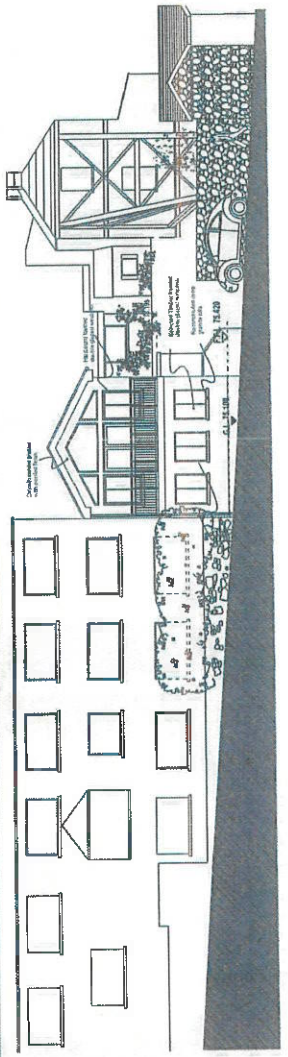

DEPONENT


PRACTICING SOLICITOR/
COMMISSIONER FOR OATHS

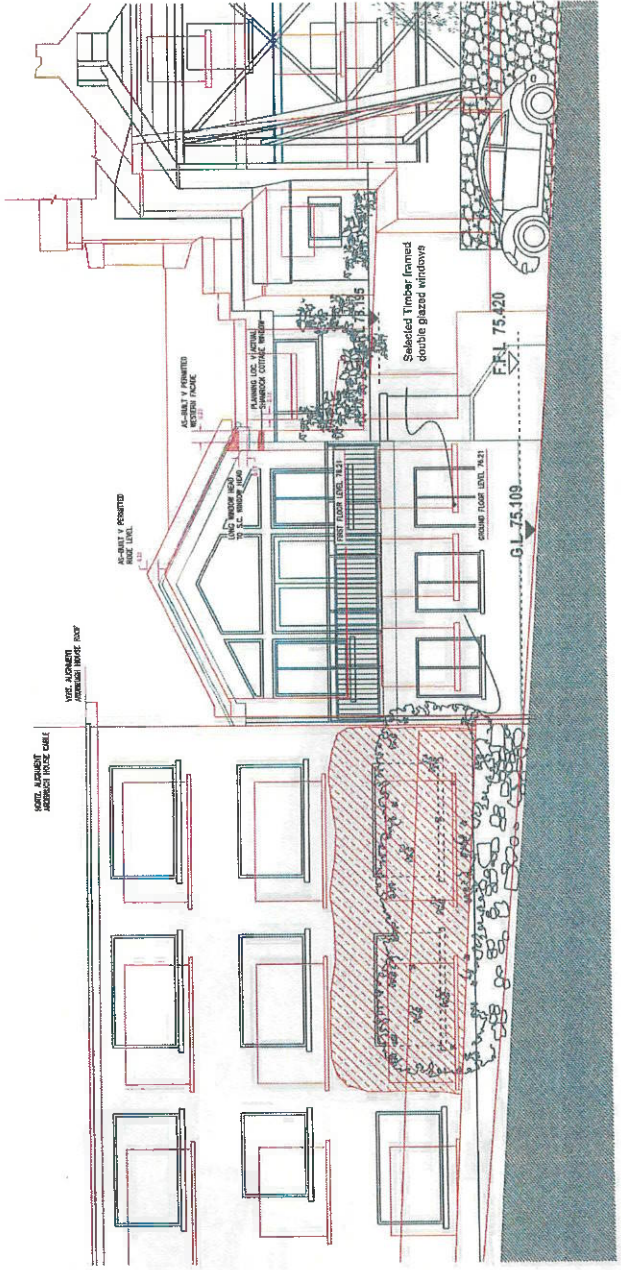
NOTES:
 2018 Survey limits are to include North Road.
 Construction Operations on Monday are to
 include.



STREET ELEVATION (2018 SURVEY) 1:100



STREET ELEVATION (PLANNING DRAWINGS) 1:100



OVERLAY (2018 SURVEY DATA RED) 1:50

For info please contact:

techsol
 TECHNICAL SOLUTIONS LTD
 11 Beechdale Road
 Ballymore
 Dublin 11
 Tel: 01 242221

PROJECT: FÁSADA Survey of
 Ardagh Road
 Co. Dub.
 CLIENT: C/o McKean Fitzgerald
 Planning Use
 Page 2

Surveyed by	Drawn by	Checked by
RM	RM	RM
Date	Date	Scale
14/03/2018	14/03/2018	1:50 & A1
Revision No.	Revision No.	Sheet No.
1	1	1/1

DRAWING NO.
 D:\18-03-2018\18-03-2018-01-01



NOTES:

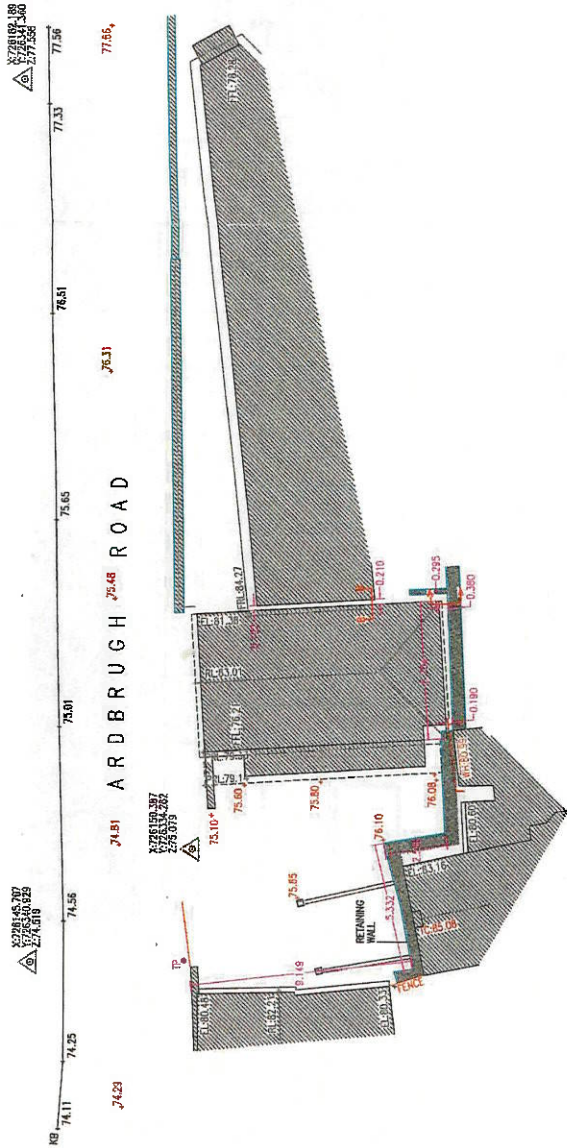
1. Survey Data is referenced to IMM Coordinates.
2. Levels indicated are in metres and referenced to Ordnance Datum Mean Head.
3. Dimensions indicated are in metres.

LEGEND:

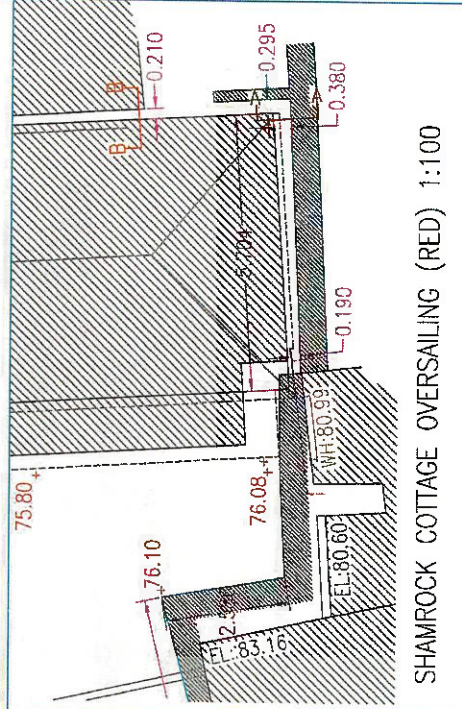
- EL: Eaves Level
- FFL: Finished Floor Level
- FRL: First Floor Level
- KB: Kerb Bottom
- PRL: Pitched Roof Level
- RE: Road Edge
- RL: Ridge Line
- TC: Top of Chimney
- TP: Telegraph Pole
- WH: Window Head Level

Techsol Technical Solutions Ltd. does not accept responsibility for third party additions to this drawing.

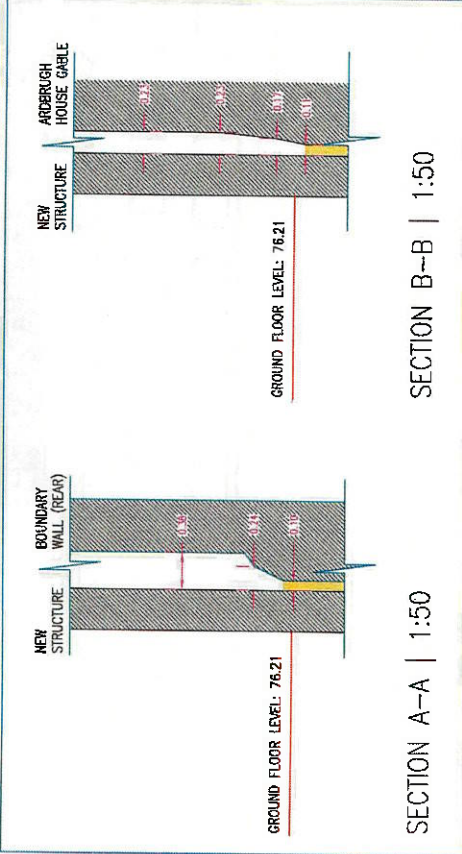
DO NOT SCALE FROM PAPER COPIES



SITE LAYOUT (2018 SURVEY) 1:200



SHAMROCK COTTAGE OVERSAILING (RED) 1:100



SECTION A-A | 1:50

SECTION B-B | 1:50

<p>techsol technical solutions ltd.</p>		<p>TECHSOL Technical Solutions Ltd. 71 Beechfield Road Walkinstown Dublin 12 Tel: 01 424 2227</p>		<p>PROJECT: Boundary Survey at Ardburgh Road Dalkey Co. Dublin</p>		<p>CLIENT: C/o. McCann Fitzgerald Riverside One Dublin 7</p>		<p>Surveyed by RM</p>	<p>Drawn by RM</p>	<p>Checked by RM</p>	<p>File ref. P:\DL7445</p>	<p>Date May 2018</p>	<p>Scale 1:200 @ A3</p>
						<p>sales@techsol.ie</p>		<p>Drawing No. DL7445</p>	<p>Revision No. Rev 2</p>	<p>Revision No. Rev 2</p>	<p>Sheer No. 1/1</p>		

THE HIGH COURT

Record No. 2018/122MCA

**IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT
2000, AS AMENDED AND IN THE MATTER OF AN APPLICATION**

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL McDONAGH & NOREEN FARRAR

Respondents

AFFIDAVIT OF ROBERT MERRY

**McCann FitzGerald
Solicitors
Riverside One
Sir John Rogerson's Quay
Dublin 2
DOR\29426031.1**

Appendix 2

Affidavit of Mr Gavin Lawlor

THE HIGH COURT

Record No. 2018/122 MCA

**IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION**

BETWEEN

DARRAGH FEGAN

Applicant



-and-

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

AFFIDAVIT OF GAVIN LAWLOR

I, Gavin Lawlor, Town Planning Consultant and Director of Tom Phillips and Associates of 80 Harcourt Street Dublin 2, aged 18 years and upwards **MAKE OATH** and say as follows:-

1. I hold a Masters Degree in Regional and Urban Planning, Conferred by University College Dublin and I am a corporate Member of the Irish Planning Institute. I have worked as a consultant town planner for 23 years.
2. I make this affidavit in reply to the affidavit of John O'Malley sworn on 18 April 2018 ("Mr O'Malley's Affidavit") and in reply to certain averments contained in the affidavit of Darragh Fegan sworn on 5 April 2018 ("Mr Fegan's Affidavit") and that of Val O'Brien sworn on 18 April 2018 (Mr O'Brien's Affidavit). At the outset, it should be noted that I had no involvement in the development the subject of these proceedings prior to the initiation of the proceedings. I was retained on 10 May 2018 by the respondents herein for the purposes of providing my expert assessment of the planning matters raised by or on behalf of the Applicant in the proceedings.

3. I make this affidavit having had the opportunity to inspect the development at 23 Ardrugh Road the subject of these proceedings from the road, from all aspects of the development site itself, as well as internally. I note that none of Mr O'Malley, Mr O'Brien or the Applicant herein have had the benefit of a full inspection of the site and the development other than from the public road or otherwise outside the site boundaries. I understand and am advised that no request was made of the respondents to permit access to the site, notwithstanding that an offer of a site inspection was refused.
4. I have also had the benefit of reading in approved but unsworn form the affidavit of Robert Merry prepared in aid of the respondents herein who has, as averred to therein, also had the benefit of a full site inspection and a review of the original site plans (rather than photocopies of same on the publicly available planning file). I say that access to the actual site and to original planning drawings is critical, for the reasons described in further detail below, in assessing compliance with any planning permission and any deviation therefrom, particularly where, as here, allegation is made of what are at most minor deviations measured in millimetres from the permitted development.
5. In summary, Mr O'Malley falls into very significant error in all relevant parts of his affidavit. At paragraph 6 of his affidavit, Mr O'Malley fairly acknowledges that he has relied upon drawings prepared by Mr O'Brien and exhibited to Mr O'Brien's affidavit. Mr O'Brien also avers that he and Mr O'Malley each refer to the same diagrams which they 'considered and prepared together' (paragraph 10 Mr O'Brien's Affidavit). For the reasons explained more fully below and averred to in the affidavit of Robert Merry, to which I beg to refer when produced, these diagrams are fundamentally flawed. As a result, Mr O'Malley's planning assessment is grounded upon and flows from an incorrect premise.

Applicants Unauthorised Development

6. At the outset, I think it relevant to note that the north facing window of Shamrock Cottage may comprise unauthorised development. Having reviewed the planning register, it would appear that only one planning application has been made for development at Shamrock Cottage. This application bearing the planning register reference D06B/1047 was lodged on 1st December 2006. I beg to refer to a copy of the planning application drawings and permission for D06B/1047 upon which pinned together and marked with the letters and numeral "GL01" I have signed my name prior to the swearing hereof. The application sought permission for a single storey 21m² extension to the front of Shamrock Cottage and the conversion of the flat roof of Shamrock Cottage to a Roof Garden. Permission was granted on 1 February 2007 for the single storey extension to the front of the Cottage. However, the proposed roof garden was refused permission. According to the planning enforcement register, a warning letter was issued to the Applicant and his wife on 30 July 2007 alleging there was an unauthorised extension to the rear of the dwelling with a rear window less than one metre from the boundary (i.e. the north facing window). I beg to refer to a copy of the warning letter upon which pinned together and marked with the letters and numeral "GL02" I have signed my name prior to the swearing hereof. I note that this window and extension are shown as being part of the existing Cottage in the planning application drawings submitted with D06B/1047. The enforcement file was closed on 23 August 2007 following receipt of correspondence from the applicant. The reason stated by the planning authority for closing the file was that the 'window had been in place for a number of years'. I beg to refer to a copy of the letter from Dun Laoghaire Rathdown County Council ("DLRCC") stating that the file had been closed upon which pinned together and marked with the letters and numeral "GL03" I have signed my name prior to the swearing hereof. It would appear therefore that the extension provide to the rear of Shamrock Cottage with the north facing windows was unauthorised but escaped enforcement action on the part of DLRCC on the basis that, by the time DLRCC became aware of it, the passage of time since construction was such that enforcement was time-barred. I say that although the unauthorised development

appears therefore to be immune from enforcement action, it still constitutes unauthorised development.

7. I would note further from my site inspection that the roof of the second storey of Shamrock Cottage has a railing similar to that refused permission under D06B/1047. This railing is evident in Plates 1 and 2 of Exhibit JOM 5. This would suggest that, notwithstanding the refusal of permission for the roof garden at Shamrock Cottage, the applicant appears to be using the roof for such a purpose.
8. I am surprised the neither the Applicant nor Messrs O'Malley or O'Brien, in any of the two hundred pages of the evidence put forward in support of the within application, informed this Honourable Court as to the existence of this enforcement file pertaining to the north facing window of Shamrock Cottage or dealt with the railing on the roof. I say, believe and am advised that this is clearly relevant information given the discretionary nature of the Court's jurisdiction under Section 160 of the Planning and Development Act, 2000, as amended. Moreover, as discussed further below and in the Affidavit of Mr Merry sworn herein on behalf of the respondents, this is also a factor in the mapping errors made by Messrs O'Brien and O'Malley.

The 2015 Planning Applications

9. I have reviewed the planning register of the planning authority, DLRCC to ascertain the relevant planning history of the site at 24 Ardrugh Road (the "Site"). For the purposes of the present proceedings, I note that a total of 4 no. applications were made pertaining to the site. These were as follows:

Planning Reference No.	Applicant	Decision
D04A/1189	Peter Dempsey	Refused
D07A/0507	Peter Dempsey	Granted
D15A/0363	Noreen Farrar	Refused
D15A/0750	Noreen Farrar	Granted

10. In all four applications listed, permission was being sought for a two-storey house of a very similar scale and design to that ultimately permitted and development. Two planning applications were made in 2015, one refused and the other granted. The only significant difference between the two was the extent of the extension to the ground floor to the west and the inclusion of a western facing balcony. In particular, the refused scheme (D15A/0363) sought permission to extend the ground floor further to the west over what was permitted in D07A/0507 in two steps, one of 900mm for the southern half of the western side of the building and the other of 1635mm for the northern half of the western side of the building (under the proposed western facing balcony). Both the western balcony and the northern extension of 1635mm were omitted in the application granted.
11. I say that one significant error evident in each of Mr O'Brien's and Mr O'Malley's Affidavits is that they seek to invoke in aid of the Applicant herein the application for permission that was refused by DLRCC in July 2015, reference D15A/0363, the first of the two applications referred to above. Each of Mr O'Brien and Mr O'Malley refer in detail to that part of D15A/0363 that sought permission to extend the ground floor of the proposed development by 900mm to the west. However, as is clear from a review of the planning application

drawings submitted with D15A/0363 the western ground floor extension occurred in two steps one of 900mm and one of 1635mm as noted in Para 11 above. As such D15A/0363 was refused primarily on the grounds that it included application for a balcony at first floor level on the western façade of the first floor of the property as well as a significant extension to the west at ground floor level. I would note that it is obviously apparent from a comparison of the ground floor plans for D15A/0363 and D15A/0750 that the dimension of the western expansion nearest Shamrock Cottage is identical in both applications at 900mm and the overall width of the houses proposed in both applications is also identical in this location. Both applications show the width of the house on the southern boundary before the 900mm extension to be 5690mm which is identical to the width of the house permitted under D07A/0507 at its southern boundary. I note that that the planning officer in her report dealing with the D15A/0750 application (as exhibited in DF13) states the following under the heading Enlarged Ground Floor Plans: "*The ground floor plan of the proposed dwelling is to be enlarged to the west by 0.9 metres. The previously proposed development, which was refused planning permission, Ref. D15A/0363, showed the enlarged ground floor to be located in front of a north facing window of the dwelling to the south, Shamrock Cottage. It was considered that the proposed enlarged ground floor would be visually obtrusive from this window and would seriously detract from the residential amenity of Shamrock Cottage. Under the subject planning application, this ground floor extension has been altered to ensure that there will be no impeding of the view from this window. The Applicant has submitted drawing no. PP-03, 3D images which shows the junction of the two buildings in this area. The proposed development is considered not now to detract from the residential amenity of this dwelling.*" Given that the overall dimension of the southern extent of the proposed development has not changed between D15A/0363 and D15A/0750, it is clear that the alternation to the ground floor that the planning officer is referring to is the reduction in the width of the northern most extension provided at ground floor in D15A/0363 from 1635mm to that proposed in D15A/0750 at 900mm. I beg to refer to a copy of the planning application drawings and permission for D15A/0363 and D15A/0750 upon which pinned together and marked with the letters and numeral "GL04" I have signed my name prior to the swearing hereof.

12. Mr O'Malley, at paragraph 45 of his affidavit, states that DLRCC's 'fundamental objection' to D15A/0363 was clearly the 0.9m ground floor extension to the west, on the basis that this would be visually obtrusive. As noted above this cannot be the case. However, Mr O'Malley fails to point out that the subsequent application, D15A/0750, made in November 2015, omitted the wraparound balcony but incorporated a ground floor extension of 0.9m identical in other respects to that in application D15A/0363 at its nearest point to Shamrock Cottage. This second application, D15A/0750, was the subject of a grant of planning permission by DLRCC. I say therefore that the enormous and repeated emphasis placed by Mr O'Brien and Mr O'Malley on the initial refusal of the extension of 0.9m is demonstrably misplaced given the subsequent approval by DLRCC, in the context of an application made 5 months after the initial refusal, of an extension of exactly the same proportions in exactly the same position relative the northern window of Shamrock Cottage. In fact the roof of the extension is shown to pass underneath the window in Shamrock Cottage in the First Floor Plan on drawing PP-01 submitted with D15A/0750 (exhibited as JOM 3).
13. By comparing the applications (D15A/0363 and D15A/0750), it is evident that the principal difference between the two is the omission of the western element of the first floor balcony, and the reduction in the proposed ground floor extension with at the northern end from 1635mm to 900mm. Of course, the balcony was designed to sit on top of that 1635mm wide part of the extension. Mr O'Malley, when he quotes from the reason for refusal at paragraph 8 of his affidavit omits the first sentence of the refusal reason. Both he and Mr Fegan place enormous emphasis on the text in the reason to the effect that the '*...the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of this dwelling...*' However, I say and believe that the single reason for refusal cannot be parsed in this fashion and must be read as a whole; reading the reason as a whole, the

comment as to the visual impact of the ground floor extension is intrinsically linked to the fact that a balcony was being proposed on the roof of that extension and that the extension itself under the balcony is considerably wider than the 900mm extension to the south which is identical in both applications. The photo Mr O'Malley refers to, photograph 22 (at exhibit VOB2 to Mr O'Brien's affidavit) helps to illustrate what the planning authority was referring to when it described the then proposed first floor balcony as visually obtrusive, if one imagines the view from the window had a balcony been in place directly outside that window.

14. The extension of the ground floor by 0.9m was a constant element of both applications. Clearly, as a matter of logic, it was the omission of the balcony and the 1635mm extension that concerned the planning authority.
15. I say therefore that the references in the 'Reason' given for the refusal of D15A/0363 to the proposed alteration being 'visually obtrusive' and to 'overlooking' are clearly to be read as referring to the balcony and the 1635mm ground floor extension. Indeed, were it otherwise, the grant of permission for the identical 900mm ground floor extension and an additional window in the western façade at first floor level 5 months later would have no logic. It is notable that neither the Applicant nor his wife made any objection to D15A/0750, which sought an extension 900mm wide and an extra window but which omitted the first floor balcony.
16. I say that if Mr O'Malley contends, as he does, that a prior planning rejection can inform a subsequent grant of permission, then he must do so by reference to the actual meaning and obvious intent of the prior rejection, rather than by mischaracterising it, as I regret to say he does repeatedly
17. At paragraph 56 of his affidavit, Mr O'Brien acknowledges that the planning authority was concerned to ensure that the proposed ground floor extension did 'not block the north facing window'. I agree with Mr O'Brien and Mr O'Malley's repeated observation that words in a planning decision ought generally be given their ordinary meaning, and it is quite clear that the approved ground floor extension - which is identical to that refused previously at its southern most point - does not 'block' the north facing window of Shamrock Cottage. I believe that it is clear that the planning authority was concerned by the wraparound balcony and the extent of the extension underneath it; on the basis of the development for which permission was being sought in application D15A/0363, it was only this aspect of the proposal that could have 'blocked' the north facing window of Shamrock Cottage, but of course this was never constructed.

Applicant's Mapping Errors

18. I say that it is evident from even a cursory site inspection that Mr O'Brien's drawings, which form the basis of his and Mr O'Malley's affidavits, are significantly in error. In this respect, I beg to refer to a copy of Mr Merry's affidavit sworn on behalf of the respondents herein when produced. Mr Merry sets out that the reference point selected by Mr O'Brien and used for the purposes of comparing the actual position of the house as built from the plans submitted to the planning authority is incorrect. The reference point chosen, described as the south eastern corner of Shamrock Cottage, is not shown on the Ordnance Survey Ireland (OSI) map. This may arise because the south eastern reference point forms part of the extremity of the unauthorised development constructed at Shamrock Cottage, of which the north-facing window forms part.
19. In any event, Mr O'Brien appears to have drawn the Shamrock Cottage extension onto the OSI map. However, as Mr O'Brien is undoubtedly aware, OSI Maps are only accurate to plus or minus 1000mm. Therefore, the reference point chosen is entirely unsuitable and is in, fact,

unreliable. It is very surprising that Mr O'Brien should seek to rely on what is a relatively inaccurate map, with, in effect, a margin of error of up to 2000mm, as a basis to illustrate what he says is a deviation of a maximum of 700mm.

20. I say also that Mr O'Malley and Mr O'Brien have relied upon plans and maps apparently drawn from the public planning file. Necessarily, they must have relied upon copies of these documents as, I am instructed, they have never sought original plans or drawings. Copies of any plans are necessarily inaccurate and not scalable. Maps and plans become distorted in any copying process and a copy of a map or plan can only be relied upon to use a dimension actually shown on the map or plan. Therefore a map or plan may be relied upon where an actual measurement is shown on it, but it is not accurate or reliable to take a measurement from a copy of a map or plan by seeking to scale from the map or plan.
21. I note that a further inaccuracy arises in (and therefore from) Mr O'Brien's drawings in that he describes and draws (drawing reference 170508-02) the house as constructed (the "House") as being at a distance of 460mm from the gable wall of the neighbouring property known as Ardrugh House. In fact the 'gap' between Ardrugh House and the House varies to between 197 and 210mm (as the gable wall undulates). Mr O'Brien therefore exaggerates the gap by a factor of more than 200%. Mr O'Brien, in his drawings, has consistently wrongly measured the location of the House, which is correctly shown on Mr Merry's drawings.
22. In terms of his planning assessment, Mr O'Malley lists 6 items of complaint, being (1) the position of the house as built (the "House Location"), (2) the roof of the ground floor extension, (3) Roof plane windows, (4) Over sailing at Southern Site Boundary, (5) High Level Windows (sic) in West Elevation (6) Ground Floor Windows in South Elevation. I therefore propose to address each of these in turn.

House location

23. The first issue listed by Mr O'Malley relates to the position of the House. He relies on the plans created by Mr O'Brien in asserting at Para 12 of his affidavit that the position of the House as built is, (i) in respect of the western façade (ground floor), 700mm further west than permitted at the north end (abutting Shamrock Cottage) and 650mm to the west at the southern (road) end; (ii) the first floor western façade is 430-450mm further west than permitted, (iii) the eastern façade is alleged to be 420-460mm further west than it ought be and (iv) the southern end is 580-710mm further back from the rear property boundary than as permitted. Mr O'Malley and Mr O'Brien say that each of these 'deviations' are significant and that the result is that the House constitutes unauthorised development.
24. I note that the House as built has been inspected and/or reviewed two times by the Enforcement Division of DLRCC (one in August 2016 and one in May 2017). Each time, the Enforcement Division has confirmed that the House has been built in substantial compliance with the planning permissions. In this regard I beg to refer to copies of the report of Martin Cassidy, DLRCC Planning Inspector, of 30th August 2016 (with attached photographs), the email of Mr Cassidy of 15th September 2016, the email of Mr Cassidy of 12th January 2017, the email of Mr Cassidy of 29th March 2017 and the report of Mr Cassidy, entitled Planning Memo: Enforcement, of 5th May 2017, all of which are exhibited to the Affidavit of Noreen Farrar sworn herein, when produced. I think it important to note that DLRCC's Planning Inspector, Mr Merry, Mr Dunbar and I have all had opportunity to inspect the House as built, rather than to attempt to measure from adjoining properties or from the public road. I am advised that Solicitors for the respondents, in correspondence in December 2017, offered to have a site meeting with the Applicant, but this offer was rejected out of hand and I consider this to be significant.

25. Turning to the specifics, Mr O'Malley, at paragraphs 12 and 67 of his affidavit, avers (based on his joint efforts with Mr O'Brien) that the House is constructed 650-700mm west of the approved building line. This is not correct. The actual deviation as measured by Mr Merry is of the order of 430mm. This would, in my professional opinion, constitute a minor deviation.
26. It is relevant to note that the effect of the combined permissions relied upon by the respondents (D07A/0507 and D15A/0750) permitted the construction of a House of a width (at ground floor level excluding the 900mm extension), from east to west, of 5690mm. As constructed, the House is, from east to west, 5704mm wide at ground and first floor, that is 14mm wider than permitted at ground floor and 6mm narrower than permitted at first floor. The house is also smaller from north to south than permitted by the planning permissions being 9990mm as built as against 10450mm as permitted.
27. I say that the one of the significant errors made by Mr O'Brien and Mr O'Malley, as identified by Mr Merry, is that they chose as a reference point for their drawings the south-eastern corner of Shamrock Cottage. This aspect of Shamrock Cottage is not shown on OSI maps. Mr O'Brien has drawn onto the OSI map what is the approximate position of the south eastern corner of Shamrock Cottage and extrapolated from that. As Mr O'Brien is undoubtedly aware, the stated accuracy of OSI maps is plus or minus 1000mm; however, Mr O'Malley and he rely on a map with this stated accuracy of to within only plus or minus 1000m to support an allegation of a deviation of, at its most significant, 700mm (which figure is, anyway, factually inaccurate on the basis of Mr Merry's site measurements, which were obtained by an actual site inspection which neither Mr O'Malley or Mr O'Brien conducted). In other words, the stated deviation alleged by Mr O'Brien and Mr O'Malley is within the margin of error of the map upon which they base their allegations.
28. Further, I say that it appears that Messrs O'Malley and O'Brien did not check their measurements even visually from the public road. I say this because they allege a deviation at the south eastern end, next to Ardrugh House, of 460mm from the eastern building line as permitted under the planning permission. In fact, the movement at this point, taken from actual measurement, is 190mm. I say that, given the proximity to the public road to this point, Messrs O'Malley and O'Brien could easily have established by visual inspection alone that their extrapolation of a deviation of 460mm was entirely incorrect.
29. Mr Merry's inspections illustrates that the maximum movement of the House at the southern end is 290mm and at the northern end 197mm. In relation to the western façade, the maximum deviation is 430mm at ground and 230mm at first floor level. I am advised that these deviations arose by reason of the site conditions. This is reflected in the penultimate paragraph of DLRCC's Enforcement Officer's report of 5th May 2017. Unfortunately, Ardrugh House's gable wall is not straight, either in the vertical or horizontal planes. In order to construct the House and to avoid interference with Ardrugh's foundations, as set out in the consulting engineer, Mr Dunbar's affidavit, it was necessary to move the eastern gable to the west by between 190 and 290mm.
30. Mr O'Malley also complains that the deviation is other than minor by reference to a 'visualization' included in the D15A/0750 planning application. In my experience, a planning authority will not rely on a visualization exclusively. These images are used as a tool to help the planning authority visualise the likely relationship of a proposed development to its surrounds in 3 dimensions. They are, as is the case in this instance, not necessarily totally accurate, but rather give an impression of the likely relationships. The key documents in any planning application are the detailed measured plans.

Oversailing

31. Messrs O'Malley and O'Brien and the applicants complain, in significant detail, that the roof of the House at the northern end, i.e. next to Shamrock Cottage, 'oversails' the roof of Shamrock Cottage. As both ultimately recognise, any oversailing was temporary while the roof was under construction. Following complaint from the Applicant and his wife, the respondents' contractor was instructed to cut back the roof so as to avoid any potential oversailing. I say that it is surprising that the applicants should not inform this Court that any oversailing was temporary and was removed on or about January 2017, well before these proceedings commenced.
32. Further and in any event I understand that any oversailing is fully denied by the respondents by reference to the extent of their title and in this respect to I beg to refer to the affidavit of Mr Dunbar, when produced.

Downpipe

33. Mr O'Malley also complains (at paragraph 73 of his affidavit) that a gutter and downpipe are in plain view from the unauthorised north facing window of Shamrock Cottage. However, I am instructed that the downpipe is a temporary structure which is intended to be removed. It will be replaced by a downpipe located at the southern end of the western façade, which will be in copper and will therefore be visually attractive and not is the same location as the current temporary downpipe.

Ground Floor Roof

34. It is unclear as to why Mr O'Malley makes separate complaint about the roof of the ground floor area, having made the complaints he does about the gable wall of the ground floor: it will of course be the case that the roof will extend to cover the ground floor. I say that as set out above, the position of the ground floor is not 700mm to the west as Messrs O'Brien and O'Malley contend and that they have similarly repeated their measurement errors in respect of the roof of the ground floor.
35. Mr O'Malley is correct that the roof of the ground floor is extended to the northern end, that is away from Shamrock Cottage and next to the public road, to cover the front door. In my professional opinion, this slight extension of the roof to give rain cover at the front door is a minor deviation that is not material in planning terms. There is no impact on the residential amenity of Shamrock Cottage. Furthermore, I note that the planning enforcement authorities took no issue with this as is evidenced from the report of the enforcement officer dated 5 May 2017 which include photographs of the extended ground floor roof.
36. Having regard to the comments made by Mr O'Malley at Para 96 of his Affidavit, I would agree that the profile of the roof over the extended ground floor varies from what is shown in the planning application drawings relating to D15A/0750. I do not however agree that this is a material deviation from the permitted drawings. Having regard to the copper finish, this is a high-quality material which in my professional opinion will be much more attractive to view from Shamrock House than a typical flat roof material such as asphalt. In terms of the requirement to agree this material with the planning authority as averred to in Para 93 of Mr O'Malley's affidavit, I would note that Condition 5 of D07A/0507 has been superseded by D15A/0750 and in particular Condition 2 of that permission which expressly precludes the amendments made in D15A/0750 (i.e. the roof over the extended ground floor) from consideration against the conditions relating to D07A/0507. As such the copper finish cannot be consumed as being unauthorised as is claimed by Mr O'Malley.

Roof Plane Windows

37. No application was made for roof plane windows and they are not permitted under the planning permission. However, once a building is practically complete, the owner is free to install roof lights as they constitute exempted development for which planning permission is not required under the provisions of Section 4(1)(h) of the Planning and Development Act, 2000. This provision notes that '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', is exempted development. Roof lights such as those installed would in my professional opinion fall under this exemption. The precise timing at which the exemption can be availed of is more appropriately a matter for legal submission. However, it is clear that, at a level of general principle, the installation of roof lights is not considered to be so material in planning terms as to require to be the subject of an application for planning permission.

Rear Windows - Southern Ground Floor Elevation

38. Two windows facing onto the granite boundary wall were built as part of the construction. These windows can have no effect on Shamrock Cottage. They are 'below ground' as far as Shamrock Cottage is concerned and no over-looking or other issue could possibly arise by reason of their existence. I say that given that Mr O'Malley only refers to these window in two paragraphs of his very lengthy affidavit, I do not believe that he has any real objection to them. While they are not indicated in the permitted plans, their addition is not material in planning terms.

High Level Window West Elevation

39. I say that at paragraph 108 of his Affidavit, Mr O'Malley selectively quotes - and does so incorrectly - from the text of the planner's report in relation to that part of application of D15A/0750 that relates to the addition of three windows at first floor level on the western façade. The full text of the relevant part of the planning officers' report in this context is:

"New windows:

Three new first floor windows are proposed on the west facing elevation of the proposed dwelling. One of these windows is to the kitchen area is a high-level window. A frosted glass slit window is proposed to the living room. These windows will not give rise to overlooking issues. Another slit window is proposed to the first floor level living area. This will face onto the private amenity space for the dwelling and the blank gable wall of the dwelling to the west and will not therefore give rise to overlooking issues."

40. Mr O'Malley avers that his affidavit 'focuses on the high-level window' nearest to Shamrock Cottage only. I say therefore that the Applicant has raised no issue in relation to the other two windows the subject of permission D15A/0750, and I therefore make no comment as to the other two windows other than to say that, as is evident from photograph no. 22 at Exhibit "VOB2" to the affidavit of Mr O'Brien, there is no view from the unauthorised window of Shamrock Cottage to or through the other two windows in the western façade.
41. As regards the high level, horizontal window, I wish to make a number of observations.
42. First, although this was not required under the planning permission, the high-level window has been glazed with permanently frosted glass. Although this is obvious from even a cursory inspection, neither Mr O'Malley nor any of the other deponents who have sworn

affidavits on the Applicant's behalf (including the Applicant himself) has averred to this fact. I am advised that frosted glazing was installed voluntarily by the respondents although not required by the planning permission, in an attempt to accommodate concerns expressed by the Applicant's wife. In this regard, I beg to refer to the Affidavit of Noreen Farrar when produced. Further, it is clearly accepted at a level of principle by the planning authority that a frosted glass window does not give rise to an overlooking issue.

43. Second, the window sill is at a height of 1.73m above floor level which is in accordance with the planning permission. The head of the window is 170mm above the head of the north facing window in Shamrock Cottage. In this respect, contrary to the claim made by Mr O'Malley in Para 111 of his affidavit, the sill of the high-level window is not below the sill level of the window at Shamrock Cottage. In fact, a simple visual inspection proves this point. I would also note this claim is at variance with the claim made in Para 113 that the sill is built some 340 to 970mm above its permitted location and again at variance with a further claim that the sill is below the level of the head of the Shamrock Cottage window. The complaint the Applicant makes in this regard seems to me to be illogical.
44. At paragraph 111 Mr O'Malley seeks to deploy a document sent to the planning authority with the plans for D15A/0750 which is marked as a 'visualization'. No dimensions are included in the visualization. It is not scaleable as a plan might be. It is taken from an angle (necessarily so, to show the façade) and is a 'mock-up' of how the House might look. The planning permission requires the House to be built in accordance with the plans (condition no. 1), but not with the 'visualization'. I note that the entirety of Mr O'Malley's commentary on the permitted location of the high level is based on his assessment of the details shown in the 3D image submitted with the planning application. As noted above, this image is a tool and not a planning application drawing from which a compliance matter should be judged. In fact, it is of some note that Mr O'Malley himself notes at Para 112 that the 3D image does not accurately represent the elevations as shown on the planning application drawings.
45. It is a well understood planning principal that one should rely on the information shown in planning application drawings as the primary authority when determining compliance. If there is a conflict between an illustration/visualization and accurate measured drawings, then the drawings clearly take precedent, as is the case in this instance. Notwithstanding this fact, Mr O'Malley conveniently relies on the image in place of the drawings to assess the status of the high-level window. The rationale given for this approach is that the only document that shows the high-level window and the Shamrock lodge window together is the 3D Image. This is a fundamentally flawed approach as the 3D image does not contain any dimensions and cannot be used as a determinant of planning compliance. It is simply an illustration. Any planner should be capable of reading planning application drawings and determining the actual relationship of the windows and it is not necessary to rely on a 3D image to determine the permitted relationship. Moreover, as is clear from comparing the west and north elevation on planning application drawing PP-01, it is clear that both elevations have common elements that easily allow comparison of the relationship between the windows. For example, the western elevation shows the location of the high-level window relative to the northern boundary wall of Shamrock Cottage and more particularly to the roofline/facia of the Cottage. The northern elevation shows the location of the north facing window in Shamrock Cottage relative to the same roofline/facia shown in the western elevation. It is therefore very easy to deduce the relationship between the windows. In this regard, it is clear that the head of the high level window in the House is just above the head of the window in the northern gable of Shamrock Cottage with the sill of the high level window being below the head of the Shamrock Cottage window. The as built relationship between these windows is fully compliant with this observation. In this regard, as noted earlier in this paragraph the head of the high-level window is some 170mm above the head of the Shamrock Cottage window.

46. There appears to be a very significant contradiction in Para 113 of Mr O'Malley's affidavit. In particular, Mr O'Malley claims that the high-level window has been constructed some 340 to 970mm above its permitted level as shown in the planning application drawings. Yet at the same time later in the same paragraph he claims that the cill is constructed some 200mm below the head of the window in Shamrock Cottage. As noted above, the planning application drawings clearly show that the cill level of the high-level window as permitted is below the head of the Shamrock Cottage window. If Mr O'Brien or Mr O'Malley are accurate in their claims as to the location of the window relative to its permitted location, then this would mean that the cill level of the high-level window must be above the head of the Shamrock Cottage window. This is however not the case. As Mr O'Malley recognises the cill of the high-level window is below the head of the Shamrock Cottage window.
47. I say that from inspection, recognising the height of the high-level window from floor level, even if it were not frosted permanently, overlooking of the unauthorised window in Shamrock Cottage is not realistically possible. I say that, in fact and in my professional opinion, it is quite incorrect to say, as Mr O'Malley does, that 'quite serious and profound' overlooking could occur in the circumstances. Moreover, it is also wholly incorrect for Mr O'Malley to claim that it is possible to directly look into the first floor level of the 'as built' house from the existing sitting room window a Shamrock Cottage. As is evidenced from a site visit the high-level window has been frosted and there is no inter-visibility at all between the properties.
48. I say that Mr O'Malley may well be aware in fact that the window is frosted given his averment at paragraph 115 to the effect that even if the window were frosted, 'a perception of overlooking' might arise and artificial lighting might give rise to light pollution. The nearest public street light is less than 20 metres away and light from such a lamp is many times brighter than any light that might be given off through the high level frosted glass. I say further that in my experience as a planning consultant I have never heard reference to a 'perception of overlooking', something that it is perhaps illustrative of the approach taken by the Applicant herein.
49. I say also that, while it may be a matter for legal argument, I do not believe that an unauthorised development is entitled to the protection of planning laws.

Mr O'Malley complains at paragraph 109 that the plans as submitted to the planning authority with application D15A/0750 'did not adequately show the proposed west elevation and the existing window at Shamrock Cottage' (the unauthorised window), but clearly the plans submitted were sufficient for DLRCC to validate, consider and determine the planning application, and the said plans are in keeping with what, in my experience, planning authorities would expect to see submitted with a planning application.

Conclusion

50. I note that Mr O'Malley states at paragraph 128 that his opinion is supported by DLRCC's assessment of D15A/0363 and D15A/0750. However, he dismisses DLRCC's Enforcement Section's repeated opinions that the House has been constructed in accordance with the permissions other than in respect of minor deviations. I say that Mr O'Malley is clearly being selective in his approach.

51. In my professional opinion, the movement of the house by between 190 and 290mm west from Ardbrough House and the consequent movement of the western façade and the ground floor roof by equivalent distances, arising as it does from the nature of the gable wall of Ardbrough House itself, is precisely the sort of minor deviation that occurs in any construction project and is of a minor and immaterial nature.

SWORN by the said GAVIN LAWLOR

on 18 JUNE 2018

at 88 Harcourt Street,

in the County of the City of Dublin before me a
Practising Solicitor

~~[and I personally know the Deponent]~~

~~[the Deponent has been identified to me by
whom I personally know]~~



Gavin Lawlor

the identity of the Deponent has been established
to me by the Deponent by reference to his
~~passport~~/driver's licence no. ~~1-1~~ 0000015JK5

which contains a photograph of the Deponent



Practising Solicitor

JAMES PETERS

This affidavit is filed on behalf of the defendants by McCann FitzGerald Solicitors, Riverside One, Sir John Rogerson's Quay, Dublin 2 this day of 2018

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

EXHIBIT "GL01"
AFFIDAVIT OF GAVIN LAWLOR

Exhibit "GL01" as referred to in the Affidavit of Gavin Lawlor sworn *18* day
of *JUNE* 2018



DEPONENT



PRACTISING SOLICITOR/
~~COMMISSIONER FOR OATHS~~

JAMES PETERS

NO. P/0453/07.

