

26/11/2018

Local Authority Ref: 11618

To whom it Concerns,

I am writing to appeal a decision by Dun Laoghaire Rathdown to allow the exemption of three roof lights on a development that my home directly overlooks. Under a section 5, I made a submission explaining why these roof lights should not be ruled as exempt. The Local Authority in turn ruled against my submission. I appreciate how subjective the planning system can be in terms of section 5 applications with different planning experts holding opposing views on the same matter. In this case however I firmly believe consideration should have been given to the fact that my homes only Living room window, directly overlooks these roof lights and are in very close proximity which in turn brings problems the Local Authority have failed to deliberate upon in making their decision.

I appreciate that I am including a lot of information in this appeal. Over the years there have been several applications on this site. Indeed the Bord ruled on the development that was granted permission. I beg to refer to condition 2 of the grant of permission in D15A/0750 which stated

"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 (PL 06D.224147), 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"

A problem has arisen in that unfortunately the Bord's grant D07A/0507 / PL 06D.224147, was significantly deviated from along with the Local Authority's D15A/0750 grant. One of the many deviations from the grant include these three roof lights.

I can safely say the above, as in a recent High Court action I took against the developers for unauthorised development under Section 160, both the Legal team and Planning experts were dumbfounded at the lack of enforcement on this site with the number of deviations.. The information contained within this appeal are the reasons why I believe the roof lights should not be exempted development, and to make them exempt would only go towards rewarding developers who have wilfully and deliberately deviated from two grants of

permission, ignoring a planning refusal ruling and carrying out unauthorised works injuring an neighbouring home.

I am advised by John O'Malley who is a Chartered Town Planner. Mr O' Malley has 22 years' experience and is employed as a Director by Kieran O Malley and Company Ltd. Mr O' Malley is a member of Irish Planning Institute and Royal Town Planning Institute.

I am also advised by Val O'Brien, Managing Director of Val O'Brien & Associates, Mr O'Brien is a chartered surveyor, having qualified in 1989 and is the longest serving "Building Surveying" member of the Society of Chartered Surveyors Ireland and acts as a spokesperson for the Society.

Both gentlemen have produced signed sworn affidavits (Exhibit 1 & Exhibit 2) which I shall be referring to throughout this appeal. As part of their affidavits they have included Exhibits (Exhibits VOB 1-11) and (Exhibits JOM 1-5) to complement which they refer to in their affidavits and hence I have included them for the Bord's ease. While these affidavits are irrelevant in some parts to this Section 5, for transparency reasons, I want to include the documents in full. The information contained within the affidavits is most important as they provide clarity in a sworn capacity on the issues.

Local Authority's Arguments Contested:

1. The Local Authority use section 4(1) (h) as a reason for making these roof lights exempt. However the windows comprise a large proportion of the total area of the roof and replace a significant section of the roof, so they materially alter its external appearance. The Local Authority refer to the roof lights not being visible from the streetscape and so the roof lights that protrude from the flat roof do not alter the appearance of the existing dwelling. That may be so from the road, but from my Living Room window, I look directly onto this roof where the roof lights are located only 2 metres away. I beg to refer to Exhibit 3a, 3b and 3c.

The Local Authority in this section 5, while considering the impact of the roof lights from the streetscape did not consider my homes positioning that is directly above these roof lights. I say the Local Authority should have deliberated on my homes positioning which has remained in situ for approximately 180 years and taken it into consideration. There is no mention that they did. As the works are plainly visible from the window of my Living Room it renders the external appearance of the 'as built' roof inconsistent with the character of the overall roof and the house.

2. I say that Section (4) (1) (h) also sets out that the effect of the changes upon the character of the house and of other structures are all factors that are supposed to be considered. I do not believe the Local Authority did in this Section 5. The roof lights create openings in what was supposed to a solid roof

under the grant of permission in D15A/0750. This allows light to spill out and upwards thereby rendering the external appearance of the roof inconsistent with the character of the roof structure and indeed the house built.

The officer in the Local Authority in their Section 5 failed to appreciate that when the lights are on, a considerable amount of light protrudes from these roof lights, which have become very prominent with the onset of the darker evenings. The glare does not just come from the roof lights themselves but also projects up onto the walls of the development which is very visible from our only Living Room window. It is also very visible from within our Living Room regardless of where you are sitting or standing. I beg to refer to Exhibit 3a, 3b, 3c. (Please note that the light and glare visible in this picture is on a dimmer switch. When the full light is on the glare is more pronounced. The developers have been careful to avoid putting these lights on in full so providing photographic evidence showing just how significant the glare has so far not been possible).