Dun Laoghaire-Rathdown County Council

COUNTY MANAGEMENT ACTS, 1940 TO 1994 AND LOCAL GOVERNMENT ACT 2001

RECORD OF EXECUTIVE BUSINESS MANAGER'S ORDERS

Register Reference: D06B/1047 **Date Received:** 01-Dec-2006
Add. Info Req'd: **Add. Info Rec'd:**

Name & Address: Sara Devitt, S K Design, Ballinacor, Greenane, Rathdrum, Co. Wicklow
Development: Permission sought for 21 metre squared single storey extension to the front of existing 69 m. sq. two storey dwelling plus the conversion of 26 m. sq. flat roof into a roof garden at Shamrock Cottage.
Location: Shamrock Cottage, Ardbrough Road, Dalkey, Dublin
Applicant: Darragh Fegan
App. Type: Permission
Report
(R O'Connor)

no. 6
Permission sought for 21 metre squared single storey extension to the front of existing 69 m. sq. two storey dwelling plus the conversion of 26 m. sq. flat roof into a roof garden at Shamrock Cottage.

ZONING

In the Dun Laoghaire-Rathdown County Development Plan 2004-2010, the site is zoned Objective A 'To protect and/or improve residential amenity'. To the south of the site is a Proposed Natural Heritage Area.

SITE NOTICE

In place and legible on 16/1/07.

THIRD PARTY SUBMISSIONS

One submission was received during the prescribed period. The main issues raised include:
Overlooking
Inaccuracies in drawings

The contents of the above have been noted.

PRE-PLANNING CONSULTATION

None on file.

DEPARTMENTAL REPORTS

Roads: No report received to date (30/01/07).

Environmental Services: No report received to date (30/01/07).

Site Description

The site has a stated area of 0.0108 Ha. On site is an existing semi-detached house which is part single storey-part two storey. The site is located on Ardbrough Road which is characterised by a diversity of house types.

NO.P / 0453 / 07.

Dun Laoghaire-Rathdown County Council

COUNTY MANAGEMENT ACTS, 1940 TO 1994 AND LOCAL GOVERNMENT ACT 2001

RECORD OF EXECUTIVE BUSINESS MANAGER'S ORDERS

PLANNING HISTORY

There is no recent planning history on site.

PROPOSAL

This is a proposal to extend the existing single storey element of the cottage to the front elevation and to convert the 26 sq. m. flat roof into a roof garden.

PLANNING ASSESSMENT

The main issues are considered to be design issues and overlooking.

Design

The proposed single storey extension to the front is considered to be acceptable in terms of design and does not detract from the overall character of the dwelling. It will also serve to increase the amenity of the existing dwelling without a detrimental impact on neighbouring dwelling.

Overlooking

It is considered that the proposed roof garden would overlook adjacent and adjoining properties and as such would have a detrimental impact on the residential amenity of same. I do not consider that this element of the proposal is acceptable.

Summary

In conclusion, it is considered that permission should be GRANTED for the single storey extension and permission should be REFUSED for the proposed roof garden.

DECISION

I recommend a split decision on the proposed development as follows:

I recommend a GRANT OF PERMISSION for the single storey extension to the front elevation be made under the Planning & Development Act, 2000-2006, subject to the following conditions:

I recommend a REFUSAL OF PERMISSION for the 26 sq. m. roof garden be made under the Planning & Development Act, 2000-2006, for the following reason:

DECISION

I recommend a split decision on the proposed development as follows:

I recommend a **GRANT OF PERMISSION** for the single storey extension to the front elevation be made under the Planning & Development Act, 2000-2006, subject to the following conditions:

NO. 0453/07

Dun Laoghaire-Rathdown County Council

COUNTY MANAGEMENT ACTS, 1940 TO 1994 AND LOCAL GOVERNMENT ACT 2001

RECORD OF EXECUTIVE BUSINESS MANAGER'S ORDERS

1. The development to be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the other conditions attached hereto.
REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained.
2. That the water supply and drainage arrangements, including the disposal of surface water, be in accordance with the requirements of the County Council.
REASON: In the interest of public health.
3. That the entire premises be used as a single dwelling unit.
REASON: To prevent unauthorised development.
4. That all external finishes harmonise in colour and texture with the existing premises.
REASON: In the interest of visual amenity.
5. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.
REASON: To protect the amenities of the area.

NOTE: Any alterations to the drainage systems within the site are a matter for compliance with the Building Regulation.

NOTE: The applicant is advised that in the event of encroachment or oversailing of the adjoining property, the consent of the adjoining property owner is required. If this written agreement is not obtained the proposed development shall be modified only insofar as is required to do this.

NOTE: The attention of the applicant is drawn to Section 34(13) of the Planning and Development Act 2000, which relates as follows- 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

I recommend a **REFUSAL OF PERMISSION** for the 26 sq. m. roof garden be made under the Planning & Development Act, 2000-2006, for the following reason:

1. The proposed roof garden would create excessive overlooking of adjacent properties and as such would be seriously injurious to the residential amenities of said properties. As such the proposed roof garden would be contrary to the zoning objective for the area.


for Senior Planner

Endorsed:


Senior Executive Officer

ORDER: A decision, pursuant to Section 34(8) of the Planning and Development Act, 2000, for Register Reference D06B/1047, for the proposed development is as follows:

NO. P/0453/07

Dun Laoghaire-Rathdown County Council

COUNTY MANAGEMENT ACTS, 1940 TO 1994 AND LOCAL GOVERNMENT ACT 2001

RECORD OF EXECUTIVE BUSINESS MANAGER'S ORDERS

To **GRANT PERMISSION** under the Planning & Development Act, 2000, for **Error! Cannot open file.**, subject to the conditions as set out above and to **REFUSE PERMISSION** under the Planning & Development Act, 2000, for **Error! Cannot open file.** for the reasons as set out above, is hereby made.

*the 20sq.m roof garden
the single storey extension to the front elevation*

REG. REF.: D06B/1047

Signed:

Richard [Signature]
Approved Officer

Dated:

1/2/07.

to whom the appropriate powers have been delegated by order of the Dun Laoghaire Rathdown County Manager dated 24/10/2005.



Sara Devitt
S K Design
Ballinacor
Greenane
Rathdrum
Co. Wicklow

NOTIFICATION TO GRANT PERMISSION & REFUSE PERMISSION
Planning & Development Acts 2000 - 2006

Final Grant Order Number P/2081/07	Date of Final Grant 15-Mar-2007
Decision Order Number P/0453/07	Date of Decision 01-Feb-2007
Register Reference D06B/1047	Date Received 01-Dec-2006

Applicant Darragh Fegan
Development: Permission sought for 21 metre squared single storey extension to the front of existing 69 m. sq. two storey dwelling plus the conversion of 26 m. sq. flat roof into a roof garden at Shamrock Cottage.
Location Shamrock Cottage, Ardbrough Road, Dalkey, Dublin
Floor Area 21 Sq. Metres
Time extension(s) up to and including
Additional Information Requested/Received: /

A Permission has been **GRANTED** for the single storey extension to the front elevation subject to the following condition(s):.

1. The development to be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the other conditions attached hereto.
REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained.
2. That the water supply and drainage arrangements, including the disposal of surface water, be in accordance with the requirements of the County Council.
REASON: In the interest of public health.
3. That the entire premises be used as a single dwelling unit.
REASON: To prevent unauthorised development.





4. That all external finishes harmonise in colour and texture with the existing premises.
REASON: In the Interest of visual amenity.
5. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.
REASON: To protect the amenities of the area.

NOTE: Any alterations to the drainage systems within the site are a matter for compliance with the Building Regulations.

NOTE: The applicant is advised that in the event of encroachment or oversailing of the adjoining property, the consent of the adjoining property owner is required. If this written agreement is not obtained the proposed development shall be modified only insofar as is required to do this.

NOTE: The attention of the applicant is drawn to Section 34(13) of the Planning and Development Act 2000, which relates as follows- "A person shall not be entitled solely by reason of a permission under this section to carry out any development."

And permission has been **REFUSED** for the 26 sq.m. roof garden under the Planning & Development Act, 2000-2006, subject to the following reason(s):

1. The proposed roof garden would create excessive overlooking of adjacent properties and as such would be seriously injurious to the residential amenities of said properties. As such the proposed roof garden would be contrary to the zoning objective for the area.

Signed on behalf of the Dun Laoghaire Rathdown County Council

Teresa Ryder

for Senior Executive Officer

Date: 15-Mar-2007

Building Regulations

Buildings must be designed and constructed in accordance with the Building Regulations.

Commencement Notice

A Commencement Notice must be submitted in respect of all buildings other than exempted development, not less than fourteen days and not more than twenty eight days before development commences and be accompanied by a fee of €30.





Fire Certificate

A Fire Certificate must be obtained in respect of the erection, alteration or change of use of all buildings other than dwelling houses.

Amendments to the Building Regulations to take effect from 1st January 2001 **Building Regulations (Amendment) Regulations 2000 (S.I. No. 179 of 2000)** **Building Regulations (Amendment) (No. 2) Regulations 2000 (S.I. No. 249 of 2000)**

Amendment (S.I. 179 of 2000) relates to making new houses visitable by people with disabilities and imposing more stringent requirements on non-residential buildings / places relating to adequate access for disabled.

Amendment (S.I. 249 of 2000) introduces requirements for positioning letter plate apertures in house and other buildings.

Pursuant to the Planning and Development Act 2000 Section 34(13) A person shall not be entitled solely by reason of a permission under this section to carry out any development.

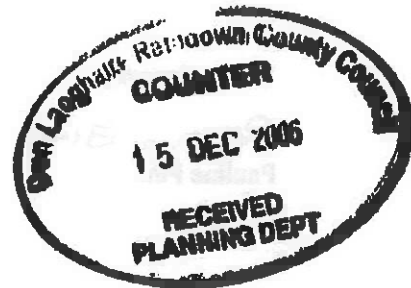


32a ard Brugh Road,
Dalkey,
Co. Dublin.

Tel: Home - 2859991
(after 6.30 p.m.)

Office – Failte Ireland
Culture and Heritage Dept.
Direct Line – 6024217

The Manager,
Dun Laghaire/Rathdown Planning Department,
Level 1,
County Hall,
Marine Road,
Dun Laoghaire,
Co. Dublin.



13th December 2006

**Reference Planning Application – Mr. & Mrs. Darragh and Alison Fegan –
DO6B1047. – Shamrock Cottage, Ard Brugh Road, Dalkey , Co. Dublin.**

**Permission sought for 21 metre square single storey extension to front of
existing 69 metre square 2 storey dwelling plus conversion of 26 metre
square flat roof into a roof garden.**

Dear Sir/Madam,

I refer to the above Planning Application by Mr. & Mrs. Darragh and Alison Fegan, and I wish to state that I object to this planning application on the grounds that:-

(1)

The proposed roof garden would seriously overlook adjoining properties particularly my private back garden which at the moment is completely private.

(2)

In addition this overlooking would seriously effect the privacy to both my bedroom and bathroom at 1st floor level.

(3)

The site layout / roof plan does not show the proposed hatch to the roof garden.

(4)

The elevation E2 is incorrect in that it shows the existing ridge line carried through to the new extension which would in fact be over the adjoining property.

I hope the above clarifies my reasons for objecting to this planning application. I enclose a cheque for €20.00 made payable to Dun Laoghaire/Rathdown County Council.

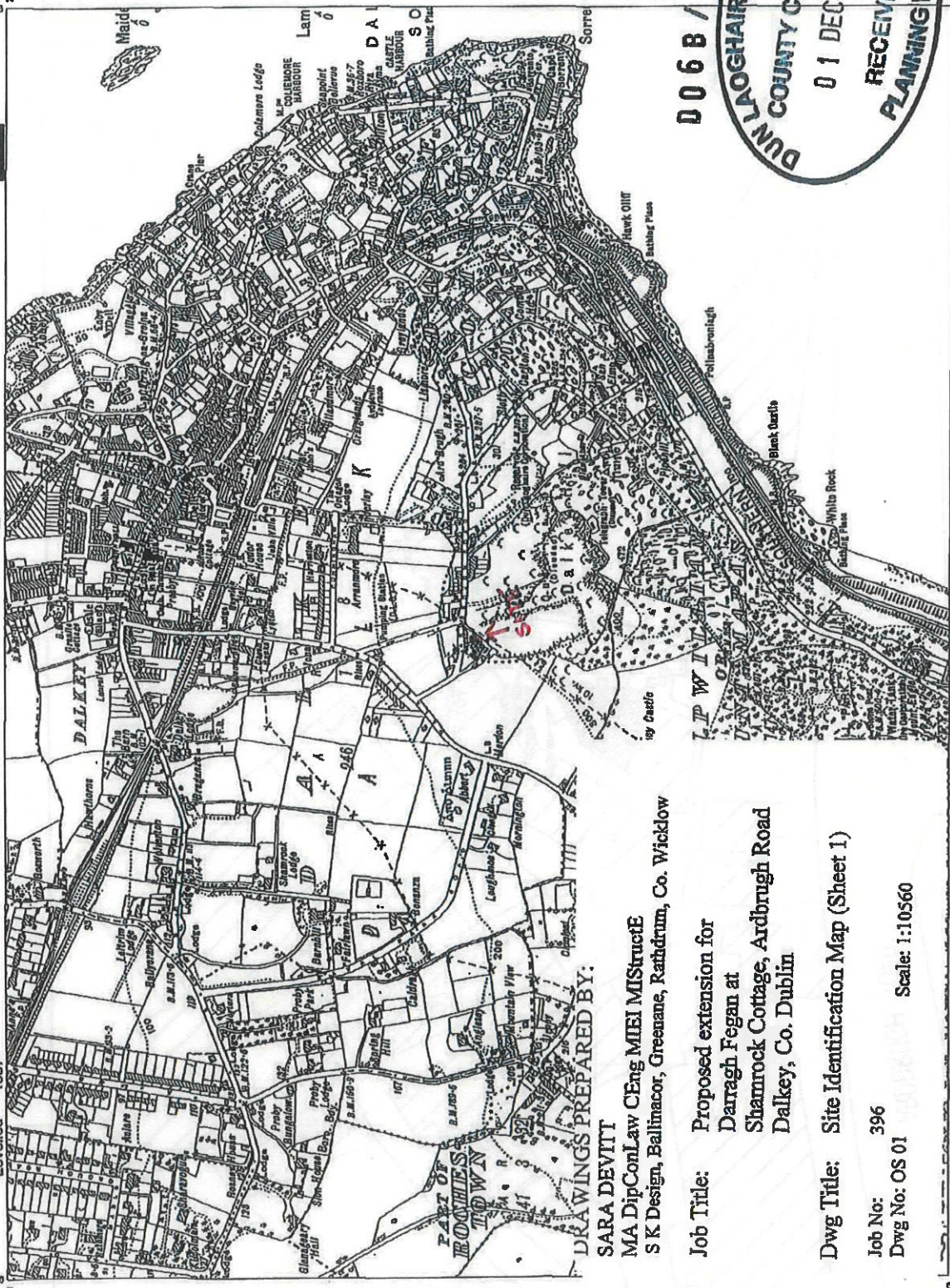
Yours sincerely,

Pauline Finn

Pauline Finn

Rural PLACE Map

Surveyed 1837
Revised 1937
Levelled 1937



ITM CENTRE PT. COORDS
726150, 726319

DESCRIPTION

MAP SHEETS

6 inch
DND023

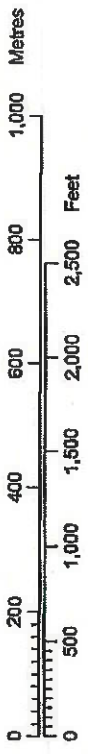


Also known as the 1:10,000 scale map, this is a detailed map of the area shown. It is a reproduction of the original map, which was surveyed in 1837 and revised in 1937. The map is a reproduction of the original map, which was surveyed in 1837 and revised in 1937. The map is a reproduction of the original map, which was surveyed in 1837 and revised in 1937.

D06B / 1047
DUNLAOGHAIRE RATHBONE
COUNTY COUNCIL
01 DEC 2006
RECEIVED
PLANNING DEPT



Plot Ref. No. 355856 2.4
Plot Date 22-MAR-2006



Scales- 1:10,000
Scales- 1:10,000

DRAWINGS PREPARED BY:

SARA DEVITT
MA DipConLaw CEng MIEI MStructE
S K Design, Balinacor, Greenans, Rathdrum, Co. Wicklow

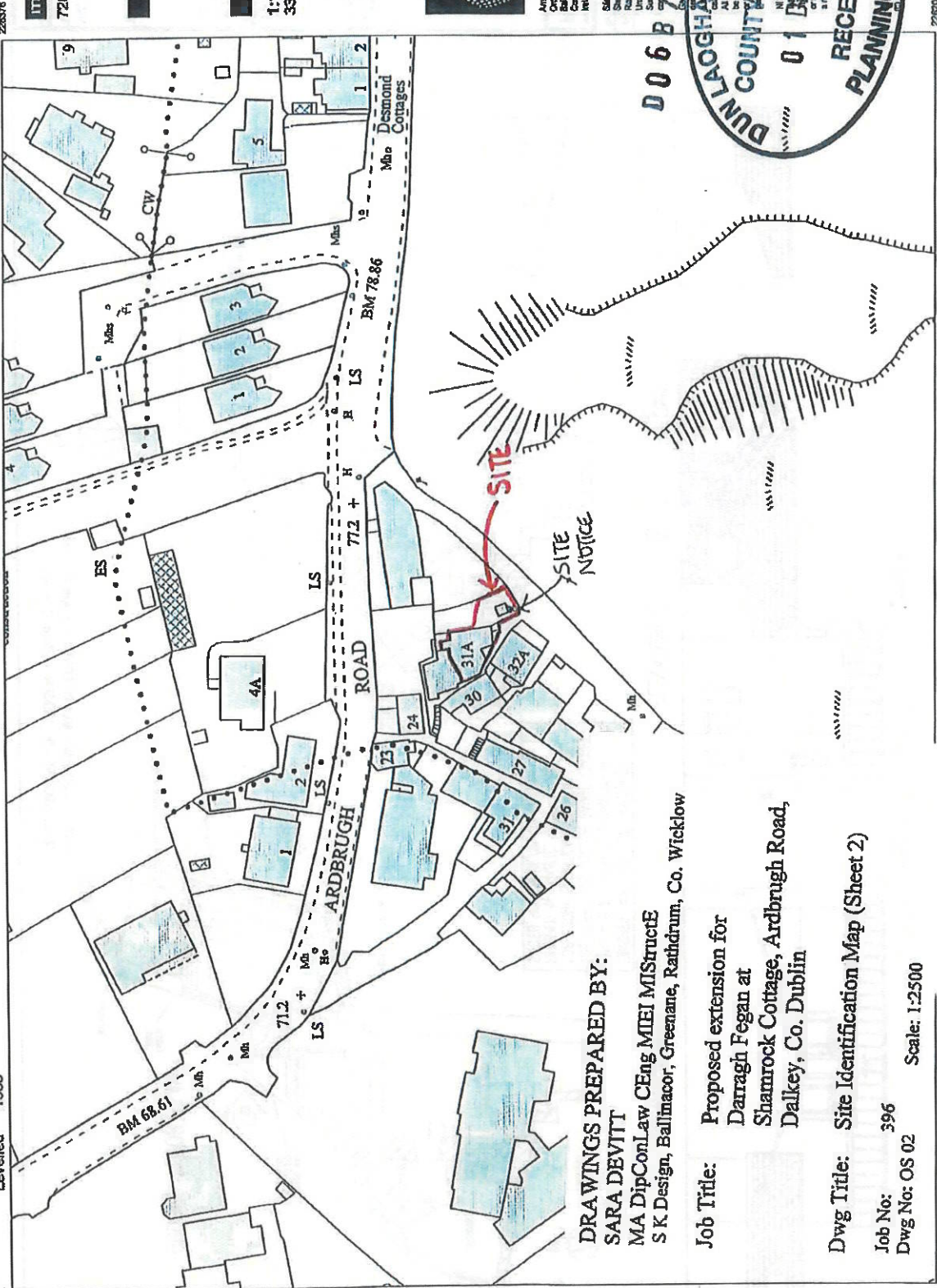
Job Title: Proposed extension for
Darragh Fegan at
Shamrock Cottage, Ardbrugh Road
Dalkey, Co. Dublin

Dwg Title: Site Identification Map (Sheet 1)

Job No: 396
Dwg No: OS 01
Scale: 1:10,000

Surveyed 1974
Revised 2005
Levelled 1983

Urban PLACE Map



ITM CENTRE PT. COORDS:
726151, 726318

DESCRIPTION

MAP SHEETS

1:1000
3394-23



Area plotted upon the Ordnance Survey map of the area shown in the title block. The map is the property of Ordnance Survey Ireland, Phoenix Park, Dublin 8, Ireland. Ordnance Survey maps are the copyright of Ordnance Survey Ireland and Government of Ireland. No part of this map may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage or retrieval system, without the prior written permission of Ordnance Survey Ireland. All rights reserved. For more information, please contact Ordnance Survey Ireland, Phoenix Park, Dublin 8, Ireland.

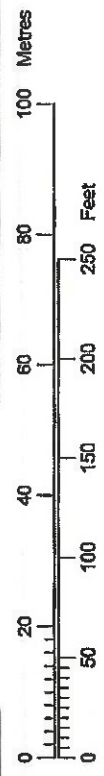


DRAWINGS PREPARED BY:
SARA DEVITT
MA DipConLaw CEEng MIEI MStructE
S K Design, Ballinacor, Greenane, Rathdrum, Co. Wicklow

Job Title: Proposed extension for
Darragh Fegan at
Shamrock Cottage, Ardburgh Road,
Dalkey, Co. Dublin

Dwg Title: Site Identification Map (Sheet 2)
Job No: 396
Dwg No: OS 02 **Scale:** 1:2500

Scale:- 1:1,000
Scale:- 1:1,000



Plot Ref. No. 355856_1_2
Plot Date 22-MAR-2006



Sara Devitt
S K Design
Ballinacor
Greenane
Rathdrum
Co. Wicklow

Date: 06-Dec-2006

PLANNING AND DEVELOPMENT ACTS, 2000 TO 2002

Register Ref: D06B/1047 **D06B/1047**

Development: Sara Devitt of S K design seeks full planning permission on behalf of Darragh Fegan for 21 metre squared single storey extension to the front of existing 69m squared two storey dwelling plus the conversion of 26m squared flat roof into a roof garden at Shamrock Cottage, Ardbrugh Road, Dalkey, Co Dublin

Location: Shamrock Cottage, Ardbrugh Road, Dalkey, Dublin

Applicant: Darragh Fegan

App. Type: Permission

Dear Sir/Madam,

With reference to the above, I acknowledge receipt of your application received on 01-Dec-2006.

In accordance with the Planning and Development Regulations 2001 it should be noted that this application may be declared invalid subsequent to this acknowledgement.

Please note that, in accordance with Section 251 of the Planning and Development Act, 2000, "where calculating any appropriate period or other time limit referred to in this Act or in any regulations made under this Act, **the period between the 24th Day of December and the first day of January, both days inclusive, shall be disregarded**". Any applications received prior to 11th March 2002 shall be dealt with under the Local Government, (Planning & Development Acts) 1963 - 1999. The disregarded days referred to in the 2000 Act, do not apply under this legislation.

Yours faithfully,

Helena Walsh

for SENIOR EXECUTIVE OFFICER



**PHOTOGRAPHS OF EXISTING DWELLING AT
SHAMROCK COTTAGE, ARDBRUGH ROAD, DALKEY**

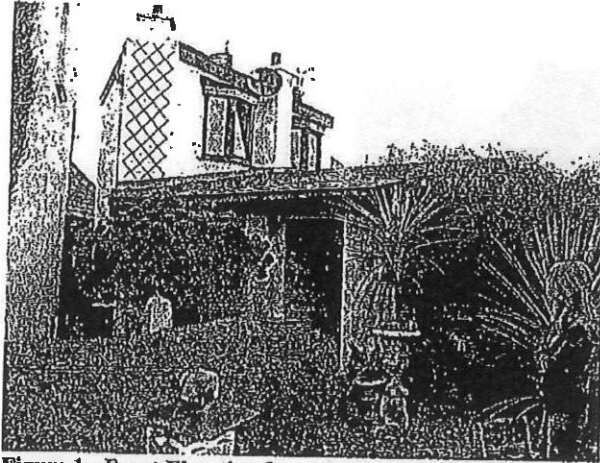


Figure 1 - Front Elevation from the laneway

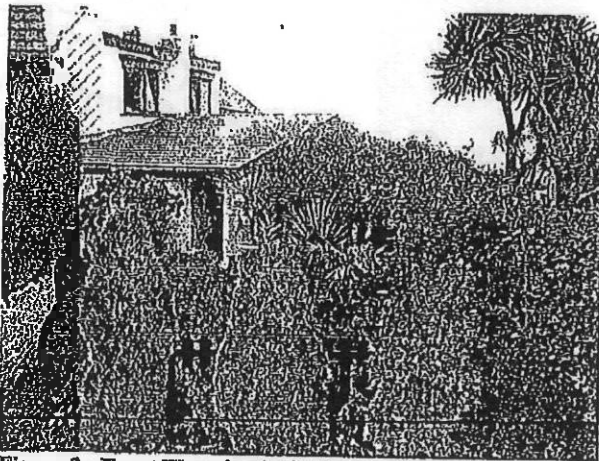


Figure 2 - Front Elevation including garden

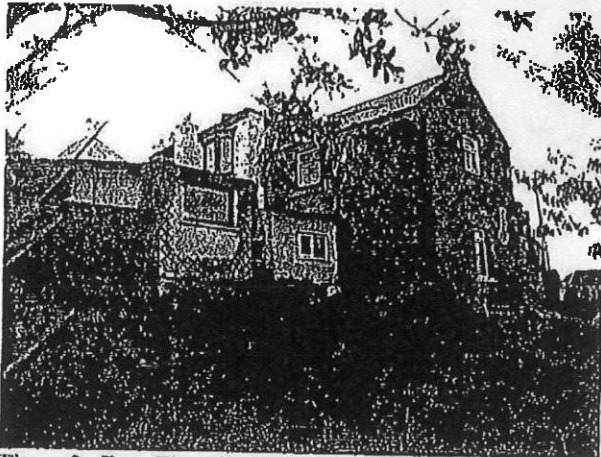


Figure 3 - Rear Elevation from Ardbrough Road

0068 / 1047



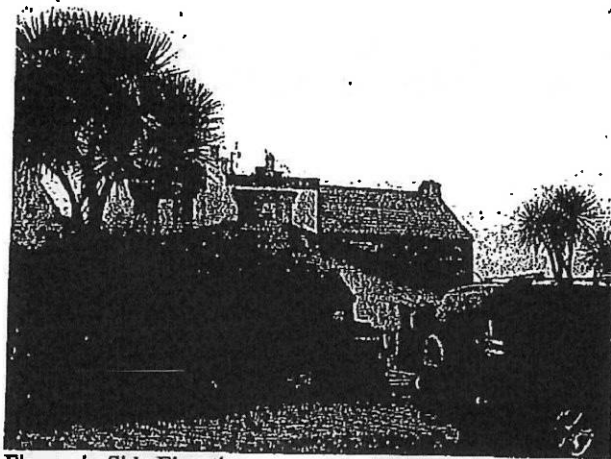


Figure 4 - Side Elevation

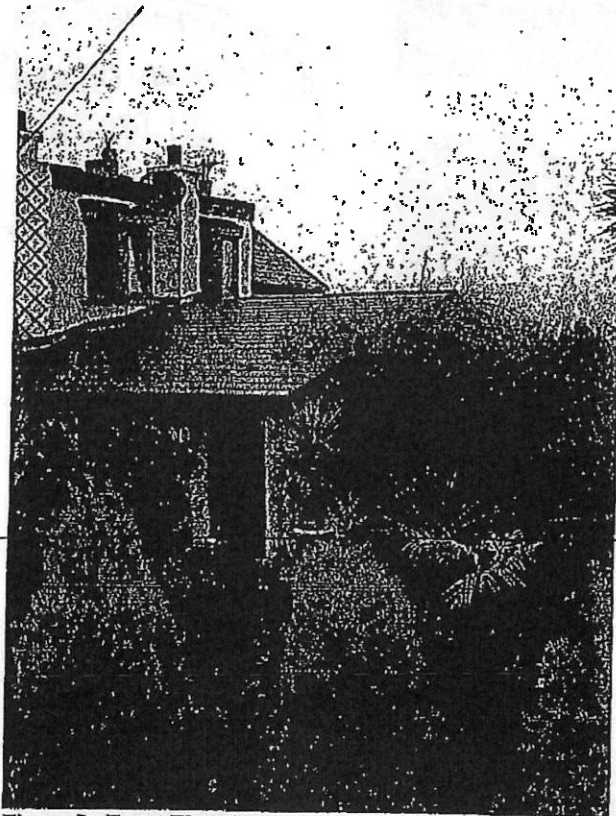


Figure 5 - Front Elevation

D06B/1047



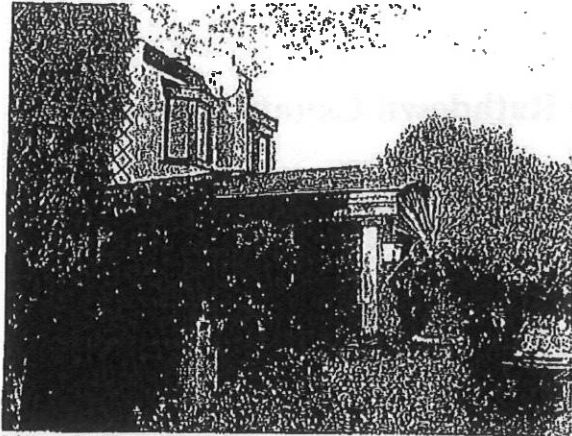


Figure 6 - Front Elevation

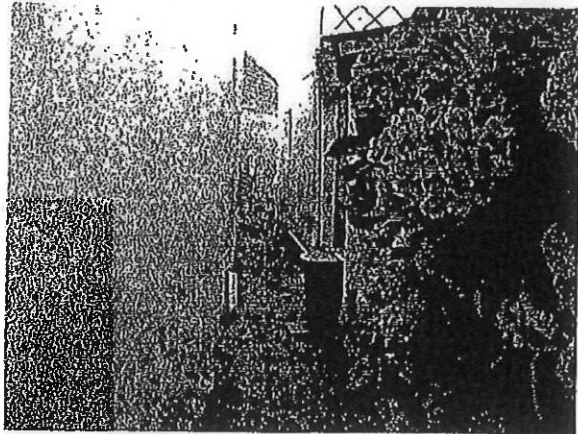


Figure 7 - Side Elevation

00.68 / 1047 .



Dun Laoghaire Rathdown County Council

Site Notice

I/ ~~we~~ **DARRAGH FEGAN**
Intend to apply for

- Permission**
- Retention Permission**
- Outline Permission**
- Permission consequent on the grant of outline
Permission (Ref)**


For development on this site: **SHAMROCK COTTAGE, ARDBRUGH
ROAD, DALKEY, Co. DUBLIN**

The development will consist/ consists of

**21m² SINGLE STOREY EXTENSION TO THE FRONT OF
EXISTING 69m² TWO STOREY DWELLING PLUS THE
CONVERSION OF 26m² FLAT ROOF INTO A ROOF GARDEN.**

The Planning application may be inspected or purchased during office hours
10am to 4pm Monday – Friday at the offices of The Planning Authority,
County Hall, Marine Road, Dun Laoghaire. A submission or observation in
relation to the application may be made in writing to the Planning Authority
on payment of a fee of €20. Submissions must be made within five weeks
from the date the application is received by the Planning Authority

Signed:



Sara Devitt (agent for applicant)
Curlew House
Ballinacor
Greenane
Rathdrum
Co. Wicklow

Date of erection of site notice: 29/11/06

D 0 6 B / 1 0 4 7 .





Dun Laoghaire Rathdown County Council
Economic Development & Planning Department,
Level 1, County Hall, Dun Laoghaire, Co. Dublin.
Tel: (01) 2054700. Fax: (01) 2803122. Email: planning@dlrcoco.ie

Declaration under Section 74 (4) of the Copyright and Related Rights Act 2000.

Planning Register Reference: Dob B 1047
Applicant: Daniel Galton Segon
Location: And Brugl RD, Dalkey
Proposal (brief description): Extension of Roof Garden

I wish to purchase material in respect of the above Planning application. This material is required for the sole purpose of enabling the material to be inspected at another time or place or otherwise facilitate the exercise of the right of public inspection.

Signed: Pauline Gilw
Address: 32A ARD-BRUGL RD
Dalkey Hill Dalkey
Co. Dublin

Dated: 6-12-06
Receipt No.:





Dun Laoghaire Rathdown County Council
 Economic Development & Planning Department,
 Level 1, County Hall, Dun Laoghaire, Co. Dublin.
 Tel: (01) 2054700 Fax: (01) 2803122
 Email: planning@dlrcoco.ie

D06B/1047

PLANNING APPLICATION FORM

Reg. Ref.

D06B/1047

PLEASE READ INSTRUCTIONS BEFORE COMPLETING FORM
 ALL QUESTIONS MUST BE ANSWERED

1. Application for:

Permission

Outline Permission

Permission consequent
 on the grant of outline
 permission

Retention Permission

Place an X in the appropriate box

Where permission consequent on the grant of Outline Permission is being applied for,
 quote outline permission ref. No.

NOTE: Permission consequent on the grant of Outline Permission should be sought only where Outline Permission was
 previously granted. Under S.36 3(a) Outline Permission lasts for 3 years.
 Outline Permission may not be sought for:

- (a) the retention of structures or continuance of uses, or
- (b) developments requiring the submission of an Environmental Impact Statement/L.P.C./Waste Licence or
- (c) works to Protected Structures

2. Location, townland or postal address of site or building: (if none, give description sufficient to identify):

SHAMROCK COTTAGE

ARDBRUGH ROAD

DALKEY, Co. DUBLIN



3. Name of applicant (principal, not agent):

DARRAGH FEGAN

Address: (please note a c/o address is not acceptable) SHAMROCK COTTAGE,

ARDBRUGH ROAD, DALKEY, Co. DUBLIN

Telephone: _____

Fax: _____

e-mail: _____

4. Name and address to which notifications should be sent:

Name: SARA DEVITT

Address: S K DESIGN, BALLINACOR, GREENANE, RATHDRUM, Co. WICKLOW

Telephone: 0404 46015 Fax: 0404 43606 e-mail: saradevitt@eircom.net
 087 4186295

5. Where the applicant is a company registered under the Companies Acts 1963 – 1999, please state the following:

Registered address of Company: _____ **D06B/1047**

Registered Number of Company: _____

Name of Company Directors: _____ **N/A**



6. Name and Address of person or firm responsible for preparation of drawings:

Name: SARA DEVITT

Address: S K DESIGN, BALLINACOR, GREENANE,
RATHDROM, CO. WICKLOW

Telephone: 0404 46015 Fax: 0404 43606 e-mail: saradevitt@eircom.net
087 4186295

7. Description of nature and extent of proposed development, including reference to number and height of buildings Protected Structures, etc. where appropriate: (This should correspond with the wording of the newspaper and site notice.)

21m² SINGLE STOREY EXTENSION TO THE FRONT
OF EXISTING 69m² TWO STOREY DWELLING PLUS
THE CONVERSION OF 26m² FLAT ROOF INTO A
ROOF GARDEN

8a. A schedule of proposed floor areas and uses shall be provided with all applications.

8b. In the case of buildings to be retained on site, please state:-

N.B. Where a change of use is proposed a Schedule of Existing / Permitted uses and floor areas shall be provided

Address	Floor	Present use(s) (or use(s) when last used – date when last use ceased should be included)	Area of each use (sq m)	Proposed use(s)	Area of each use (sq m)

9 (a) Does the proposal involve demolition, partial demolition or change of use of any habitable* dwelling or part thereof? Yes No (please tick X)

(b) Does the proposal involve the demolition of a building which forms part of a terrace of buildings or which abuts another building in separate ownership? NO

(c) In the case of a habitable house* please state if occupied and give details of occupancy. NIA

(d) Does the proposal involve the demolition of any other type of structure? NO

*A "habitable house" is a building or part of a building which

(a) is used as a dwelling or

(b) is not used but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied

10a. Does the development involve a PROTECTED STRUCTURE and/or its curtilage or a proposed PROTECTED STRUCTURE and / or its curtilage?

Yes No Place X in the appropriate box.

(If yes, the newspaper and site notice must indicate this fact).

10b. Does the development involve works to the exterior of a structure within an architectural conservation area or a proposed architectural conservation area?

Yes No Place X in the appropriate box

In the event that the applicant has answered YES to either 10a or 10b, 10 sets of drawings/plans must be submitted

11(a) (i) Area of site 0.0108 hectares

(ii) Floor area* of new buildings proposed within development 21 sqm

(iii) Floor area* of existing buildings proposed to be retained within site 69 sqm

(iv) Total floor area* of proposed development (i.e. new and retained) 90 sqm

(v) Floor area* of building(s) to be demolished 0 sqm

*Gross floor area i.e. the total floor space on each floor measured from the inside of the external walls

(ALL SECTIONS MUST BE COMPLETED) D06B/1047

11(b) Section 49, Planning & Development Act, 2000 (Complete if relevant)
Supplementary Development Contribution Scheme (LUAS Line B1)

Area of sitehectares
Area of Residential Developmenthectares
Area of Commercial Elementshectares



12. A new contribution scheme under Section 48 of the planning and Development Act 2000 was adopted by Dun Laoghaire Rathdown County Council on the 21st January, 2004.

With effect from 22nd January, 2004, the first 40 sq metres of any domestic extension, including granny flats will be exempt from the contribution scheme.

All domestic extensions in excess of 40 sq metres will now be required to pay a contribution under the scheme;

e.g.: Domestic Extension = 50 sq metres. Area in excess of 40 sq metres = 10 sq metres. Area subject to contribution = 10 sq metres.

Please Certify:

*Gross floor area of the proposed domestic extension which is the subject of this application.

21 m²

Signature: D. Peg

*Gross floor area i.e. the total floor space on each floor measured from the inside of the external walls.

13. Fee payable: €34 Basis of calculation: CLASS 2

If exemption from payment of fees is being claimed, evidence to prove eligibility or exemption in accordance with Article 157 of the Planning & Development Regulations 2001 must be submitted.

Classes of fees set out in Explanatory Leaflet accompanying this application form

14. (a) State proposed method of Foul Drainage: MAINS D06B/1047

(b) State proposed method of surface water drainage: MAINS

15. State source of Water Supply: MAINS



16. Is it proposed that the Development will: (please tick appropriate box)

- (a) be taken in charge by the County Council ()
- (b) be maintained by an Estate Management Company ()
- (c) in part be Taken in Charge & part maintained y an Estate Management Company ()

In the case of B & C please submit a Site Layout drawing that clearly indicates the services within the estate (Roads, Footpaths, Car Parking Spaces, Foul / Surface Water Sewers, Watermain & Open Spaces) that will be maintained by the Estate Management Company.

17. (a) State applicants legal interest or estate in site (i.e. freehold, leasehold, etc.):

FREEHOLD

(b) Date such interest acquired: 2001

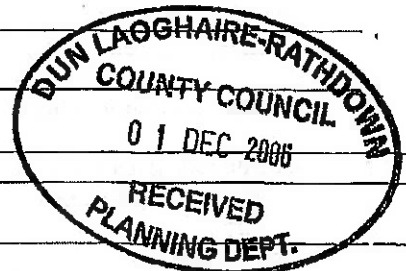
(c) If applicant is not the owner, state name and address of owner and include documentary evidence of consent of the owner to make the application.

N/A

0068/1067

18. List of documents enclosed with application:

SEE ATTACHED SCHEDULE



19. Date of erection of Site Notice(s) 23/11/06

Location(s) of Site Notice(s) ON FRONT BOUNDARY

20. Is an Environmental Impact Statement, in accordance with Part 10 of the Planning and Development Regulations 2001, required?

Yes No Place an X in appropriate box.

If yes, the newspaper notice and site notice must indicate this fact

21. Does the development comprise, or is it for the purpose of an activity in relation to which an integrated Pollution Control Licence or a Waste Licence or a Waste Permit is required?

Yes No Place an X in the appropriate box

If yes, the newspaper notice and site notice must indicate this fact.

22. Does the European Communities (Control of Major Hazards involving Dangerous Substances) Regulations 2000 apply to the Proposed Development (S.I. 476 of the Planning and Development Act 2000)?

N.B. Does not apply to residential applications.

Yes No Place an X in the appropriate box

23. Do any statutory notices apply to the site/building at present? (e.g. Enforcement, Dangerous Buildings, Derelict Sites, Building Control, Fire Safety etc).

Yes No Place an X in the appropriate box

If yes, please give details _____

24. (a) In the case of residential developments please provide breakdown of residential mix:-

Number of	Studio	1 Bed	2 Bed	3 Bed	4 bed	4+ Bed	Total
Houses							
Apartments							

24. (b) In all types of development, please state:

Proposed plot ratio 83% Proposed site coverage 69%

EXISTING 64% EXISTING 52%

REGISTER OF DOCUMENTS SUBMITTED WITH APPLICATION
FOR DARRAGH FEGAN

D06B/1047.

DOCUMENTS: Application Form
Fee €34
Newspaper Notice
Site Notice
Photos of Existing Building
Specification



DRAWINGS:

TITLE	DWG SIZE	DWG NO.	SCALE
Site Identification Map (Sheet 1)	A4	OS 01	1:10560
Site Identification Map (Sheet 2)	A4	OS 02	1:2500
Site Layout Plan	A2	396/01	1:500
Existing Floor Plans	A2	396/02	1:100
Proposed Floor Plans & Elevations	A2	396/03	1:100

25. Details of compliance with the requirements of Part V of the Planning & Development Act 2000, as amended, in relation to Social and Affordable Housing.

N.B. Must be completed for all developments for the provision of one or more new dwelling units.

(a) Is the proposal exempt from the requirements of Part V? Yes No please indicate X

If the answer is YES, the application for new residential units must be accompanied by either a copy of the Certificate of Exemption under Section 97, or, where a Certificate has been applied for but not issued, by a copy of the completed application form, or by such details that show why Part V does not apply to the proposal as outlined under Section 96 (14) of the above Act.

If the answer is NO, please attach particulars of agreement or proposal to comply with the provisions of Social / Affordable Housing in compliance with Section 96 of the Act.

N.B. In accordance with Section 97 (3) of the Planning & Development Act, 2000, as amended, applications for a Certificate of Exemption under Section 97 must be made before the making of the planning application.

26. Has a pre-Planning Consultation in accordance with Section 247 of the Planning & Development Act 2000 taken place

Yes No Place an X in the appropriate box

If yes, please state date of meeting N/A NOTE: Such consultation is not compulsory

27. Is the site of the proposal subject to a current appeal to An Bord Pleanala in respect of the same development or development of the same description?

Yes No Place an X in the appropriate box

If yes, please give details N/A

I, the undersigned, hereby declare, all the foregoing particulars to be true and I hereby certify that all accompanying drawings are fully in compliance with the Planning and Development Regulations 2001, as amended.

Signature of applicant [Signature]
(or agent)

Date 27/11/06

It should be understood that:

(a) the granting of planning permission does not relieve the developer of the responsibility of complying with any requirements under other codes of legislation affecting the proposal, and

(b) a person shall not be entitled solely by reason of a planning permission to carry out any development.

Please note that in accordance with Section 251 of the Planning & Development Act, 2000 "where calculating any appropriate period or other time limit referred to in this Act or in any regulations made under this Act, the period between the 24th December, and the 1st January, both days inclusive shall be disregarded".

0068/1047



PLANNING APPLICATIONS

DUBLIN CITY COUNCIL - Planning application for the erection of a single storey extension to the rear of a house at 15, Levee Road, Dublin 15.

PLANNING APPLICATIONS

DUBLIN CITY COUNCIL - Planning application for the erection of a two storey extension to the rear of a house at 15, Levee Road, Dublin 15.

PLANNING APPLICATIONS

DUBLIN CITY COUNCIL - Planning application for the erection of a two storey extension to the rear of a house at 15, Levee Road, Dublin 15.

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TECHNICAL ENGINEERING & ELECTRICAL UNION (TEEU) SPECIAL NOTICE

This is to formally advise all members that the following Dublin Branches Annual General Meetings are scheduled to be held in the Teachers Club, 36 Parnell Square, Dublin 1.

The following Nominations will be taken at the AGM: General/President, TEEU; General/Trustees, TEEU(3); Branch NEC-Officer(s); Branch Committee.

PLANNING APPLICATIONS

DUBLIN CITY COUNCIL - Planning application for the erection of a two storey extension to the rear of a house at 15, Levee Road, Dublin 15.

PLANNING APPLICATIONS

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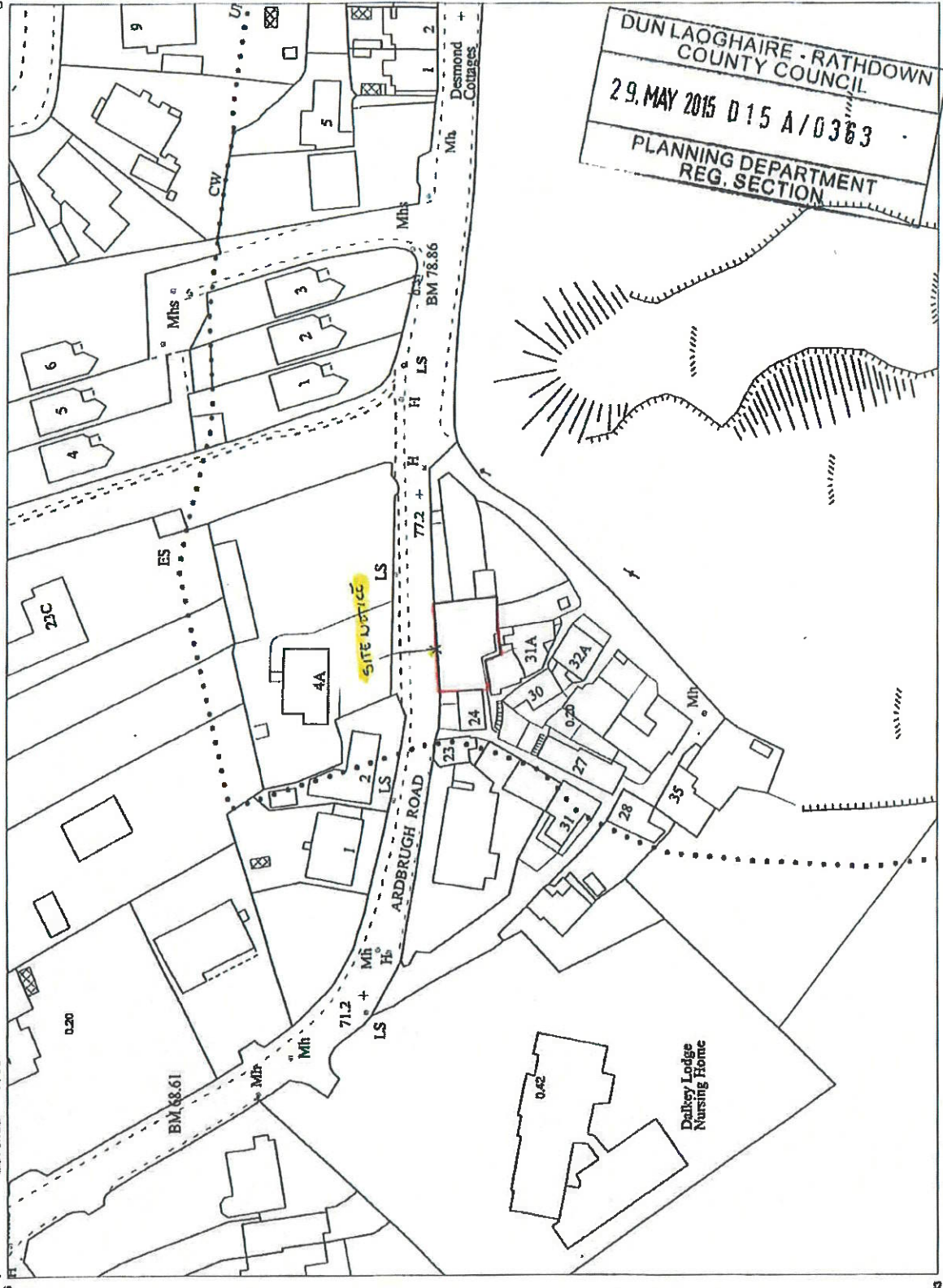
**REGISTER OF DRAWINGS SUBMITTED WITH APPLICATION
FOR DARRAGH FEGAN**

TITLE	DWG SIZE	DWG NO.	SCALE
Site Identification Map (Sheet 1)	A4	OS 01	1:10560
Site Identification Map (Sheet 2)	A4	OS 02	1:2500
Site Layout Plan	A2	396/01	1:500
Existing Floor Plans	A2	396/02	1:100
Proposed Floor Plans & Elevations	A2	396/03	1:100

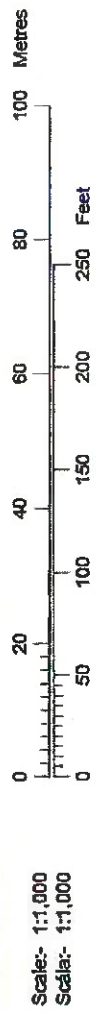


Urban PLACE Map

Surveyed 1974
Revised 2014
Levelled 1983



DUN LAOGHAIRE - RATHDOWN
COUNTY COUNCIL
29. MAY 2015 D 15 A / 0363
PLANNING DEPARTMENT
REG. SECTION



ITEM CENTRE PT. COORDS	DESCRIPTION	MAP SHEETS
726154, 726329		

1:1000
3394-23



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Rohrer, Crossagh, Dublin 14.
On behalf of Ordnance Survey Ireland,
Phoenix Park, Dublin 15.

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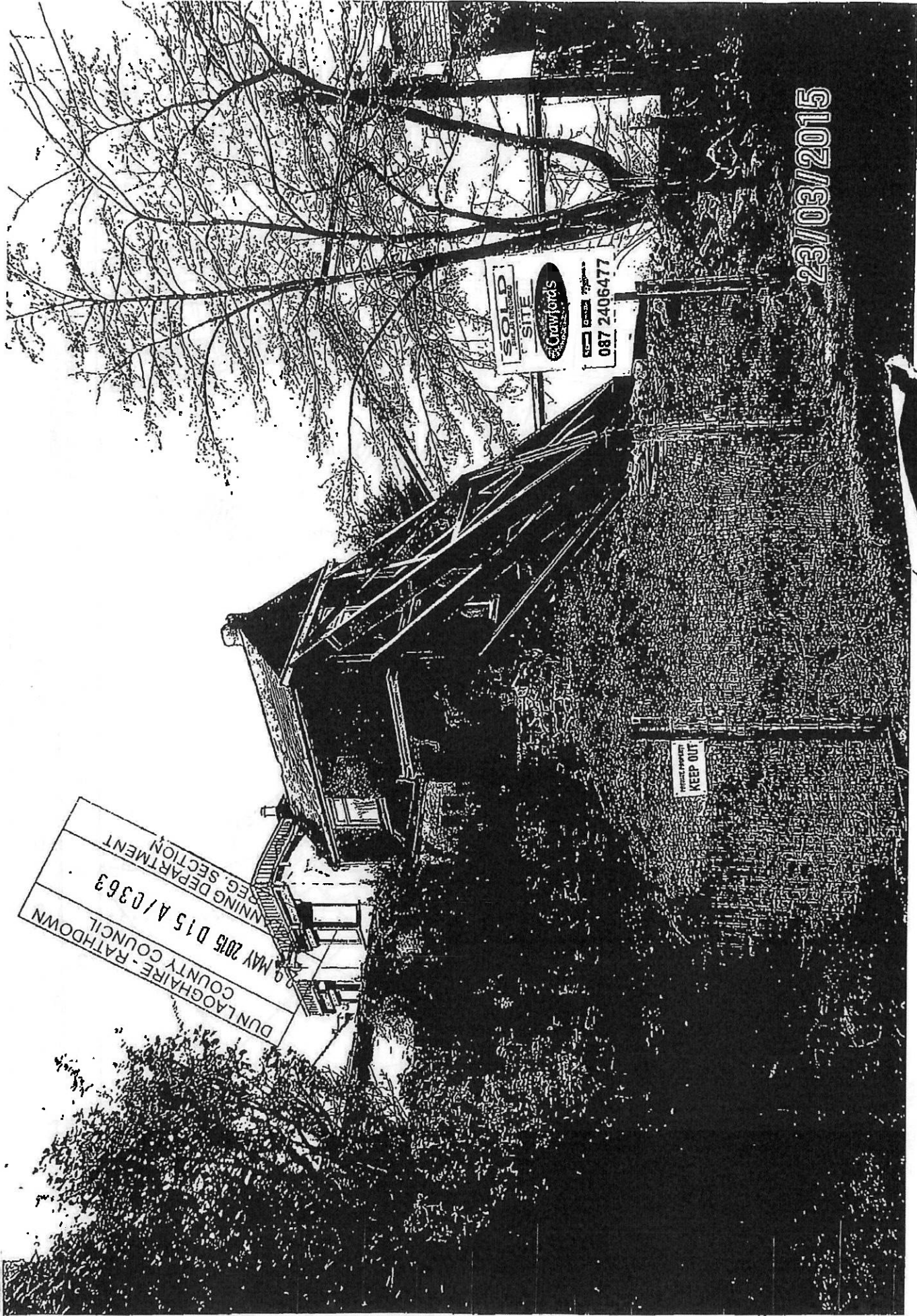


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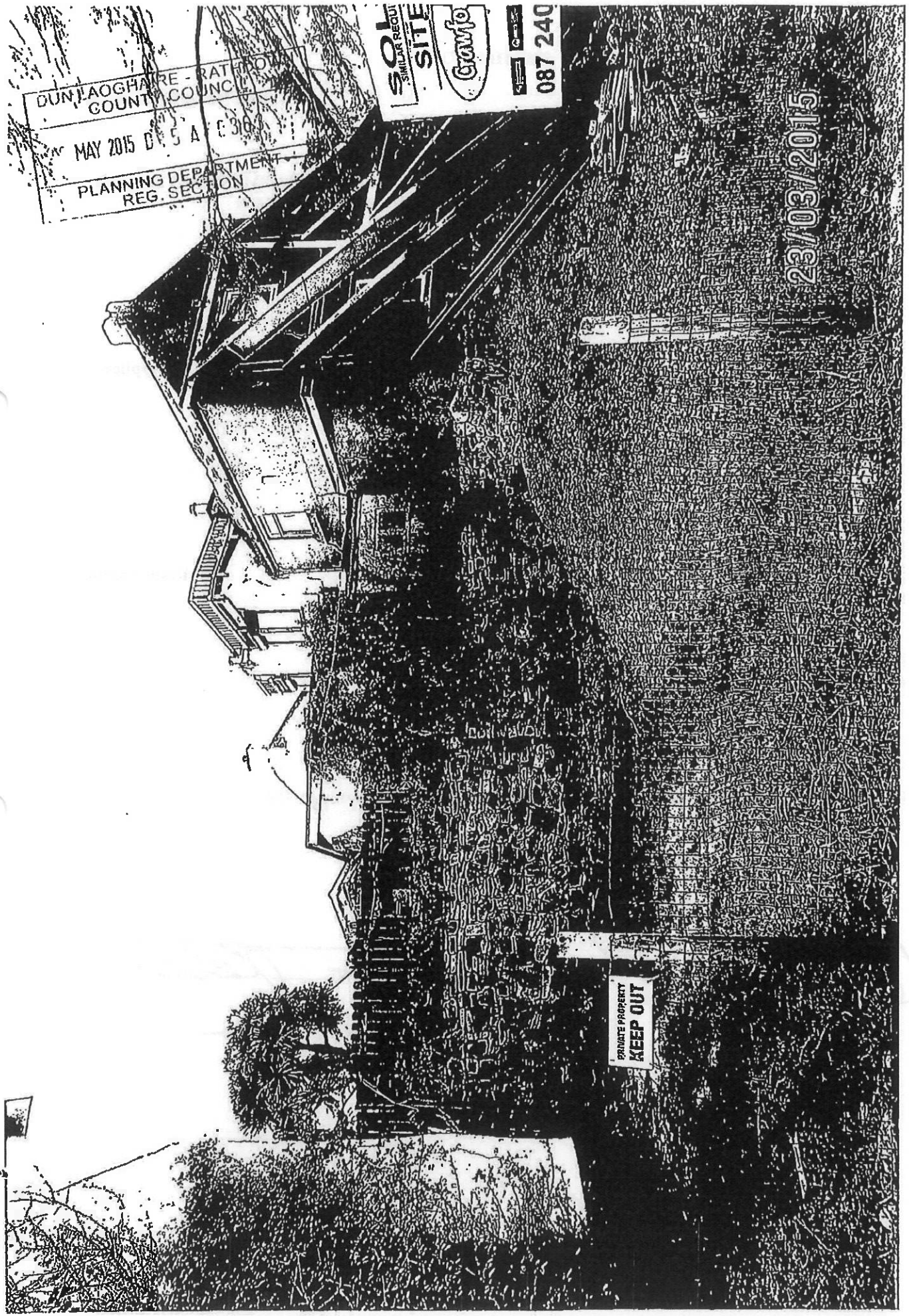


DUN LAOGHAIRE - RATHDOWN
COUNTY COUNCIL
29 MAY 2015 015 A/0363
PLANNING DEPARTMENT
REG. SECTION

SOLD
SITE
Crawford's
087 2406477

Private Property
KEEP OUT

23/03/2015



DUNLAOGHAIRE - RATHFOLM
COUNTY COUNCIL

MAY 2015 D. 5 A. E. 318

PLANNING DEPARTMENT
REG. SECTION

SOL
SIMILAR REQUIT
SITE
Grainfo

087 240

PRIVATE PROPERTY
KEEP OUT

23/03/2015

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant

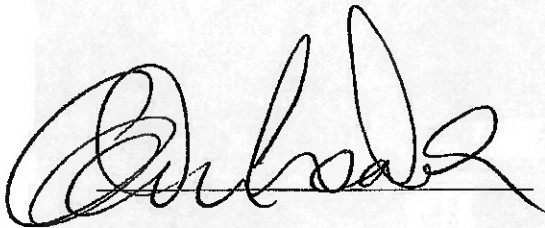
-and-

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

EXHIBIT "GL02"
AFFIDAVIT OF GAVIN LAWLOR

Exhibit "GL02" as referred to in the Affidavit of Gavin Lawlor sworn *18* day
of *JUNE* 2018



DEPONENT



PRACTICING SOLICITOR/
~~COMMISSIONER FOR OATHS~~

Economic Development & Planning Department
An Rannóg Forbartha agus Pleanála Eacnamaíochta
Fiona Sarratt
Enforcement Section
Direct Tel: 01 2054864
Fax: 01 2803122

PLANNING AND DEVELOPMENT ACT 2000 - 2006

Warning Letter under Section 152(1)

Warning Letter under Section 152(1) of the Planning and Development Act 2000 - 2006 in relation to lands at **Shamrock Cottage, Ardbrough Road, Dalkey, Co Dublin.**

**TO Darragh Fegan & Alison Byrne,
Shamrock Cottage,
Ardbrough Road,
Dalkey,
Co Dublin**

It has come to the attention of the Planning Authority that unauthorised development may have been carried out at the above lands. The alleged unauthorised development consists of **extension to the rear of dwelling with rear window less than one metre from the boundary it faces.**

The matter is now under investigation by the Planning Authority. Any person served with this Warning Letter may make submissions or observations in writing to the Planning Authority regarding the purported offence not later than four weeks from the date of the service of this letter.

If, following investigation, the Planning Authority consider that unauthorised development has been carried out at the above named lands, an Enforcement Notice may be served under Section 154 of the Planning and Development Act 2000 - 2006, without further communication to you.

It is brought to your attention that officials of the Planning Authority may at all reasonable times enter on the above named lands for the purposes of inspection.

Under Section 151 of the Planning and Development Act 2000-2006 it is an offence to carry out unauthorised development. In this regard your attention is drawn to Section 156 of the aforementioned Act, which set out details of the penalties involved (copy enclosed).

30/8/07

You are hereby warned that any costs reasonably incurred by the Planning Authority in relation to the investigation, detection and issue of the enforcement notice concerned, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers, may be recovered from the person or persons on whom an enforcement notice is served or where court action is taken.

Please quote reference number: **Enf 239/07** in any further correspondence or if you have any queries please contact a member of staff in the Enforcement Section at 01 2054864.

Date: 30/1/07

Signed: *MunHeagarty*
Administrative Officer.

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant


-and-

MICHAEL MCDONAGH & NOREEN FARRAR

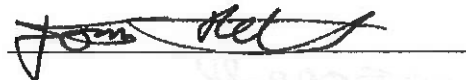
Respondents

EXHIBIT "GL03"
AFFIDAVIT OF GAVIN LAWLOR

Exhibit "GL03" as referred to in the Affidavit of Gavin Lawlor sworn 18 day
of JUNE 2018



DEPONENT



PRACTICING SOLICITOR/
~~COMMISSIONER FOR OATHS~~

JAMES PETERS



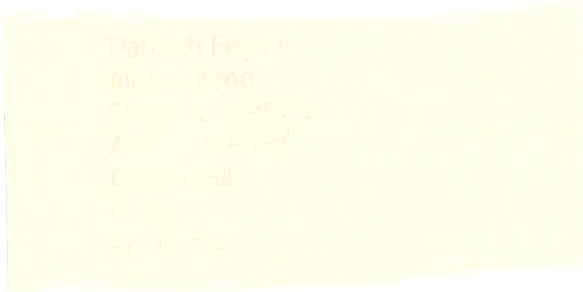
Dún Laoghaire-Rathdown
County Council Comhairle Contae
Dhún Laoghaire-Ráth an Dúin

County Hall, Dún Laoghaire, Co. Dublin, Ireland
Halla an Chontae, Dún Laoghaire, Co. Átha Cliath, Éire
Tel: 01 205 4700 Fax: 01 280 6969 Web: www.dlrccoco.ie

Economic Development & Planning Department
An Raonóg Forbartha agus Pleanáil Eacnamaíochta
Enforcement Section
Direct Tel: 01 2054864
Fax: 01 2803122
Email: planningenforcement@dlrccoco.ie

Date: 23rd August 2007

Ref.: Enf 23907



Re: Shamrock Cottage, Ardbrough Road

Dear Sir/Madam,

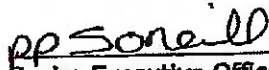
I refer to previous correspondence regarding the above mentioned location.

I acknowledge receipt of your submission dated 20th August 2007.

As the window has been in place for a number of years no further action is warranted at this time.

Accordingly, the file on this matter is now closed.

Yours faithfully,


Senior Executive Officer,
Economic Development & Planning Dept.



THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

EXHIBIT "GL04"
AFFIDAVIT OF GAVIN LAWLOR

Exhibit "GL04" as referred to in the Affidavit of Gavin Lawlor sworn 18 day
of JUNE 2018



DEPONENT



PRACTICING SOLICITOR/
~~COMMISSIONER FOR OATHS~~

JAMES PETERS

Darragh & Alison Fegan
Shamrock

16/06/2015

Application Date: 29-May-2015

Planning Application Ref: D15A/0363

Registration Date: 29-May-2015

Main Location: Site adjacent to 24 Ardbrough Road, Dalkey, Co. Dublin

Proposal: Permission for alterations to previously approved plans for a two-storey

Full Description: Permission for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

To whom it concerns,

I am writing in connection with the above planning application. I have examined the plans and I know the site well as apart from my residence being next to it, over a number of years we successfully fought and won numerous planning requests to limit the size of this property overshadowing and invading our privacy. The previous residence that originally was on the land was a one story dwelling.

The planning permission sought by a Mr Dempsey (now deceased) for the current proposed structure finally managed after many years, to get planning - The size of the proposed structure, the windows etc have in my opinion already exceeded the boundaries of what should be deemed acceptable.

Hence for those reasons I strongly object to the request for further development of this house. Compromise was reached some time back on this proposed house and to come back now with this further development should not be approved. There should be absolutely no further leeway on this matter.

- West elevation – On previous planning applications, permission was refused to have windows on the first floor. This was entirely reasonable and the refusal was for good reason, as categorically the windows will overlook our property. This will lead to loss of privacy and will have a negative impact on our property. The proposed windows are in very close proximity to our sitting room. They will also look directly into the master bedroom. In short the only privacy we would have would be by closing all the curtains in the house 24x7.

Bun Laoghaire Rathdown
County Council

COUNTER

24 JUN 2015

RECEIVED
Planning Department

- Balcony to the west elevation – Same point. This extends to our sitting room windows and again would overlook into our residence.

On a point of clarity, the permission granted to build this house took many years due to its excessive design which would be at my expense in terms of privacy, light, views and monetary value. Some of these things can be taken into consideration and some obviously not. This new application is making an attempt to reverse the decisions made by the Council previously. These changes are completely obtrusive and should not be entertained or it will set a poor precedence for redeveloped sites and the impact they have on existing dwellings within the community.

You are more than welcome to visit our property to understand the planning permission sought here has no regard for the neighbouring residence; the design is at the expense of a house that has stood for over 80 years. Please bear in mind the density of the proposed house is already considerably higher than original development which sat on this land, which was a bungalow.

May I specify that if any meeting is arranged by the proposing side with the council that I am informed so I can in turn counter argue in the interest of a fair and balanced process.

Should you require any further information please do not hesitate to contact me.

Yours faithfully,

Darragh & Ali Fegan

Kenny Kane Associates
 Oak Hollow Studio
 Upper Glenageary Road
 Glenageary
 Co. Dublin

23-Jul-2015

NOTIFICATION OF DECISION TO REFUSE PERMISSION ✓
Planning & Development Act 2000, as amended

Order Number P/1378/15 ✓	Date of Order 22-Jul-2015 ✓
Register Reference D15A/0363 ✓	Date Received 29-May-2015 ✓

Applicant:
Development

Noreen Farrar
 Permission for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

Location:

Site adjacent to 24 Ardbrough Road, Dalkey, Co. Dublin


Dear Sir/Madam,

In pursuance of its functions under the above mentioned Act, Dún Laoghaire-Rathdown County Council, being the Planning Authority, did by Order dated as above make a decision to **REFUSE PERMISSION** in respect of the above proposal. ✓

For the 1 reason(s) on the attached numbered pages.

Please note that, in accordance with Section 251 of the Planning and Development Act 2000, as amended, "where calculating any appropriate period or other time limit referred to in this Act or in any regulations made under this Act, **the period between the 24th Day of December and the first day of January, both days inclusive, shall be disregarded**".

Signed on behalf of Dún Laoghaire-Rathdown County Council.


 for Senior Executive Officer

REASONS

1. The western element of the proposed wraparound balcony will give rise to overlooking issues and will be visually obtrusive from the windows of the dwellings to the south. The proposed enlarged ground floor is located in front of part of the easternmost window of the dwelling to the south, Shamrock Cottage. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of this dwelling. Having regard to the Impact of the proposed development, by reason of being visually obtrusive and resultant overlooking, the proposed development would seriously injure the residential amenity of adjacent dwellings and depreciate the value of properties in the vicinity and is, therefore, contrary to the proper planning and sustainable development of the area.

SUBMISSIONS/OBSERVATIONS

NOTE (1): In deciding this planning application, the planning authority, in accordance with Section 34 (3) of the Planning & Development Act, 2000, as amended, has had regard to any submissions or observations received in accordance with the Planning and Development Regulations 2001 - 2010, pertaining to this application.

REMOVAL OF SITE NOTICE

NOTE (2): The applicant is reminded that in accordance with Article 20 of the Planning and Development Regulations 2001 - 2012, any site notice erected or fixed pertaining to this application shall be removed (if not already done so) following receipt of this notification.

FURTHER NOTES

APPEALS

This decision of the Planning Authority does not authorise works to commence and may be appealed to An Bord Pleanála by an Applicant or any person who made submissions or observations in writing in relation to this application to the Planning Authority.

A person who has an interest in adjoining lands in respect of which permission has been granted and who did not make a submission or observation under Section 37(6)(a) of the Planning and Development Act, 2000, as amended, may apply to the Board for leave to appeal the decision of the Planning Authority. Appeals should be sent to:

**The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.**

Tel: 01-8588100

Every appeal must be made in writing and must state the subject matter and full grounds of appeal. It must be fully complete from the start.

The Board must receive an appeal within four weeks, beginning on the date of the decision set out above. A Third Party appeal will be invalid unless accompanied by the prescribed fee and a copy of the receipt from the Planning Authority in respect of a submission/observation.

GRANT OF PERMISSION

In the case of a notification of a decision to Grant Permission, where no appeal is received by An Bord Pleanála against the decision, a PERMISSION will be granted by the Council as soon as may be after the expiration of the period for the making of an appeal.

REFUND OF FEES – REPEAT PLANNING APPLICATION

Provision is made for a partial refund of fees in the case of certain repeat applications submitted within a period of twelve months where the full standard fee was paid in respect of the first application where both applications relate to developments of the same character or description and to the same site. An application for a refund must be made in writing to the Planning Authority and received by them within a period of 8 weeks beginning on the date of Planning Authority's decision on the second application. Please consult the Planning & Development Regulations, 2001-2010, for full details of fees, refunds and exemptions.

Kenny Kane Associates
Oak Hollow Studio
Upper Glenageary Road
Glenageary
Co. Dublin

23-Jul-2015

NOTIFICATION OF DECISION TO REFUSE PERMISSION ✓
Planning & Development Act 2000, as amended

Order Number P/1378/15 ✓	Date of Order 22-Jul-2015 ✓
Register Reference D15A/0363 ✓	Date Received 29-May-2015 ✓

Applicant:
Development

Noreen Farrar
Permission for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

Location:

Site adjacent to 24 Ardbrugh Road, Dalkey, Co. Dublin

Dear Sir/Madam,

In pursuance of its functions under the above mentioned Act, Dún Laoghaire-Rathdown County Council, being the Planning Authority, did by Order dated as above make a decision to **REFUSE PERMISSION** in respect of the above proposal. ✓

For the **1** reason(s) on the attached numbered pages.

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Signed on behalf of Dún Laoghaire-Rathdown County Council.


for Senior Executive Officer

REASONS

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SUBMISSIONS/OBSERVATIONS

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REMOVAL OF SITE NOTICE

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FURTHER NOTES

APPEALS

This decision of the Planning Authority does not authorise works to commence and may be appealed to An Bord Pleanála by an Applicant or any person who made submissions or observations in writing in relation to this application to the Planning Authority.

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RP (T.F.)
(22/17)

No. P71378/15.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Reg. Reference: D15A/0363 **Date Received** 29-May-2015
Add. Info. Req: **Add. Info. Received:**
Name & Address: ✓ Kenny Kane Associates, Oak Hollow Studio, Upper Glenageary Road, Glenageary, Co. Dublin
Development: Permission for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.
Location: Site adjacent to 24 Ardbrough Road, Dalkey, Co. Dublin
Applicant: Noreen Farrar
App. Type: Permission
Level of Decision: Approved Officer

Report: Louise Bell

Signed: Louise Bell
Case Planner

Dated: 17/07/15.

SITE DESCRIPTION:

The site is located on the southern side of Ardbrough Road in Dalkey, close to the old Quarry. The area is elevated affording views northwards towards Dublin Bay.

The area is characterised by a mixture of old and new developments. The older buildings comprise predominantly single storey cottages, originally built to provide accommodation for quarry workers. Newer developments comprise single and two storey structures.

The application site is rectangular shaped with a 16m road frontage and 11m depth which reduces to 9 m in the western third. The site forms part of a triangular shaped cluster of tightly knit cottages, vehicular access to which are gained from narrow cul-de-sacs running off Ardbrough Road. ^{the site} It has been cleared of any structures but is overgrown and has a wire fence boundary to the road. A steel buttressing frame has been erected within the site to support the two storey dwelling to the south west of the site. (JB)

The site is bound to the east by a large two storey house, Ardbrough House, which appears to be a renovation of an earlier structure. The building is two storeys in height and has a flat roof and dashed external wall finish. There are a number of additions to the rear including timber balconies. Its vehicular access is at the rear from the cul-de-sac.

To the south, the site is bound in part by two houses which are located at a height overlooking the site i.e. Shamrock Cottage and No. 32A Ardbrough Road, and in part by a derelict site. Shamrock Cottage, the nearest of the two houses, has a window overlooking the site. To the west the site adjoins a two storey dwelling, which has a blank gable wall facing onto the subject site.

Ardbrough Road is narrow road with a footpath only on its northern side.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

ZONING OF SITE:

In the 2010-2016 Dun Laoghaire-Rathdown County Development Plan the site is zoned, "Objective A: To protect and/or improve residential amenity."

RECENT PLANNING HISTORY:

The following recent planning applications are considered relevant in this instance:

Subject Site:

D07A/0507: Permission was granted by an Bord Pleanála (Ref. PL06D.224147) for a two storey dwelling and associated works and car-parking.

An Extension of Duration of this permission was granted until 3rd of January, 2018 (Ref. D07A/0507/E).

Reg. Ref. D04A/1189 - PL06D.213210

Permission refused by the Board for a two storey house on the site for the reason of being out of character with the pattern of development in the vicinity and serious injury to amenities of property in the vicinity.

D03A/1157 - PL 06D.206288

Permission refused by the Board for a house (two storey and single storey) on the site for ~~the~~ being out of character with the pattern of development in the vicinity and serious injury to amenities of property in the vicinity.

D98A/0832- PL 06D.109657

Permission refused for a three storey house and two parking spaces for the reason of over development of the site and serious injury to amenities of adjoining properties.

PRE-PLANNING MEETING:

PAC/109/15 Drawings were submitted for pre-planning advice different from that proposed under the subject planning application. Issues discussed: Single storey extension not acceptable as it would reduce private open space to an unacceptable level; Balcony may be acceptable as it is to the front of the dwelling facing Ardbrugh Road. Applicant should ensure no overlooking issues.

SUBMISSIONS:

One submission has been received within the prescribed period. The main points raised in these submissions can be summarised as follows:

- On previous planning applications, permission was refused ~~to have~~ ^{regarding having} windows on the first floor. Proposed windows will give rise to overlooking.
- Balcony to the west elevation would overlook the sitting room windows of 'Shamrock Cottage'.
- This new application is making an attempt to reverse the decisions made by the Council previously. These changes are completely obtrusive and will set a poor precedent.

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

- Density of the proposed house is already considerably higher than the original development which sat on the land, which was a bungalow.

The contents of this submission are duly noted and will be taken into account in the assessment of the proposed development.

SITE NOTICE:

- ✓ Site notice was in place and acceptable on the 2nd July, 2015.

The site was visited for an assessment of the application on the 2nd July, 2015.

DEPARTMENTAL REPORTS:

- ✓ Transportation Planning: Report dated 13th July, 2015. Transportation have no objection to the proposed alterations, subject that the Applicant complies with the Planning Authorities' conditions of the previously granted concurrent Planning Application (Reg. Ref. D07A/0507) for the site.

- ✓ Drainage Planning: Report dated 14th July, 2015. No objection, subject to a condition that, 'prior to the commencement of construction the applicant shall submit an alternative proposal for the disposal of Surface water that demonstrates that a reasonable effort has been made to incorporate SuDS measures appropriate to the scale of the proposed development.'

PROPOSAL:

- TP Permission is sought ^{for} alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

PLANNING ASSESSMENT:

Enlarged Ground Floor Plan:

The ground floor of the proposed dwelling is to be enlarged by 0.9 metres. The permitted development shows the proposed dwelling in line with the building line of the dwelling to the south, Shamrock Cottage. This dwelling has a north facing window on the boundary with the subject site. ^{Enlarging the ground floor plan and its location} The proposed enlarged ground floor will be in front of part of this window. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of Shamrock Cottage.

Balcony:

A wraparound balcony is proposed to the northern and western elevation of the building. The western element of this balcony will give rise to overlooking of the windows of the dwellings to the south. It will seriously detract from the residential amenity of these dwellings. The western element of this balcony will also be visually obtrusive from the north facing windows of the dwellings at the southern site boundary. ~~The element of the balcony facing the road may be acceptable, however, a split decision, is not considered appropriate in this instance as the balcony is a wraparound balcony.~~

20/1375. 12.

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

New Windows:

Two new windows are proposed on the west facing elevation of the proposed dwelling. One of these windows is to the kitchen area and appears to be a high level window. However, this could not be ^{fully} ascertained from the drawings provided. A high level window in this location may be acceptable. In any future planning application on the site, details should be provided of the height of the window from floor level. The slit window to the living room may also be acceptable in any future planning application on the site. However, the glazing within this window should be manufactured opaque or frosted glass. The application of film to the surface of clear glass is not acceptable.

Conclusion:

The western element of the proposed wraparound balcony will give rise to overlooking issues and will be visually obtrusive from the windows of the dwellings to the south. The proposed enlarged ground floor ^{will be in front of} part of the easternmost window of the dwelling to the south, Shamrock Cottage. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of this dwelling. Some elements of the proposed development may be acceptable, however, it is considered that since all elements of the proposed development are linked and attaching conditions to a split decision may not ensure a satisfactory development on the site, permission should be refused for the proposed development.

RECOMMENDATION

I recommend that a decision to **REFUSE PERMISSION** be made under the Planning & Development Act 2000, as amended for the following reasons:-

1. The western element of the proposed wraparound balcony will give rise to overlooking issues and will be visually obtrusive from the windows of the dwellings to the south. The proposed enlarged ground floor ^{will be in front of} part of the easternmost window of the dwelling to the south, Shamrock Cottage. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of this dwelling. ^{The proposed} development would seriously detract from the residential amenity of adjacent dwellings and is, therefore, contrary to the proper planning and sustainable development of the area.

It is considered that the impact of the proposed development by reason of overlooking and/or being visually obtrusive and resultant overlooking,

J. J. B. 20/7/15
Senior Executive Planner

Endorsed: J. Lannon 22/7/15
pp Senior Executive Officer

ORDER: A decision pursuant to Section 34(8) of the Planning & Development Act 2000, as amended, for Register Reference D15A/0363, to **REFUSE**

13/15

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

PERMISSION for the above proposal for the (1) reason(s) set out above is hereby made.

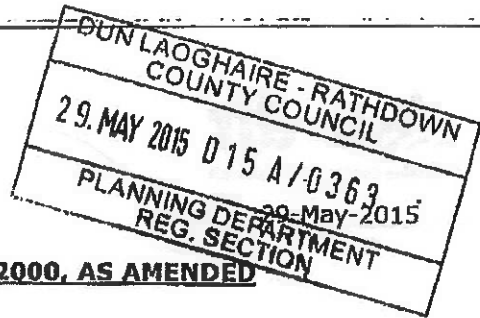
REG. REF.: D15A/0363

Signed: *Frances Hanrahan*
Approved Officer

Dated: 22/7/2015

Thereunto empowered by order of Príomhfieldhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 1950, dated 17/2015, delegating to me all her powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.

Kenny Kane Associates
Oak Hollow Studio
Upper Glenageary Road
Glenageary
Co. Dublin



PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED

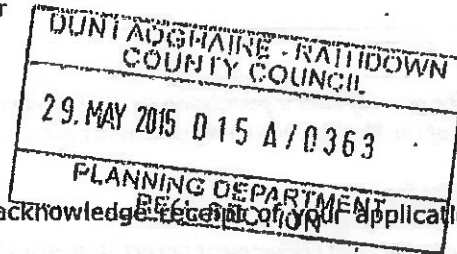
Register Ref.: D15A/0363

Development: Permission for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

Location: Site adjacent to 24 Ardbrugh Road, Dalkey, Co. Dublin

Applicant: Noreen Farrar

App. Type: Permission



Dear Sir/Madam

With reference to the above, I acknowledge receipt of your application received on 29-May-2015.

In accordance with the Planning and Development Regulations 2001, as amended, it should be noted that this application may be declared invalid subsequent to this acknowledgement.

Please note that, in accordance with Section 251 of the Planning and Development Act, 2000, "where calculating any appropriate period or other time limit referred to in this Act or in any regulations made under this Act, the period between the 24th Day of December and the first day of January, both days inclusive, shall be disregarded".

Yours faithfully

Helen Walsh

for SENIOR EXECUTIVE OFFICER

Planning Application Form

Date received 29.5.15 Reg. ref. DISA/0363

Please read directions and documentation requirements at front of form before completion. All questions relevant to the proposal being applied for must be answered. Non-relevant questions: Please mark n/a.

1 Application for (please tick) (Form no. 2 of schedule 3 to the Planning and Development Regulations 2001, as amended)

Permission *Outline permission
 *Permission consequent on the grant of outline permission Retention permission

Where permission consequent on the grant of outline permission is being applied for, quote outline permission ref. no.

Date of grant of outline permission

*NOTE: Permission consequent on the grant of outline permission should be sought only where outline permission was previously granted. Under S.36 3(a) of the Planning and Development Act 2000 outline permission lasts for 3 years.

Outline permission may not be sought for:

- (a) the retention of structures or continuance of uses, or
- (b) developments requiring the submission of an Environment Impact Statement/I.P.C./Waste Licence or
- (c) works to protected structures or proposed protected structures

2 Location of proposed development

(a) Postal address or townland or location (as may best identify the land and/or structure in question)

Site adjacent to 24 Ardbrugh Road, Dalkey, Co. Dublin

(b) Ordnance survey map reference number and the grid reference where available (Grid reference in terms of the Irish transverse mercator)

3394-23, Grid refs 726154, 726329

3 Name of applicant (person/entity seeking planning permission, not an agent acting on his/her behalf)

Noreen Farrar

4 Where the applicant is a company registered under the Companies Acts 1963-1999, please state the following

Name(s) of company director(s) N/A

Registered address of company

On Loughshairne Road
 County Council
COUNTER
29 MAY 2015
RECEIVED
 Planning Department

5 Person/Agent acting on behalf of the applicant (if any)

Name Frank J. Kenny, B.Arch., FRIAI

6 Person responsible for preparation of drawings and plans. (Where the plans have been drawn up by a firm/company, the name of the person primarily responsible for the preparation of the drawings and plans on behalf of that firm/company should be given.)

Name Frank J. Kenny, B.Arch., FRIAI

Firm/Company Kenny Kane Associates

12 In the case of residential development please provide breakdown of residential mix

Number of	Studio	1 Bed	2 Bed	3 Bed	4 Bed	4+ Bed	Total
Houses	<input type="text"/>	<input type="text"/>	1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Apartments	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of car parking spaces to be provided Existing Proposed Total

13 Where the application refers to a material change of use of any land and/or structure or the retention of such a material change of use:

Existing use (or previous use where retention permission is sought). Note: Where the existing use is "vacant" please state the most recent authorised use of the land or structure

N/A

Proposed use (or use it is proposed to retain)

Nature and extent of any such proposed use (or use it is proposed to retain)

14 Social and Affordable Housing (please tick appropriate box)

Is the application an application for permission for development to which Part V of the Planning and Development Act 2000, as amended, applies? (see direction no. 1)

Yes No

If the answer to the above question is yes and the development is not exempt (see below), you must specify, as part of your application, the manner in which you propose to comply with Section 96 of Part V of the Act. Please submit proposals on separate sheet.

If the answer to the above question is yes, but you consider the development to be exempt by virtue of Section 97 of the Planning and Development Act 2000, a copy of the Certificate of Exemption under Section 97 must be submitted (or, where an application for a Certificate of Exemption has been made, but has not yet been decided, a copy of the application should be submitted). (see direction no. 2)

If the answer to the above question is no by virtue of Section 96(13) of the Planning and Development Act 2000, details indicating the basis on which Section 96(13) is considered to apply to the development should be submitted. (see direction no. 3)

NB. This section must be completed for all proposals for the provision of one or more new dwelling units on residentially zoned lands.

16 (cont.)

2. Are you aware of any valid planning applications previously made in respect of this land/structure?

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

If yes, please state planning reference number(s) and the date(s) of receipt of the planning application(s) by the planning authority if known

Ref. no. Date

Note: If a valid planning application has been made in respect of this land or structure in the six months prior to the submission of this application, then the site notice must be on a yellow background in accordance with Article 19(4) of the Planning and Development Regulations 2001 as amended. A valid application includes an application subsequently withdrawn.

3. Is the site of the proposal subject to a current appeal to An Bord Pleanála in respect of the same development or development of the same description?

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

Note: the appeal must be determined or withdrawn before another similar application can be made.

An Bord Pleanála reference no.

17 Pre-application consultation

Has a pre-application consultation taken place in relation to the proposed development? (see direction no. 6)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

If yes, please give details

Ref. no. (if any)

Date(s) of consultation

Persons involved

18 Services

1. Proposed source of water supply

<input type="checkbox"/> Existing connection	<input checked="" type="checkbox"/> New connection	<input checked="" type="checkbox"/> Public mains
<input type="checkbox"/> Group water scheme	<input type="checkbox"/> Private well	<input type="checkbox"/> Other (please specify)

Name of group water scheme (where applicable)

2. Proposed wastewater management/treatment (see question 26)

<input type="checkbox"/> Existing	<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> Public sewer
<input type="checkbox"/> Conventional septic tank system	<input type="checkbox"/> Other on-site treatment system (please specify)	

3. Proposed Surface Water Disposal

<input checked="" type="checkbox"/> Public Sewer/Drain	<input type="checkbox"/> Soakpit	<input type="checkbox"/> Watercourse
<input type="checkbox"/> Other (please specify)	<input type="text"/>	

19 Details of public notice

<input checked="" type="checkbox"/> White	<input type="checkbox"/> Yellow
---	---------------------------------

*Approved newspaper in which notice was published

Date of publication Date on which site notice was erected

* Note: The list of approved newspapers for the purpose of giving intention to make a planning application, is available from the council. Please also refer to directions for completion of site notice.

20 Application fee

Fee payable Basis of calculation

Note: Please see fee notes attached to this form.

21 I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct and accurate and fully compliant with the Planning & Development Act 2000, as amended, and the regulations made thereunder

Signed (applicant or agent as appropriate) Date

24 Is it proposed that the development will (please tick appropriate box)

(a) be taken in charge by the county council

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

(b) be maintained by an estate management company

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(c) in part be taken in charge and part maintained by an estate management company

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

Please submit a site layout drawing that clearly indicates all services within the estate (roads, footpaths, car parking spaces, foul/surface water sewers, watermain and public open spaces) that the applicant wish the local authority to take in charge.

25 Do any statutory notices apply to the site/building at present? (eg. enforcement, dangerous buildings, derelict sites, building control, fire safety etc.) (please tick appropriate box)

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

If yes, please give details

26 Detailed proposals for the separate disposal of both foul and surface water to the public sewers, or other locations, are required. No surface water should be shown entering the foul drainage system.

Please give details

Separate foul and surface water systems within the site, taken to a 'last manhole' connected to the existing combined sewer in Ardbrugh Road.

architects | designers | planning consultants | licensing specialists

Oak Hollow Studio, Upper Glenageary Road, Glenageary, Co. Dublin.

Telephone: (01) 214 0294

E-mail: info@kennykane.ie

Web: www.kennykane.ie

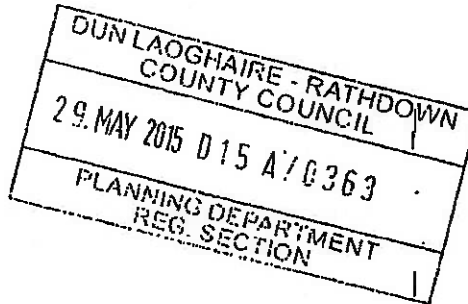


Frank J. Kenny B.Arch., F.R.I.A.I.