I beg to refer to Exhibit 1, Paragraph 23 where Val O' Brien who has never seen the photo in Exhibit 3 pre-empted this problem in his affidavit. Another person who had the foresight was the Planning Inspector in the Local Authority who presided over D07A/0507 and stated *"In my view there should be no first floor windows except on the front elevation". The applicant has omitted all first-floor windows to the western elevation and as such, has addressed the concern raised*". The Planning Inspector in PL 06D.224147 from the Bord stated *"In addition first floor windows have been removed from the western elevation. This will provide greater protection to the privacy of adjoining properties to the south and west"* Something is badly amiss..... Three roof lights never part of any plan bring the entire number of windows to 6 visible from our Living room window when you include the 3 windows on the first floor. And yet the view of the Local Authority in their D07A/0507 was that it would be best if there were none.

3. Because the Local Authority did not investigate and deliberate on this section 5 adequately they have also failed to consider how my wife, children and I can look down from our Living room window directly into what is the master bedroom through one of the roof lights. Visibility into this roof light improves when dark and it is simply not acceptable to have my children being able to view into an adult's bedroom, day or night. I beg to Exhibit 4. I can safely say the officer in their section 5 deliberations and response did not take this into account as no officer would presumably find it acceptable to have such a situation. No request from the Local Authority was ever made to look at the roof and roof windows from within my Living Room.

4. These roof lights have been installed within a roof that significantly materially deviates from the grant of permission D15A/0750 and I am advised that the entire roof including the roof lights are unauthorised. Establishing the legitimacy of this roof is of paramount importance. A ground floor extension (enlarged ground floor) and flat roof in the grant of permission D15A/0750 was granted permission to come over 900mm from the building line of Shamrock Cottage. The developers deliberately built the development in the incorrect position on the site. This in part resulted in the ground floor extension and roof being moved over approximately 1870mm from the building line of Shamrock Cottage instead of just 900mm. The flat roof was also increased in length by a further 2000mm. To add insult to injury, the 3 large roof lights have been installed on this flat roof that were never part of any planning application and hence never received a grant of permission.

A smaller ground floor extension (enlarged ground floor) and flat roof was refused in D15A/0363. After this refusal the developers reduced the size of the extension in the D15A/0750 application in order to overturn this refusal. I beg to refer to Exhibit 5 detailing the D15A/0363 Inspectors report. The Inspector stated:

"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".

The enlarged ground floor and flat roof that has been built is now more obtrusive than the granted permission in D15A/0750 but it is also greater in size and more impactful to our home than the D15A/0363 refusal. The three roof lights as aforementioned were then installed on this roof. The Planning officer apart from being very clear and specific in refusing this in D15A/0363 was absolutely right – it has ended up seriously injuring our residential amenity.

After the D15A/0363 refusal, in a preplanning meeting, the Local Authority requested 3D images to be submitted in the new D15A/0750 application so that they could accurately assess the relationship between the enlarged ground / flat roof and my home. The 3D image the developers submitted as part of the D15A/0750 application. As a result of this 3D image the Local Authority were rightly of the opinion that it would not have an impact and hence the enlarged ground floor and flat roof was granted permission on the basis that this is what

the finished development would look like. As per exhibit 6, it looks nothing like this. The enlarged ground floor and roof was supposed to stop at the green line. My amenity from my window would not be impacted. As can be seen from this exhibit my window was not ever supposed to be impeded. The developers however did not build to the planning application they submitted and did not obey the grant of permission. They built completely over, all the way to the red line, covering my entire window. This was what the Planning Inspector in the D15A/0363 refusal was trying to avoid. The entire roof with roof lights are now under my Living Room window.

The Local Authority list 4 reasons as to what they consider as unauthorised development on their website. Yet they have allowed the developers for this flat roof alone to tick three of their four reasons with no consequence. I am advised that this roof is most certainly a material alteration from a planning application, where such deviation would have in itself required planning permission and where no permission has been granted for the alteration. It is also non-compliant with condition 1 attached to the D15A/0750 planning permission. Finally the roof does not meet the conditions and limitations set down to be considered exempt development under the Planning and Development Acts.

One of the key aspects to winning my High Court action and holding the offending developers to account in the absence of enforcement was the ground floor extension and flat roof. It was this deviation that my Senior Counsel Mr James Connolly was certain as to the outcome. He felt it would be difficult for the offending developers to explain how despite a planning refusal the ground floor extension and flat roof had been built further over than the grant of permission in D15A/0750 and what was built is larger, meaning it was more impactful than the said refusal. From his considerable planning experience, he was of the opinion that a judge would see a refusal as being very material and very significant contrary to the opinions of the enforcement inspector in the Local Authority, who failed to enforce this deviation despite the refusal by his own colleagues in the planning department.

I beg to refer to Exhibit 1 and Exhibit 2 where Mr O'Brien and Mr O'Malley in their sworn documents verify this deviation.

5. As aforementioned under section 160 I took action against the developers in the High Court. It was pencilled in for October 2nd 2018. The extent of the deviations meant it was due to be heard over four full days, a long and costly case. Six days before we were due to enter Court, the offending developers under the advice of their Legal team reached out to my Legal team asking to settle the case. Their Legal team and experts were fully aware the development as it stands is in gross violation of the grants of permission received in D07A/0507 / PL 06D.224147 and D15A/0750.

I beg to refer to Exhibit 7. This High Court Order as agreed to by the offending developers rule that these roof lights to be covered over amongst costs awarded to us and other structural changes. My wife and I only agreed to this settlement on these terms. However we now believe the developers may be attempting to have these roof lights made exempt through their relationship with the Local Authority. In light of the High Court Order and the absence of enforcement, it is clear my wife and I have been the only party willing to maintain the integrity of the planning system on this site. The developers were surreptitious, in that the affidavits of the developer's own experts and builders have admitted to being aware early on in the development stages that the development could not be built as per the grant and that the planning application was in fact completely wrong and misleading. What concerns me is that the Local Authority have consistently got the enforcement decisions wrong on this site as will be highlighted in this appeal.

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 or worse.

6. An Bord Pleanála's Condition No. 3 in (D07A/0507 / PL 06D.224147) excluded specific ordinarily exempted development being carried out without a prior grant of permission in the interest of residential amenities.
7. As the zoning of the site was to 'protect and approve amenity', the officer on this Section 5, should have at a minimum considered the positioning of my home, Shamrock Cottage, which directly looks down onto these roof lights just two metres away. Under the Planning Act Section 15 there is a general duty of planning authority to secure objectives of development plan which includes principles of the zoning on the site, light pollution and overlooking. The section 5 officer who ruled in this case is still obliged to follow the Planning Act.
8. As can be seen from Mr O'Malley's and Mr O'Brien's affidavits in Exhibit 1 and Exhibit 2, my home has now been dealt serious injury through obtrusiveness, overlooking, light pollution and destruction of amenity that has in turn caused mental distress and depreciated the value of our home. To try and resolve this, it will in time mean some works to minimise the obtrusive nature of the development that has been forced upon us by the offending developers not willing to abide by a grant of permission. While I have not engaged the services of an architect, I am sincerely concerned that these roof lights will prevent any attempt by me to fix what has been broken illegally by the developers. I beg to refer to Exhibits 8a and 8b. This is obtrusiveness at the extreme end of the scale. We will in time need to fix this disastrous enforcement department decision.

9. The Officer in their Section 5 response deliberated on the unauthorised aspect of the flat roof where the roof lights sit but decided to stop at the enforcement file ruling (ENF 13516). As the officer in their section 5 response has referred to it, I wish to bring to the attention to the Bord, how enforcements ruled most unsatisfactory on this site. It brings me no satisfaction to state that information retrieved under the freedom of Information act show internal emails from the enforcement inspector where the facts are few and the mendacities many. The enforcement inspector who presided over the site (ENF13516) was a Mr Martin Cassidy.

Without wishing to cause offence to Mr Cassidy it is difficult to understand his position on this matter. Had Mr Cassidy applied the most basic of planning principles, he still should have spotted many significant and material deviations from the grant of permissions.

I beg to refer to Exhibit 9. These are the deviations that Mr Cassidy overlooked despite my original and subsequent submissions to Mr Cassidy's department detailing such deviations requesting for enforcement's assistance.