Planning Department
Dun Laoghaire Rathdown County Council
County Hall
Marine Road,
Dun Laoghaire
Co. Dublin

28th May 2015

Our Ref: 15-003



Re: Two-storey dwelling at a site adjacent to no. 24 Ardbrugh Road, Dalkey

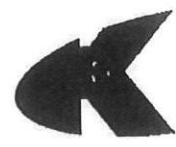
Dear Sirs

On behalf of our client, Noreen Farrar, we wish to apply for Planning Permission for alterations to previously approved plans for a two-storey dwelling at a site adjacent to no. 24 Ardbrugh Road, Dalkey, Co. Dublin (Reg. Ref. D07A/0507) The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

We enclose herewith the following documentation:

1. 6 copies permitted plans
2. 6 copies of Site Location map
3. 6 copies of drawing no. 15-003/PP-01
4. Newspaper notice, The Herald
5. Copy of Site notice
6. 6 copies of photographs (2 no.), showing temporary steel support structure on site.
7. Planning Application form duly completed
8. Cheque in the amount of €34 being the appropriate fee in the matter.
9. Copy of Pre-Planning application receipt ref. PAC/109/15

History: Planning Permission (Reg. ref. D07a/0507) for a two-storey dwelling was granted by An Bord Pleanala following a third party appeal against the decision to grant permission, on 3rd January 2008. The applicant in that case has since died and the site has since remained vacant. The duration of the life of the Planning permission has been extended.



This application is seeking some modest alterations to the previously approved permission
Steel structure erected as temporary support to adjacent dwelling in order to make the
accommodation somewhat more commodious. Extending the width of the ground floor plan is
the main feature of this application and the provision of a first floor balcony on the northern
elevation in order to provide an additional amount of private open space.

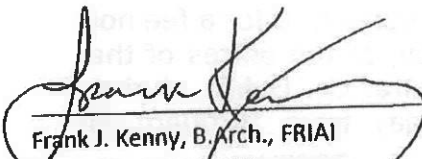
Since the granting of permission ref. D07A/0507, a steel buttressing frame has been erected
within the site, in part of the area that is designated as private open space to serve the dwelling,
to provide structural support to the adjoining house. We enclose herewith two photographs
showing the structure (6 copies of each). It is to be assumed that this support is temporary and
that a permanent support solution will be found.

Other minor alterations to the fenestration are proposed as shown and the entrance porch has
been altered and internal alterations are also proposed.

My clients are keen to move quickly to construct a dwelling on this site which will enhance the
aspect of this road by removing the dereliction that is currently a feature of this site.

We look forward to a favourable decision in the above.

Yours faithfully


Frank J. Kenny, B. Arch., FRIAI
For KENNY KANE ASSOCIATES





DÚN LAOGHAIRE-RATHDOWN COUNTY COUNCIL

SITE NOTICE

I, NOREN FARRAR

intend to apply for (tick as appropriate)

- Permission**
- Retention Permission**
- Outline permission**
- Permission consequent on the Grant of Outline Permission (Reg. Ref.:)**

for development at this site: Site adjacent to No. 24 Ardbrough Road, Dalkey, Co. Dublin

The development will consist / ~~consists~~ of:

Alterations to previously approved plans for a two-storey dwelling at a site adjacent to no. 24 Ardbrough Road, Dalkey, Co. Dublin (Reg. Ref. D07A/0507) The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

The planning application may be inspected or purchased for a fee not exceeding a reasonable cost of making a copy, at the offices of the Planning Authority, Marine Road, Dún Laoghaire, Co. Dublin, during its public opening hours of Monday to Friday from 10:00am to 4:00pm.

A submission or observation in relation to the application may be made in writing to the Planning Authority, on payment of a fee of €20 within 5 weeks of receipt of the application by the Planning Authority and such submissions or observations will be considered by the Planning Authority in making a decision on the application. The Planning Authority may grant permission subject to or without conditions or may refuse to grant permission.

Signed:


Frank J. Kenny B. Arch., FRIAI
Kenny Kane Associates (Agent)

Oak Hollow Studio, Upper Glenageary Road,
Co. Dublin

Date of erection of site notice:

29th day of May 2015

Planning and Enterprise Department
An Roinn Pleanála agus Fiontair
Secretariat Section
Marine Road, Dun Laoghaire, Co. Dublin
e-mail: preplanning@dlrcoco.ie
Tel: 01 2054700 Extension 4502

Pre Application Consultation Ref: PAC/109/15

Frank J Kenny - Kenny Kane Associates
Oak Hollow Studio
Upper Glenageary Road
Glenageary
Co Dublin

26-Mar-2015

Re: Pre Application Consultation at Ardbrough Road, Dalkey

Dear Sir/Madam,

I acknowledge receipt of your request for a pre application discussion relating to the address above, received in these offices on 25-Mar-2015. Contact will be made with you within 2 weeks of date of this letter.

Please note your reference number PAC/109/15, which must be used on all future correspondence.

Yours sincerely,

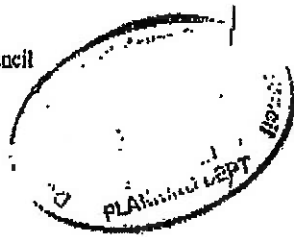
*Secretariat Section
Planning and Enterprise Department*



FILE: 07-012
Dempsey

Our Ref: PL.06D.224147
P.A.Reg.Ref: E07A/0507

The Secretary,
Planning Section,
Dun Laoghaire-Rathdown County Council
The County Hall,
Marine Road,
Dun Laoghaire,
Co. Dublin.



An B

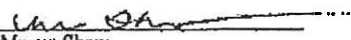
Appeal Re: Construct a house and all associated works.
Ardrugh Road, Dalkey, Co. Dublin.

Dear Sir/Madam,

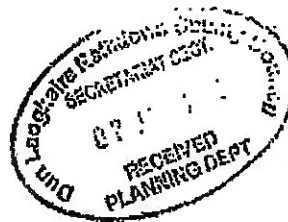
An order has been made by An Bord Pleanála determining the above-mentioned appeal under the Planning and Development Acts 2000 to 2006. A copy of the order is enclosed.

In accordance with section 146(3) of the Planning and Development Act 2000, the Board will make available for inspection and purchase at its offices the documents relating to the appeal within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the appeal on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

Yours faithfully,


Mueve Shaw
Administrative Assistant
Direct Line:

Encl:
BP 100a.ttr



PLANNING AND DEVELOPMENT ACTS 2000 TO 2006

Dun Laoghaire-Rathdown County

Planning Register Reference Number: D07A/0507

An Bord Pleanála Reference Number: PL.06D.224147

APPEAL, by Philip and Frances O'Reilly care of V. Forde of 106 Saint Begn Villas, Dalkey, County Dublin and by others against the decision made on the 13th of June, 2007 by Dun Laoghaire-Rathdown County Council to grant subject to conditions a permission to Peter Dempsey care of Kenny Kane Associates of Patrick Street, Dun Laoghaire, County Dublin in accordance with plans particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Construction of a two-storey dwelling associated works and car parking at Ardbugh Road, Dalkey, County Dublin.

DECISION

GRANT permission for the above proposed development in accordance with said plans and particulars based on the reasons and considerations under subject to the conditions set out below.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received in accordance with statutory provisions.

03

REASONS AND CONSIDERATIONS

Having regard to the established pattern of development in the area and the scale and design of the proposed dwelling, it is considered that, subject to compliance with the conditions set out below, the proposed development would not detract from the amenities of adjoining properties, would be acceptable in terms of traffic and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The entire premises shall be used as a single dwelling unit only.
Reason: In the interest of residential amenity.

2. The proposed car parking area shall be defined by a contrasting surface of the adjoining public road. Details of the proposed surface material shall be submitted to the planning authority for agreement prior to commencement of development.
Reason: In the interest of clarity.

3. Development described in Classes 1 or 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 shall not be carried out on the curtilage of the proposed dwellinghouse without a prior grant of planning permission.
Reason: In the interest of residential amenities.

4. The proposed site excavation works shall be overseen by a suitably qualified Structural Engineer to ensure that all necessary measures are taken to ensure that no damage is caused to adjoining properties.
Reason: In the interest of the safety of adjoining property.

5. Prior to commencement of construction of the house, details of the material colours and textures of all the external finishes to the proposed house shall be submitted to the planning authority for agreement.
Reason: In the interest of orderly development and the visual amenities.

6. All necessary measures shall be taken by the developer to prevent the spill or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

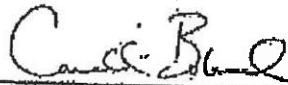
Reason: In the interest of public health and to ensure a proper standard of development.

8. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development area of the planning authority that is provided or intended to be provided on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer. In default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied where permission is granted.



Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 3rd day of January

Coastline Ltd. Est. Clonsilla, Dublin 15
 of 4148888
 Cannon Row, Navan
 045 9029002
 Greenhill Centre, Wicklowtown
 0145290002

UP TO 60% DISCOUNT
OFF YOUR OWN ROLLER BLINDS
 Up to 50% discount off fish
 woods (all colours)
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 Sat 10am - 4.15pm

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 Order of €400
 = €160
 You pay

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 BLINDS: Clonsilla, Blinds, 122
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 Power City. Measure your own
 roller blinds. Up to 40% discount
 on Irish woods, all colours.
 Beautiful ready-made blackout
 curtains or window dressings
 available. 018242613/ 014908888
 www.clonsillablinds.com

LEGAL NOTICES
 BETTING ACT 1931
 NEWSPAPER
 OPERATORS
 I, Nigel David Singer of Flat 9
 Brewery Wharf, Cantelwyn, and
 of the Managing Annular Limited,
 Companies registered in the
 Republic of Ireland, being the
 sole proprietor and sole
 shareholder of the said
 company, do hereby certify that
 the said company is fit and
 proper to hold a licence under
 the Betting Act 1931.
 Signed: Nigel Singer
 Dated this 28th day
 of May 2015

Dublin, Meath & all surrounding
 counties covered.

ARCHITECTS
ARCHITECTURAL DRAWINGS
 & Building Services
 available rates. Call 01 536 9272

ARTICLES FOR SALE
 SCAFFOLD TOWERS, 6x4x20ft,
 braces and wheels, n-wide
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 delivered. 087-414 8122

BER CERTIFICATES
 IF YOU ARE building, selling,
 renting/leasing a property or
 residential/leasing a property
 you need a BER. If you are
 thinking of buying a property
 you need a BER. Please
 Building or Dwelling. Please
 contact & grants available for these
 improvements. I will survey &
 advise on how to reduce your
 energy consumption. Ph: Tony
 on 086 9698705 / 01 8693557
 energysavingratings@gmail.com

MISCELLANEOUS
BALLROOM CLASSES 8pm:
 Presentation Primary School,
 Terenure. Absolute Beginners,
 Improvers, Wedding dances
 by request. 01 821 7574
 www.silver-slippers.net

LEGAL NOTICES
 Alizatin Limited CFO note:
 having ceased office and
 having moved to a new office at
 Unit B, KCR Business Estate,
 Dublin 12, having no
 outstanding liabilities exceeding
 the amount of €150.
 The Registrar of Companies has
 received a request from the
 company to be removed from the
 Register on that basis to
 effect a reduction in the
 amount of the company's
 liability to the Registrar of
 Companies of the name of
 the company off the register.

DIVORCE SERVICES
 If you have been separated for
 1 year, you can apply for
 a decree absolute. We will
 handle all the legal aspects
 of the divorce. We will
 draft & process your divorce
 for Court. For more
 information contact us on
 01 454 2111 or
 www.divorcebyconsent.com
 Ph: 0851 211820

DRAW RESULTS
 ST FRANCIS HOSPICE Monthly
 Draw on 12th May 2015
 2nd Prize: €10,000
 3rd Prize: €5,000
 4th Prize: €2,500
 5th Prize: €1,250
 Mrs A. Lee 08877. For further
 information about the Hospice
 Draw contact 857 7555.

GARAGE DOORS
 AT SHUTTERS & DOORS. Menu
 of Insulation, Roller Shutters &
 Garage Doors. Roller Shutters &
 Industrial Doors. 08706497399
 085 9087654973 41-shut
 ters@shuttersanddoors.ie
 tarsanddoors.ie

LEGAL NOTICES
 LADY 44, Kildara, single, seeks
 a professional male, 42-54,
 Dublin or Kildara for friendship
 plus. Reply to box no. 8176.

PLANNING APPLICATIONS
 DUN LAOGHAIRE BATHDOWN
 COUNCIL - Noreen Farrar
 intends to apply for Planning
 permission for a 2 storey
 pre-cast concrete car
 adjacent to no. 23 Ardara
 Road, Bathdown. The alterations
 will comprise an enlarged
 ground floor plan by extending
 to the west by porch, revised
 elevations, a first floor balcony,
 on the northern side planning
 permission at a fee not
 exceeding the reasonable
 cost of making a copy of the
 application and a fee of €150.
 County Hall, Dun Laoghaire,
 during its public opening hours
 from 10.00am to 4.00pm on
 the date of receipt by the Authority
 of the application.

HAIR & BEAUTY
**QUALIFIED MOBILE HAIR-
 DRESSER** available for
 full time or part time. I can
 cut, curl, tint, blow dry, style,
 perm, upstyles, get the
 color, Alana. Other 6-10 each inc.
 light colour 6-10 each inc.
 and blow dry Ph. 087-7654604

HOMES SECURITY
AMPTECH ALARMS. Installa-
 tions, Repairs, Upgrades.
 CCTV, Siren, Alarm, 24hr
 service only 049: www.amptech.ie
 info@amptech.ie Call Robert
 01 61568980-0862-90807

MEETING POINT
ATTRACTIVE professional lady,
 57, would like to meet, get
 together for travelling & people
 relationships please reply
 to Box no. 8164.

PLANNING APPLICATIONS
 DUBLIN CITY COUNCIL
 permission sought for a Parking
 Guidance Information sign and
 Meter, Eustace Street, by Euro Car
 Parks (Ireland) Ltd. It shall be
 internally illuminated, 2.7m high
 situated on a post, overall
 height 3.55m, located in the
 pavement, adjacent to the
 North Circular Rd Dublin 7. The
 planning application may be
 inspected at the reasonable
 cost of making a copy of the
 application and a fee of €150.
 offices of Dublin City Council
 during its public opening hours
 from 10.00am to 4.00pm on
 the date of receipt by the Authority
 of the application.

MEETING POINT
MAN 44, goodlooking, 6000 for
 seeks nice lady, Kerry or Munster
 area. Replies to box no 8183

PIANOS
TYNAN PIANOS for value since
 1958 01 497 7807 / 498 3567.

LEGAL NOTICES
 An Garda Síochána Road
 Regulations 1985 (Section 41)
 An Garda Síochána proposes
 to dispense of the following
 vehicles in the manner the Garda
 Commissioner directs on or
 after two weeks following the
 publication of the notice:-
 05 C 9365
 04 RN 1762
 02 LH 7323
 01 LK 2481
 98 D 69889
 02 D 53779
 98 D 9015
 00 WH 3797
 00 G 2665
 02 Y 9036
 02 D 59318
 01 G 8435
 99 G 4555
 02 G 8065
 98 L 710

MEETING POINT
 James Daly Builders Limited
 trading having ceased to trade
 on 31st December 2014 having
 been registered in County Mayo and
 its principal place of business at
 Invertown, Claremorris, Co. Mayo,
 Ireland, has been dissolved and
 its liabilities exceeding €150,
 resolved to notify that the
 company is not carrying on
 business and to request the
 Registrar of Companies to
 section 311 of the Companies
 Act 1963 to strike the name of
 the company off the register.
 By order of the Board,
 Lavence Daly,
 Director / Secretary

PLANNING APPLICATIONS
 DUBLIN CITY COUNCIL
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 Guidance Information sign and
 Meter, Eustace Street, by Euro Car
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 offices of Dublin City Council
 during its public opening hours
 from 10.00am to 4.00pm on
 the date of receipt by the Authority
 of the application.

UPHOLSTERY
NAVAN UPHOLSTERY Sofas,
 chairs, 3 piece-suites, new,
 & lounge. Cleaned like new
 & repaired. Leather sofas
 repaired. New sofas made to
 order. Post School, Hospital &
 all contract work. All services
 like new. Full polishing services
 available. 086-3501022.
 Covered 086-3501022.

USEFUL SERVICES
 5000 LEAFLETS PRINTED IN FULL
 colour Nationwide Delivery. PH:
 087 9502397 or 01 4511248

PLANNING APPLICATIONS
 DUBLIN CITY COUNCIL
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 Guidance Information sign and
 Meter, Eustace Street, by Euro Car
 Parks (Ireland) Ltd. It shall be
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 of the application.

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 offices of Dublin City Council
 during its public opening hours
 from 10.00am to 4.00pm on
 the date of receipt by the Authority
 of the application.

DISAFC363

PP (T.F.)
(2017)

No. P71378/15.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Reg. Reference: D15A/0363 **Date Received** 29-May-2015
Add. Info. Req: **Add. Info. Received:**
Name & Address: ✓ Kenny Kane Associates, Oak Hollow Studio, Upper Glenageary Road, Glenageary, Co. Dublin
Development: Permission for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.
Location: Site adjacent to 24 Ardrugh Road, Dalkey, Co. Dublin
Applicant: Noreen Farrar
App. Type: Permission
Level of Decision: Approved Officer
Report: Louise Bell

Signed: Louise Bell
Case Planner

Dated: 17/07/15.

SITE DESCRIPTION:

The site is located on the southern side of Ardrugh Road in Dalkey, close to the old Quarry. The area is elevated affording views northwards towards Dublin Bay.

The area is characterised by a mixture of old and new developments. The older buildings comprise predominantly single storey cottages, originally built to provide accommodation for quarry workers. Newer developments comprise single and two storey structures.

The application site is rectangular shaped with a 16m road frontage and 11m depth which reduces to 9 m in the western third. The site forms part of a triangular shaped cluster of tightly knit cottages, vehicular access to which are gained from narrow cul-de-sacs running off Ardrugh Road. It has been cleared of any structures but is overgrown and has a wire fence boundary to the road. A steel buttressing frame has been erected within the site to support the two storey dwelling to the south west of the site. (JB)

The site is bound to the east by a large two storey house, Ardrugh House, which appears to be a renovation of an earlier structure. The building is two storeys in height and has a flat roof and dashed external wall finish. There are a number of additions to the rear including timber balconies. Its vehicular access is at the rear from the cul-de-sac.

To the south, the site is bound in part by two houses which are located at a height overlooking the site i.e. Shamrock Cottage and No. 32A Ardrugh Road, and in part by a derelict site. Shamrock Cottage, the nearest of the two houses, has a window overlooking the site. To the west the site adjoins a two storey dwelling, which has a blank gable wall facing onto the subject site.

Ardrugh Road is narrow road with a footpath only on its northern side.

AP (TF) 2015

No. P71378/15

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Reg. Reference: D15A/0363 **Date Received** 29-May-2015
Add. Info. Req: **Add. Info. Received:**
Name & Address: ✓ Kenny Kane Associates, Oak Hollow Studio, Upper Glenageary Road, Glenageary, Co. Dublin
Development: Permission for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.
Location: Site adjacent to 24 Ardbrough Road, Dalkey, Co. Dublin
Applicant: Noreen Farrar
App. Type: Permission
Level of Decision: Approved Officer
Report: Louise Bell

Signed: Louise Bell
Case Planner

Dated: 17/07/15.

SITE DESCRIPTION:

The site is located on the southern side of Ardbrough Road in Dalkey, close to the old Quarry. The area is elevated affording views northwards towards Dublin Bay.

The area is characterised by a mixture of old and new developments. The older buildings comprise predominantly single storey cottages, originally built to provide accommodation for quarry workers. Newer developments comprise single and two storey structures.

The application site is rectangular shaped with a 16m road frontage and 11m depth which reduces to 9 m in the western third. The site forms part of a triangular shaped cluster of tightly knit cottages, vehicular access to which are gained from narrow cul-de-sacs running off Ardbrough Road. It has been cleared of any structures but is overgrown and has a wire fence boundary to the road. A steel buttressing frame has been erected within the site to support the two storey dwelling to the south west of the site. (JB)

The site is bound to the east by a large two storey house, Ardbrough House, which appears to be a renovation of an earlier structure. The building is two storeys in height and has a flat roof and dashed external wall finish. There are a number of additions to the rear including timber balconies. Its vehicular access is at the rear from the cul-de-sac.

To the south, the site is bound in part by two houses which are located at a height overlooking the site i.e. Shamrock Cottage and No. 32A Ardbrough Road, and in part by a derelict site. Shamrock Cottage, the nearest of the two houses, has a window overlooking the site. To the west the site adjoins a two storey dwelling, which has a blank gable wall facing onto the subject site.

Ardbrough Road is narrow road with a footpath only on its northern side.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

ZONING OF SITE:

In the 2010-2016 Dun Laoghaire-Rathdown County Development Plan the site is zoned, "Objective A: To protect and/or improve residential amenity."

RECENT PLANNING HISTORY:

The following recent planning applications are considered relevant in this instance:

Subject Site:

D07A/0507: Permission was granted by an Bord Pleanála (Ref. PL06D.224147) for a two storey dwelling and associated works and car-parking.

An Extension of Duration of this permission was granted until 3rd of January, 2018 (Ref. D07A/0507/E).

Reg. Ref. D04A/1189 - PL06D.213210

Permission refused by the Board for a two storey house on the site for the reason of being out of character with the pattern of development in the vicinity and serious injury to amenities of property in the vicinity.

D03A/1157 - PL 06D.206288

Permission refused by the Board for a house (two storey and single storey) on the site for the being out of character with the pattern of development in the vicinity and serious injury to amenities of property in the vicinity.

D98A/0832- PL 06D.109657

Permission refused for a three storey house and two parking spaces for the reason of over development of the site and serious injury to amenities of adjoining properties.

PRE-PLANNING MEETING:

PAC/109/15 Drawings were submitted for pre-planning advice different from that proposed under the subject planning application. Issues discussed: Single storey extension not acceptable as it would reduce private open space to an unacceptable level; Balcony may be acceptable as it is to the front of the dwelling facing Ardbrough Road. Applicant should ensure no overlooking issues.

SUBMISSIONS:

One submission has been received within the prescribed period. The main points raised in these submissions can be summarised as follows:

- On previous planning applications, permission was refused *regarding having* ~~to have~~ windows on the first floor. Proposed windows will give rise to overlooking.
- Balcony to the west elevation would overlook the sitting room windows of 'Shamrock Cottage'.
- This new application is making an attempt to reverse the decisions made by the Council previously. These changes are completely obtrusive and will set a poor precedent.

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

- Density of the proposed house is already considerably higher than the original development which sat on the land, which was a bungalow.

The contents of this submission are duly noted and will be taken into account in the assessment of the proposed development.

SITE NOTICE:

- ✓ Site notice was in place and acceptable on the 2nd July, 2015.

The site was visited for an assessment of the application on the 2nd July, 2015.

DEPARTMENTAL REPORTS:

- ✓ Transportation Planning: Report dated 13th July, 2015. Transportation have no objection to the proposed alterations, subject that the Applicant complies with the Planning Authorities' conditions of the previously granted concurrent Planning Application (Reg. Ref. D07A/0507) for the site.

and D07A/0507/E

- ✓ Drainage Planning: Report dated 14th July, 2015. No objection, subject to a condition that, 'prior to the commencement of construction the applicant shall submit an alternative proposal for the disposal of Surface water that demonstrates that a reasonable effort has been made to incorporate SuDS measures appropriate to the scale of the proposed development.'

PROPOSAL:

for.
 Permission is sought for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

PLANNING ASSESSMENT:

Enlarged Ground Floor Plan:

The ground floor of the proposed dwelling is to be enlarged by 0.9 metres. The permitted development shows the proposed dwelling in line with the building line of the dwelling to the south, Shamrock Cottage. This dwelling has a north facing window on the boundary with the subject site. The proposed enlarged ground floor will be in front of part of this window. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of Shamrock Cottage.

Balcony:

A wraparound balcony is proposed to the northern and western elevation of the building. The western element of this balcony will give rise to overlooking of the windows of the dwellings to the south. It will seriously detract from the residential amenity of these dwellings. The western element of this balcony will also be visually obtrusive from the north facing windows of the dwellings at the southern site boundary. ~~The element of the balcony facing the road may be acceptable, however, a split decision, is not considered appropriate in this instance as the balcony is a wraparound balcony.~~

1376. 13.

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

New Windows:

Two new windows are proposed on the west facing elevation of the proposed dwelling.

One of these windows is to the kitchen area and appears to be a high level window.

However, this could not be ^{fully} ascertained from the drawings provided. A high level window in this location may be acceptable. In any future planning application on the site, details should be provided of the height of the window from floor level. The silt window to the living room may also be acceptable in any future planning application on the site. However, the glazing within this window should be manufactured opaque or frosted glass. The application of film to the surface of clear glass is not acceptable.

Conclusion:

The western element of the proposed wraparound balcony will give rise to overlooking issues and will be visually obtrusive from the windows of the dwellings to the south. The proposed enlarged ground floor ^{will be shown to be} in front of part of the easternmost window of the dwelling to the south, Shamrock Cottage. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of this dwelling. Some elements of the proposed development may be acceptable, however, it is considered that since all elements of the proposed development are linked and attaching conditions to a split decision may not ensure a satisfactory development on the site, permission should be refused for the proposed development.

RECOMMENDATION

I recommend that a decision to **REFUSE PERMISSION** be made under the Planning & Development Act 2000, as amended for the following reasons:-

1. The western element of the proposed wraparound balcony will give rise to overlooking issues and will be visually obtrusive from the windows of the dwellings to the south. The proposed enlarged ground floor ^{is located} in front of part of the easternmost window of the dwelling to the south, Shamrock Cottage. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of this dwelling. ^{the proposed} development would seriously detract from the residential amenity of adjacent dwellings, and is, therefore, contrary to the proper planning and sustainable development of the area.

Having regard to the impact of the proposed development by reason of the overlooking and these being visually obtrusive and resultant overlooking,

J. J. B. 20/7/15
Senior Executive Planner

Endorsed: J. Lannon 22/7/15
pp Senior Executive Officer

ORDER: A decision pursuant to Section 34(8) of the Planning & Development Act 2000, as amended, for Register Reference D15A/0363, to **REFUSE**

13/15

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

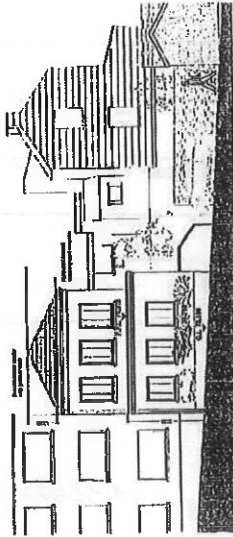
PERMISSION for the above proposal for the (1) reason(s) set out above is hereby made.

REG. REF.: D15A/0363

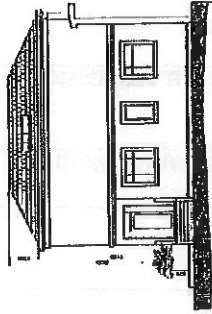
Signed: 
Approved Officer

Dated: 22/7/2015

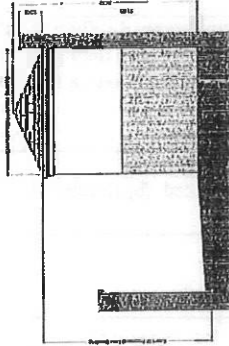
Thereunto empowered by order of Príomhfeidhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 190, dated 4/7/2015, delegating to me all her powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.



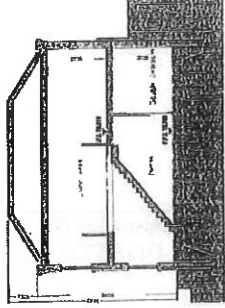
FRONT ELEVATION (NORTH) (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1/100



WEST ELEVATION (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1/100



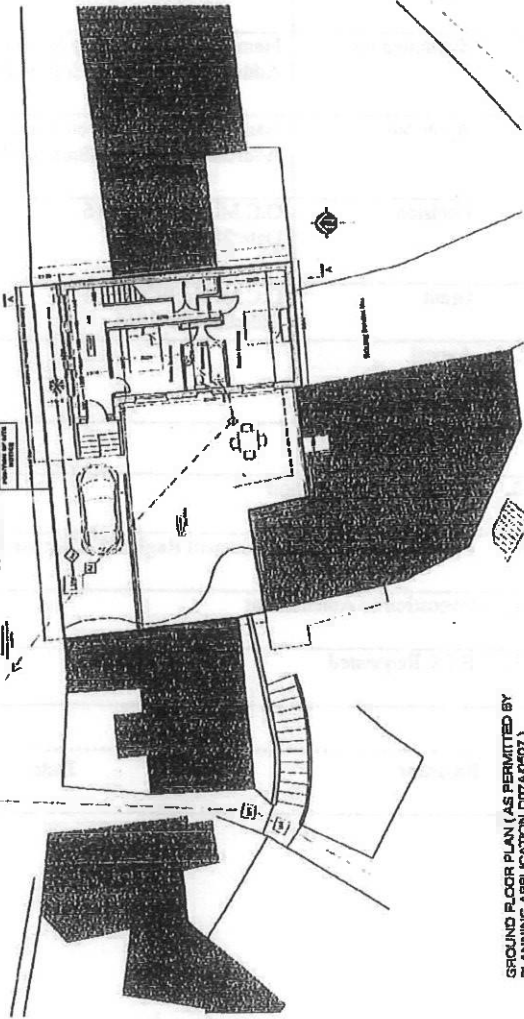
SOUTH ELEVATION (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1/100



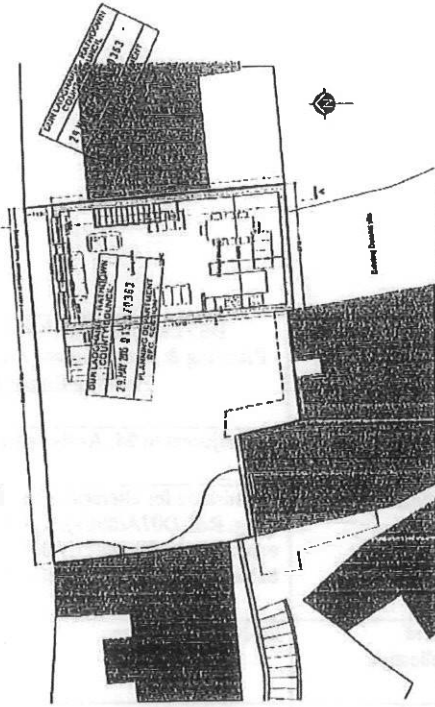
SECTION A-A (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1/100

ARBRUGH ROAD

ARBRUGH ROAD



GROUND FLOOR PLAN (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1/100



FIRST FLOOR PLAN (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1/100

OS REF. NO. 3384-23

DATE: 11/18/2010

PROJECT: KENNY, NC 1187

CLIENT: KENNY, NC 1187

DESIGNER: KENNY, NC 1187

SECTION: AS PER D07A0507

PP-02

	Dún Laoghaire-Rathdown County Council Planning & Development Act 2000, (As Amended) Planning Register (Part 1)		Register Ref No. D15A/0750
1. Location	site adjacent to 24, Ardbrough Road, Dalkey, Co. Dublin		
2. Development	Permission for alterations to previously approved plans for a two-storey dwelling at a site (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.		
3. Date of Application	26-Nov-2015	Date Further Particulars (a) Requested (b) Received	
3a. Type of Application	Permission	1. 2.	
4. Submitted by	Name: Kenny Kane Associates Address: Oak Hollow Studio, Upper Glenageary Road, Glenageary, Co. Dublin		
5. Applicant	Name: Noreen Farrar Address: 89 Mountain View Road, Crinken Glen, Shankill, Dublin 15		
6. Decision	O.C.M. No:P/0194/16 Date:28-Jan-2016	Effect:GRANT PERMISSION	
7. Grant	O.C.M. No:P/0479/16 Date:03-Mar-2016	Effect: GRANT PERMISSION	
8. Appeal Notified			
9. Appeal Decision			
10. Material Contravention			
11. Enforcement (*see Enforcement Register) Compensation	Purchase Notice		
12. Revocation or Amendment			
13. E.I.S. Requested	E.I.S. Received	E.I.S. Appeal	
14. Registrar Date Receipt No.	

Kenny Kane Associates
 Oak Hollow Studio
 Upper Glenageary Road
 Glenageary
 Co. Dublin

**NOTIFICATION OF GRANT OF Permission
 Planning & Development Act 2000, as amended**

Final Grant Order Number P/0479/16	Date of Final Grant 03-Mar-2016
Decision Order Number P/0194/16	Date of Decision 28-Jan-2016
Register Reference D15A/0750	Date Received 26-Nov-2015

Applicant: Noreen Farrar
Development: Permission for alterations to previously approved plans for a two-storey dwelling at a site (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

Location: site adjacent to 24, Ardbrugh Road, Dalkey, Co. Dublin
Floor Area 109 Sq. Metres
Time extension(s) up to and including
Additional Information Requested/Received: /

A Permission has been granted for the development described above, subject to the (10) Conditions on the attached Numbered Pages.

Signed on behalf of Dún Laoghaire-Rathdown County Council

Sinead Hayden

for Senior Executive Officer

Date: 03-Mar-2016

Conditions and Reasons

1. The development to be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the other conditions attached hereto.
REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained.
2. Save for the amendments granted on foot of this permission, the development shall otherwise be retained and completed in strict accordance with the terms and conditions of Planning Permission Reg. Ref. D07A/0507, save as may be required by the other conditions attached hereto.
REASON: In the interest of the proper planning and sustainable development of the area.
3. The glazing within the west facing, first floor living area window, shall be manufactured opaque or frosted glass. The application of film to the surface of clear glass is not acceptable.
REASON: In the interests of residential amenities.
4. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.
REASON: To protect the amenities of the area.
5. The disposal of surface water shall be in accordance with the requirements of the County Council. In this regard (1) Drainage works shall be as shown on the drawing no. 15-003-PP-01.
REASON: In the interest of public health.
6. The entire premises be used as a single dwelling unit and shall not be sub-divided in any manner or used as two or more separate habitable units.
REASON: To prevent unauthorised development.
7. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €221.33 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSJ Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.
REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

Note on above Condition:

Please note that with effect from 1st January, 2014 Irish Water are now the statutory body responsible for both water and waste water services. Accordingly, the contribution payable has been reduced by the amount of the contribution associated with these services. Further details/clarification can be obtained from Irish Water at Tel. 01 6021000.

8. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €5,068.55 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

9. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €3,290.12 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

10. This development shall not be carried out without prior agreement, in writing, between the Applicant and the Planning Authority relating to the payment of development contributions.

REASON: Investment by Dún Laoghaire-Rathdown County Council in Local Authority works has facilitated and will facilitate the proposed development. It is considered appropriate and reasonable that the developer should contribute to the cost of same.

NOTE 1: That water supply and foul drainage shall be in accordance with the requirements of Irish Water.

NOTE 2: The proposed development shall not overhang or oversail the adjoining property without the written agreement of the owner of this property. If this written agreement is not obtained the proposed development shall be modified only insofar as is required to do this.

NOTE 3: The attention of the Applicant is drawn to Section 34 (13) of the Planning and Development Act 2000, as amended, which relates as follows 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

Building Regulations

Buildings must be designed and constructed in accordance with the Building Regulations.

Commencement Notice

A Commencement Notice must be submitted in respect of all buildings other than exempted development, not less than fourteen days and not more than twenty eight days before development commences and be accompanied by a fee of €30.

Fire Safety Certificate

A Fire Safety Certificate must be obtained in respect of the erection, alteration or change of use of all buildings other than dwelling houses.

Amendments to the Building Regulations to take effect from 1st January 2001 **Building Regulations (Amendment) Regulations 2000 (S.I. No. 179 of 2000)** **Building Regulations (Amendment) (No. 2) Regulations 2000 (S.I. No. 249 of 2000)**

Amendment (S.I. 179 of 2000) relates to making new houses visitable by people with disabilities and imposing more stringent requirements on non-residential buildings / places relating to adequate access for disabled.

Amendment (S.I. 249 of 2000) introduces requirements for positioning letter plate apertures in house and other buildings.

Pursuant to the Planning and Development Act 2000 Section 34(13): "A person shall not be entitled solely by reason of a permission under this section to carry out any development."



Comhairle Contae County Council

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Dún Laoghaire, Co. Átha Cliath, Éire. A96 K6C9
Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire, Co. Dublin, Ireland. A96 K6C9
T: 01 205 4700 F: 01 280 6969 www.dlrco.ie

Kenny Kane Associates
Oak Hollow Studio
Upper Glenageary Road
Glenageary
Co. Dublin

29-Jan-2016

NOTIFICATION OF DECISION TO GRANT PERMISSION
Planning & Development Act 2000, as amended

Order Number P/0194/16 ✓	Date of Order 28-Jan-2016 ✓
Register Reference D15A/0750 ✓	Date Received 26-Nov-2015 ✓

Applicant:
Development:

Noreen Farrar
Permission for alterations to previously approved plans for a two-storey dwelling at a site (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

Location:

site adjacent to 24, Ardbrough Road, Dalkey, Co. Dublin

Site Area:


172sq.m

Dear Sir/Madam,

In pursuance of its functions under the above mentioned Act, Dún Laoghaire-Rathdown County Council, being the Planning Authority, did by Order dated as above make a decision to **GRANT PERMISSION** in respect of the above proposal, subject to the **10** numbered conditions on the attached pages.

Please note that, in accordance with Section 251 of the Planning and Development Act 2000, as amended, "where calculating any appropriate period or other time limit referred to in this Act or in any regulations made under this Act, **the period between the 24th Day of December and the first day of January, both days inclusive, shall be disregarded**".

Signed on behalf of Dún Laoghaire-Rathdown County Council.



for Senior Executive Officer

CONDITIONS AND REASONS

1. The development to be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the other conditions attached hereto.
REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained.
2. Save for the amendments granted on foot of this permission, the development shall otherwise be retained and completed in strict accordance with the terms and conditions of Planning Permission Reg. Ref. D07A/0507, save as may be required by the other conditions attached hereto.
REASON: In the interest of the proper planning and sustainable development of the area.
3. The glazing within the west facing, first floor living area window, shall be manufactured opaque or frosted glass. The application of film to the surface of clear glass is not acceptable.
REASON: In the interests of residential amenities.
4. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.
REASON: To protect the amenities of the area.
5. The disposal of surface water shall be in accordance with the requirements of the County Council. In this regard (i) Drainage works shall be as shown on the drawing no. 15-003-PP-01.
REASON: In the interest of public health.
6. The entire premises be used as a single dwelling unit and shall not be sub-divided in any manner or used as two or more separate habitable units.
REASON: To prevent unauthorised development.
7. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €221.33 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.
REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure and Facilities benefiting

development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

Note on above Condition:

Please note that with effect from 1st January, 2014 Irish Water are now the statutory body responsible for both water and waste water services. Accordingly, the contribution payable has been reduced by the amount of the contribution associated with these services. Further details/clarification can be obtained from Irish Water at Tel. 01 6021000.

8. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €5,068.55 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.
REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.
9. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €3,290.12 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.
REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.
10. This development shall not be carried out without prior agreement, in writing, between the Applicant and the Planning Authority relating to the payment of development contributions.
REASON: Investment by Dún Laoghaire-Rathdown County Council in Local Authority works

has facilitated and will facilitate the proposed development. It is considered appropriate and reasonable that the developer should contribute to the cost of same.

NOTE 1: That water supply and foul drainage shall be in accordance with the requirements of Irish Water.

NOTE 2: The proposed development shall not overhang or oversail the adjoining property without the written agreement of the owner of this property. If this written agreement is not obtained the proposed development shall be modified only insofar as is required to do this.

NOTE 3: The attention of the Applicant is drawn to Section 34 (13) of the Planning and Development Act 2000, as amended, which relates as follows 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

(1) Submissions/Observations

NOTE: In deciding this planning application, the planning authority, in accordance with Section 34 (3) of the Planning and Development Act 2000, as amended, has had regard to any submissions or observations received, in accordance with the Planning and Development Regulations, 2001 to 2012, pertaining to the application.

(2) Removal of Site Notice

NOTE: The applicant is reminded that in accordance with Article 20 of the Planning and Development Regulations, 2001 to 2012, any site notice erected or fixed pertaining to this application shall be removed (if not already done so) following receipt of this notification.

FURTHER NOTES

APPEALS

This decision of the Planning Authority does not authorise works to commence and may be appealed to An Bord Pleanála by an Applicant or any person who made submissions or observations in writing in relation to this application to the Planning Authority.

A person who has an interest in adjoining lands in respect of which permission has been granted and who did not make a submission or observation under Section 37(6)(a) of the Planning and Development Act, 2000, as amended may apply to the Board for leave to appeal the decision of the Planning Authority. Appeals should be sent to:

**The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.**

Tel: 01-8588100

Every appeal must be made in writing and must state the subject matter and full grounds of appeal. It must be fully complete from the start.

The Board must receive an appeal within four weeks, beginning on the date of the decision set out above. A Third Party appeal will be invalid unless accompanied by the prescribed fee and a copy of the acknowledgement of receipt from the Planning Authority in respect of a submission/observation.

GRANT OF PERMISSION

In the case of a notification of a decision to Grant Permission, where no appeal is received by An Bord Pleanála against the decision, a PERMISSION will be granted by the Council as soon as may be after the expiration of the period for the making of an appeal.

REFUND OF FEES – REPEAT PLANNING APPLICATION

Provision is made for a partial refund of fees in the case of certain repeat applications submitted within a period of twelve months where the full standard fee was paid in respect of the first application where both applications relate to developments of the same character or description and to the same site. An application for a refund must be made in writing to the Planning Authority and received by them within a period of 8 weeks beginning on the date of Planning Authority's decision on the second application. Please consult the Planning & Development Regulations, 2001 to 2010, for full details of fees, refunds and exemptions.

GP (2011)

No. P/0194/16.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Reg. Ref.: D15A/0750 **Date Received:** 26-Nov-2015
Add. Info Req'd: **Add. Info Rec'd:**
Name & Address: Kenny Kane Associates, Oak Hollow Studio, Upper Glenageary Road, Glenageary, Co. Dublin
Development: Permission for alterations to previously approved plans for a two-storey dwelling at a site (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations to the site adjacent to 24, Ardbrough Road, Dalkey, Co. Dublin
Location: site adjacent to 24, Ardbrough Road, Dalkey, Co. Dublin
Applicant: Noreen Farrar
App. Type: Permission
Level of Decision: Approved Officer
Report: Louise Bell

Signed: Louise Bell
 Case Planner

Dated: 25/01/16

CONTRIBUTION
 S.48 Surface Water €221.33
 S.48 Roads €5,068.56
 S.48 Community & Parks €3,290.12
 S.48 Special Contributions
 S.49 Luas Line B1
 S.49 Glenamuck/Kitteman Scheme

SITE DESCRIPTION:

The site is located on the southern side of Ardbrough Road in Dalkey, close to the old Quarry. The area is elevated affording views northwards towards Dublin Bay.

The area is characterised by a mixture of old and new developments. The older buildings comprise predominantly single storey cottages, originally built to provide accommodation for quarry workers. Newer developments comprise single and two storey structures.

The application site is rectangular shaped with a 16m road frontage and 11m depth which reduces to 9 m in the western third. The site forms part of a triangular shaped cluster of tightly knit cottages, vehicular access to which are gained from narrow cul-de-sacs running off Ardbrough Road. The site has been cleared of any structures but is overgrown and has a wire fence boundary to the road. A steel buttressing frame has been erected within the site to support the two storey dwelling to the south west of the site.

The site is bound to the east by a large two storey house, Ardbrough House, which appears to be a renovation of an earlier structure. The building is two storeys in height and has a flat roof and dashed external wall finish. There are a number of additions to the rear including timber balconies. Its vehicular access is at the rear from the cul-de-sac.

To the south, the site is bound in part by two houses which are located at a height overlooking the site i.e. Shamrock Cottage and No. 32A Ardbrough Road, and in part by a derelict site. Shamrock Cottage, the nearest of the two houses, has a window overlooking the site. To the west the site adjoins a two storey dwelling, which has a blank gable wall facing onto the subject site.

SECURITY BOND/CIF: CASH:

P/0194/16.

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Ardbrugh Road is narrow road with a footpath only on its northern side.

ZONING OF SITE:

In the 2010-2016 Dun Laoghaire-Rathdown County Development Plan the site is zoned, "Objective A: To protect and/or improve residential amenity."

RECENT PLANNING HISTORY:

The following recent planning applications are considered relevant in this instance:

Subject Site:

D15A/0363: Permission was refused, by the Planning Authority, for alterations to previously approved plans for a two-storey dwelling (Reg. Ref. D07A/0507). The alterations to comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations, for the following reason:

'The western element of the proposed wraparound balcony will give rise to overlooking issues and will be visually obtrusive from the windows of the dwellings to the south. The proposed enlarged ground floor is located in front of part of the easternmost window of the dwelling to the south, Shamrock Cottage. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of this dwelling. Having regard to the impact of the proposed development, by reason of being visually obtrusive and resultant overlooking, the proposed development would seriously injure the residential amenity of adjacent dwellings and depreciate the value of properties in the vicinity and is, therefore, contrary to the proper planning and sustainable development of the area.'

D07A/0507: Permission was granted by an Bord Pleanála (Ref. PL06D.224147) for a two storey dwelling and associated works and car-parking.

An Extension of Duration of this permission was granted until 3rd of January, 2018 (Ref. D07A/0507/E).

Reg. Ref. D04A/1189 - PL06D.213210

Permission refused by the Board for a two storey house on the site for the reason of being out of character with the pattern of development in the vicinity and serious injury to amenities of property in the vicinity.

D03A/1157 - PL 06D.206288

Permission refused by the Board for a house (two storey and single storey) on the site for being out of character with the pattern of development in the vicinity and serious injury to amenities of property in the vicinity.

D98A/0832- PL 06D.109657

Permission refused for a three storey house and two parking spaces for the reason of over development of the site and serious injury to amenities of adjoining properties.

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

PRE-PLANNING MEETING:

Pre-planning in relation to the previous refusal of planning permission on site took place in October 2015 (Ref. PAC/579/15) Issues Discussed:

- Advised to show, in the planning application, how the proposed enlarged ground floor will not block north facing window of Shamrock Cottage.
- The balcony proposed will be confined to the front of the building only. The western elevation balcony has been omitted from the proposed development. This overcomes part of the reason for refusal.
- Two new windows are proposed on the west facing elevation of the proposed dwelling. The glazing within these windows are proposed to be frosted glass. They will therefore not give rise to overlooking issues.
- The reason for refusal appears to have been overcome provided the Applicant ensures the proposed enlarged ground floor will not block north facing window of Shamrock Cottage.
- Drainage Planning report for previous refusal states no objection subject to a condition that, 'prior to the commencement of construction the applicant shall submit an alternative proposal for the disposal of Surface water that demonstrates that a reasonable effort has been made to incorporate SuDS measures appropriate to the scale of the proposed development.' The Applicant should attempt to address this in the planning application.

✓ SUBMISSIONS:

No submissions have been received within the prescribed period.

✓ SITE NOTICE:

Site notice was in place and acceptable on the 5th January 2016.

The site was visited for an assessment of the application on the 5th January 2016.

✓ DEPARTMENTAL REPORTS:

Transportation Planning: No report to date.

Drainage Planning: Report dated 18th December 2015. No objection.

PROPOSAL:

Permission for alterations to previously approved plans for a two-storey dwelling at a site (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

PLANNING ASSESSMENT:

Enlarged Ground Floor Plan:

P/0194/16

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

The ground floor of the proposed dwelling is to be enlarged to the west by 0.9 metres. The previously proposed development, which was refused planning permission, Ref. D15A/0363, showed the enlarged ground floor to be located in front of a north facing window of the dwelling to the south, Shamrock Cottage. It was considered that the proposed enlarged ground floor would be visually obtrusive from this window and would seriously detract from the residential amenity of Shamrock Cottage. Under the subject planning application, this ground floor extension has been altered to ensure that there will be no impeding of the view from this window. The Applicant has submitted drawing no. PP-03, 3D Images which shows the junction of the two buildings in this area. The proposed development will not detract from the residential amenity of this dwelling.

Balcony:

Under the previously proposed development, which was refused planning permission, Ref. D15A/0363, a wraparound balcony was proposed to the northern and western elevation of the building. It was considered that the western element of this balcony would give rise to overlooking of the windows of the dwellings to the south and would seriously detract from the residential amenity of these dwellings. It was also considered that the western element of this balcony would be visually obtrusive from the north facing windows of the dwellings at the southern site boundary. Under the subject planning application, the balcony has been altered to present itself directly to the road to the front of the dwelling. The balcony will not now give rise to overlooking issues and will not detract from the residential amenity of adjacent dwellings.

New Windows:

Three new first floor windows are proposed on the west facing elevation of the proposed dwelling. One of these windows is to the kitchen area is a high level window. A frosted glass slit window is proposed to the living room. These windows will not give rise to overlooking issues. Another slit window is proposed to the first floor level living area. This will face onto the private amenity space for the dwelling and the blank gable wall of the dwelling to the west and will not therefore give rise to overlooking issues.

Conclusion:

It is considered that the reason for refusal under the previous planning application on the site has been overcome. The western element of the proposed wraparound balcony has been omitted and the proposed north facing balcony will not give rise to overlooking issues. The proposed enlarged ground floor has been altered so that it is not now proposed in front of part of the easternmost window of the dwelling to the south, Shamrock Cottage. The proposed development will not detract from visual or residential amenity in the area. The proposed development is therefore considered to be in accordance with the proper planning and sustainable development of the area.

RECOMMENDATION:

Pursuant to the Planning and Development Acts 2000, as amended, it is hereby recommended, for the reason set out in the First Schedule hereto, to GRANT PERMISSION

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

for the said development in accordance with the plans and particulars, subject to the conditions set out in the Second Schedule.

FIRST SCHEDULE:

Having regard to the 2010-2016 Dun Laoghaire-Rathdown County Development Plan, it is considered that subject to compliance with the conditions, the proposed development would not seriously injure the residential amenities of the area and would not contravene materially the current Development Plan of the area. The proposed development is considered to be in accordance with the proper planning and sustainable development of the area.

SECOND SCHEDULE:

I recommend that a decision to GRANT PERMISSION be made under the Planning & Development Act 2000, as amended, subject to the following (10) condition(s):-

1. The development to be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the other conditions attached hereto.
REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained.
2. Save for the amendments granted on foot of this permission, the development shall otherwise be retained and completed in strict accordance with the terms and conditions of Planning Permission Reg. Ref. D07A/0507, save as may be required by the other conditions attached hereto.
REASON: In the interest of the proper planning and sustainable development of the area.
3. The glazing within the west facing, first floor living area window, shall be manufactured opaque or frosted glass. The application of film to the surface of clear glass is not acceptable.
REASON: In the interests of residential amenities.
4. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.
REASON: To protect the amenities of the area.
5. The disposal of surface water shall be in accordance with the requirements of the County Council. In this regard (i) Drainage works shall be as shown on the drawing no. 15-003-PP-01.
REASON: In the interest of public health.
6. The entire premises be used as a single dwelling unit and shall not be sub-divided in any manner or used as two or more separate habitable units.
REASON: To prevent unauthorised development.
7. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €221.33 to the Planning Authority as a contribution

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSI Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

Note on above Condition:

Please note that with effect from 1st January, 2014 Irish Water are now the statutory body responsible for both water and waste water services. Accordingly, the contribution payable has been reduced by the amount of the contribution associated with these services. Further details/clarification can be obtained from Irish Water at Tel. 01 6021000.

8. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €5,068.55 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSI Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

9. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €3,290.12 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún

P/0194/16

No.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

10. This development shall not be carried out without prior agreement, in writing, between the Applicant and the Planning Authority relating to the payment of development contributions.

REASON: Investment by Dún Laoghaire-Rathdown County Council in Local Authority works has facilitated and will facilitate the proposed development. It is considered appropriate and reasonable that the developer should contribute to the cost of same.

NOTE 1: That water supply and foul drainage shall be in accordance with the requirements of Irish Water.

NOTE 2: The proposed development shall not overhang or oversail the adjoining property without the written agreement of the owner of this property. If this written agreement is not obtained the proposed development shall be modified only insofar as is required to do this.

NOTE 3: The attention of the Applicant is drawn to Section 34 (13) of the Planning and Development Act 2000, as amended, which relates as follows 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.


Senior Executive Planner

Endorsed:


Senior Executive Officer

ORDER: A decision, pursuant to Section 34(8) of the Planning & Development Act, 2000, as amended, for Register Reference D15A/0750, to **GRANT PERMISSION** for the above proposal, subject to the (10) condition(s) as set out above is hereby made.

No. 15A/0750

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

REG. REF.: D15A/0750

Signed: Liam Walsh Dated: 28-1-16
Approved Officer

I am hereby empowered by order of Príomhcheadhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 2011, dated 14-12-15, delegating to me all her powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.

Urban PLACE Map

Surveyed 1974
Revised 2014
Levelled 1983

ITM CENTRE PT. COORDS
726154, 726329

DESCRIPTION

MAP SHEETS

1:1000
3394-23

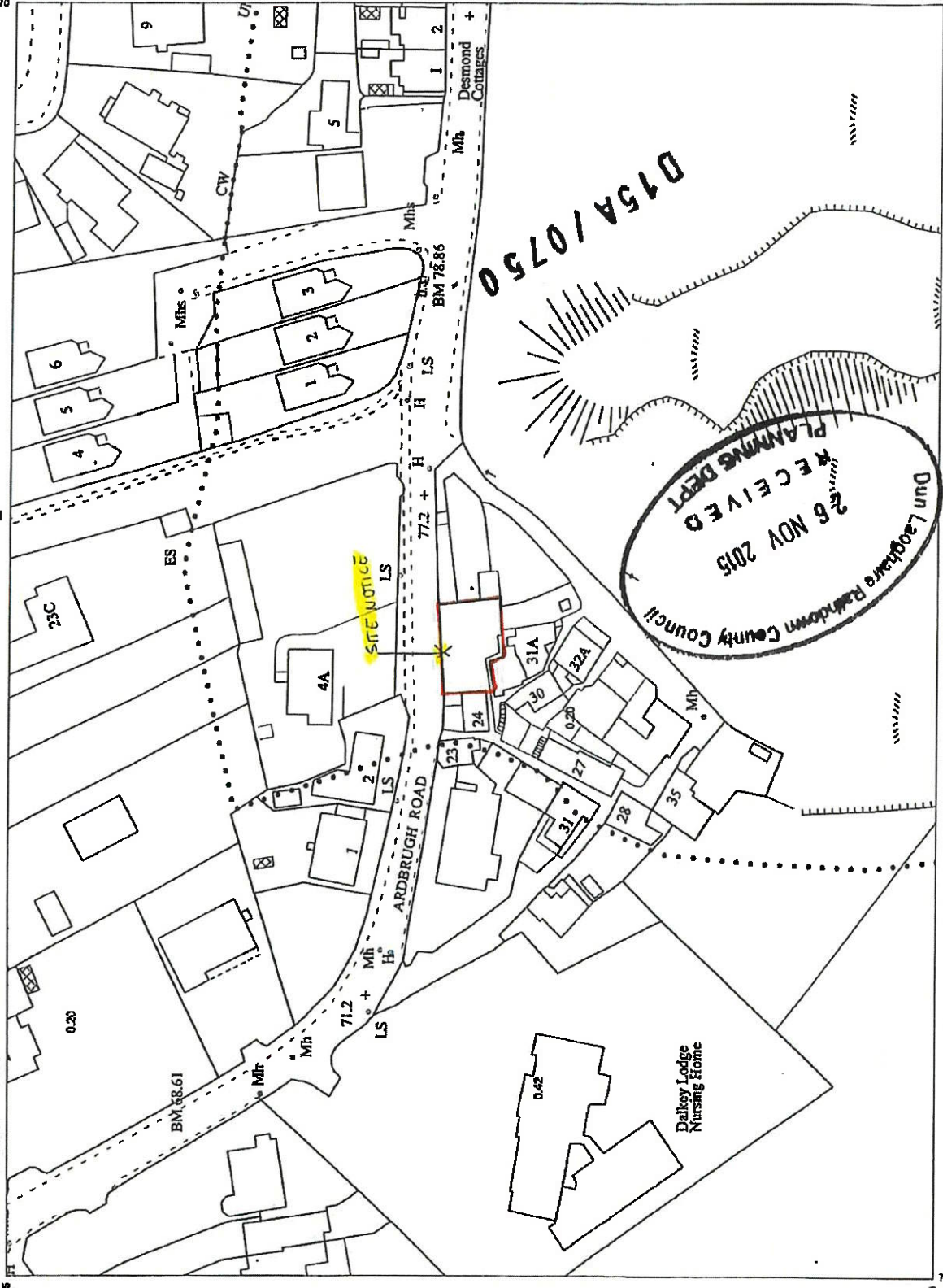


Produced by University College Dublin,
Rehilly, Clonsilla, Dublin 14
On behalf of Ordnance Survey Ireland,
Phoenix Park, Dublin 8.

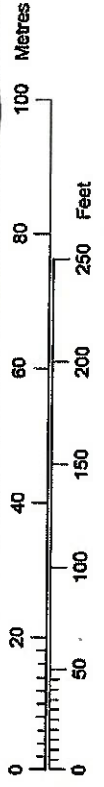
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Plot Ref. No. 25244827_1_4
Plot Date 02-NOV-2015



Scale:- 1:1,000
Scale:- 1:1,000

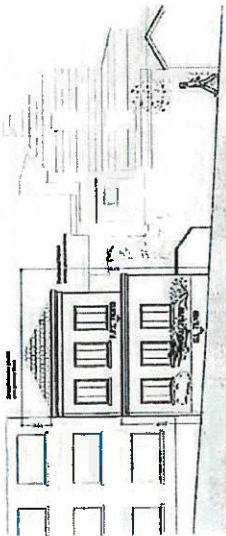


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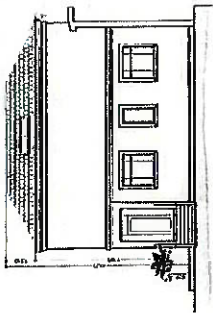
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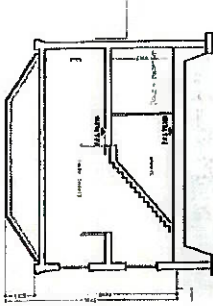
FRONT ELEVATION (NORTH) (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1:100



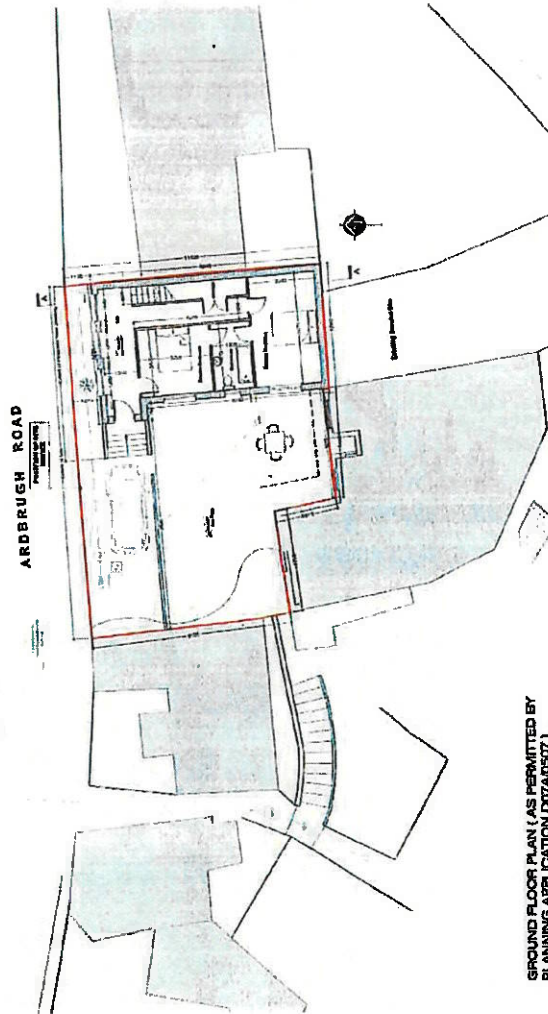
WEST ELEVATION (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1:100



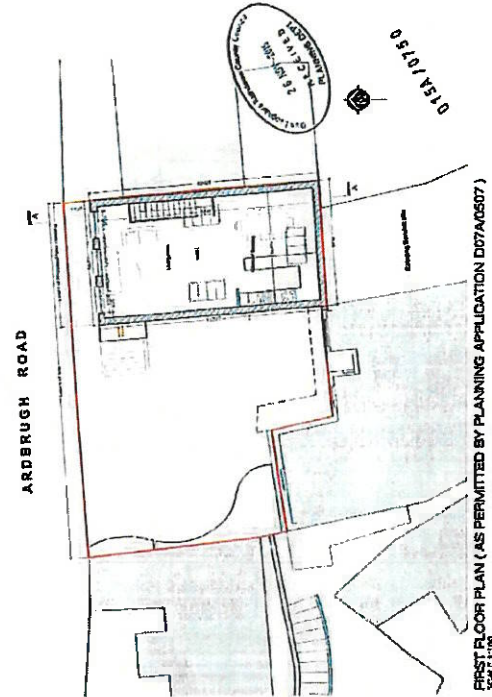
SOUTH ELEVATION (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1:100



SECTION A-A (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1:100



GROUND FLOOR PLAN (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1:100



FIRST FLOOR PLAN (AS PERMITTED BY PLANNING APPLICATION D07A0507)
SCALE 1:100

OS REF. NO. 3354-23

DATE OF SURVEY: 2007/11/15

BY: J. KENNY

SCALE: 1:100

PROJECT: NEWTON FARM

CLIENT: KENNY ASSOCIATES

PROJECT NO: PP-02



Kenny Kane Associates
Oak Hollow Studio
Upper Glenageary Road
Glenageary
Co. Dublin

01-Dec-2015

PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED

Register Ref.: D15A/0750

Development: Permission for alterations to previously approved plans for a two-storey dwelling at a site (Reg. Ref. D07A/0507). The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

Location: site adjacent to 24, Ardbrough Road, Dalkey, Co. Dublin

Applicant: Noreen Farrar

App. Type: Permission

Dear Sir/Madam

With reference to the above, I acknowledge receipt of your application received on 26-Nov-2015.

In accordance with the Planning and Development Regulations 2001, as amended, it should be noted that this application may be declared invalid subsequent to this acknowledgement.

Please note that, in accordance with Section 251 of the Planning and Development Act, 2000, "where calculating any appropriate period or other time limit referred to in this Act or in any regulations made under this Act, **the period between the 24th Day of December and the first day of January, both days inclusive, shall be disregarded**".

Yours faithfully

Helen Walsh

for SENIOR EXECUTIVE OFFICER



dlr Bogaire Rathdown Co Co
 VALIDATION COUNTER
 26 NOV 2015
 RECEIVED
 PLANNING DEPARTMENT

015A/0750

Planning Department

Planning Application Form

Date received 26/11/15 Reg. ref. 015A/0750

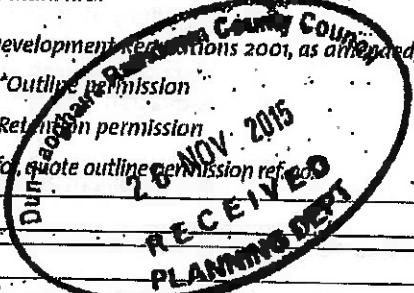
Please read directions and documentation requirements at front of form before completion. All questions relevant to the proposal being applied for must be answered. Non-relevant questions: Please mark n/a.

1 Application for (please tick) (Form no. 2 of schedule 3 to the Planning and Development Regulations 2001, as amended)

- Permission
- *Outline permission
- *Permission consequent on the grant of outline permission
- Retention permission

Where permission consequent on the grant of outline permission is being applied for, quote outline permission ref. no.

Date of grant of outline permission



*NOTE: Permission consequent on the grant of outline permission should be sought only where outline permission was previously granted. Under S.36 3(a) of the Planning and Development Act 2000 outline permission lasts for 3 years.

Outline permission may not be sought for:

- (a) the retention of structures or continuance of uses, or
- (b) developments requiring the submission of an Environment Impact Statement/I.P.C./Waste Licence or
- (c) works to protected structures or proposed protected structures

2 Location of proposed development

(a) Postal address or townland or location (as may best identify the land and/or structure in question)

Site adjacent to no.24 Ardbugh Road, Dalkey, Co. Dublin

(b) Ordnance survey map reference number and the grid reference where available (Grid reference in terms of the Irish transverse mercator)

3394-23, Grid refs 726154, 726329

3 Name of applicant (person/entity seeking planning permission, not an agent acting on his/her behalf)

Noreen Farrar

4 Where the applicant is a company registered under the Companies Acts 1963-1999, please state the following

Name(s) of company director(s) N/A

Registered address of company

5 Person/Agent acting on behalf of the applicant (if any)

Name Frank J. Kenny, B.Arch., FRIAI

6 Person responsible for preparation of drawings and plans. (Where the plans have been drawn up by a firm/company, the name of the person primarily responsible for the preparation of the drawings and plans on behalf of that firm/company should be given.)

Name Frank J. Kenny, B.Arch., FRIAI

Firm/Company Kenny Kane Associates

7 Legal interest of applicant in the land and/or structure

(a) Owner (b) Occupier (c) Other

Please tick appropriate box to show the applicant's legal interest in the land or structure.

* Where legal interest is other, the applicant is requested to expand further on the interest in the land and/or structure.

If you are not the legal owner, please state the name and address of the owner and supply a letter from the owner, of consent to make the planning application, as listed in the accompanying documentation.

8 Description of proposed development.

(A brief description of the nature and extent of the development, including reference to the number, height and uses of buildings, protected structures, etc). This should correspond with the wording of the newspaper advert and site notice.

Application for Planning Permission for alterations to previously approved plans for a two-storey dwelling at a site adjacent to no. 24 Ardbrugh Road, Dalkey, Co.Dublin (Reg. Ref. D07A/0507) The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

9 Site area

Area of site to which the application relates in hectares

0.0172

ha.

10 Where the application relates to a building or buildings

Gross floor area in sqm

(a) Gross floor space of any existing building(s)

0

(b) Gross floor space of proposed works

109 sq.m.

(c) Gross floor space of work to be retained (if appropriate)

0

(d) Gross floor space of any demolition (if appropriate)

0

Note: Gross floor space means the area ascertained by the internal measurement of the floor space on each floor of a building i.e. floor areas must be measured from inside the external wall.

11 In the case of mixed development (eg. residential, commercial, industrial, etc.), please provide breakdown of the different classes of development and breakdown of the gross floor area of each class of development

N/A

Class of development

Gross floor area in sqm

(a) Gross floor space of residential class of development

(b) Gross floor space of industrial/commercial class of development

(c) Gross floor space of demolition of industrial/commercial class of development

(d) Gross floor space of demolition of residential class of development

(e) Other

12 In the case of residential development please provide breakdown of residential mix

Number of	Studio	1 Bed	2 Bed	3 Bed	4 Bed	4+ Bed	Total
Houses	<input type="text"/>	<input type="text"/>	1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Apartments	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of car parking spaces to be provided Existing Proposed Total

13 Where the application refers to a material change of use of any land and/or structure or the retention of such a material change of use:

Existing use (or previous use where retention permission is sought). Note: Where the existing use is "vacant" please state the most recent authorised use of the land or structure

N/A

Proposed use (or use it is proposed to retain)

Nature and extent of any such proposed use (or use it is proposed to retain)

14 Social and Affordable Housing (please tick appropriate box)

Is the application an application for permission for development to which Part V of the Planning and Development Act 2000, as amended, applies? (see direction no. 1)

Yes No

If the answer to the above question is yes and the development is not exempt (see below), you must specify, as part of your application, the manner in which you propose to comply with Section 96 of Part V of the Act. Please submit proposals on separate sheet.

If the answer to the above question is yes, but you consider the development to be exempt by virtue of Section 97 of the Planning and Development Act 2000, a copy of the Certificate of Exemption under Section 97 must be submitted (or, where an application for a Certificate of Exemption has been made, but has not yet been decided, a copy of the application should be submitted). (see direction no. 2)

If the answer to the above question is no by virtue of Section 96(13) of the Planning and Development Act 2000, details indicating the basis on which Section 96(13) is considered to apply to the development should be submitted. (see direction no. 3)

NB. This section must be completed for all proposals for the provision of one or more new dwelling units on residentially zoned lands.

15 Development details (please tick appropriate box)

(1) Does the proposed development consist of work to a protected structure and/or its curtilage or proposed protected structure and/or its curtilage?

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

Note: If Yes, newspaper advertisement and site notice must indicate this fact.

(2) Does the proposed development consist of work to the exterior of a structure which is located within an architectural conservation area (ACA)?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

Note: If the answer is YES to either 15(1) or 15(2) TEN sets of drawings/plans/photographs must be submitted with the planning application.

(3) Does the application relate to development which affects or is close to a monument or place recorded under Section 12 of the National Monuments (Amendment) Act, 1994 (see direction no. 4).

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(4) Does the application relate to work within or close to a European site (under S.I. No. 94 of 1997) or a Natural Heritage Area?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(5) Does the proposed development require the preparation of an Environmental Impact Statement? (see direction no. 5)

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(6) Does the application relate to a development which comprises or is for the purposes of an activity requiring an integrated pollution prevention and control licence?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(7) Does the application relate to a development which comprises or is for the purposes of an activity requiring a waste licence?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(8) Do the major accident regulations apply to the proposed development?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(9) Does the application relate to a development in a Strategic Development Zone?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(10) Does the proposed development involve the demolition of any habitable house?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

Note: Demolition of a habitable house requires planning permission.

Note: A "habitable house" is a building or part of a building which

(a) is used as a dwelling, or

(b) is not used, but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling, but has not been occupied.

16 Site history (please tick appropriate box)

Details regarding site history (if known)

1. Has the site in question ever, to your knowledge, been flooded?

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

If yes, please give details eg. year, extent

Are you aware of previous uses of the site eg. dumping or quarrying?

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

If yes, please give details eg. year, extent

16 (cont.)

2. Are you aware of any valid planning applications previously made in respect of this land/structure?

Yes No

If yes, please state planning reference number(s) and the date(s) of receipt of the planning application(s) by the planning authority if known

Ref. no. Date

Note: If a valid planning application has been made in respect of this land or structure in the six months prior to the submission of this application, then the site notice must be on a yellow background in accordance with Article 19(4) of the Planning and Development Regulations 2001 as amended. A valid application includes an application subsequently withdrawn.

3. Is the site of the proposal subject to a current appeal to An Bord Pleanála in respect of the same development or development of the same description?

Yes No

Note: the appeal must be determined or withdrawn before another similar application can be made.

An Bord Pleanála reference no.

17 Pre-application consultation

Has a pre-application consultation taken place in relation to the proposed development? (see direction no. 6)

Yes No

If yes, please give details

Ref. no. (if any)

Date(s) of consultation

Persons involved

18 Services

1. Proposed source of water supply

Existing connection New connection Public mains
 Group water scheme Private well Other (please specify)

Name of group water scheme (where applicable)

2. Proposed wastewater management/treatment (see question 26)

Existing New Public sewer
 Conventional septic tank system Other on-site treatment system (please specify)

3. Proposed Surface Water Disposal

Public Sewer/Drain Soakpit Watercourse
 Other (please specify)

19 Details of public notice

White Yellow

*Approved newspaper in which notice was published

Date of publication Date on which site notice was erected

*Note: The list of approved newspapers for the purpose of giving intention to make a planning application; is available from the council. Please also refer to directions for completion of site notice.

20 Application fee

Fee payable Basis of calculation

Note: Please see fee notes attached to this form.

21 I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct and accurate and fully compliant with the Planning & Development Act 2000, as amended, and the regulations made thereunder

Signed (applicant or agent as appropriate) Date 26th November 2011

Supplementary information (Sections 22, 23, 24, 25)

22 Development contributions

A development contribution scheme under Section 48 of the Planning and Development Act 2000 was adopted by Dún Laoghaire Rathdown County Council on the 21st January, 2004.

With effect from 22nd January 2004, the first 40 square metres of any domestic extension, including family flats will be exempt from the contribution scheme. All domestic extensions including family flats in excess of 40 square metres are subject to a contribution under this scheme. For example:

Domestic extension = 50 square metres.

Area in excess of 40 square metres = 10 square metres. Area subject to contribution = 10 square metres.

Please certify

* Gross floor area of the proposed domestic extension which is the subject of this application

Signature

* Gross floor area: the total floor space on each floor measured from the inside of the external walls

23 (1) Section 49, Planning and Development Act, 2000 (complete if relevant).

Supplementary Development Contribution Scheme (LUAS Line B1). (This scheme does not apply to domestic extensions or family flats).

Area of site hectares

Area of residential development hectares

Area of commercial elements hectares

Note: If unsure whether site of application falls within Section 49 scheme area, please check with our planning office.

23(2) Section 49, Planning and Development Act, 2000 (complete if relevant). Supplementary Development Contribution Scheme (Glenamuck District Distributor Road and Surface Water Attenuation Ponds).

This scheme does not apply to:

(a) Domestic extensions and family flats

(b) Other exempted development as outlined in the Scheme. A full list of exemptions is available on our website www.dlrcco.ie.

(c) Single residential developments where the applicant is native to the area. A separate statutory declaration form needs to be completed in this case.

Is the proposer native to the area?

Yes No

If "Yes" please submit the statutory declaration form with this application form which is available on the Council's website www.dlrcco.ie, or at the Council's Planning Office, County Hall, Marine Road, Dún Laoghaire or the Dundrum Office (behind Bank of Ireland, Main Street, Dundrum).

No. of residential units

Area of commercial elements m².

Area retail elements m².

Note: If unsure whether site of application falls within Section 49 scheme catchment area, please check with our Planning Office.

24 Is it proposed that the development will (please tick appropriate box)

(a) be taken in charge by the county council

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

(b) be maintained by an estate management company

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

(c) in part be taken in charge and part maintained by an estate management company

<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	-------------------------------------

Please submit a site layout drawing that clearly indicates all services within the estate (roads, footpaths, car parking spaces, foul/surface water sewers, watermain and public open spaces) that the applicant wish the local authority to take in charge.

25 Do any statutory notices apply to the site/building at present? (eg. enforcement, dangerous buildings, derelict sites, building control, fire safety etc.) (please tick appropriate box)

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

If yes, please give details

26 Detailed proposals for the separate disposal of both foul and surface water to the public sewers, or other locations, are required. No surface water should be shown entering the foul drainage system.

Please give details

Separate foul and surface water systems within the site, taken to a 'last manhole' connected to the existing combined sewer in Ardbrugh Road.

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PLANNING APPLICATIONS

DUN LAOGHAIRE RATHDOWN
 DUN LAOGHAIRE
 Intends to apply for Planning Permission for alterations to a previously approved plan for a development on a site adjacent to no. 23 Arbragh Road, Dalkey, Co. Dublin (Ref. D07A0567). The alterations to the ground floor plan by extending to the west by 0.5 metre, altered entrance porch, raised ground floor, altered internal alterations. The planning application may be inspected on the northern elevation and on the ground floor plan. The cost of making a copy at the offices of the Planning Authority may exceed the reasonable cost of making a copy at the offices of the Planning Authority. A submission/observation may be made during the public opening hours. A submission/observation may be made within a period of 5 weeks from the date the application is received by the Planning Authority.

FLIGHTS

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ACCOUNTANCY

ACCOUNTS, Bookkeeping Call 087 751 8741

PLANNING APPLICATIONS

DUBLIN CITY COUNCIL
 Dublin City Council for a planning application for a single residential unit (unit 388) in Ballyboggan Industrial Estate, Ballyboggan Road, Dublin 11. The development will consist of a three storey building with a vehicle storage area and new waste water treatment system together with associated alterations and single storey alterations. The planning application may be inspected at a fee not exceeding the cost of making a copy at the offices of the Planning Authority during the public opening hours and a submission/observation may be made in writing to the Planning Authority of payee within the period of 5 weeks beginning on the date of receipt by the Planning Authority of the application.

THE HERALD WEDNESDAY, NOVEMBER 25, 2015 45

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DÚN LAOGHAIRE-RATHDOWN COUNTY COUNCIL

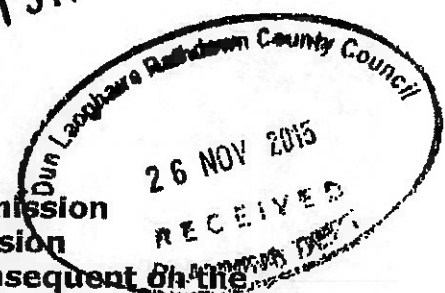
SITE NOTICE

D07A/0750

I, **NOREEN FARRAR**

Intend to apply for (tick as appropriate)

- Permission**
- Retention Permission**
- Outline permission**
- Permission consequent on the Grant of Outline Permission (Reg. Ref.:)**



for development at this site: Site adjacent to No. 24 Ardburgh Road, Dalkey, Co. Dublin

The development will consist / consists of:

Alterations to previously approved plans for a two-storey dwelling at a site adjacent to no. 24 Ardburgh Road, Dalkey, Co.Dublin (Reg. Ref. D07A/0507) The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

The planning application may be inspected or purchased for a fee not exceeding a reasonable cost of making a copy, at the offices of the Planning Authority, Marine Road, Dún Laoghaire, Co. Dublin, during its public opening hours of Monday to Friday from 10:00am to 4:00pm.

A submission or observation in relation to the application may be made in writing to the Planning Authority, on payment of a fee of €20 within 5 weeks of receipt of the application by the Planning Authority and such submissions or observations will be considered by the Planning Authority in making a decision on the application. The Planning Authority may grant permission subject to or without conditions or may refuse to grant permission.

Signed:

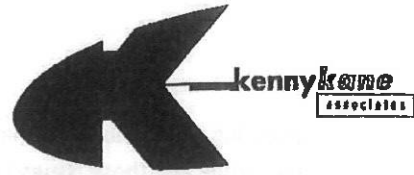
[Signature]
Frank J. Kenny B.Arch., FRIAI
Kenny Kane Associates (Agent)

Oak Hollow Studio, Upper Glenageary Road,
Co. Dublin

Date of erection of site notice:

26th day November of 2015

architects	designers	planning consultants	licensing specialists
Oak Hollow Sturlo, Upper Glenageary Road, Glenageary, Co. Dublin.			
Telephone:		(01) 214 0294	
E-mail:		info@kennykane.ie	
Web:		www.kennykane.ie	



Frank J. Kenny B.Arch., F.R.I.A.I.

Planning Department
Dun Laoghaire Rathdown County Council
County Hall
Marine Road,
Dun Laoghaire
Co. Dublin

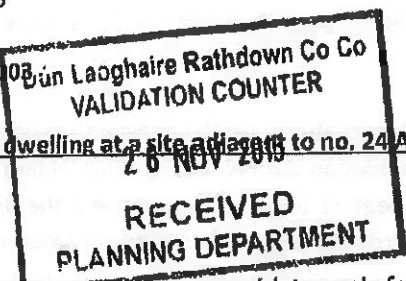


D15A/0350

015A/0750

25th November 2015

Our Ref: 15-003 **Dun Laoghaire Rathdown Co Co VALIDATION COUNTER**
Re: Two-storey dwelling at a site adjacent to no. 24 Ardbrough Road, Dalkey
26 NOV 2015



Dear Sirs

On behalf of our client, **NOREN FARRAR**, we wish to apply for Planning Permission for alterations to previously approved plans for a two-storey dwelling at a site adjacent to no. 24 Ardbrough Road, Dalkey, Co. Dublin (Reg. Ref. D07A/0507) The alterations will comprise an enlarged ground floor plan by extending to the west by 0.9 metre, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

We enclose herewith the following documentation:

1. 6 copies permitted plans
2. 6 copies of Site Location map
3. 6 copies of drawing no. 15-003/PP-01
4. Newspaper notice, The Herald
5. Copy of Site notice
6. 6 copies of photographs (2 no.), showing temporary steel support structure on site.
7. Planning Application form duly completed
8. Cheque in the amount of €34 being the appropriate fee in the matter.
9. Copy of Pre-Planning application receipt ref. Oac/579/15.
10. 3-D images showing the relationship between the proposed development and the adjacent dwelling demonstrating that there will be no obscuring of the window of the adjacent dwelling.

History: Planning Permission (Reg. ref. D07a/0507) for a two-storey dwelling was granted by An Bord Pleanala following a third party appeal against the decision to grant permission, on 3rd January 2008. The applicant in that case has since died and the site has since remained vacant. The duration of the life of the Planning permission has been extended. A further Planning application (reg. ref. D15A/0363) was refused and was not appealed by the applicant. A pre-

D15A/0363



planning submission was made setting out the manner in which the reasons for refusal would be overcome and those issues have now been addressed in this application, as follows:

- (i) The wraparound balcony proposed in D5A/0363 has been altered to present itself directly to the road on the front of the dwelling.
- (ii) The extension to the side has been altered to ensure that there will be no impeding of the view from the easternmost window of Shamrock Cottage. The enclosed 3-D images show the junction of the two building in this area.
- (iii) Obscure glazing is fitted to the vertical window at the side. The high level windows on the west elevation are considered to be at such a height as not to generate a problem of overlooking, but these can be fitted with obscure glass if required. The tall window in the west elevation located over the entrance doorway is considered not be overlooking adjoining properties and is fitted with clear glass in order that the occupants can survey the private and open space relating to the house.

This application is seeking some modest alterations to the previously approved Permission (D07a/0507), in order to make the accommodation somewhat more commodious. Extending the width of the ground floor plan is the main feature of this application and the provision of a first floor balcony on the northern elevation in order to provide an additional amount of private open space.

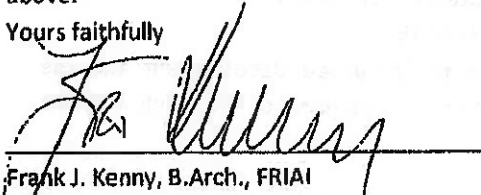
Since the granting of permission ref. D07A/0507, a steel buttressing frame has been erected within the site, in part of the area that is designated as private open space to serve the dwelling, to provide structural support to the adjoining house. We enclose herewith two photographs showing the structure (6 copies of each). It is to be assumed that this support is temporary and that a permanent support solution will be found.

Other minor alterations to the fenestration are proposed as shown and the entrance porch has been altered and internal alterations are also proposed.

My clients are keen to move quickly to construct a dwelling on this site which will enhance the aspect of this road by removing the dereliction that is currently a feature of this site.

We look forward to a favourable decision in the above and in the light of the revisions made to the proposal following the refusal of D15A/0363, we look forward to a favourable decision in the above.

Yours faithfully



Frank J. Kenny, B.Arch., FRIAI
For KENNY KANE ASSOCIATES



THE HIGH COURT

Record No. 2018/122MCA

**IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION**

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL McDONAGH & NOREEN FARRAR

Respondents

AFFIDAVIT OF GAVIN LAWLOR

**McCann FitzGerald
Solicitors
Riverside One
Sir John Rogerson's Quay
Dublin 2
BPQ\29423415.1**

Appendix 3

Affidavit of Martin Dunbar

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

AFFIDAVIT OF MARTIN DUNBAR

I, MARTIN DUNBAR, Chartered Engineer, of Unit 2 Aldercourt, Ferns, Enniscorthy, Co. Wexford, aged eighteen years and upwards MAKE OATH and say as follows:

1. I am the Managing Director of Dunbar Lunn Consulting Engineers Limited. I am a Consulting Engineer, having qualified in 2001 and I am a Chartered Member of Engineers Ireland. I established the Practice of Dunbar Lunn Consulting Engineers Limited in 2007 and I lead a team of Design Engineers and Engineering Technicians with expertise in all areas of building consultancy. I have extensive experience in relation to the development of commercial and residential properties.
2. In or around February 2016 I was instructed by the Respondents as a consultant engineer in relation to the construction a new dwelling (the "New Dwelling House") on a site adjacent to 24 Ardbrough Road, Dalkey County Dublin (the "Site"). As part of my role I am also acting as an Assigned Certifier for the purpose of Building Regulation compliance.

3. The Site is bordered to the East on Ardbrough Road by a house known as Ardbrough House ("Ardbrough House"), to the North by the Applicant's property ("Shamrock Cottage") and by a derelict cottage (the "Derelict Cottage"). A portion of the Site is occupied by steel girders supporting the Derelict Cottage which were installed by the local authority.
4. I beg to refer to the above mentioned proceedings (the "Proceedings"). I make this affidavit for and on behalf and with the approval of the Respondents herein, from facts within my own knowledge save where otherwise appears and where so appearing I believe same to be true and accurate in every respect.

Inspections during Construction

5. I carried out inspections of the Site and the development of the New Dwelling House on at least 10 occasions during the progression of the construction works. The purpose of our inspections was to inspect the on-going construction of the New Dwelling House in accordance with our appointment and as required as Assigned Certifier as per the Building Control Regulations, in respect of the development permitted under planning permissions reference D07A/0507 and D015A/0750, as granted by Dún Laoghaire Rathdown County Council ("DLRCC"). The inspections, in the usual way, occurred at particular points of the development, including at construction of the foundations and at other points of construction. Our last inspection took place on 25 May 2018 and was carried out in the context these Proceedings having been issued. In the usual way, my role also included regular interaction with the contractor.

The Proceedings

6. For the purposes of preparing this affidavit, I have reviewed the following information:
 - (a) The Affidavit and associated documents/drawings of Val O'Brien, the Applicant's Surveyor;
 - (b) The Affidavit and associated drawings of Mr John O'Malley, the Applicant's Planner;
 - (c) The Affidavit of the Applicant;
 - (d) The Affidavit of Alison Fegan;
 - (e) The Affidavit of Mr Robert Merry of Techsol;
 - (f) The Affidavits of Mr Gavin Lawlor of Tom Phillips & Associates, Planning Consultants;
 - (g) A review of Land Registry mapping detailing the extent of the Site, together with previous deeds relating to the Site as presented to me; and
 - (h) A further review that I have undertaken of documents obtained by the Respondents' solicitors under the Freedom of Information Act from the Enforcement Section of DLRCC, in relation to complaints made under reference number Enf 239/07, as presented to me.

7. I say that I have also prepared a photographic schedule which helps to expand on and clarify the issues arising. I beg to refer to a true copy of said photographs upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof. Within Exhibit MD1, these photographs are numbered: MD16.031.01, MD16.031.02, MD16.031.03 and MD16.031.04, and so on.
8. In making this affidavit, I summarise the findings from my inspections and my review of documents noted above under three headings, which, in ease of the court, are as per the format of the Applicant's Surveyors Affidavit:
 - (a) New Dwelling House
 - (b) The old derelict property
 - (c) Shamrock Cottage

NEW DWELLING

New Dwelling Construction

9. Construction of the foundation structure commenced following a lengthy period of time, from circa 7th of April 2016 to 13th of May, during which site investigation was carried out through careful limited excavation and examination adjacent to boundary structures at the east and southeastern areas of the site, being Ardrugh House and the stonework boundary/party wall respectively.
10. The primary concern of the site investigation was that underpinning works could possibly be required under the adjoining property to the eastern boundary, Ardrugh House. Following initial limited excavation and removal of loose material, it could be seen that a rock ledge or face supported both Ardrugh House and the stonework boundary/party wall existing to the south of the site.
11. The rock ledge was above ground level and quite pronounced adjacent to the stonework boundary/party wall, where the rear gable of the new dwelling house was to be constructed, I beg to refer to a true copy of the photographs attached hereto upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof. It was also noted that groundwater flow was present within the southeast corner area, permeating from the ground and at the juncture of the stonework wall and supporting rock ledge or face below.
12. The site investigation works were also inspected by a third party, Mr Gerard Doyle of Ryan Associates Consulting Engineers, who represented Mr William McHugh, the Owner of the adjacent property, Ardrugh House.
13. From examination of both the Ardrugh House adjoining gable wall and the stone/party wall to the southern boundary of the site, including the rock ledge or face that supported them, both sections of existing wall were completely out of plumb (not vertically straight), horizontally mis-aligned (wall face moves in and out), and with the supporting rock face or ledge below proud of the walls in numerous positions. Both the plastered eastern boundary (building) wall and the stonework party/boundary wall, forming the eastern and southern

boundary line against the New Dwelling House respectively, lie outward in the vertical plane (away from the New Dwelling House).