- o Mr Cassidy failed to observe from the D15A/0750 that the development was to be adjoined to another dwelling on this sensitive site. The development today as it stands is detached. One would have to consider an adjoined dwelling ending up as detached that seriously injures a neighbouring home as very substantial, material and serious breach of planning conditions. I beg to refer to Exhibit 10.
- o Mr Cassidy failed to observe the D15A/0353 planning application that was refused by his own Local Authority Planning department. *"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".* By not enforcing Mr Cassidy is endorsing not just unauthorised development but also encouraging developers to build in defiance of a planning refusal. Again a very significant oversight undermining his own planning departments Planning Officers and the planning system as a whole.
- o 2 windows not shown in any planning application exist today in the development. Another window that was supposed to be a 'high level' window, ended up 500mm lower directly looking into our Living room less than a metre away. A very distressing situation. There would be less overlooking in a Ghetto with not planning system in place. I beg to refer to Exhibit 11a and 11b.
- o Mr Cassidy failed to enforce the developers to comply with condition 3 in D15A/0750. This stated that the glazing within the west facing first

floor living area window had to be opaque or frosted and that even the application of film was not acceptable. Today the window is a clear window with no such frosted glazing. Yet again Mr Cassidy failed to enforce another condition.

- o The development was granted permission for it to be tucked behind our home and to the east of our building line. It was built instead in front and overlaps our building line. I beg to refer to Exhibit 12. Not one of the four corners of this development are where they should be. This has made the development incredibly obtrusive and has destroyed our homes amenity in a site zoned to protect and improve amenity. A significant breach of the development plan. Seven times planning inspectors stated it was or should be in line with our homes building line. Again ignored by Mr Cassidy to the benefit of the developers.

I am advised a major objective of the revision of the planning code that culminated in the 2000 Planning Act was to ensure increased compliance with planning law, in response to complaints about failures in the planning enforcement system from both individuals and I suspect the Bord. This is one of those cases. A catastrophic failure by enforcement. As the Bord only knows too well any development that requires permission and does not have that permission is unauthorised development, as is a development which is proceeding in breach of conditions laid down in the planning permission. The list of flouting the conditions of the grant of permission by the offending developers on this site is as compelling as it is long, making it more inexplicable why no enforcement was forthcoming by Mr Cassidy

- I. Ignoring a planning refusal in D15A/0363
- II. Breach of Condition 1 of D15A/0750
- III. Breach of Condition 2 of D15A/0750
- IV. Breach of Condition 3 of D15A/0750
- V. Breach of Condition 10, (Note 2) of D15A/0750
- VI. Breach of Condition 10, (Note 3) of D15A/0750
- VII. Breach of Condition 1 of D07A/0507
- VIII. Breach of Condition 12 Note A in DLRCC D07A/0507
- IX. Breach of Condition 12 Note B in DLRCC D07A/0507
- X. Breach of Condition 5 Bord Pleanala PL 06D.224147 D07A/0507
- XI. Breach of Condition 5 Bord Pleanala PL 06D.224147
- XII. Ignoring Section 34 (13) of the Planning and Development Act 2000, as amended
- XIII. Breach of Condition 4 Bord Pleanala PL 06D.224147 D07A/0507

The enforcement inspector is governed by Section 153 (3) of the planning act and he failed to adhere to this section of the planning act. Mr Cassidy was duty bound by law to take into consideration all material submissions relating to this

site. Had he applied this during his investigation he would have seen all of the above aforementioned deviations and breaches of conditions. It is difficult to understand just what material aspects Mr Cassidy considered and did even take into account the planning applications and subsequent grants of permission?

I am advised that through legal precedence, that the Courts put a lot of weight on Local Authority's and Planning Officials. Mr Cassidy would have been afforded such stature in a Court Room. All of Mr Cassidy's opinions can be read in Exhibits 13. I beg to refer to Exhibit 13d. When Mr Cassidy stated

"I consider this to be minor in nature, not material to an extent that would necessitate the benefit of a new planning permission and as such not warranting enforcement action"

These words should be considered as being exceptionally important in favour of the developers defence and their legal team's argument. A judge would be very hesitant to rule against such advice from a Local Authority on such matters.

I beg to refer to Exhibit 13e. Equally impressive was Mr Cassidy's opinion that there was no impact to my home when he stated

"I consider that the current building position and size inclusive of permitted west facing elevation windows and west side ground floor roof construction / design would not give rise to overlooking of adjoining properties, would not result in injury or loss to residential amenity of adjoining properties and is not visual obtrusive".

The offending developer's legal firm were McCann Fitzgerald, widely considered in legal circles to be one of the most exclusive law firms in Ireland. The developers had access to some of the greatest legal minds in the country in their Senior Barrister, Junior Barrister and Solicitors to name just a few of the legal resources they had at their disposal. They also had access to Engineers and Town Planners whose own reputation also put them at the top of their profession. It was hence not surprising the developers were most bullish and their legal team continually reminded me that Mr Cassidy had on several occasions stated the development was entirely acceptable and that the deviations were minor and our house was most certainly not injured.