Following examination of the boundary walls adjacent to the foundations of the New Dwelling House, all loose material, rocks and stones was cleared away from the boundary walls, without any underpinning being required or undermining of the adjacent boundary walls or rock face supports. Some breaking of the existing rock was carried out in the southeast corner area within the site on an area of protruding rock to form a level formation area for the concrete strip foundation. The rock breaking was limited to and carried out within the Respondents' site area, and being approximately 4metres from the Applicant's single storey extension area, using a small 2.5 tonne excavator and lightweight hammer. I beg to refer to a true copy of the photographs attached hereto upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof

A strip foundation was poured tight against the existing rock face and boundary walls, which was stepped to accommodate the different formation levels of the foundation. I beg to refer to a true copy of the photographs attached hereto upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof. In order to accommodate the underlying supporting rock face or ledge, which was proud of the boundary walls above in numerous locations, and to account for the mis-alignment of the boundary walls, a straight line was taken against the eastern and southern boundaries, in order to form a square corner and establish the rising blockwork wall position. A further measure undertaken was the inclusion of a narrow land drain, circa 100mm in width, to ensure all groundwater was routed away from the existing and proposed buildings.

14. During the installation of the foundation works, monitoring of the adjoining eastern and southern boundary walls was undertaken through the use of a crack monitor placed on an existing vertical crack on the eastern gable wall of Ardbrough House and a visual inspection, carried out on a daily basis by the Contractor, Mr Thomas McDonald, of the stonework boundary/party wall to the southern boundary area. I beg to refer to a true copy of the photographs attached hereto which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof. No cracking, significant movement or damage occurred to either the eastern boundary wall or the southern boundary/party wall during the foundation works. The crack monitor and site area was also inspected by Mr Gerard Doyle of Ryan Consulting Engineers during this period.
15. An agreement was reached with Mr William McHugh to infill the gap between the gable of the Ardbrough House building and the New Dwelling House, which arose due to the condition and line of the existing gable wall and the supporting rock face or ledge below. The primary purpose of infilling the gap that has arisen is to prevent the ingress of rainwater, and the possible entry of rodents. It is proposed to infill the gap with cement board construction, and place a hidden gutter underside of the new dwelling eaveline, for which support works are already in place. I beg to refer to a true copy of the photographs attached hereto upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof.

New Dwelling Planning Compliance

16. Planning permission for the New Dwelling House was granted under planning reference no. D 07A/0507. This permission was amended by D015A/0750, which provides for an enlarged ground floor area (with the dwelling having a gross floor area at ground level of 67.6sq.m), a balcony located to the northern elevation, and high level windows located on the western

elevation. The drawings submitted, specifically drawing PP-01 and 3-D visualisation drawing PP-03, indicate the proposed ground floor area being placed in front of the north facing window within the adjoining Shamrock Cottage, although no dimension in relation to the proposed ground floor level and the existing window, situated above the proposed ground floor roof level, is noted.

17. From review of the Planner's report in regard to planning reference no. D015A/0750, it was noted that a pre-planning meeting (reference no. PAC/579/15) was held arising from the previous refusal of planning permission on the subject site, which took place in October 2015 (reference D15A/0363).
18. The issues discussed at the meeting, as noted in the planning report above, concerned the proposed western elevation of the New Dwelling House, and the potential of blocking/overlooking of the north facing window of Shamrock Cottage. The issues discussed, and apparently agreed, are stated in the report as:
 - (a) "The balcony proposed will be confined to the front of the building only. The western elevation balcony has been omitted from the proposed development. This overcomes part of the reason for refusal";
 - (b) "Two new windows are proposed on the west facing elevation of the proposed dwelling. The glazing within these windows is proposed to be frosted glass. They will therefore not give rise to overlooking issue"; and
 - (c) "The reason for refusal appears to have been overcome provided the Applicant ensures the proposed enlarged ground floor will not block north facing window of Shamrock Cottage."

Survey

19. From review of the topographical survey of the site carried out by Mr Rob Merry (to whose Affidavit I beg to refer when produced), it is clear that the OS mapping, and, subsequently, the site layout and floor plans submitted as part of the planning application under planning reference no. D015A/0750, while acceptable for planning purposes, contain several discrepancies in relation to existing boundaries, with the location and orientation of adjoining buildings shown inaccurately, and take no account of the existing boulder/rock boundary walls present within the subject site adjacent to the southwest corner area.
20. From my review of the survey drawings contained in exhibit VOB1, as prepared by the Applicant's Surveyor Val O'Brien, the drawings appear to use a copy of the planning drawings submitted by Kenny Kane in relation to planning reference no. D015A/0750, as a background reference. The plan drawings as prepared by the Applicant's Surveyor contain no reference to the existing stone party walls on the site of the New Dwelling House, are inaccurate in regard to the distance indicated between the adjoining neighbouring property to the west and the New Dwelling House, and fail to indicate the position of the northern elevation window of Shamrock Cottage on the ground floor plan in relation to the New Dwelling House. It is noted that the Applicant's Surveyor, states in section 16 of the affidavit submitted, that the '*drawings submitted with the application were grossly inaccurate*'. I beg to refer to the affidavit of Rob Merry in relation to the accuracies and tolerable thresholds within OSI mapping.

21. The survey drawings contained in exhibit VOB1, as prepared by the Applicant's Surveyor Val O'Brien, appear to overlay outlines of the adjoining properties as taken from measurements carried out by Val O'Brien onto a copy the planning drawings submitted by Kenny Kane. The ground floor and first floor plan, ref. no. 170508-02 & 170508-03, clearly show the approved position of the New Dwelling House overlain on the neighbouring Ardrugh house to the western elevation, and to the adjoining party wall on the southern boundary.
22. Val O'Brien's elevation drawings, ref. no. 170508-04 & 170508-05, indicate the gable wall of the neighbouring dwelling Ardrugh House adjoining the New Dwelling House on the western boundary, as perfectly vertical or "plumb". From my inspection of the site, and as confirmed by the survey carried out by Rob Merry, this is not the case as the adjoining western boundary wall of Ardrugh House is not perfectly vertical, leans to the west, with a difference of approximately 200mm when at the eave line of the New Dwelling House. Similarly, the rear party wall adjoining the southern boundary of the New Dwelling House is also not perfectly vertical, leans to the south, with a horizontal difference of approximately 150mm when measured at the top of the party wall.
23. From my review of the drawings prepared by both the Applicant's Surveyor, Val O'Brien and by Rob Merry, and my inspection on the ground, it is clear the existing window contained within the northern elevation of Shamrock Cottage has not been oversailed or obstructed by the New Dwelling House. From the survey undertaken by Rob Merry, the closest area of the New Dwelling House to the said window of Shamrock Cottage, occurs at the southwest corner of the property, with the New Dwelling House constructed 190mm east of the existing window within the northern elevation of Shamrock Cottage, and at a distance of 290mm from the north elevation of Shamrock Cottage. The survey also clearly indicates the existing window contained within the northern elevation of Shamrock Cottage is 790mm above the roof of the extended ground floor area of the New Dwelling House.
24. I also refer to refer to the affidavit of Thomas McDonald, wherein he confirms that the location of the first floor western gable wall is at the location agreed with the Applicant during the course of construction of the New Dwelling House, though I note that the Applicant's Surveyor makes no reference to this.

New Dwelling - Interactions with DLRCC Planning Enforcement

25. During the course of construction the Respondents received a warning letter from DLRCC pursuant to Section 152 (1) of the Planning and Development Act 2000 (as amended) dated 11 July 2016 Reference ENF 13516. The complaint alleged:

"non-compliance with condition No 1 of planning permission Register Reference D15A/0750 comprising alterations to planning permission register reference D07A/0507 in that the dimensions of the enlarged ground floor constructions are in excess of those submitted with the plans, particulars and specifications lodged with the application as required by the governing planning permission."
26. In response to the complaint, I made various submissions to the DLRCC and I beg to refer to copies of same, together with the responses received from DLRCC, upon which marked with the letters and number "MD2" I have signed my name prior to the swearing hereof. I understand that the original complaint appears to have come from the Applicant arising from the possibility of the north facing window of Shamrock Cottage being blocked and beg to refer to the affidavits of Thomas MacDonald and Noreen Farrar regarding interaction with the Applicant in relation to this matter. Arising from the said interaction, this gable wall of

the New Dwelling House was stepped back to a position agreed with the Applicant and Alison Fegan and has been constructed in that agreed location.

27. Following submissions made by me to DLRCC and site inspections of the New Dwelling House by DLRCC, DLRCC confirmed by letter dated 30 March 2017 that:

" The Planning Authority considers that planning permission Register Reference D15A/0750 is complied with."

I beg to refer to a copy of the said letter upon which I have marked with the letters "MD3" I have signed my name prior to the swearing of this affidavit.

New Dwelling - Roof Lights

28. 3 no. rooflights have been constructed within the roof of the extended ground floor area of the New Dwelling House. The roof lights are horizontally placed with the roof, with the distance from the nearest roof light to the back wall and to the northern elevation of Shamrock Cottage being 1.4m and 2.0m respectively.
29. At present, 3 no. public street lights exist within 50m of the rear of the subject site, on Ardbrough Road adjacent to the northern boundary. The closest public street light is situated approximately 20m from the rear southern site boundary, and was directly visible by northern elevation windows of Shamrock Cottage prior to the construction of the New Dwelling House. External light is visible to Shamrock Cottage.
30. From inspection of the site, I noted that 2 no. rooflight windows exist within the roof area of Shamrock Cottage adjoining the southern boundary wall. These rooflights, constructed within a single storey extension structure, are directly adjacent to 2 no. large bay windows constructed to the western elevation at first floor level within Shamrock Cottage. I beg to refer to a true copy of the photographs attached hereto upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof. Artificial light will therefore impact on Shamrock Cottage at night through these existing external light sources and it is difficult to see how the rooflights in the New Dwelling would have any adverse impact on Shamrock Cottage.

New Dwelling - Substantial Compliance with Planning Permissions

31. I have reviewed the site layout, floor plans, elevations, section and visualisation drawings, as submitted and approved under the grant of planning permissions D07A/0507 and D015A/0750, and in my opinion, the existing constructed property is substantially compliant with the planning permissions as granted.
32. I refer to paragraph 17 of Applicant's Surveyor's Affidavit where he states:

"The deviations when taken together are so great that it ought not in my opinion be possible to receive a certificate of compliance with planning permission for the development as constructed".

I presume that what the Surveyor is seeking to opine is that it would not be possible for a professional to confirm substantial compliance with the relevant planning permissions. I appreciate that Val O'Brien did not have the benefit of an opportunity to accurately inspect the New Dwelling House (nor, I am advised, did he request same), but even having regard to

this fact, I strongly disagree with his opinion and my view is shared by DLRCC following their detailed on-site inspections.

33. I refer to paragraph 30 of Applicant's Surveyor's Affidavit where he states:

"I say that whilst the visual impact of the new dwelling house is quite apparent from the exterior, the impact is very noticeable from within the sitting room to Shamrock Cottage"

The Applicant's Surveyor makes no reference to the Applicant's consent to the location of the gable wall at its current location, or to the Respondents' decision to frost the window immediately adjacent to the Applicant's window to try to address concerns expressed by the Applicant's wife. Even more significantly, the Applicant's Surveyor does not take into account that the New Dwelling House was always going to be visible from the window of Shamrock Cottage; this is an inevitable consequence of the development of the vacant, infill site. It is difficult to see how the Applicant's Surveyor can opine on the significant loss of value to Shamrock Cottage.

New Dwelling - Title to the Site and Oversailing

34. In his Affidavit, the Applicant's Surveyor makes certain comments in relation to oversailing, encroachment and trespass by the Respondents on or over the foundations of Shamrock Cottage. However, he does not (nor, indeed, does the Applicant) make any reference to the legal title of Shamrock Cottage nor of the New Dwelling House, both titles being registered in the Land Registry.
35. I have reviewed the title maps received, and, specifically, the plan area registered under Land Registry folio DN209982F which is registered in the names of the Respondents.. The majority of the rear stonework party wall area to the rear southern boundary of the site of the New Dwelling House is within the confines of the said folio, with the registered area of the property being 12m when measured from the northern road boundary. Further detailed review of the rear southern boundary area, with reference to the existing title map and the survey undertaken by Rob Merry, indicates that encroachment has taken place by the neighbouring property, Shamrock Cottage, with the single storey extension of Shamrock Cottage being constructed approximately 600mm within the Respondents' registered title. Again, as noted in paragraph 14 above, the existing single storey extension of Shamrock Cottage is not indicated on the title map, or on recent OSI land registry mapping received. I beg to refer to a copy of Land Registry Folio and Filed Plan DN209982F which I have initialled and marked with the letter "MD4" prior to swearing this affidavit.
36. The Applicant in his affidavit, at paragraph 46, references the boundary wall to the rear of the Site as being subject to a right of way over the route thereof which, he says, "...had always existed allowing for maintenance to both Shamrock Cottage and Mrs O Reilly's House", thereby acknowledging the Respondents' ownership of the said boundary wall.
37. The Applicant's Surveyor, while making no reference to the title of the New Dwelling House, admits at paragraph 21 of his Affidavit that the roof does not extend over the boundary wall. His complaint appears to be that the finishing out of the guttering will require such guttering to extend over the boundary wall. This again is factually incorrect as there are several solutions that the Respondents can adopt for the proper treatment of rainwater should they choose not to have guttering overhanging the boundary wall. In the final sentence of paragraph 21 of his Affidavit, he appears merely to be saying that if the guttering is not dealt with properly, it could give rise to a risk of water damage to Shamrock Cottage. Not only in

this based on a hypothetical, but there is no explanation or quantification of the likelihood or remoteness of this "risk" having regard to the various levels between the properties.

38. The Applicant's Surveyor in paragraph 22 of his Affidavit, while alleging that the foundations of the New Dwelling House undermine Shamrock Cottage, states:

" Indeed, it goes without saying, this constitutes an act of trespass to the Applicants property, I am instructed and believe that no consent was requested, or given, for the said encroachment."

Again, he makes no reference to any title document to support his allegation of an alleged trespass. I address the allegation of damage to the foundation or structure of Shamrock Cottage below.

THE OLD DERELICT COTTAGE

34. As noted in Applicant's Surveyor's affidavit, a two-storey derelict property is located to the west and rear of Shamrock Cottage, and directly to the south west corner of the site of the New Dwelling. It is my understanding that the derelict property and Shamrock Cottage once formed part of the same dwelling. The nearest distance between the New Dwelling House and the old derelict property is 4.8m, adjacent to the western boundary.
39. The old derelict property is at a higher elevation than the New Dwelling House, and the northern elevation is founded/supported on the stonework boundary wall, adjacent to the southwest corner of the site.
40. The old derelict property is currently being supported by a propping steel structure located on the property's northern gable end, which has been in place since 2013, prior to the commencement of the construction of the New Dwelling House. The propping structure consists of 2 no. large steelwork shores, braced together, and each individually anchored by a large steelwork column acting as an anchor and driven into the ground, within the bounds of the Respondent's site, adjacent the western boundary.
41. From inspection of the site prior to the commencement of construction of the New Dwelling House, I noted that loose stone and road planings had been dumped around the steel structure. The stone was dumped in uncompacted heaps or mounds, adjacent to, but not directly against, the existing stonework party wall at the rear of the subject site. The majority of the stone remains in place at present, adjacent to the old derelict property stonework boundary wall, with the original ground level unaltered. No loose or dumped stone was removed from the area between the existing stonework wall and support structure during the construction of the foundation works for the New Dwelling House.
42. The old derelict property is in poor condition, with significant cracking visible throughout the eastern and northern building elevations. From inspection, it can be seen that the cracking has been subject to previous repair works, which involved the infilling of the cracking within the external elevations, with a black pitch/bitumen-based filler.
43. In his Affidavit, the Applicant's Surveyor, Val O'Brien, notes that 'a stock pile of gravel' had been placed at the base of the support structure by DLRCC as a deliberate measure to support the old derelict property, and goes on further to state 'by removing that gravel, this will have

weakened the support structure to the derelict property. This poses a risk to the integrity of Shamrock Cottage' (paragraph 25).

44. Further, I say that unsubstantiated statements are made by Mr. O'Brien in relation to cracking present on the old derelict building. He states at paragraph 26 that, *'it appears that there has been some relatively recent movement, as some of the cracks are fresh, and the obvious concern is that there will be a risk of cracking and settlement to Shamrock Cottage, as this is largely dependent on derelict property for support',*. At paragraph 27, he states, *'the removal of any gravel at low level would of had an impact on the stability of the derelict dwelling which in turn would have an impact on the support to Shamrock Cottage',* with reference made in paragraph 28 to photographs 11-20 in exhibit VOB2 used.
45. Again, it is difficult to see how the Applicant's Surveyor can reach such conclusions without having inspected the Respondents' Site. He depends on the Applicant's explanation as regards the purpose of gravel on the Respondents' Site without query and has sought no engineering information from the Respondents or permission to inspect, which would, I say and believe, have been important for the formation of an informed opinion. The gravel removed had no supporting role for the derelict property, as would be evident from a physical inspection as to the location of same.
46. With reference to photographs 11-20 in exhibit VOB2, I note that no reference survey, previous condition report or detailed examination of the external cracking noted has been exhibited (or appears to have been undertaken). Rather, reliance is simply placed on photographs of existing cracking within the external walls of the old derelict property, which clearly show that previous infilling and repair works with bitumen and cement render have been carried out at some stage in the past.
47. The Applicant's Surveyor in paragraph 26 of his affidavit observes:
- "It appears that there has been some relatively recent movement, as some of the cracks are fresh, and the obvious concern is that there will be a risk of cracking and settlement to Shamrock Cottage ..."*
- The Applicant's Surveyor gives no indication of when these cracks occurred, or even how or if movement occurred, or the period of measurement he took in observing these cracks and changes over the three separate visits he undertook over an eight month period. However, in paragraph 27, he concludes:
- "In my opinion, whilst the support owed to Shamrock Cottage is from the derelict property it is inevitable that the recent works involved in constructing the new dwelling house and in particular the removal of any of the gravel at low level would of [sic] had an impact on the stability of the derelict dwelling which in turn would have had an impact on the support to Shamrock Cottage."*
48. In my professional opinion, the Applicant's Surveyor simply does not have any technical information to support this claim. He errs as regards the role of the gravel on the Site, the construction of the New Dwelling and the foundations, as discussed further below. He draws on no engineering data to support his opinion nor has he, as would be expected from a person forming such an opinion, sought an inspection of the Site or construction details of the New Dwelling at foundation level.

49. The Applicant, at page 95 of his affidavit quotes from "Kavanagh Forensics Structural Engineers Report 2017" which he has failed to admit into evidence and the Applicants Surveyor makes no reference to same.

IMPACT ON SHAMROCK COTTAGE

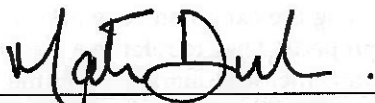
50. From my inspections of the site, it was clearly apparent that the single storey extension area of Shamrock Cottage adjacent to the rear or southern boundary of the subject site has been poorly designed and is poorly maintained. The roof structure consists of slated roof constructed at a shallow pitch (less than the 22.5 degrees required for standard slate finish), has ivy/vegetation overgrown on the elevation, penetrating the eave and soffit areas, and large amounts of moss, debris and dirt exists within the area adjacent to the old derelict property. I beg to refer to a true copy of the photographs attached hereto upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof.
51. Furthermore, from visual inspection, the flashing detail between the slate roof of the extension and the old derelict property appears damaged and weather beaten. I beg to refer to a true copy of the photographs attached hereto upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof.
52. In addition, no gutter or rainwater goods are present along the extension eave line, allowing rainwater to discharge directly onto the Respondents' property, I beg to refer to a true copy of the photographs attached hereto upon which pinned together and marked with the letters "MD1" I have signed my name prior to the swearing hereof.
53. At paragraph 31 of his Affidavit, the Applicant's Surveyor, Val O'Brien, refers to dampness and mould growth noted to the rear area of Shamrock Cottage, adjacent to the old derelict cottage. I say and believe that this is irrelevant to the Respondents, as the condition or maintenance of either Shamrock Cottage or the old derelict cottage is not the Respondents' responsibility or concern. The insinuation or suggestion that dampness present within Shamrock Cottage is a result of settlement and/or movement of the old derelict cottage due to works carried out within the Respondents' site is completely unfounded and incorrect, when taking into account the method and location of the foundation construction undertaken and the fact that the existing large steelwork temporary support structure to the old derelict property has remained completely unaltered.
54. At paragraphs 32 and 33, Mr. O'Brien details internal cracking in Shamrock Cottage. However, just as I have stated above in respect of photographs of external cracking, again his affidavit contains no reference to a reference survey or previous condition report having been undertaken and includes no detailed examination of the cracking. The statement made at paragraph 32 being, *'In particular we noted some fresh cracking to the ceiling within the sitting room which is indicative of recent movement'*, is completely unsubstantiated, and is expressed with no direct or corroborative evidence. At the end of paragraph 32, Mr. O'Brien states *"However given the poor condition of the properties to the rear, this is likely to deteriorate rapidly unless some corrective action and associated remedial work is undertaken to the properties to the rear"*. I say and believe that this appears to acknowledge that the true source of the issues described is the derelict state of the adjoining cottage, the condition or maintenance of which is not the Respondents' responsibility or concern.

55. Finally, with reference to photographs 21-27 in exhibit VOB2, although poor in quality, the majority of the pictures taken of the cracking and mould appear to be within the bedroom and internal stair areas of Shamrock Cottage. It is noted that on the basis of paragraph 36 that these rooms are present within an area of the property that is in direct contact with the old derelict property.


Conclusions


56. From review of the information in relation to the planning application drawings and documents submitted, and subsequent conditions of grant, I say and believe that the new dwelling is in substantial compliance with planning permission, D07A/0507 and D015A/0750, as granted.

57. From my inspection of the New Dwelling throughout its construction I am satisfied that no damage has been occasioned to Shamrock Cottage or the old derelict property as a result of the construction of the New Dwelling as alleged, or at all, and the Applicant has not submitted any evidence to the support such a claim.


Martin Dunbar, B.Eng.(Hons.),
CEng., M.I.E.I.
Signed of behalf of
Dunbar Lunn Consulting Engineers


SWORN by the said MARTIN DUNBAR

and I personally know the Deponent 

~~the Deponent has been identified to me by~~ 
~~whom I personally know~~ ✓

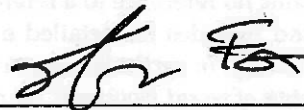
the identity of the Deponent has been established to me by the Deponent by reference to his passport/driver's licence no. 26100839

which contains a photograph of the Deponent

before me a Practising Solicitor / ~~Commissioner~~ 
For Oaths ✓

on 14 June 2018

at Dillon Eustace, 33 Sir John Rogersons Quay Dublin 2
in the City of Dublin


Practising Solicitor/ Commissioner For Oaths.
JENNIFER FOX

This affidavit is filed on behalf of the defendants by McCann FitzGerald Solicitors, Riverside One, Sir John Rogerson's Quay, Dublin 2.

Filed the day of 2018

16.031.021

19/05/16.

GRAVEL / STONE STILL IN PLACE



GRAVEL / STONE STILL IN PLACE.

1166-2440.

17/05/16

MD/6.031.022



MD16.031.023



WD.16.031.024

2017.03.14



UD.16.031.025

16.031.025



MD 16.031.026



11016.031.027



MD 16.031.028



WMD 16.031.15

14/04/16



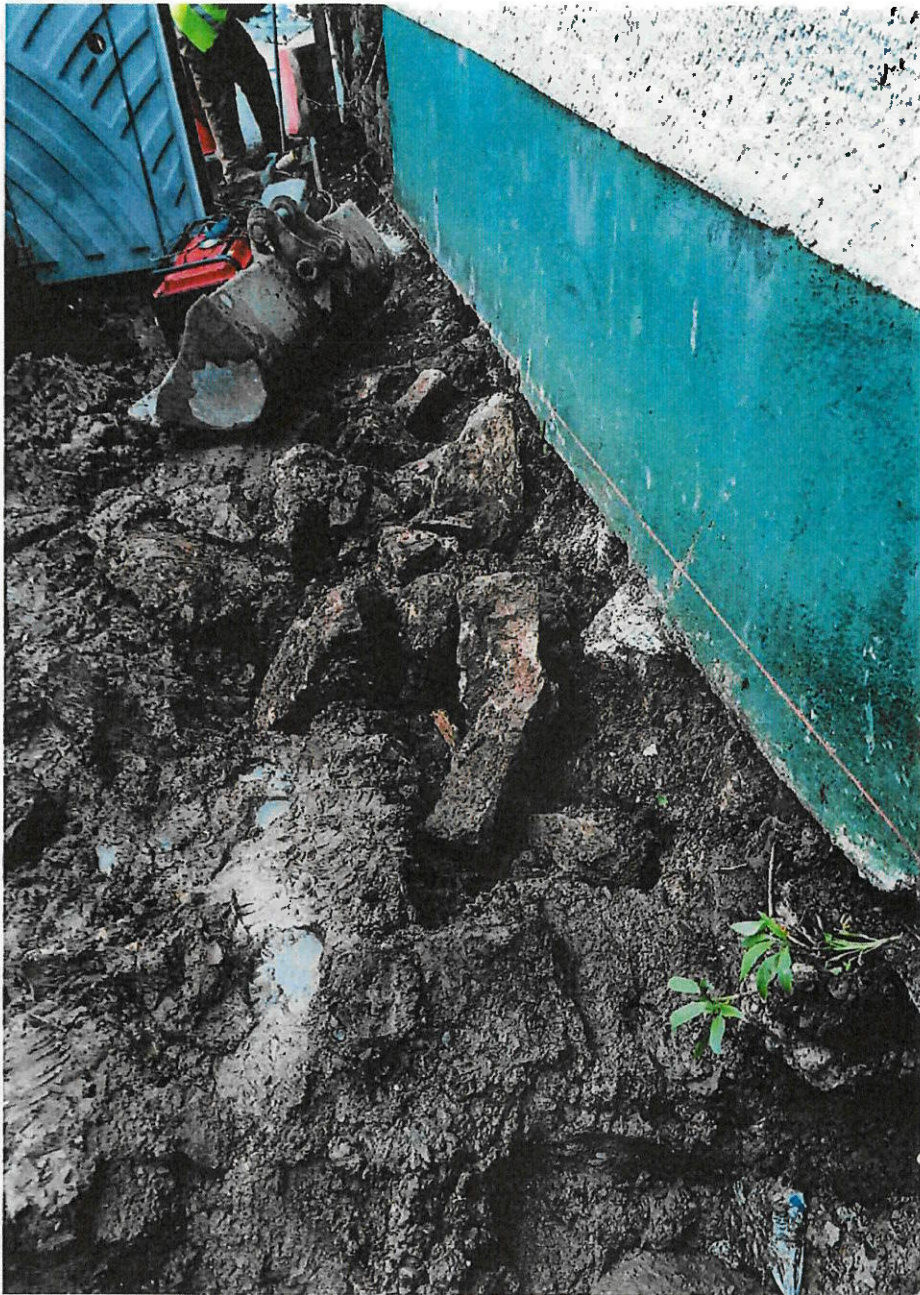
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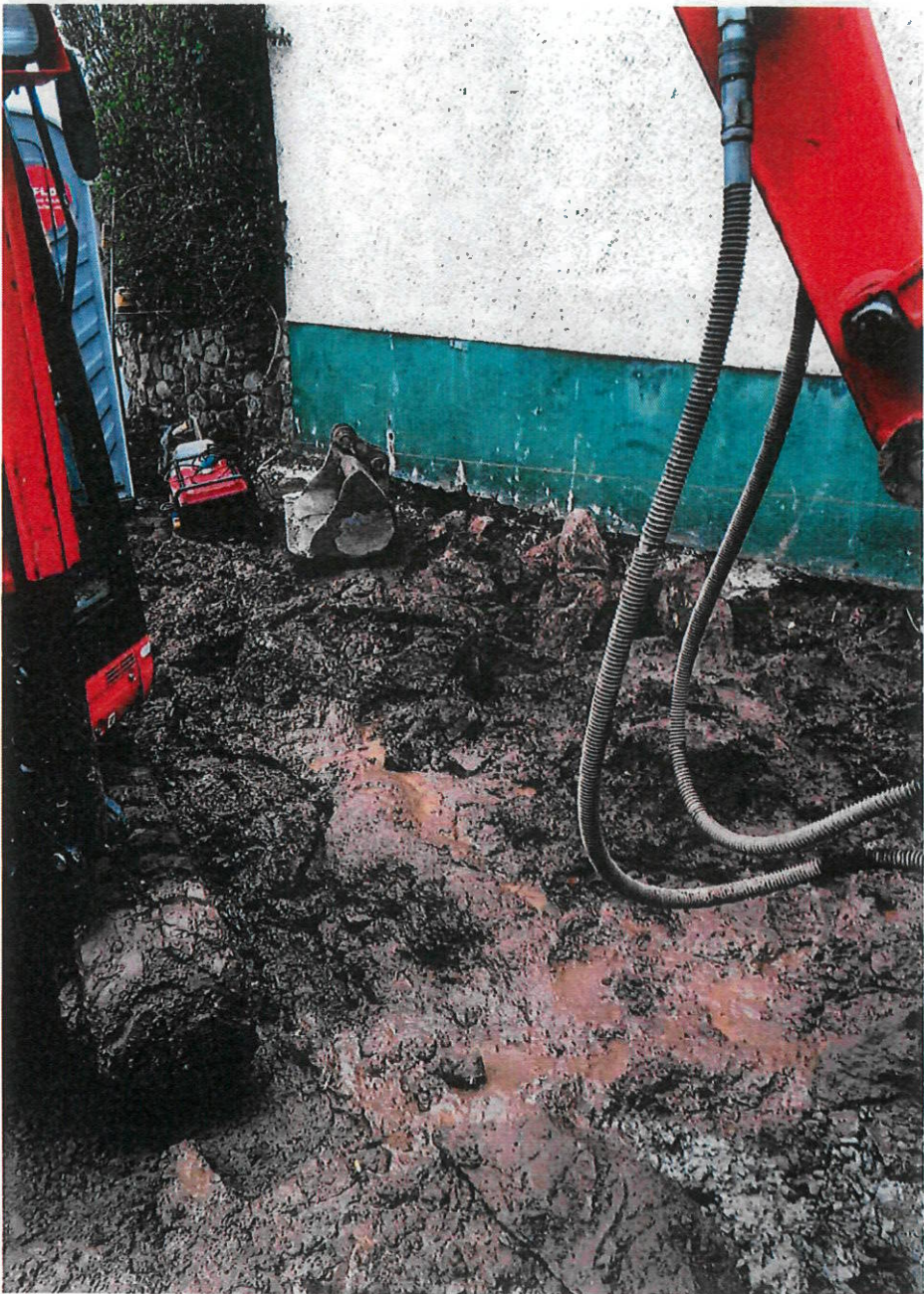
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W016.031.1.

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MD 16.031.19

14/04/16.



WD 16.031.020

14/04/16,



WD 16.031.020

WD 16.031.01

07/04/16.



IMG_1878

W016.031.02

07/04/16



GRAVEL/STONE
IN PLACE.

11/01/1879.

WD.16.01.03

07/04/18



1MG-1280

WD 16.031.04

02/04/16



146_1881

WD16.81.05

07/04/18.



Wet - 1882

MD16.031.06

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1583-1883

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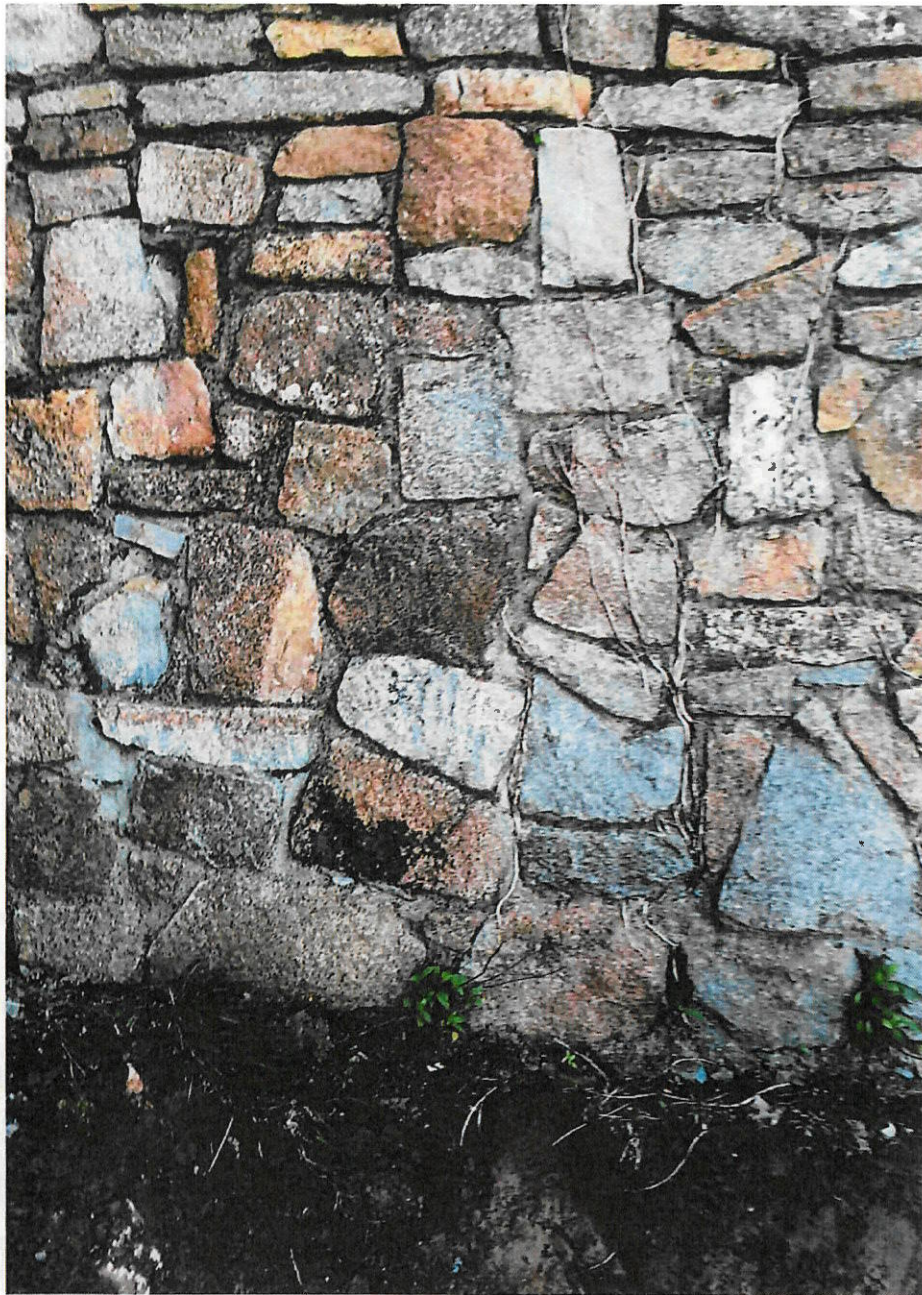
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11/6/1891

UD 16.031.09

07/04/18



1891-1892

1891-1892

WD 16.031.10

07/04/18.



1166-1893.

WD 16.031. 11

16.031
07/04/16.



SPN 1101

IMG_1894

MD 16.031.12

07/04/18



1168-1895

1168-1895

WD16.031.13

07/04/18



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WD 16.031.14.

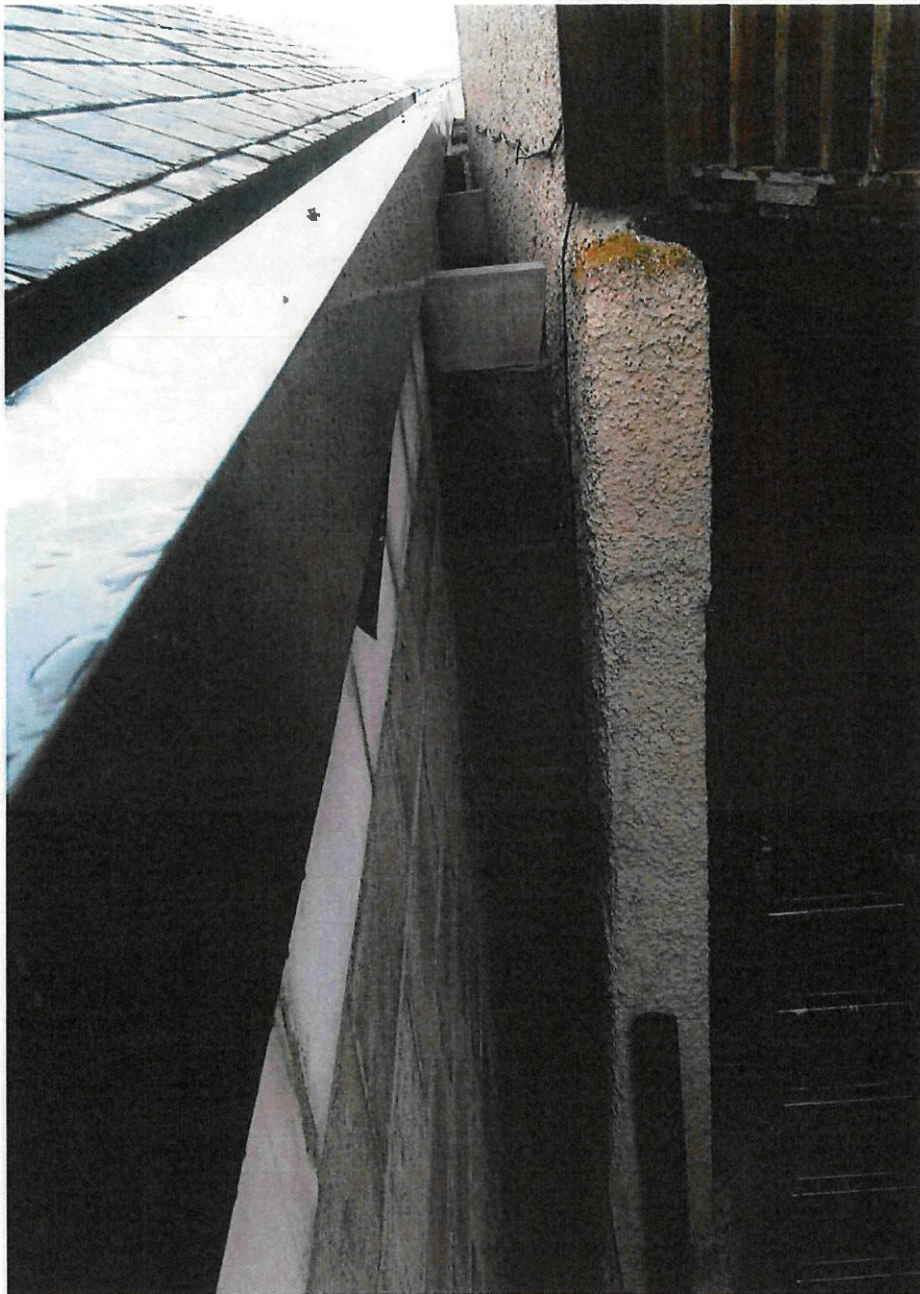
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WVD 16.031.029

24/01/17.



WD16.031.030

24/01/17

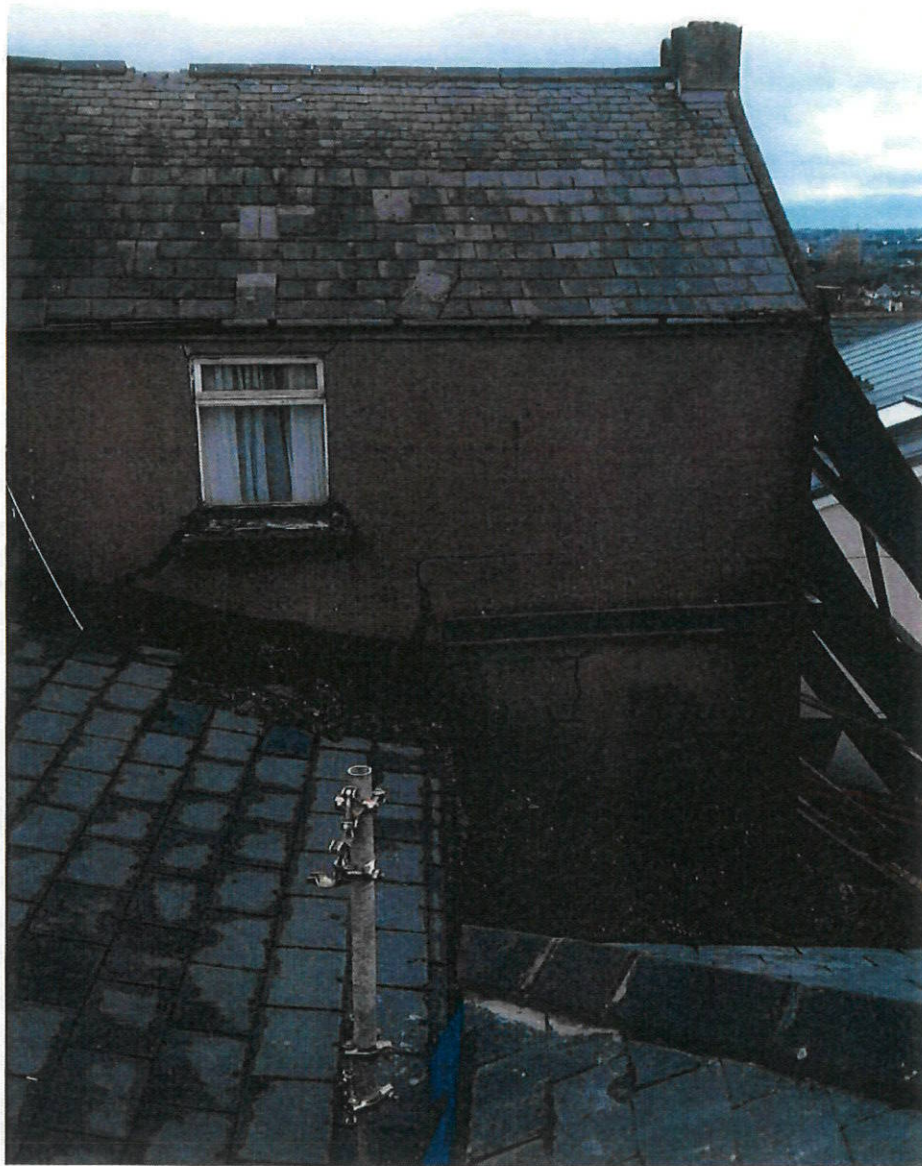


MD. 16.031.030



16.031.031

24/01/17.