As aforementioned, **the developers lost.**

It is clear that McCann Fitzgerald's and the multiple experts did not have confidence in Mr Cassidy's assertions that this development was not unauthorised and did not impact my home. Otherwise they most certainly would have run the case. Advising their clients to settle and pay more than three hundred thousand Euro including costs to us was out of desperation to resolve this case. From this one must also conclude that Mr Cassidy stands alone in his 'expert' opinion, now that the developers and their experts threw in the towel.

An example of just how inept the enforcement was on this site is that after Mr Cassidy closed the enforcement file, I contacted my solicitor who in turn sent a letter on the 20th of April 2017 to the enforcement department. It took just one letter from my solicitor for the truth to finally start seeping out from the enforcement department but kept from the public domain. I beg to refer to Exhibit 13d. In this internal email we retrieved under a Freedom of information request Mr Cassidy's stated:

"It is physically impossible to construct this house in the exact position as indicated on drawings submitted with the Planning application due to the existence of the site boundary wall on the southern boundary, the existence of the roof overhang to Shamrock Cottage and The Ardrugh dwelling house on the eastern side"

It had only taken 10 months for Mr Cassidy to concede that he was wrong. For many years the Bord and Local Authority's planning inspectors had invested a lot of time trying to avoid what Mr Cassidy had wilfully endorsed. He had allowed the developers to build unhindered and out of control. It is ludicrous for an enforcement inspector to say *"It is physically impossible to construct this house in the exact position as indicated on drawings submitted with the Planning application"*. What is the purpose of planning applications if they cannot be understood by the public and equally do not have to be followed by the developers? What is the point of Planning Inspectors if enforcement do not ensure developments are built in accordance with the Inspectors permissions?

After 10 months and the development was built without being controlled largely thanks to Mr Cassidy, realising my wife and I were not going to allow this to go unchallenged he decided to state that all these deviations and breaches of conditions were minor and not material....One does not have to be of a cynical nature to understand why he chose to take this course of action. Mr Cassidy personally allowing an unauthorised development be built in defiance of a refusal and injuring a neighbouring property was problematic for Mr Cassidy and indeed the Local Authority. Had Mr Cassidy done the right thing at the beginning and requested the developers to submit a new application it could have avoided all these problems. Instead attempting to have everyone believe the deviations were not material was a far more favourable position for Mr Cassidy to take or so he thought.

Hence, clearly the Local Authority Officer in this Section 5 exemption ruling has put far too much weight on the fact the enforcement file was closed by Mr Cassidy who had a very real motive in closing the file. It has been adequately proven this file should never have been closed and the development should have been enforced. I therefore respectfully ask the Bord, just as the developers own legal experts and planning experts have done, not to put any weight on the Local Authority's enforcement closing the file.

After much deliberation I believe Mr Cassidy reasoning was one of two things. 'Deliberate unknowing', in that he was fully aware something was wrong but chose to ignore it for reason only he can explain or else it was 'crass self-delusion' where Mr Cassidy started off on a sound ideological premise in that he believed his opinions to be true even though they have been proven beyond doubt to be incorrect, and then he drew what he thought were apparently reasonable conclusions from his misguided opinions. These two explanations for Mr Cassidy's poor performance on this site are considerably lenient and generous as the only other reason is one I would rather not contemplate or speculate upon and I would rather give Mr Cassidy the benefit of the doubt.

Planning Comment on Planning History

The Local Authority's Section 5 officer in their response mentions a planning application (D13A/0031). This planning application is for a completely different site, a completely different dwelling and a completely different owner. It has absolutely nothing to do with the site in question and should not have been deliberated on by the Local Authority in making its decision on this section 5 as it bears no relevance.

Much of the planning history on this site is not mentioned in the Local Authority's Section 5 response. All of the planning reports for this site of which there were 10 in total reveal a rich history and comprehensively details the Planning Inspectors opinions and considerations from both the Local Authority and Bord Pleanala. The Planning Inspectors put a lot of weight on the positioning of my home Shamrock Cottage in determining the position and scale of the development.

The Bord's Planning Inspector in PL06D.206288 understood the difficulties associated with this site stating "*The site is a difficult site to develop, due to its restricted size and proximity to other dwellings...*". It was also deemed by the Local Authority in D04A/1189 as a "*sensitive infill site*". Hence the Planning Bodies put significant effort on this site in ensuring a balance between what was acceptable and what was over development. The Planning Inspectors fully understood the sensitivity of the site and made an effort to protect our 180 year old cottage.

In the end, the many hours of work by your Planning Inspectors went to waste as the developers disregarded and the grant of permission in PL06D.224147 along with D15A/0750. Despite their best efforts to get this right, all it took was one Local Authority enforcement inspector not complying with Section 153 (3) of the Planning Act to unravel the planning system and encouraging a developer to deviate without fear of consequence.

In fact the Planning Bodies mentioned on no less than **seven** occasions that the development should not or did not cross the building line of my home. The planning applications going back several years also had the development not crossing the building line. The development needless to say was built beyond the building line, endorsed by the planning inspector. I strongly hope that the Planning Inspectors who ruled on this site within Bord Pleanala would

be surprised at what has occurred and been allowed to occur on this site contrary to their opinions in these reports. It is disrespectful to the many hours invested in this site by all parties, not least the Bord. I beg to refer to Exhibit 14 that details just some of the concerns raised by Planning Inspectors on this site. Much if all ignored by the developer.

Conclusion

Initially my wife and I had the utmost faith in the Local Authority enforcement department to rule on this site. My wife and I are now of the opinion the Local Authority have continually unfairly ruled against us in every aspect on this site from the onset of enforcements involvement. As our High Court Action suggests we are not willing to be victims of clear wrongdoings and failings within the Local Authority. As outlined above, the Local Authority have not just failed us but also the community, their planning colleagues and the planning system. This section 5 ruling by the Authority is yet another decision made with zero consideration to the impact to my family looking directly above this unauthorised roof with the roof lights.

It is significant and noteworthy that a certain number of documents have been censored and withheld by the Local Authority from a FOI request I made. The documents that were not released were all at a time of high sensitivity in relation to Mr Cassidy's ability to perform his duties to the standards one would expect from this office. It took an investigation by the Office of the Information Commissioner to force the Local Authority to release a document. I have yet to receive it from the Local Authority.

Senior Barristers, Town Planners and Engineers all see how materially this development deviates from the grant of permission. Even a DLRC Local Councillor familiar was surprised at the enforcement departments decision and stated to me after unsuccessful efforts to have the department review the case without prejudice *"that the enforcement department were circling the wagons just like the HSE"*, I took this as they were wrongly protecting the department and Mr Cassidy rather than act in the greater good of the public and planning system. They have been intent on railroading my wife and I at every turn to avoid stating the obvious which is that Mr Cassidy should have acted in a timely manner and a new application be submitted in a timely manner.

Having to risk my family's financial security to fight this through the High Court has been exceptionally stressful both physically and mentally. Unfortunately it took just one individual who was the weak cog in an otherwise robust system to allow developers work around the planning system. I sincerely hope that in the future this weakness will be addressed and members of the public will not have to go through the Courts when enforcement inspectors cannot competently execute their role within the planning system effectively. The Local Authority and enforcement department had too much of a vested interest in supporting the developer rather than admitting and saying they were wrong, just as the developers and their experts eventually did conceding the High Court Order.

To rule that roof lights can be exempt on a roof that is unauthorised I would see as being somewhat illogical. Mr O'Malley and Mr O'Brien in their affidavits (Exhibit 1 & Exhibit 2) discuss

in detail why this flat roof over the ground floor should not be located where it is. Indeed I to have done so in paragraph 4.

I do not believe rewarding the offending developers by making these roof lights exempt is appropriate. It would mean ignoring the fact that a *“physically impossible to construct”* structure has in fact been built through material deviations both wilfully and deliberately by developers who believe the planning system does not apply to them. Allowing these roof lights on a roof that is *“visually obtrusive from this window (my Living room window) and will seriously detract from the residential amenity of this dwelling”* (my home) should not be tolerated. These roof lights will allow our children to view into a master bedroom just 2 metres away and will light pollution into our Living Room. These very developers stated to a neighbour in the early stages of development that *“they could do what the like”* and up until we brought them to the High Court, they were doing exactly that.

I do believe it is finally time to bring the offending developers back into the planning system without favour, prejudice or impartially and rule that those who flout the planning laws will not be tolerated, specifically when they have caused injury and depreciation to a neighbouring home. I beg to refer to their planning application in Exhibit 15 where no roof lights can be seen anywhere in planning application and how we were misled in terms of the relationship of the development from the planning application. It is very different in reality.

If it helps to see first-hand the impacts and injury caused, I extend an invite to visit our home from the inside. Should further information be require please do not hesitate to contact me.