Comhairle Contae Dhún Laoghaire Ráth an Duin, Halla an Chontae, Dún Laoghaire, Co. Átha Cliath, Éire
 Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire, Co. Dublin, Ireland
 T: 01 205 4700 F: 01 280 6969 www.dlr.co.ie

Planning and Organisational Innovation Department
 An Rannóg Pleanála agus Nuála Eagraíochta
 Enforcement Section
 Direct Tel: 01 2054864
 Fax: 01 2803122
 Email: planningenforcement@dlrco.ie

PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Warning Letter under Section 152(1)

ENF 13516

Warning Letter under Section 152(1) of the Planning and Development Act 2000 (as amended) in relation to lands at site adjacent to, 24 Ardrugh Road,, Dalkey, Co. Dublin

Ms. Noreen Farrell
 6, Maple Road
 Dalkey
 Dublin

It has come to the attention of the Planning Authority that unauthorised development may have been carried out at the above lands. The alleged unauthorised development consists of **Non compliance with condition No 1 of planning permission Register Reference D15A/0750 comprising alterations to planning permission Register reference D07A/0507 in that the dimensions of the enlarged ground floor construction are in excess of those submitted with the plans, particulars and specifications lodged with the application as required by the governing planning permission.**

The matter is now under investigation by the Planning Authority. Any person served with this Warning Letter may make submissions or observations in writing to the Planning Authority regarding the purported offence not later than four weeks from the date of the service of this letter.

If, following investigation, the Planning Authority consider that unauthorised development has been carried out at the above named lands, an Enforcement Notice may be served under Section 154 of the Planning and Development Act 2000 (as amended), without further communication to you.

It is brought to your attention that officials of the Planning Authority may at all reasonable times enter on the above named lands for the purposes of inspection.

Under Section 151 of the Planning and Development Act 2000 (as amended) it is an offence to carry out unauthorised development. In this regard your attention is drawn to Section 156 of the aforementioned Act, which set out details of the penalties involved (copy enclosed).

You are hereby warned that any costs reasonably incurred by the Planning Authority in relation to the investigation, detection and issue of the enforcement notice concerned, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers, may be recovered from the person or persons on whom an enforcement notice is served or where court action is taken.

Please quote reference number: **ENF 13516** in any further correspondence or if you have any queries please contact a member of staff in the Enforcement Section at 01 2054864.

Date: 11th July 2016

Signed:

Maura Murphy
Administrative Officer

dunbar lunn
civil & structural consulting engineers

2 Aldercourt,
Fams,
Enniscorthy,
Co. Wexford.

P: 053 9366006
F: 053 9366009

Our Ref.; MD/CB/C.16.031
Your Ref.; ENF 13516

12th. July 2016

Enforcement Section,
Dun Laoghaire Rathdown County Council,
County Hall,
Dun Laoghaire,
Co. Dublin.

Dear Sirs,

Re: Non Compliance with Condition No. 1 of Planning Permission Register Reference D15A/0750 comprising alterations to Planning Permission Register reference D07A/0507 in that the dimensions of the enlarged ground floor construction are in excess of those submitted with the plans, particulars and specifications lodged with the application as required by the governing Planning Permission.

We refer to your letter dated the 11th. July last addressed to our Client Ms. Noreen Farrar and wish to respond on behalf of our Client;

It is our opinion all works have been completed to date in substantial compliance with the plans and particulars submitted under Planning Reference No: D15A/0750

As discussed with our Client, we would also seek an appointment with the Building Control office or Planning office at the offices of the Local Authority to discuss further the matters brought to your attention.

Please do not hesitate to contact me if you have any queries in regard to the above, or require any further information.



Martin Dunbar, B.Eng.(Hons), CEng., M.I.E.I.
On Behalf of Dunbar Lunn Consulting Engineers

Planning and Organisational Innovation Department
An Rannóg Pleanála agus Nuála Eagraíochta
Enforcement Section
Direct Tel: 012054864
Fax: 01 2803122
planningenforcement@dlrco.ie

Our Ref: ENF 13516
Your Ref: MD/CB/C.16.031

Date: 22-Jul-2016

Martin Dunbar
Dunbar Lunn
Civil & Structural Consulting Engineers
2 Aldercourt
Ferns,
Enniscorthy
Co. Wexford

Re: site adjacent to, 24 Ardbrough Road,, Dalkey, Co. Dublin
Your Client: Ms. Noreen Farrar,

Dear Mr. Dunbar

I refer to your correspondence dated, 12-Jul-2016, in response to the Warning Letter issued for alleged unauthorised development consisting of **Non compliance with condition No 1 of planning permission Register Reference D15A/0750 comprising alterations to planning permission Register reference D07A/0507 in that the dimensions of the enlarged ground floor construction are in excess of those submitted with the plans, particulars and specifications lodged with the application as required by the governing planning permission.**

I wish to advise you that your submission has been referred to the Planning Inspector for the area for inspection and comment.

The Planning Authority will revert to you when the Inspector's report is to hand.

Yours sincerely,

Bridget Bannon
Enforcement Section
Planning and Organisational Innovation Department
Tel: 2054 864



Planning and Organisational Innovation Department
An Rannóg Pleanála agus Nuála Eagraíochta
Enforcement Section
Direct Tel: 012054864
Fax: 01.2803122
planningenforcement@dlrcoco.ie

Our Ref: ENF 13516
Your Ref: MD/CB/C.16.031

Date: 31st August, 2016.

Martin Dunbar
Dunbar Lunn
Civil & Structural Consulting Engineers
2 Aldercourt
Ferns,
Enniscorthy
Co. Wexford

Re: site adjacent to, 24 Ardbrough Road, Dalkey, Co. Dublin
Your Client: Ms. Noreen Farrar

Dear Mr. Dunbar

I refer to your correspondence dated, 12-Jul-2016, in response to the Warning Letter issued for alleged unauthorised development consisting of **Non compliance with condition No 1 of planning permission Register Reference D15A/0750 comprising alterations to planning permission Register reference D07A/0507 in that the dimensions of the enlarged ground floor construction are in excess of those submitted with the plans, particulars and specifications lodged with the application as required by the governing planning permission the content of which has been noted.**

I wish to advise you that the Planning Authority has investigated the matter raised, and carried out an inspection of the development on 25th August, 2016.

It is considered that the house being constructed conforms to the planning permission as granted with regards to positioning, size and format.

The Planning Authority wishes to advise that **the first floor balcony, to the front elevation, must be constructed in its entirety within the site boundary, and shall not overhang the public road space fronting the property.**

It is also noted that **Condition No. 2 of D15A/0750 is required to be complied with**



Condition No. 2 of D15A/0750 reads:-

Save for the amendments granted on foot of this permission, the development shall otherwise be retained and completed in strict accordance with the terms and conditions of Planning Permission Reg. Ref. D07A/0507, save as may be required by the other conditions attached hereto.

REASON: In the interest of the proper planning and sustainable development of the area.

by compliance with Condition No. 2 of PL06D.224147 (D07A/0507) which reads:-

Condition no.2 of PL06D.224147 (D07A/0507)


2. The proposed car parking area shall be defined by a contrasting surface to that of the adjoining public road. Details of the proposed surface material shall be submitted to the planning authority for agreement prior to commencement of development.

Reason: In the interest of clarity.

The Planning Authority requires the submission of the required compliance details, within two weeks from the date of this letter.

The enforcement file will be reviewed on 15th September, 2016.

Yours sincerely,

 Gráinne Proctor

Enforcement Section
Planning and Organisational Innovation Department
Tel: 2054 864

**Planning and Organisational Innovation Department
An Rannóg Pleanála agus Nuála Eagraíochta**

Enforcement Section
Direct Tel: 012054864
Fax: 01 2803122

Email: planningenforcement@dlrcoco.ie

Our Ref. Enf. 135/16

Date: 16th September, 2016.

**Martin Dunbar
Dunbar Lunn
2, Aldercourt
Ferns
Enniscorthy
Co. Wexford.**

**Re: Site adjacent to 24, Ardbrugh Road, Dalkey, Co. Dublin.
Your Client: Noreen Farrar**

Dear Mr. Dunbar,

I refer to our letter dated 31st August, 2016, which afforded a period of 2 weeks from that date, for the submission of details in compliance with **Condition No. 2 of D15A/0750 and in compliance with Condition No. 2 of PL06D.224147 (D07A/0507).**

The Planning Authority notes that no compliance submission has been received to date.

Accordingly you are hereby required to **submit the required compliance details in respect of Condition No. 2 of PL06D.224147 (D07A/0507) and Condition No. 2 of D15A/0750 within TWO WEEKS from the date herein.**

Please be advised that failure to do so will result in the instigation of enforcement proceedings in the matter, in the form of an Enforcement Notice under Section 154 of the Planning and Development Act 2000 (as amended), without further notice to you or your Client. You should be aware that parties on whom the Notice is served will be liable for any costs incurred by the Planning Authority should enforcement proceedings be necessary, in accordance with the enclosed Schedule of Enforcement Costs/Fines/Penalties.

Yours sincerely,

 **Grainne Proctor**
Enforcement Section
Planning and Organisational Innovation Department
Tel: 2054864

c.c. Ms. Noreen Farrar, 5, Mapas Road, Dalkey, Co. Dublin (✓)
Encl. - Schedule of Costs at stated above (✓)



Our Ref: MD/CB/C.16.031
Your Ref: ENF 13516

Dun laoghaire-Rathdown County Council,
County Hall,
Dun Laoghaire,
Co. Dublin.

19th October 2016

Dear Sir,

Re: Non Compliance with Condition No. 2 of Planning Permission Register Reference D15A/0750 comprising alterations to Planning Permission Register reference D07A/0507

Further to your letter dated 31st August 2016, we wish to provide the following information as requested.

- 1. 'The proposed car parking area shall be defined by a contrasting surface to that of the adjoining public road. details of the proposed surface material shall be submitted to the planning authority for agreement prior to commencement of development.'*

Please find attached site layout plan showing the proposed excessive surface to the parking area outside the house. It is proposed to use a concrete kerb with 150mm upstand to the front boundary with a 6 meter long with 50mm upstand kerb to allow access for vehicles. The surface to the parking area will be a pourus decorative stone pebel, to avoid any rainwater run-off from the site onto the public road.

It is proposed to also construct a 150mm kerb 900mm from all buildings within the yard area to prevent any vehicles coliding into the walls of the buildings. The area between the kerb and the building will then be filled with topsoil and planted with shrubs as per site layout plan.

If you require any further information or have any concerns in regard to the proposed car parking area finish proposed, please do not hesitate to contact me.

Yours sincerely,

Martin Dunbar, B.Eng.(Hons), CEng., M.I.E.I.
On Behalf of Dunbar Lunn Consulting Engineers

CC Noreen Farrar & Micheal McDonagh

**Planning and Organisational Innovation Department
An Rannóg Pleanála agus Nuála Eagraíochta**

Enforcement Section

Direct Tel: 012054864

Fax: 01 2803122

Email: planningenforcement@dlrcoco.ie

Our Ref. Enf. 135/16
Your Ref. MD/CB/C.16.031

Date: 2nd November, 2016.

**Martin Dunbar
Dunbar Lunn
2, Aldercourt
Ferns
Enniscorthy
Co. Wexford.**

**Re: Site adjacent to 24, Ardbrough Road, Dalkey, Co. Dublin.
Your Client: Noreen Farrar**

Dear Mr. Dunbar,

I wish to acknowledge receipt of your correspondence dated 19th October, 2016, (received by the Planning Authority on 25th October, 2016), and also refer to previous correspondence regarding the submission of details in compliance with **Condition No. 2 of D15A/0750 and In compliance with Condition No. 2 of PL06D.224147 (D07A/0507).**

I wish to advise you that I have today forwarded this submission to my colleague, Ms. Sandra Price, Compliances, Registry Section, for processing as a formal compliance submission in respect of Condition No. 2 of D15A/0750. A formal acknowledgement and a decision, when made, will issue directly to you from this Section.

The enforcement file will be reviewed following a decision issuing on same.

Yours sincerely,

 **Gráinne Proctor**

Enforcement Section
Planning and Organisational Innovation Department
Tel: 2054864

c.c. Ms. Noreen Farrar, 5, Mapas Road, Dalkey, Co. Dublin (V)



Planning and Organisational Innovation Department
An Rannóg Pleanála agus Nuála Eagraíochta
Marine Road, Dun Laoghaire, Co. Dublin
Sandra Price
Tel: 01 205 4700 Ext. 4521
email: sprice@dlrcoco.ie

Martin Dunbar
Dunbar Lunn Civil & Structural Consulting Engineers
2 Aldercourt
Ferns
Enniscorthy
Wexford

04-Nov-2016

Planning & Development Act 2000, as amended

Register Ref: D07A/0507/C1
Development: Compliance re Condition no. 2 (PL06D.224147). Permission sought for a two storey dwelling and associated works and car-parking.
Location: Site at, Ardbrugh Road, Dalkey, Co Dublin
Applicant: Peter Dempsey
App. Type: Compliance with Conditions

Dear Sir/Madam

With reference to the above, I acknowledge receipt of your compliance documents received on 02-Nov-2016.

A member of the planning team for the area is currently examining the documentation and a decision letter will issue in due course.

Please note that, in the case of application to which Part V of the Planning & Development Act 2000, as amended, applies, "Letter of Compliance" will not issue until such time as confirmation is received from the Housing Dept, that the Part V requirements of the Housing Dept have been met. All enquiries should be directed to the Part V section of the Housing Dept.

Yours faithfully

Sandra Price

for SENIOR EXECUTIVE OFFICER

Martin Dunbar
Dunbar Lunni Civil & Structural Consultin
2 Aldercourt
Ferns
Enniscorthy
Co Wexford

15-Dec-2016

**NOTIFICATION OF DECISION IN RELATION TO COMPLIANCE SUBMITTED
Planning & Development Act 2000, as amended**

Decision Order Number P/2705/16	Date of Decision 14-Dec-2016
Register Reference D07A/0507/C1	Date Received 02-Nov-2016

Applicant: Peter Dempsey
Development: Compliance re Condition no. 2 (PL06D.224147). Permission sought for a two storey dwelling and associated works and car-parking.
Location: Site at, Ardbrough Road, Dalkey, Co Dublin

Dear Sir/Madam

In relation to the compliance submitted for D07A/0507/C1 as above, I wish to advise you that the Planning Authority's decision is as follows:-

In this regard, it is considered that the submission is in compliance with Condition no. 2 of D07A/0507 (PL06D.224147).

If you have any further queries in relation to this matter, please contact **Emma Nevin, Planner** at 01-2054700.

Yours faithfully

Sandra Price

for Senior Executive Officer

Planning and Organisational Innovation Department
An Rannóg Pleanála agus Nuála Eagraíochta

Enforcement Section

Direct Tel: 012054864

Fax: 01 2803122

Email: planningenforcement@dlrcoco.ieDate: 30th March 2017

Ref.: ENF 135/16

Martin Dunbar
Dunbar Lunn
2, Aldercourt
Ferns
Enniscorthy
Co. Wexford**Re: Site adjacent to, 24 Ardbrough Road, Dalkey, Co. Dublin****Your Client: Noreen Farrar**

Dear Mr Dunbar,

Please find enclosed herewith copy correspondence which has today issued to your client, Ms Noreen Farrar, for your information and attention.

Yours sincerely,

*Bridget Bannon*Enforcement Section
Planning and Organisational Innovation Department
Tel: 2054864

Planning and Organisational Innovation Department
An Rannóg Pleanála agus Nuála Eagraíochta
Enforcement Section
Direct Tel: 012054864
Fax: 01 2803122
Email: planningenforcement@dlrcoco.ie

Date: 30th March 2017

Ref.: ENF 135/16

Ms. Noreen Farrar,
5, Maps Road,
Dalkey,
Dublin

Re: Site adjacent to, 24 Ardbrough Road, Dalkey, Co. Dublin

Dear Ms. Farrar,

I refer to previous correspondence regarding the above mentioned location.

The Planning Authority considers that planning permission Register Reference D15A/0750 is complied with.

Accordingly, the Enforcement file on this matter is now closed.

Yours sincerely,

Bridget Bannon

Enforcement Section
Planning and Organisational Innovation Department
Tel: 2054864

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant


-and-

MICHAEL MCDONAGH & NOREEN FARRAR


Respondents

EXHIBIT "MD4"
AFFIDAVIT OF MARTIN DUNBAR

Exhibit "MD4" as referred to in the Affidavit of Martin Dunbar sworn day
of 2018



DEPONENT



PRACTISING SOLICITOR/
~~COMMISSIONER FOR OATHS~~
JONATHAN PAUL FOX

Land Registry

County Dublin

Folio 209982F

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	<p>The property shown coloured Red as plan(s) DBWN4 on the Registry Map, situate in the Townland of DALKEY COMMONS, in the Barony of RATHDOWN, in the Electoral Division of DALKEY HILL.</p> <p>The Registration does not extend to the mines and minerals</p>	<p>From Instrument D2015LR161792N</p>

Land Registry

County Dublin

Folio 209982F

Part 1(B) - Property
Parts Transferred

No.	Prop No:	Instrument:	Date:	Area (Hectares):	Plan:	Folio No:

Land Registry

County Dublin

Folio 209982F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
1	16-MAR-2016 MICHAEL MCDONAGH of 27 Brookdene, Shankill, County Dublin and D2015LR161792N NOREEN FARRAR of 27 Brookdene, Shankill, County Dublin are full owners.

Land Registry

County Dublin

Folio 209982F

Part 3 - Burdens and Notices of Burdens

No.	Particulars

M.V.U.I

Tithe Map.

Surveyed 1924
Revised 2014
Levelled 1983

Land Registry Compliant Map



726415
ITM CENTRE PT. COORDS
726154.726329

DESCRIPTION

MAP SHEETS

1:1000
3394-23

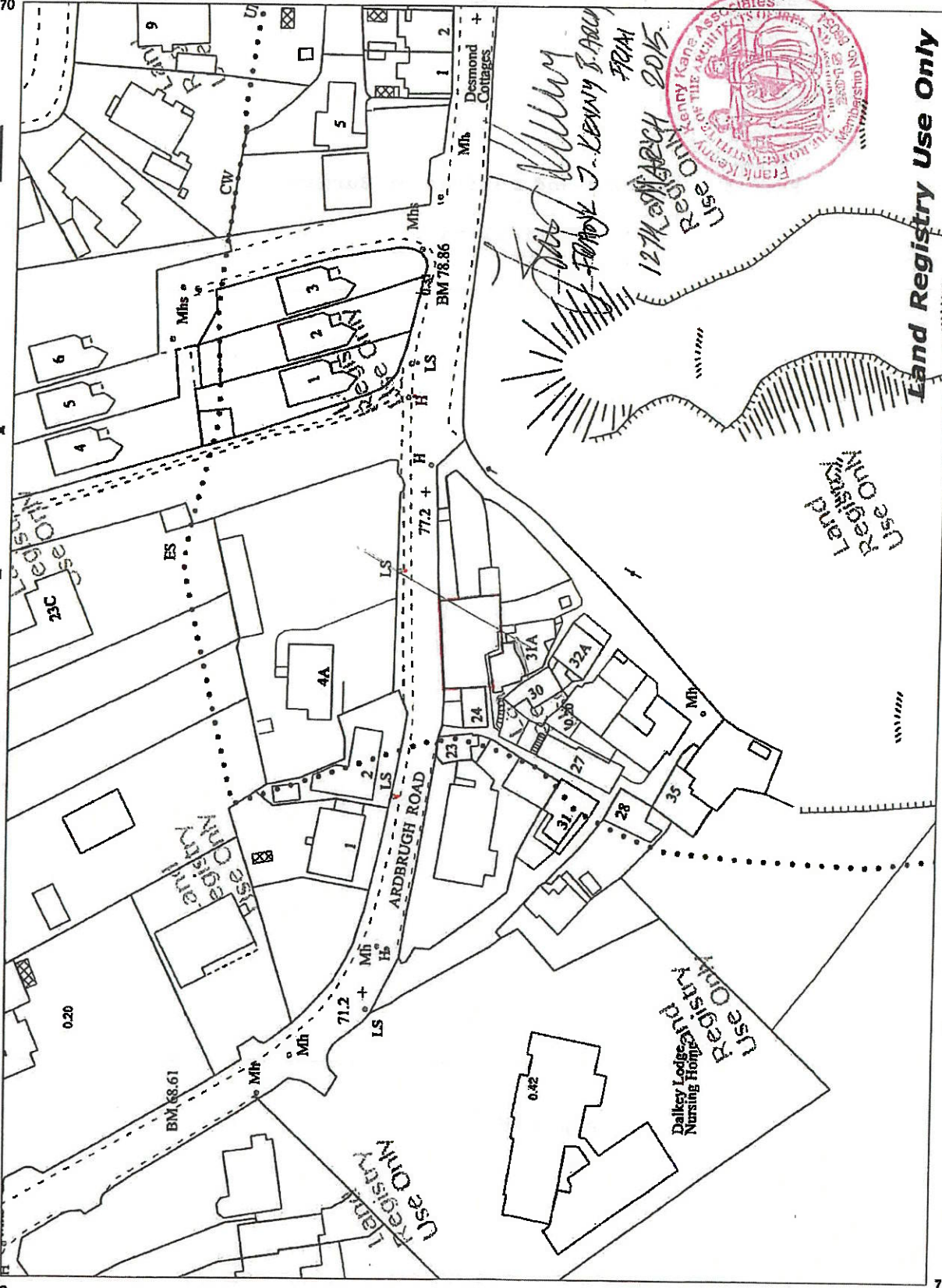


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On behalf of Ordnance Survey Ireland,
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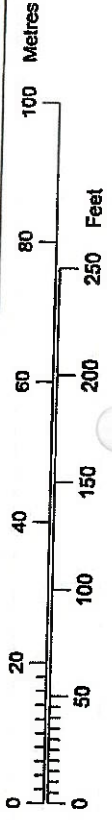


726243

726270

Plot Ref. No. 25222381_1_1
Plot Date 11-MAR-2015

Land Registry Use Only



Scale: 1:1,000
Scála: 1:1,000

726243

726037



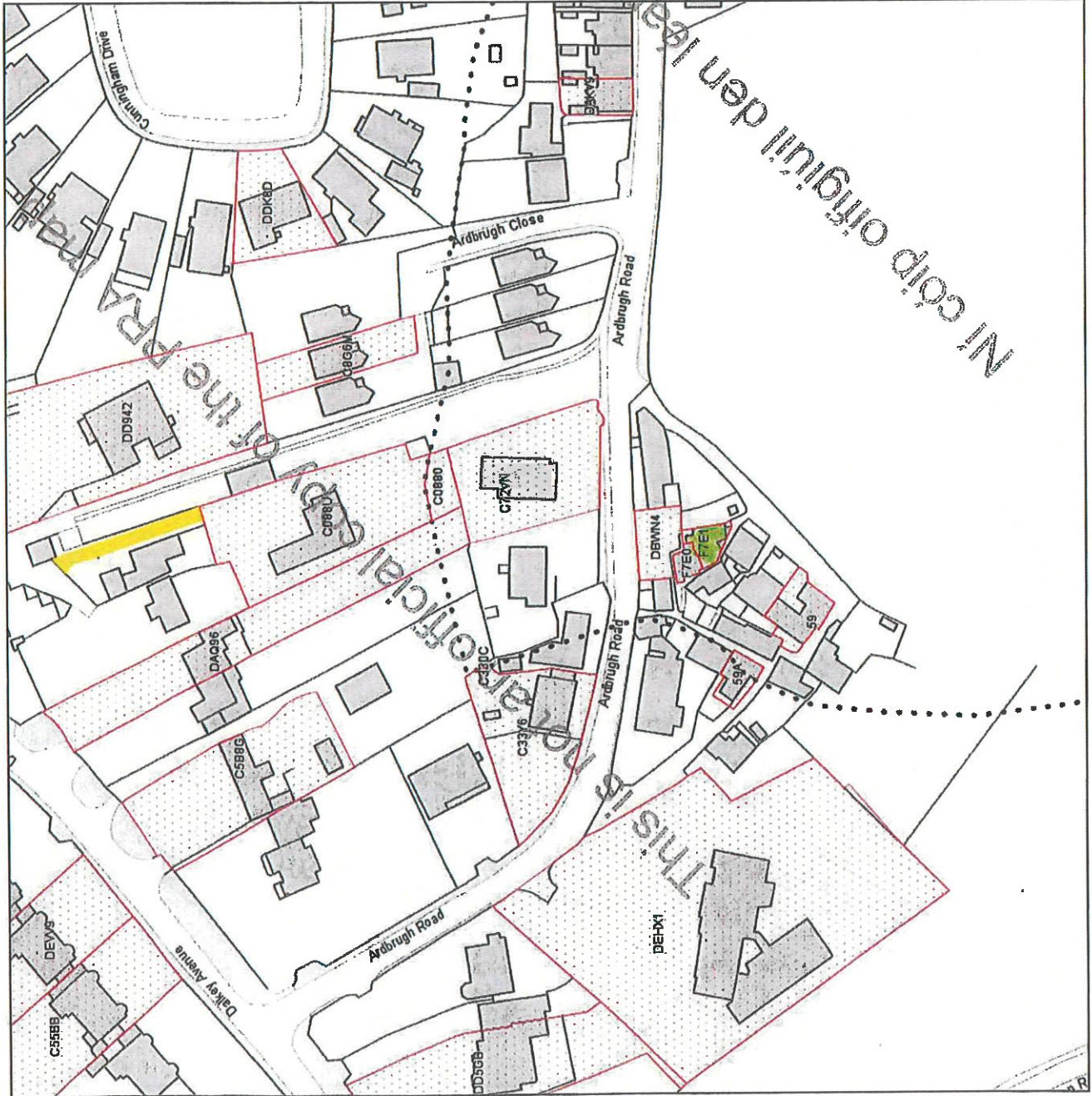
The Property Registration Authority An tÚdarás Clárúcháin Maoine

Official Property Registration Map
This map should be read in conjunction with the folio.

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(Colour line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold
- 'S' Register

(See Section 8(1)(l) of Registration of Title Act 1964 and Rule 224 & 225 Land Registration Rules 1972 - 2010).

Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- Soak Pit

A full list of burdens and their symbology can be found at: www.landireg.ie

The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent.

(see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.



Land Registry Compliant Map



Ordnance Survey
Ireland

National Mapping Agency

CENTRE COORDINATES:
ITM 726154,726330

PUBLISHED: 29/05/2018
ORDER NO.: 50009653_1

MAP SERIES: 1:1,000
MAP SHEETS: 3394-23

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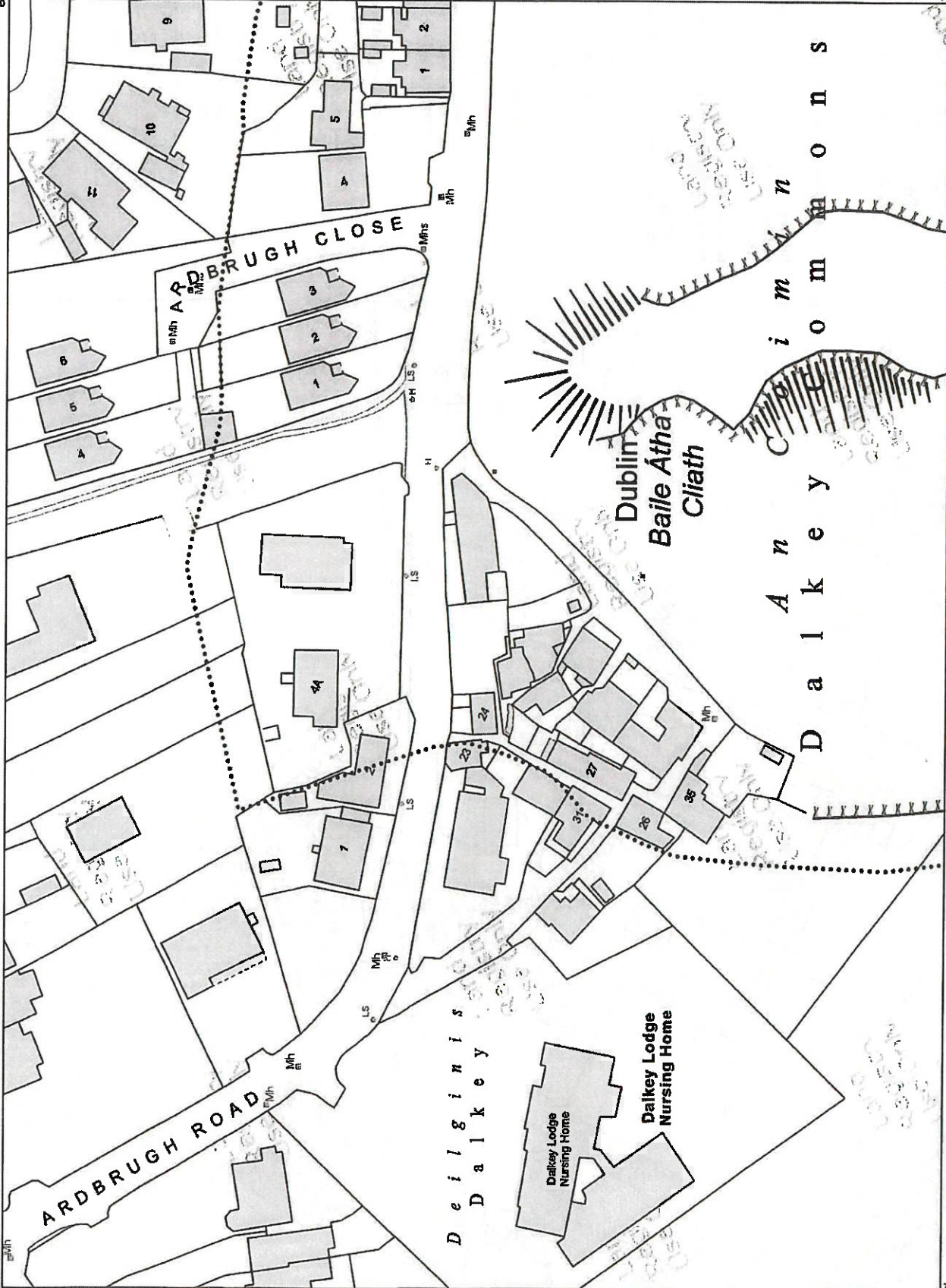
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LEGEND:
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search 'Large Scale Legend'

MDP02

726270

726416



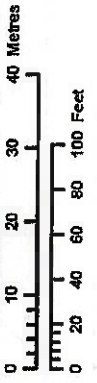
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CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



726037

416

244

726037

602A file



This Indenture

made the 29th day of October

One thousand nine hundred and sixty nine BETWEEN UNA MURPHY the Holly Bush, Broom, Near Alcester in the County of Warwickshire (hereinafter called "the Vendor") of the one part and PETER DEMPSEY of Ardrugh House, Ardrugh Road, Dalkey in the County of Dublin (hereinafter called "the Purchaser") of the other part WHEREAS the Vendor is seised of the hereditaments and premises hereinafter described and intended to be hereby assigned for an Estate in fee simple in possession free from incumbrances AND WHEREAS the Vendor has agreed with the Purchaser for the sale to him for the sum of seven hundred and fifty pounds of the said hereditaments and premises in fee simple in possession free from incumbrances. NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of seven hundred and fifty pounds now paid by the Purchaser to the Vendor (the receipt whereof the Vendor doth hereby acknowledge) The Vendor as beneficial owner hereby grants and conveys unto the Purchaser ALL AND SINGULAR the hereditaments and premises known as Number 23 Ardrugh Road Dalkey, together with the plot of ground adjoining same all of which premises are situate in the Parish of Dalkey Barony of Rathdown and County of Dublin and as to their measurements



25 minutes after 12 o'clock on the 10th day of November 1969 Book 101 No 243

Una Murphy

562
HW

and boundries are more particularly delineated on the map drawn on these presents and thereon edged red.

TO HOLD the same unto and to the use of the Purchaser his heirs and assigns in fee simple and it is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions and the Purchaser hereby certifies that he is the person becoming entitled to the entire beneficial interest in the property, hereby conveyed and that he is an Irish Citizen.

IN WITNESS whereof the parties hereto have set their hands the day and year first hereinbefore WRITTEN

SIGNED SEALED AND DELIVERED)

by the said UNA MURPHY in)
the presence of:)

J. Perry Row)
Solicitor)
Alcester)

Una Murphy ✓

SIGNED SEALED AND DELIVERED)

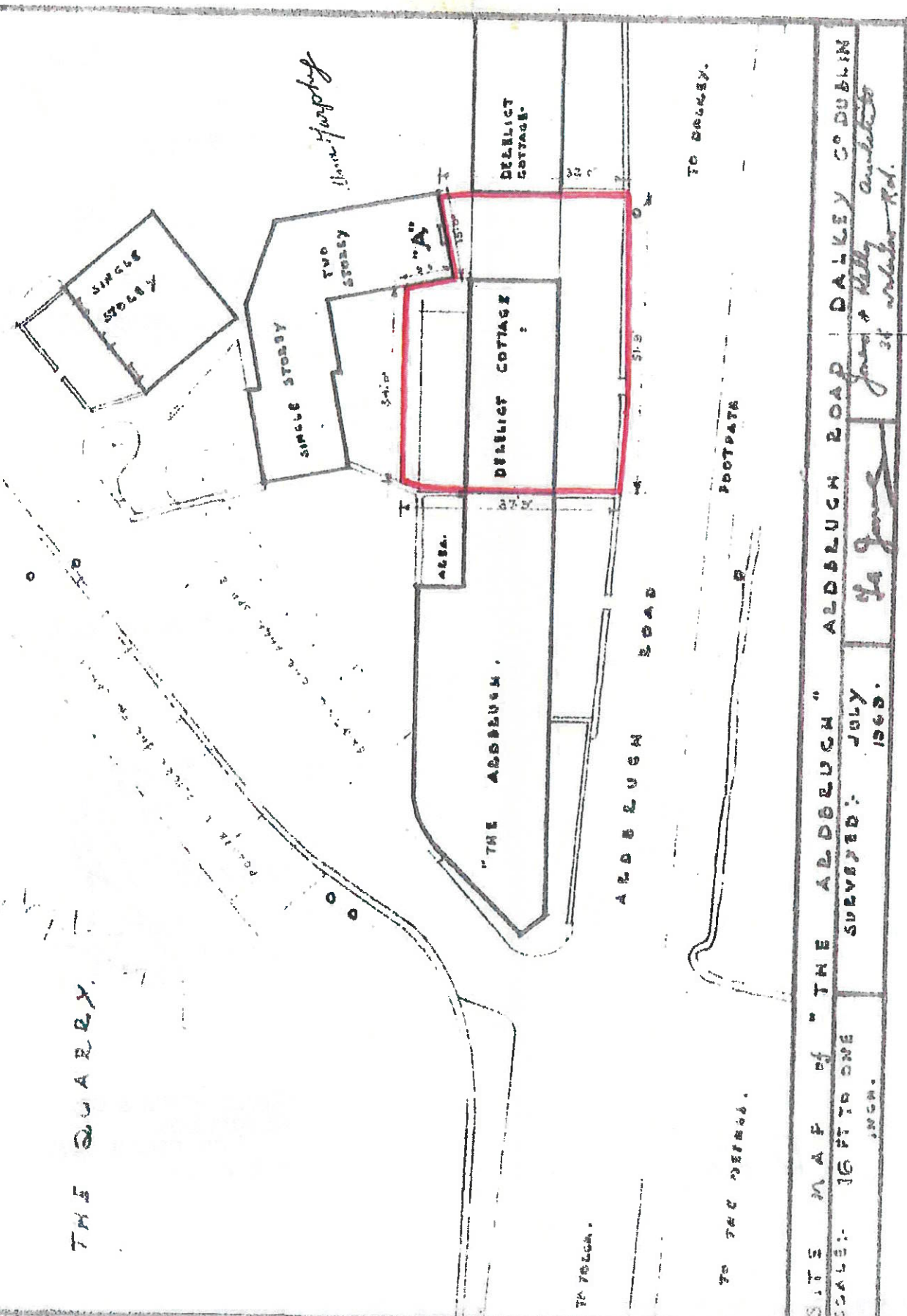
by the said PETER DEMPSEY in)
the presence of:)

Edward H. Ryan)
Solicitor)
7 the O'Connell Quay, Dublin.)

Peter Dempsey ✓



THE QUARRY.



SITE MAP of "THE ALDELUCH" ALDELUCH ROAD DALKEY CO DUBLIN
 SCALE: 16 FT TO ONE INCH.
 SURVEYED: JULY 1963.
 24 June
 James + Kelly Architects
 34 Ardara Rd.

45.62

Dated 29th day of October 196

UNA MURPHY

Vendor

and

PETER DEMPSEY

Purchaser

re / Premises known as
23 Ardbrough Road, Dalkey, Co. Dublin

I N D E N T U R E

OLARLANN NA hGNIOMHAS
(REGISTRY OF DEEDS)
B 101 N 273
10 SAN 1969
BAILE ATH. CLIAITHE
(DUBLIN)

GERALD BYRNE & CO.
SOLICITORS.
7. LOWER ORMOND QUAY.
DUBLIN. 1.

0430

NOTE: THIS IS A
PREPARED COPY
OF THE ORIGINAL
FILED 18th May 2015.
SOLICITORS AT LAW
Solicitors

RECORD NO. 222/90

AN CHUIRT TEAGHLAIGH CUARDA
(THE CIRCUIT FAMILY COURT)

DUBLIN CIRCUIT

COUNTY OF THE CITY OF
DUBLIN

The 6th day of December 1990

Before His Honour Judge Devally

IN THE MATTER OF/

THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT, 1989

BETWEEN/

MARGARET DEMPSEY

Plaintiff

-AND-

PETER DEMPSEY

Defendant

The Defendant having been duly served with an Equity Civil Bill herein and the same coming on for hearing before the Court this day and again on the 7th day of December 1990 WHEREUPON AND ON READING the pleadings and documents filed herein and on hearing evidence adduced and what was offered by Ms. Clissmann B.L. of Counsel for the Plaintiff and Mr. Allen B.L. of Counsel for the Defendant THE COURT DOTH:

- (1) Grant Decree of Judicial Separation pursuant to Section 2(1)(f);
- (2) Grant sole custody of the infants Connor and Peter to the Plaintiff with access to be agreed between the parties;
- (3) Make no Order pursuant to Section 11 of the Act;
- (4) Order that Maintenance be paid in the sum of £100.00 per week, being £50.00 each, each week in respect of the infants. The said £100.00 to be inclusive of school fees and clothes;

- (5) That the Defendant pay ESB and/or gas bills, house insurance and rates (including water rates), this obligation to continue until further Order and to apply to any other property purchased by the Plaintiff;
- (6) That the Plaintiff is entitled to the beneficial interest in the premises, the family home, situate at "Ardbrough", 21 Ardbrough Road, Dalkey in the County of Dublin to the extent of 50% and that the Plaintiff is entitled to the beneficial interest in No. 23, Ardbrough Road to the extent of 33.33%;
- (7) That the Building Society savings be deemed to be jointly held and that the wife be entitled to 50% of same;
- (8) Grant an Order pursuant to Section 16 for the sale of the family home:
 - (a) That the proceeds of sale are not used to discharge debts (of £27,000.00 approx.);
 - (b) That after payment of the necessary fees the Plaintiff is entitled to 50% of the net proceeds of sale;
 - (c) That the Plaintiff and the Defendant have joint carriage of sale;

AND THE COURT DOETH GRANT LIBERTY TO APPLY

- (9) And the Court Doeth make no Order for sale of 23 Ardbrough Road;
- (10) Make an Order conferring on the Plaintiff the right to occupy the family home pending the sale to the exclusion of the Defendant who must vacate the house by the 21st December 1990;

(11) Grant Order and Cross Order pursuant to Section 17
of the Judicial Separation and Family Law Reform
Act, 1989;

(12) Grant two-thirds of the costs of one day to the
Plaintiff.

BY THE COURT

J. Kelly (Seal)

Acting

COUNTY REGISTRAR

A COPY WHICH I ATTEST

[Signature]

Acting

County Registrar

SHERIDAN & KENNY
Solicitors, Commissioners For Oaths
41 SALLYNOGGIN RD
DUNLAOGHAIRE Co DUBLIN

THE HIGH COURT

Record No. 2018/122MCA

**IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION**

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL McDONAGH & NOREEN FARRAR

Respondents

AFFIDAVIT OF MARTIN DUNBAR

**McCann FitzGerald
Solicitors
Riverside One
Sir John Rogerson's Quay
Dublin 2
DOR\29411723.1**

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

AFFIDAVIT OF ROBERT MERRY

I, ROBERT MERRY, Civil Engineer, aged 18 years and upwards MAKE OATH and say as follows:

1. I am a Civil Engineer of 21 years' experience and Managing Director of Land Surveying practice Techsol Ltd. since 2003, I am a member of the Society of Chartered Surveyors of Ireland and I hold an MBA from DIT
2. Techsol Ltd. was requested by the Respondents' solicitors, McCann FitzGerald Solicitors, to carry out a site inspection and dimensional survey at 24 Ardbrugh Road, Dalkey for the purposes of these proceedings involved.
3. To that end, I was supplied with copies of the plans and particulars under planning permission D07A/0507 and D15A/0750 as well as the Affidavit and exhibited drawings of Mr. Val O'Brien, the Applicant's surveyor and I confirm that I have reviewed same.

Date & Scope of Survey

4. Following a review of the planning drawings and Mr O'Brien's affidavit and drawings, I decided that the best course of action would be to carry out a survey of the site, its boundaries

and adjoining buildings, using a 'total station' (Trimble S5 - 3 second accuracy) and to produce a digital plan from which relevant dimensions could be extracted. The survey was commenced on 17th May 2018 and full access to the site was provided. The aim of the survey was to collect enough data to produce a site plan with context to identify any deviations in plan positions, and also a street elevation to identify any deviations in vertical positions.

5. I beg to refer to a copy of the site plan(s) (the "Site Plans") produced on foot of the survey carried out by Techsol Ltd., upon which marked with the letters and number "RM1" I have signed my name prior to the swearing hereof.

Grid Position / Starting Point

6. It is now standard practice in the surveying sector to provide data referenced to the ITM (Irish Traverse Mercator) coordinate grid; this is the national grid for the country, to which Ordnance Survey (OS) mapping is also referenced. The starting point for this is to establish a baseline of 2 known points using a GNSS receiver which also receives corrections from the Trimble active network via a SIM card in the data logger. One would expect to achieve an accuracy of +/- 25mm for our baseline or starting point when compared to its true grid position.
7. In contrast to this, someone working from an OS map (as Mr O'Brien did for the purposes of preparing his drawings and affidavit) could not expect to achieve a grid position better than +/-1000mm as ITM coordinates on OS maps are rounded to the nearest metre.

Comparing Drawings

8. Given that both the planning drawings and Mr. O'Brien's drawings are based on an OS background map, use of a best-fit methodology was necessary when comparing Techsol's new survey data (as-built) to these.

Mr. O'Brien's Methodology

Equipment:

9. On reviewing Mr. O'Brien's affidavit, the methodology used to draw his conclusions is quite unclear. He refers to a number of site inspections and collection of accurate dimensions using "electronic equipment" (paragraph 19), without actually explaining what measurement equipment was used. 'Electronic equipment' could mean a high accuracy Total Station as employed by me; however, it may equally just refer to a handheld distometer which is akin to an electronic measuring tape. He also refers in his drawing to a number of "survey reference lines" which seem to form the basis for his 'best fit', but gives no explanation as to how these were established or if they relate to any specific grid system.

Starting Point:

10. On Mr O'Brien's comparison drawings he shows the NE corner of the Applicants Shamrock Cottage as his "overlay reference point". I understand this to be the corner of the existing derelict site on the OS map, however the Shamrock Cottage extension is not actually shown on the OS map and it is not clear whether this is the corner of the wall or the roof. In any case, it is a somewhat arbitrary point which renders dimensions referenced to it arbitrary in nature. As the Shamrock Cottage extension is not shown on the OS map the position of our structure

on the planning drawings is not directly related to this point. A more sensible reference point would be the SE corner of the site, as this is on the OS map and is also where the SE corner of the permitted structure is shown on the Planning Drawings.

Accuracy:

11. The following text from OSi.ie relates to the stated accuracy of urban mapping:

The positional accuracy results of the quality assessment work from 2004 to 2014 are as follows:

In urban, suburban and periurban mapping, the results of testing 36,929 points of hard detail are that 93.2% of the points in the mapping are within 1 metre of their true ground position, and 99.1% of points are within 2 metres of their true ground position.