Kind Regards



Darragh Fegan

0864624345

Planning Department
Rannóg Pleanála
Registry Section
Sharon O'Neill
Asst. Staff Officer
Direct Tel: 01 2054863

AN BORD PLEANÁLA
LDG- 010368-18.
ABP- _____
29 NOV 2018
Fee: € 220 Type: CMQ
Time: _____ By: POST

Reference No: Ref11618
Application Type: Declaration on Development and Exempted Development Act
– Section 5, Planning & Development Act (as amended)
Registration Date: 16-Oct-2018
Decision Date: 12-Nov-2018
Location: Site adjacent to, 24, Ardbrough Road, Dalkey, Co. Dublin
Development Works: Roof lights at Site adjacent to, 24, Ardbrough Road,
Dalkey, Co. Dublin

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act, 2000 (as amended), Dún Laoghaire-Rathdown County Council has, by Order REF140/18 Dated 12-Nov-2018 decided to issue a Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), to, Darragh and Alison Fegan Shamrock Cottage, Ardbrough Road, Dalkey Hill, Dalkey, Co Dublin that:

The works to the site adjacent to 24 Ardbrough Road, Dalkey, Co. Dublin, namely the three roof lights on the flat roof are considered to be development and are considered to be exempt development under the provisions and limitations of the Section 3 (1) of the Planning and Development Act 2000, as amended; and Section 4 (1) (h) of the Planning & Development Act, 2000, as amended.

Dated: 12th November 2018 Signed: Sharon O'Neill
For Senior Executive Officer.

NOTE: Where a Declaration is issued under Section 5, any Person issued with such a Declaration, may, on payment to An Bord Pleanála, 64, Marlborough Street, Dublin 1, of a fee of €220, refer the Declaration for review, **within 4 weeks** of the date of issue of the Declaration.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

Section 5 – Planning and Development Act 2000 (as amended)

Reference No.: Ref11618

Date Received: 16-Oct-2018

Name & Address:

Ardbrough Road, Dalkey Hill

Mr Alison Fegan SH
Dublin

Page:

Applicant:

Shamrock Cottage, Ardbrough

Alison Fegan DA
12 Hill, Dalkey Co

Alison Fegan

App. Type: Section 5

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

Development Works: Roof lights at Site adjacent to, 24, Ardbrough Road, Dalkey, Co. Dublin

Report

(Emma Nevin)

Development Plan Zoning

In the Dún Laoghaire-Rathdown County Development Plan 2016 - 2022, the site is zoned 'A' with a stated objective 'To protect and / or improve residential amenity'.

Planning History

D15A/0750: Planning permission was granted for alterations to previously approved plans for a two-storey dwelling at a site (Reg. Ref. D07A/0507). The alterations comprised an enlarged ground floor plan by extending to the west by 0.9 metres, altered entrance porch, revised elevations, a first floor balcony on the northern elevation and internal alterations.

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

The reason for refusal stated:

"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

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

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".

D13A/0031: Planning permission was granted for a first floor extension with a north side (front) balcony and internal alterations at ground floor level.

D07A/0507: Planning permission was granted by the Planning Authority and on appeal to An Bord Pleanála (Ref. PL06D.224147) for a two storey dwelling and associated works and car-parking. This permission was extended under Reg. Ref. D07A/0507/E until January 2018.

Enforcement History:

ENF 13516: 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. This enforcement file is closed.

Proposal

The proposed works have been detailed as follows:

- Three roof lights on (unauthorised) flat roof.

Planning Comment

The Council is requested to determine, in accordance with Section 5 of the Planning and Development Act 2000, as amended whether or not the proposed works constitute development or not, and if so, is it exempted development or not.

The dwelling subject to the Section 5 application is located on a site adjacent to 24 Ardbrough Road and was permitted under Reg. Ref. D15A/0750 and Reg. Ref. D07A/0507 (PL06D.224147).

The Section 5 has been submitted by an adjoining landowner, namely 'Shamrock Lodge', Ardbrough Road.

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

'In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'.

As per the above the works as described constitute development as per Section 3 (1) of the Planning and Development Act, 2000, as amended.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

It is noted that the works relate to three roof lights that have been inserted into the flat roof of the side ground floor element of the dwelling. The roof lights are linear in form and are located in close proximity to the end wall of the dwelling.

Regard is, therefore, had to Section 4 (1)(h) of the Planning & Development Act, 2000, as amended, which states that the following shall be exempted development for the purposes of the Act:

"Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures".