12. This means that the accuracy of Urban OS maps is in the region of +/-1000mm. For this reason, I say and believe that the use of an OS map augmented with additional dimensions collected by an unstated method is a flawed methodology where seeking to establish sub-metre variations.
13. I also note from Mr. O' Brien's comparison drawings that the blue "survey reference line" outline for Ardbrough house is clearly not shown parallel to the new structure. From our grid-referenced total station survey it is apparent that the new structure is approximately parallel to the gable of Ardbrough House.
14. Mr. O'Brien's affidavit states that "The inspection was taken from the public road and adjoining properties and no access was gained to the new dwelling or its immediate environs on its own land".
15. From this, I take it that remote measurements were taken, and in the absence of any technical data on how these were collected, or the achievable accuracies of the technology employed, I can only conclude that the accuracy of such data cannot be relied upon.

Techsol's As-Built Survey Drawings

16. The Site Plans (As-built drawing) confirms that the new structure is no bigger than that for which planning was granted (East-West almost identical width, North-South approx. 470mm shorter).
17. The gable wall of Ardbrough House is neither straight nor plumb as is apparent from the Site Plans. Because of the fact that the said gable wall of Ardbrough House is not in horizontal alignment with the block-built wall at the SE corner of the site this necessary offset from the gable resulted in the structure being at its closest point 110mm from Ardbrough House and at its farthest 230mm offset from Ardbrough House at the southern end. This lack of alignment also resulted in a gap of 295mm between the new structure and the block built boundary wall with Ardbrough House at the south east corner of the site.
18. The new structure is 380mm from the south boundary wall, however as the structure is 470mm shorter in a NS direction than as granted; this does not give rise to any issue at the northern elevation.
19. At the SE corner of the site there is a significant batter at the base of the rear boundary wall, as can be seen on Section A-A on the Site Layout drawing. To avoid interfering with the stability of the boundary wall the new structure was constructed at a distance of 110mm from the base of the wall. This resulted in a gap of approximately 380mm from the plumb section of the wall. Similarly, as can be seen from Section B, there is also a batter at the bottom of the

Ardbrough house gable. Again, to avoid structural interference, the new structure was constructed no closer than 100mm from the base of this gable. The distance between the new structure and the gable varies considerably in both the horizontal and vertical planes as the gable is neither plumb nor straight in plan.

20. The Street Elevation of Techsol's as-built drawing shows 220mm clearance from the first floor western gable of the new structure to the reveal of the shamrock cottage window. The equivalent elevation on the planning drawings shows a clearance of 565mm.

21. This discrepancy of 345mm arises as follows:

A Although the new structure at its closest point is 110mm from Arbrugh House, given the undulations of the gable wall of Ardbrough House the gap at the southern end corner is 210mm from the gable of Ardbrough House, which leaves it 295mm from the Ardbrough block-built boundary wall at the southern end of the eastern boundary.

It is the same width at first floor level, which means that if it is 295mm off the eastern boundary wall, it is 295mm closer to the Shamrock Cottage window.

22. **Shamrock Cottage Roof Overhang**

As can be seen from the breakout drawing on the Site Layout the extension to Shamrock cottage is partially built on the boundary wall. The dashed red line indicates the roof overhang, which clearly oversails the boundary wall and also oversails the site by approximately 190mm.

23. **High-level window**

The position of the frosted high-level window relative to the Shamrock Cottage window is indicated on the Elevations Overlay. The window head is 170mm higher than the Shamrock Cottage window head. The internal sill is 1.73m above first floor level. Given the height of the window above floor level and the fact that the glazing is opaque it's difficult to see how the privacy of Shamrock Cottage might be impacted.

24. **Long middle slit window**

The Shamrock Cottage window is not visible from this window. The line of sight is obscured by the window reveals.


Robert Merry BE MBA MSCSI

SWORN by the said ROBERT MERRY

on 8th June 2018

at Riverside Drive, Sir John
Kegon's Quay
in the County of the City of Dublin before me a
Practising Solicitor

[and I personally know the Deponent]

~~[the Deponent has been identified to me by~~
David O'Keefe ~~whom I personally know]~~

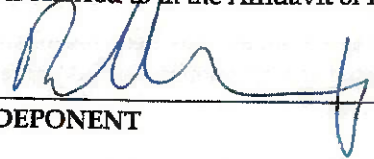
~~the identity of the Deponent has been established~~
~~to me by the Deponent by reference to his driver's~~
~~licence no. 270107657.~~

~~which contains a photograph of the Deponent~~

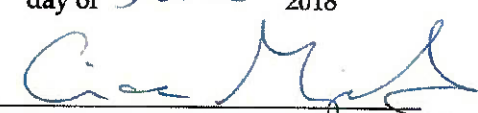

Practising Solicitor

EXHIBIT "RM1"

As referred to in the Affidavit of Robert Merry sworn ^{8th} day of June 2018

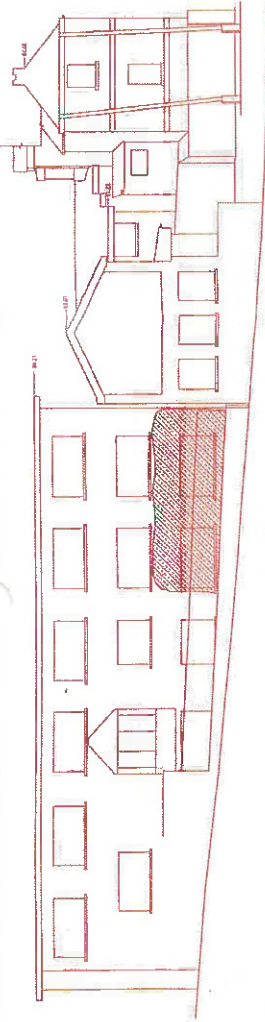


DEPONENT

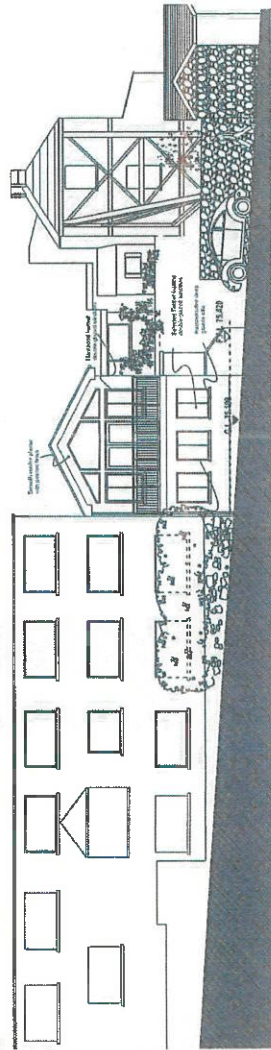


PRACTICING SOLICITOR/ ~~COMMISSIONER FOR OATHS~~

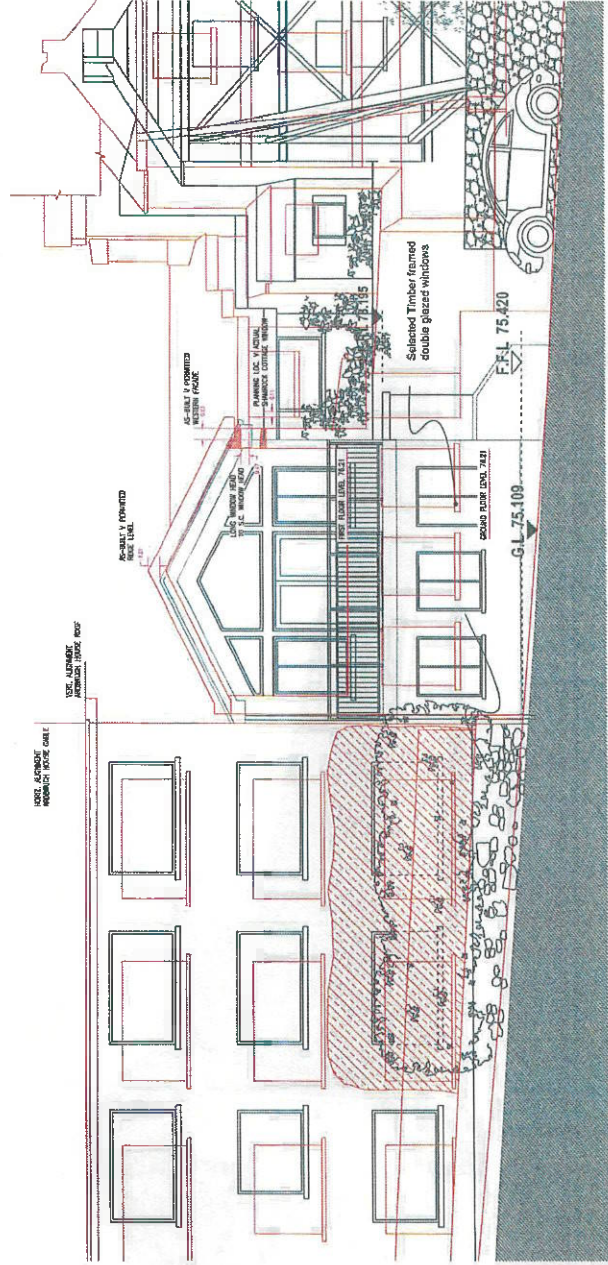
NOTES:
 2018 Survey levels are in metres above Mean Sea Level.
 Dimensions on Overlay are in metres.



STREET ELEVATION (2018 SURVEY) 1:100



STREET ELEVATION (PLANNING DRAWINGS) 1:100



OVERLAY (2018 SURVEY DATA RED) 1:50

Prepared by: Description
techsol
 technical solutions ltd.
 71 Beaufort Road
 Northcote, Auckland
 Phone: 09 308 1345
 Fax: 09 308 1347

PROJECT: Feeds Survey at
 Beaufort Road
 Co. Dublin

CURVE: Eir Vision Federal
 Dublin 2

Checked by	Drawn by	Created by
RM	JHS	JHS
Date	Scale	Sheet No.
19th May 2018	1:100 @ A1	1/1
Revision No.	Revision No.	Revision No.
1/1	1/1	1/1

sales@techsol.ie
 Drawing No. BULLO-BANKET-OVERLAYS



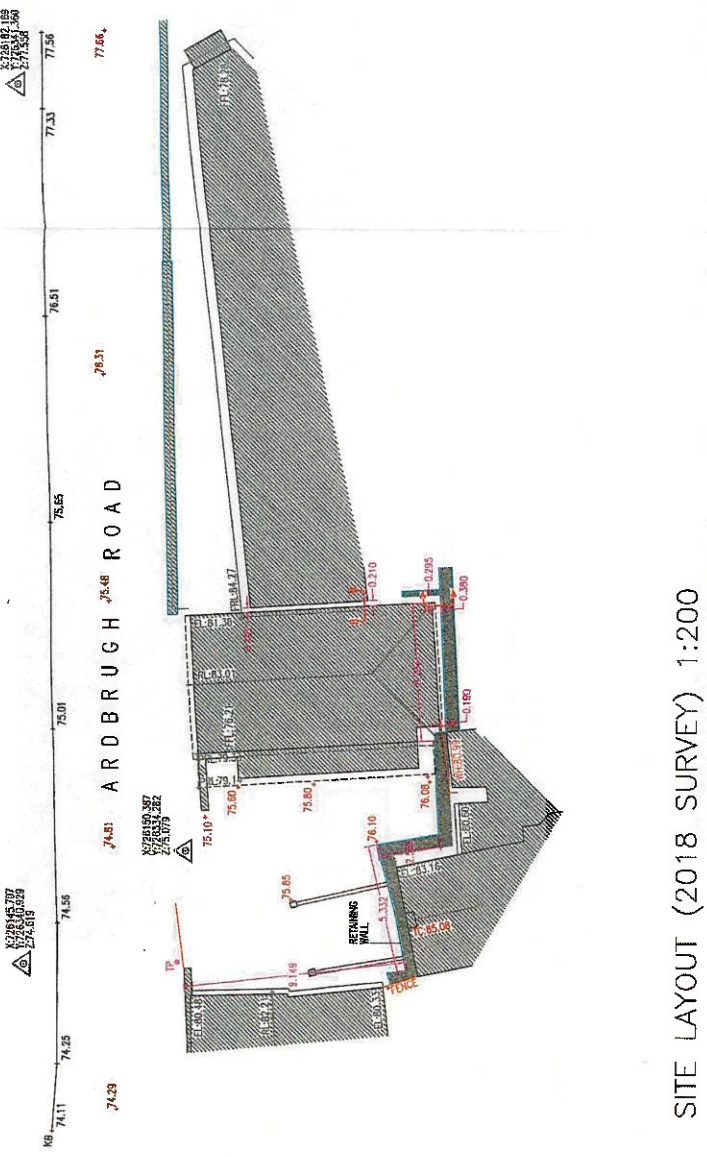
- NOTES:**
1. Survey Data is referenced to **TM Co-ordinates**.
 2. Levels indicated are in metres and referenced to **Ordnance Datum: Mean Head.**
 3. Dimensions indicated are in metres.

- LEGEND:**
- EL Eaves Level
 - FRL Finished Floor Level
 - KB Flat Roof Level
 - RE Kerb Bottom
 - RL Pitched Roof Level
 - RL Ridge Edge
 - TC Road Level
 - TP Top of Chimney
 - WH Telegraph Pole
 - WH Window Head Level

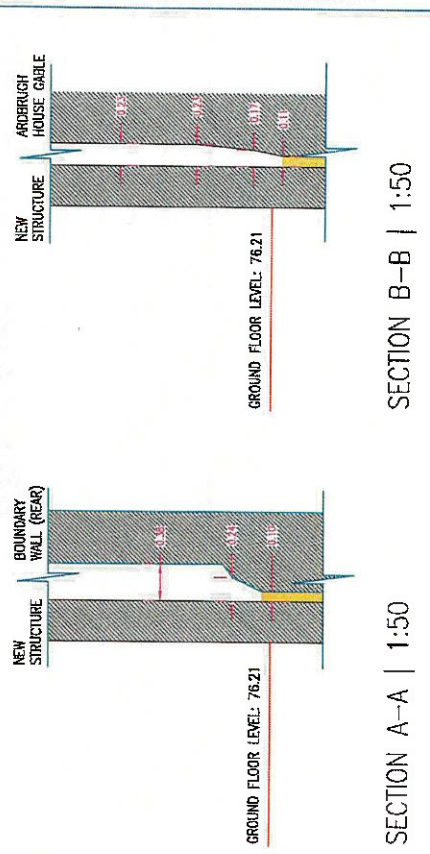
Technical Solutions Ltd. does not accept responsibility for third party additions to this drawing.

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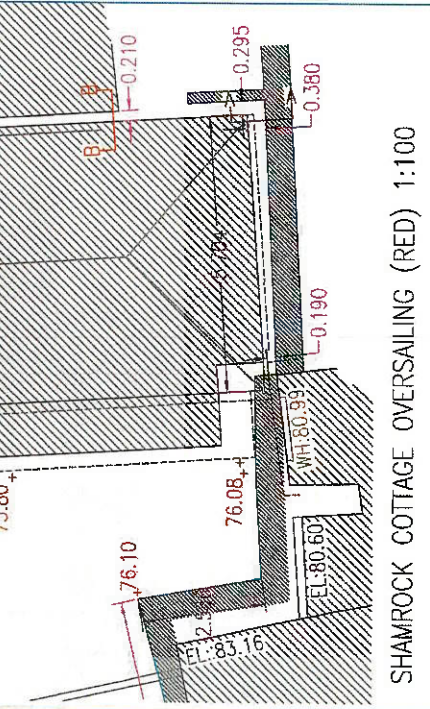
File ref.	Date	Scale
P:\DL7445	May 2018	1:200 @ A3
Drawing No.	Revision No.	Sheet No.
DL7445	Rev 2	1/1



SITE LAYOUT (2018 SURVEY) 1:200



SECTION A-A | 1:50 SECTION B-B | 1:50



SHAMROCK COTTAGE OVERSAILING (RED) 1:100

<p>techsol</p> <p>technical solutions ltd.</p>	<p>TECHSOL Technical Solutions Ltd.</p> <p>71 Reachfield Road</p> <p>Walkinstown</p> <p>Dublin 12</p> <p>Tel: 01 4242227</p>		<p>PROJECT: Boundary Survey at</p> <p>Arbrugh Road</p> <p>Dalkey</p> <p>Co. Dublin</p>		<p>CLIENT:</p> <p>C/o: McCann FitzGerald</p> <p>Riverside One</p> <p>Dublin 2</p>		<p>Surveyed by</p> <p>RM</p>	<p>Drawn by</p> <p>RM</p>	<p>Checked by</p> <p>RM</p>	<p>File ref.</p> <p>P:\DL7445</p>	<p>Date</p> <p>May 2018</p>	<p>Scale</p> <p>1:200 @ A3</p>
	<p>SECTION A-A 1:50</p>	<p>SECTION B-B 1:50</p>	<p>SHAMROCK COTTAGE OVERSAILING (RED) 1:100</p>		<p>sales@techsol.ie</p>			<p>Drawing No.</p> <p>DL7445</p>	<p>Revision No.</p> <p>Rev 2</p>	<p>Sheet No.</p> <p>1/1</p>		

Appendix 4

Drawing of Roof Lights by Rob Merry



NOTES:

1. Survey Data is referenced to ITM Coordinates.
2. Levels indicated are in metres and referenced to Ordnance Datum Mean Head.
3. Dimensions indicated are in metres.

LEGEND:

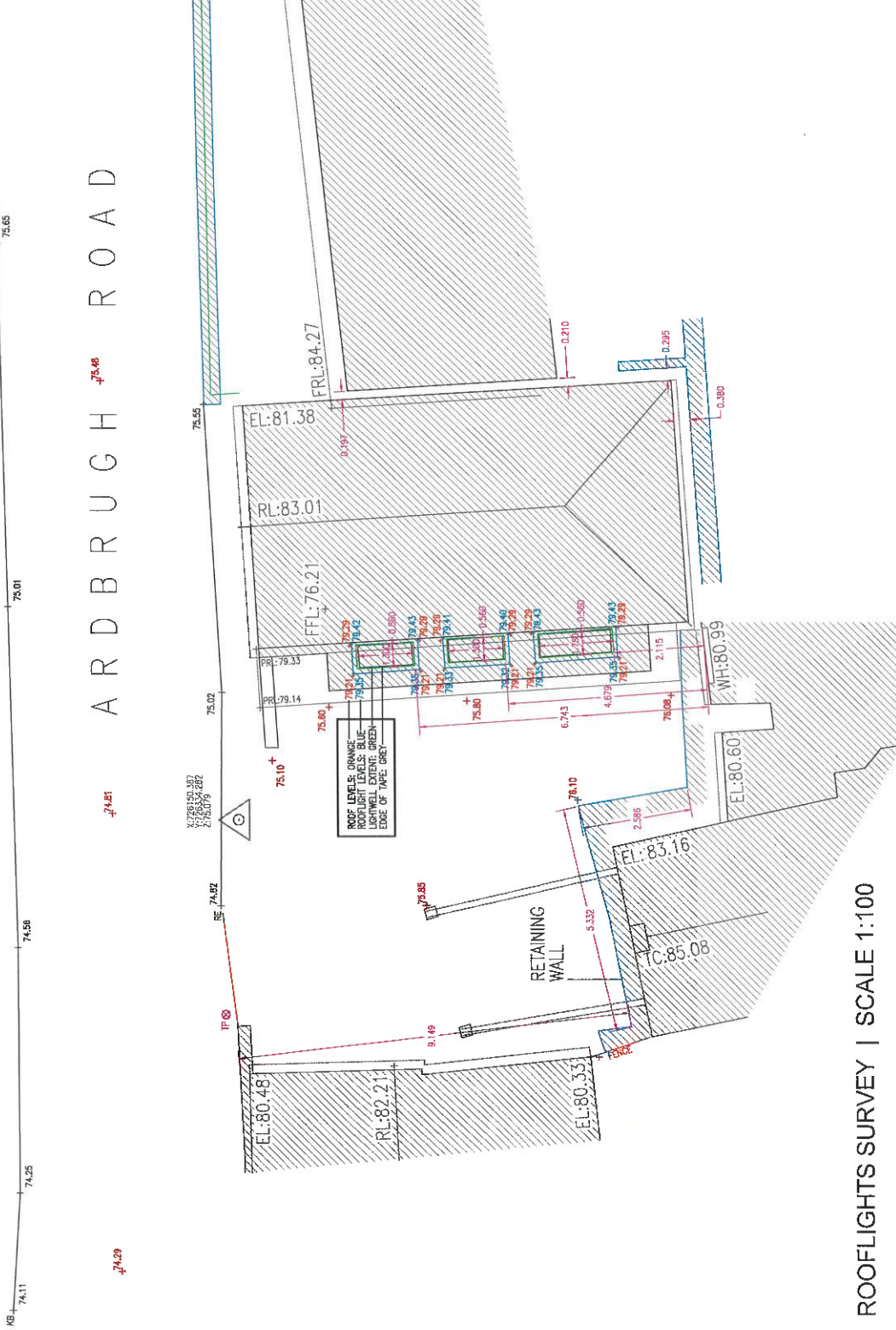
- EL: Eaves Level
- FFL: Finished Floor Level
- FRL: Flat Roof Level
- KB: Kerb Bottom
- PRL: Pitched Roof Level
- RE: Road Edge Level
- RL: Ridge Level
- TC: Top of Chimney
- TP: Telegraph Pole
- WH: Window Head Level

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77735740.828
Z: 74.619



ARDBURGH ROAD

ROOFLIGHTS SURVEY | SCALE 1:100



TECHSDL Technical Solutions Ltd.
71 Beechfield Road
Walkinstown
Dublin 12
Tel: 01 424 2227

PROJECT: Boundary Survey at
Ardburgh Road
Dalkey
Co. Dublin

CLIENT:
C/o: McCann Fitzgerald
Riverside One
Dublin 2

Surveyed by
RM
sales@techsol.ie

Checked by
RM

File ref. P:\DL\7445	Date Nov 2018	Scale 1:200 @ A3
Drawing No. DL7445	Revision No. CA	Sheet No. 1/1

Appendix 5

Supplemental Affidavit of Gavin Lawlor

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant



-and-

AND

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

SUPPLEMENTAL AFFIDAVIT OF GAVIN LAWLOR

I, Gavin Lawlor, Town Planning Consultant and Director of Tom Phillips and Associates having its registered office at 80 Harcourt Street, Dublin 2, aged 18 years and upwards, MAKE OATH and say as follows:-

1. This Affidavit is supplemental to my Affidavit of 18 June 2018 sworn herein and I make it for the purposes of replying to the Supplemental Affidavit of John O'Malley sworn on 10 July 2018 ("Mr O'Malley's Affidavit") and to certain averments contained in the Supplemental Affidavit of Alison Fegan sworn on 10 July 2018 ("Ms Fegan's Supplemental Affidavit") and that of Val O'Brien sworn on 9 July 2018 ("Mr O'Brien's Supplemental Affidavit"). I make this Affidavit from facts within my own knowledge save where otherwise appears and whereso otherwise appearing I believe same to be true and accurate.

Position of New Dwelling

2. Mr. O'Brien's Supplemental Affidavit was prepared subsequent to his site inspection of the New Dwelling conducted on 27 June 2018 in the presence of the Respondents' engineer, Mr. Merry. At paragraph 13 of his Supplemental Affidavit, Mr. O'Brien simply avers that the site inspection "*confirmed with the accuracy of the data previously recorded by me and relied upon in my first Affidavit*". However, at no point in his Supplemental Affidavit does he dispute the accuracy of Mr. Merry's measurements, or identify any specific measurement of Mr. Merry which, he says, is in error. Rather, at paragraph 9, he accepts "*that different reference points will yield a different result but it is extremely clear that the 'as built' property varies substantially to that originally proposed*".
3. In a similar vein, the Applicant's planner, Mr. O'Malley, in his Supplemental Affidavit, states that neither Mr. Merry nor Mr. O'Brien "*are wrong with regard to the measurements taken of the new build*" (paragraph 17). He likewise now seeks to rely on the more general point that "*it remains the case that the central point of the Applicant's case is entirely unanswered, the dwelling house is not built in the location as shown on the approved plans and particulars*" (paragraph 2). I say and believe that this statement is overly simplistic. Mr. O'Malley will undoubtedly be aware that few, if any, buildings are built millimetrically in accordance with the precise coordinates in planning drawings and that planning law and planning enforcement practice recognises this reality by tolerating immaterial deviations between planning drawings and "*as constructed*" developments.
4. Great emphasis is laid in all of the Supplemental Affidavits filed on behalf of the Applicant on the notion that, as summarised by Mr O Malley at paragraph 3, "*the approved house is 'beside and behind' the northeast corner of Shamrock Cottage whereas the 'as constructed' house is clearly 'over and in front' of Shamrock Cottage.*" At paragraph 4 of her Supplemental Affidavit, Ms Fegan states that "*the proposed development was to be positioned to one side and behind the corner building line of the North Eastern boundary of our home Shamrock Cottage.*" I wish to make a number of observations in respect of this argument.
5. First, this is incorrect in that it ignores the western side of the ground floor of the house. In this regard, I beg to refer to planning drawing PP-01 which was submitted with application D15A/0750 and is exhibited at "GL4" to my previous Affidavit. This drawing shows the development as permitted by Dún Laoghaire Rathdown County Council ("DLRCC"). I beg to refer in particular to the 'Front Elevation (North)', 'Ground Floor Plan' and 'First Floor Plan' drawings. While these show the first floor western wall to be in line with the northeastern corner of Shamrock Cottage, they equally show that the western end of the

ground floor is not in line and extends out in front of Shamrock Cottage. This area, which has, for ease of reference, been referred to in previous Affidavits as the 'ground floor extension' forms an integral part of the unitary, two-bedroom house, incorporating part of the bathroom and part of each of the two bedrooms.

6. Thus, it simply not correct to say, as Ms Fegan does at paragraph 3(a) of her Supplemental Affidavit, that "*the building on the planning application is drawn and represented as being to one side and tucked in behind our property, Shamrock Cottage*". It is also not the case, as she states in paragraph 3(b), that the planning permission did not authorise the building of the 'ground floor extension' area beneath the north-facing window of shamrock Cottage. When one looks, in particular, at the 'Front Elevation (North)' in PP-01, this shows the ground floor extension area extending out underneath the window of Shamrock Cottage. In this context, I note Mr. O'Malley's express acknowledgement, at paragraph 23 of his Supplemental Affidavit, that planning permission was granted "*upon the lodged plans and particulars*".
7. Thus, the planning permission permits the ground floor extension to extend out in front of but underneath the north-facing window of Shamrock Cottage. As a result of the issues previously described on the eastern boundary, the ground floor extension as built extends out up to a maximum of 430mm further underneath the window than as indicated in the planning application drawings PP-01. However, I say and believe that this is not material in planning terms, especially considering that the window of Shamrock Cottage was always going to be looking out over the roof of the permitted ground floor extension.
8. Turning to the first floor, the western wall of the New Dwelling is 230mm to the west of the position indicated in the plans and particulars and on the basis of Mr. Merry's survey, the western wall is 345mm closer to the eastern reveal of the Shamrock Cottage window than as indicated in the planning drawings. I again say and believe that this deviation, of just over one foot, is not material in planning terms.
9. As is clear from drawing PP-01, and, indeed the 3D visualisation on which the Applicant seeks to rely so heavily, the planning permission permitted a situation in which the western first floor wall of the New Dwelling would come quite close to the eastern side of the window of Shamrock Cottage. Thus, it was always going to be the case that the angular expanse of the view from the window of Shamrock Cottage would be reduced on one side (the right side when looking out from the window). The additional diminution in the angular expanse of the view because of the movement of the western wall by over one foot is minor and, in my opinion, is immaterial in planning terms.

10. I agree with Mr O'Malley that the planning file indicates a concern on the part of DLRCC, in the context of application D15/0750, that the north-facing window of Shamrock Cottage not be blocked. However, I say and believe that this objective is respected by the New Dwelling 'as constructed'. The first floor western wall is set back 220m from the eastern reveal of the Shamrock Cottage window and does not block the window. Shamrock Cottage will still have an unimpeded view of the sea, and while that view will be over the part of the flat roof of the ground floor extension and the first floor western wall of the New Dwelling will be to the right of the window when looking outwards, this was something that the planning permission expressly permitted and envisaged. In my opinion, the overall impression when looking out from the window of Shamrock Cottage will not be significantly different as a result of the deviation and I fundamentally disagree with Mr. O'Malley's assessment that the deviation "seriously injure[s] the amenity enjoyed at Shamrock Cottage" (paragraph 21 of his Supplemental Affidavit).
11. Moreover, I think it is worth emphasising that it is well-established in planning terms that no-one has a right to a view, or to blight the development of neighbouring lands in order to preserve a particular view. This is particularly so where, as here, the view concerned is through an unauthorised window, a point to which I return below.
12. In short, I believe that the Applicant—and Mr. O'Malley—seek to imply into the planning permission a protection for the extent of the view from Shamrock Cottage which is simply not to be found in the planning permission and which does not arise as a matter of planning law.

Previous refusal of permission D15A/0363

13. With reference to the averments of Mr. O'Malley at paragraphs 6 and 8 of his Supplemental Affidavit as to the differences between refused application D15A/0363 and the permitted application D15A/0750, and as to his interpretation as to why the former was refused, I reiterate the contents of paragraphs 11 to 15 of my previous Affidavit. Mr. O'Malley continues to ignore the fact that application D15A/0363 was for a 'stepped' ground floor extension on the western side of the proposed dwelling house, with an extension block of width of 1635mm at the northern end, on top of which there was to be a balcony. I say and believe that this was clearly a very significant factor in DLRCC's decision to refuse that application. Mr O'Malley's reliance on the planning authority's reasons for refusal of the earlier application is all the more surprising in circumstances given that he fails to address *at all* the fact that the planning authority has repeatedly expressed the view that the

development as constructed does not materially deviate from the permission actually granted.

High level horizontal window

14. I note that Mr. O'Malley regards the high level horizontal window as "*perhaps the most immediately obvious breach of the planning permission.*" The focus of the Applicant's complaint in this regard is the interrelationship between the high level horizontal window in the western first floor wall of the New Dwelling and the north-facing window of Shamrock Cottage. In this regard, I beg to refer to the Supplemental Affidavit of Robert Merry sworn herein when produced, which demonstrates that, insofar as concerns the height of the high level horizontal window vis-à-vis that of the window of Shamrock Cottage, the position is broadly in line with that indicated in the planning drawings. Thus, the alleged 'manifestly substantial deviation' alleged by Mr. O'Malley at paragraph 15 of his Supplemental Affidavit is not borne out by the planning drawings.
15. I note Mr. O'Malley's comment, at paragraph 25, that at the time of his site visit, the high level window was open allowing a view straight into the first floor of the New Dwelling. However, the frosting of the window by the Respondents will protect the privacy of both the Applicant and the Respondents respectively.

Roof lights

16. At paragraph 24 of his Supplemental Affidavit, Mr. O'Malley states that it is ironic that I contend that three roof plane windows are exempted development yet am of the view that the window of Shamrock Cottage is unauthorised. I return to the latter point below, but as regards the roof plane windows, I note that Mr. O'Malley does not in fact contradict my opinion that the installation of these three roof plane lights would constitute exempted development (and would not, therefore, require planning permission).
17. Rather, he simply states that "*our contention is very simple, that the Respondents' approved plans show no such roof lights at all and that the development as constructed is, therefore, not in accordance with Condition No. 1 of the grant, Reg. Ref. No. D15A/0750, which require that the development is carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application.*" Again, I am of the view that this is an overly simplistic approach. If it is the case, as I believe and Mr. O'Malley does not contradict, that the installation of three roof lights such as these would constitute exempted development, then this underlines that their effects are not considered material by the planning code. Moreover, in my opinion, it would be artificial to grant an Order requiring the removal of the roof lights at this point in

circumstances where the planning code would permit their reinstatement at a subsequent point in time. I understand that this is a matter that will ultimately be addressed further in legal argument.

18. With reference to paragraph 21 of Mr. O'Brien's Supplemental Affidavit, for the avoidance of doubt, I do not agree with his view that the roof lights are likely to be particularly intrusive in the evening or night time because of light pollution. Given the angle of the line of vision between the window of Shamrock Cottage and the roof lights and the built-up nature of the area as a whole, I do not consider that the emission of light from these roof lights can be considered material in planning terms, something which again is reflected in the fact that the installation of such roof lights is considered exempted development which would not require planning permission.

Fencing on roof of Shamrock Cottage

19. Ms Fegan, at paragraph 38 of her Supplemental Affidavit maintains that she is not using the roof as a roof garden. Ms Fegan confirms and evidences photographs of fencing on the roof. As a matter of planning law such fencing requires planning permission and does not constitute exempt development. It would appear from the planning file that no planning permission was obtained in relation to the erection of such fencing.

Planning status of north facing window of Shamrock Cottage

20. Finally, I wish to address the planning status of the north-facing window of Shamrock Cottage. I say and believe that this issue is very significant given the centrality of the Applicant's arguments about the amenity value of this window to his application for relief pursuant to section 160 of the Planning and Development Act, 2000, as amended, and the discretionary nature of the Court's jurisdiction under that provision.
21. The Applicant's planner, Mr. O'Malley, addresses this issue at paragraph 4 of his Affidavit. I note that he does not actually offer his expert opinion as to the planning status of this window. Rather, he simply states that "no weight" can be attached to my previous averment that the window may constitute unauthorised development "*because there has always been a window in this north facing elevation looking across the subject site at Ardbrough Road.*" He then states that it is his understanding that two pre-existing windows in this elevation were replaced by a single window when Shamrock Cottage was renovated in 2000 and begs to refer, for further detail, to the Supplemental Affidavit of Ms. Fegan.

22. In turn, Ms Fegan avers, at paragraph 34 of her Supplemental Affidavit that Shamrock Cottage has been in situ since the 1800s. However, the concern expressed in my previous affidavit related to the planning status of the window—in respect of which there exists a planning enforcement file which was not referred to in any of the affidavit evidence advanced by the Applicant—as opposed to the planning status of the cottage as a whole. Ms Fegan went on, at paragraph 36, to outline the nature or the renovations she and her husband carried out in 2000: “we simply replaced the two single glazed adjacent wooden windows with one double-glazed window; re-plastered; replaced the old roof; and completed some internal work such as tiling.” At “AF17”, she also exhibits a photograph which, she avers “shows a window overlooking the site behind and before we did any renovations. You can also see our neighbour’s house.” However, contrary to her averment, one cannot see any house or site through the window in the exhibited photograph and there is therefore nothing in the photograph to confirm that this is in the north facing elevation of Shamrock Cottage. Moreover, there is no sign of the second, “adjacent” window which is alleged to have been replaced.
23. Since the filing of my previous Affidavit, the Respondents’ solicitors have purchased from Ordnance Survey an aerial photograph taken in 1996. I beg to refer to a copy of the said photograph in its full original size, together with a 150% enlargement of the site the subject matter of these proceedings, upon which pinned together and marked with the letters and number “2GL01” I have signed my name prior to the swearing hereof.
24. I have examined this aerial photograph which shows the vacant site purchased by the Respondents, with The Arbrugh to the left, the north-facing elevation of Shamrock Cottage behind, with the gable of the now derelict cottage to the right of that. It is clear that there are no windows in the north-facing elevation of Shamrock Cottage. The opening of a window on this elevation, overlooking privately-owned property, would clearly require planning permission and I believe that planning permission would not, in fact, be granted for it. As previously averred, I have conducted a search on the planning file and confirm that there is no record of planning permission having been obtained for same. Thus, this photographic evidence confirms to me that the north-facing window of Shamrock Cottage is indeed unauthorised and it is difficult to reconcile this photograph with the averments made by Ms Fegan, including her averments in relation to the photographic exhibit “AF17”.

25. For the sake of completeness, I understand that the Respondents' solicitors are currently seeking to obtain a copy of the submission made by or on behalf of the Applicant and his wife in response to the planning enforcement warning letter issued to them on 30 July 2007, as referred to at paragraph 6 of my previous affidavit and exhibited at "GL02". I understand that DLRCC cannot release this submission for data protection reasons and that the Respondents' solicitors have sought a copy from the Applicant's solicitors.
26. The unauthorised status of the north-facing window is, I believe, very significant in circumstances where it appears that the development of the site purchased by the Respondents herein has been severely restricted by virtue of an act of unauthorised development. It is my professional opinion that an unauthorised development, even if immune from enforcement action because of effluxion of time, does not acquire the amenity rights which would arise in respect of an authorised development.
27. Mr. O'Malley's opinion in respect of the effects of the New Dwelling as constructed on the *amenity* of Shamrock Cottage takes no account of the fact that the north-facing window of Shamrock Cottage constitutes unauthorised development.

Conclusion

28. Finally, I reject the contention at the conclusion of Mr. O'Malley's Affidavit that I have imposed a level of complexity on this matter that does not exist. He states that, "*[i]n truth, the Respondents have simply built their house in a position where they did not have permission to build.*" However, this is not the end of the matter. Because of the variables at play during construction, developers are often required to make adjustments during the course of building works and, as averred above, planning law and practice makes allowance for this inevitable fact by tolerating immaterial deviations from the planning permission. It is therefore necessary to consider the situation that would have pertained had the permission been implemented to the correct millimetre and then to consider whether any deviations have materially altered the effects in planning terms. In the present case, the planning permission always permitted a development that would affect the visual amenity from the north-facing window of Shamrock Cottage, both by permitting the construction of the ground floor extension underneath and in front of the window and the construction of the first floor wall of the New Dwelling to the east of the window. I do not consider that the deviations that have occurred have materially increased these effects of the development on the Applicant,

and reiterate my view, shared by the planning authority, that the New Dwelling as constructed is in substantial compliance with the planning permission.



Gavin Lawlor

SWORN by the said GAVIN LAWLOR

and I personally know the Deponent

~~the Deponent has been identified to me
by _____ whom I personally
know~~

the identity of the Deponent has been established to me by the Deponent by reference to his ~~passport~~/driver's licence no. 000015JRS

which contains a photograph of the Deponent

before me a Practising Solicitor
~~/Commissioner For Oaths~~

on 20 September 2018

at 88 HARcourt Street

in the City of Dublin



Practising Solicitor / ~~Commissioner for~~
Oaths

JAMES PETERS

This affidavit is filed on behalf of the defendants by McCann FitzGerald Solicitors, Riverside One, Sir John Rogerson's Quay, Dublin 2.

Filed the _____ day of _____ 2018

THE HIGH COURT

Record No. 2018/122 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
AMENDED AND IN THE MATTER OF AN APPLICATION

BETWEEN

DARRAGH FEGAN

Applicant

-and-

MICHAEL MCDONAGH & NOREEN FARRAR

Respondents

EXHIBIT "2GL01"
SUPPLEMENTAL AFFIDAVIT OF GAVIN LAWLOR

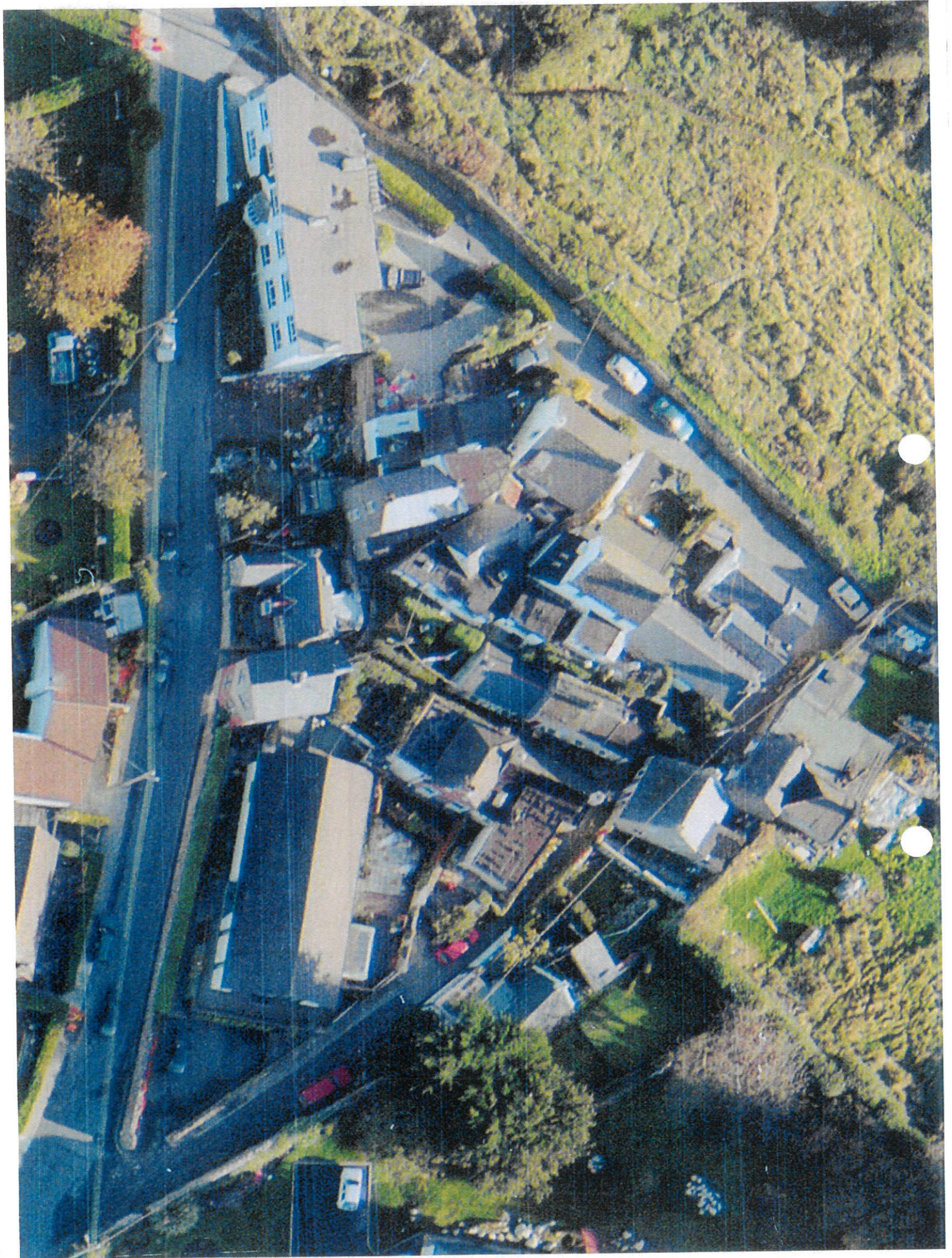
Exhibit "2GL01" as referred to in the Supplemental Affidavit of Gavin Lawlor sworn *20th* day of *September*
2018



DEPONENT



PRACTICING SOLICITOR/
COMMISSIONER FOR OATHS





OS 18/0781
FLOWN 10/11/96



0105
17

THE HIGH COURT

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IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000, AS
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BETWEEN

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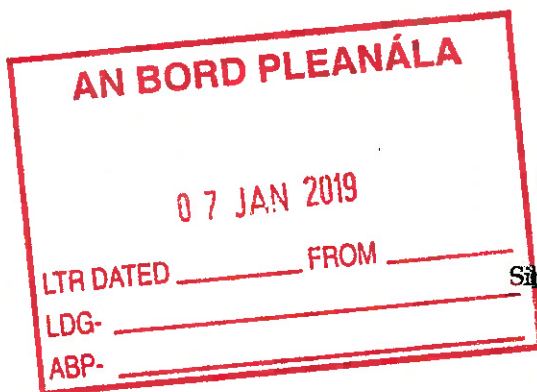
Applicant

-and-

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Respondents

SUPPLEMENTAL AFFIDAVIT OF GAVIN LAWLOR



McCann FitzGerald
Solicitors
Riverside One
Sir John Rogerson's Quay
Dublin 2

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