With respect to the position of the roof lights i.e. at ground floor roof level to the side of a ground floor side return of the dwelling it is noted that the roof lights are not clearly visible from the streetscape. There is also a mix of house types along Ardbrough Road, which directly adjoin this site.

It is considered, therefore, that the aforementioned works will not alter the appearance of the existing dwelling or render it inconsistent with the neighbouring dwellings and could, therefore, be considered exempt development under Section 4 (1)(h) of the Planning & Development Act, 2000, as amended.

It is noted that the details of the proposed works, as described by the Applicant in the submitted Section 5 application form, have indicated that the flat roof, to which the roof lights relate, is unauthorised. Regard, however, is had to the Enforcement file (ENF 13516), which relates to this site. The Planning Authority concluded (under ENF 13516 – which is closed) that the development constructed on site was acceptable and was not materially different to the permitted development (under Reg. Ref. D15A/0750) so as to warrant a new planning application with respect to same.

Conclusion:

Having regard to the above it is, therefore, considered that the works to the existing dwelling (on a site adjacent to 24 Ardbrough Road) are considered to be development and is considered to be considered exempted development in accordance with the Planning and Development Act 2000, as amended.

RECOMMENDATION:

I recommend that Dún Laoghaire-Rathdown County Council advise the Applicant that the works to the site adjacent to 24 Ardbrough Road, Dalkey, Co. Dublin, namely the three roof lights on the flat roof are considered to be development and are considered to be exempt development under the provisions and limitations of the Section 3 (1) of the Planning and Development Act 2000, as amended; and Section 4 (1) (h) of the Planning & Development Act, 2000, as amended.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS


Administrative Officer.



Executive Planner.

ORDER

The issuing of a Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), to Darragh and Alison Fegan, Shamrock Cottage, Ardbrough Road, Dalkey Hill, Dalkey, Co Dublin, that:

The works to the site adjacent to 24 Ardbrough Road, Dalkey, Co. Dublin, namely the three roof lights on the flat roof are considered to be development and are considered to be exempt development under the provisions and limitations of the Section 3 (1) of the Planning and Development Act 2000, as amended; and Section 4 (1) (h) of the Planning & Development Act, 2000, as amended, is hereby approved.

Signed:


Approved Officer

Date: 12/11/18

Thereunto empowered by order of Príomhfheidhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 2182, dated 23/10/18, delegating to me all her powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.

THE STATE OF TEXAS, COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared _____

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

Notary Public in and for the State of Texas

My Comm. Expires _____

Witness my hand and seal of office this _____ day of _____, 20____.

Notary Public in and for the State of Texas

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public in and for the State of Texas

My Comm. Expires _____

Notary Public in and for the State of Texas

Exhibit 1

THE HIGH COURT

Record No. 2018 /

**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 AND NOREEN FARRAR

Respondents

AFFIDAVIT OF VAL O'BRIEN

I, VAL O'BRIEN, Chartered Building Surveyor, of Unit G2, The Steelworks, Foley Street, Dublin 1, aged eighteen years and upwards MAKE OATH and say as follows:-

1. I am the managing director of Val O'Brien & Associates, chartered building surveyors, of Foley Street, Dublin 1. I am a chartered surveyor, having qualified in 1987. I am the longest serving "Building Surveying" member of the Society of Chartered Surveyors Ireland and I act as a spokesperson for the Society. I established the practice of Val O'Brien & Associate in 1997 and I lead a team of chartered building surveyors with expertise in all area of building surveying. We are one of the largest building surveying practices in Ireland and we provide commercial and residential surveying services nationwide.

2. I beg to refer to the proceedings herein when produced. I make this affidavit for and on behalf and with the approval of the Applicants 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.
3. I say that I and members of my team carried out three inspections of the site at issue in these proceedings, adjacent to 24 Ardburgh Road, Dalkey, County Dublin, upon which I am instructed that the Respondents herein have constructed a dwelling house (hereinafter referred to as "**the new dwelling house**"). We also conducted a survey of the Applicant's home, Shamrock Cottage, which is adjacent to the new dwelling house to the south. Finally, we further considered the exterior structure of a derelict dwelling to the south of both the new dwelling house and immediately adjacent to Shamrock Cottage. We carried out these surveys on 29 May and 8 August 2017, and two of my team members (Michal Bernaki and Brian Monaghan) carried out a third inspection on 3 January 2018 to verify certain measurements already taken.
4. The purpose of our inspections was to take measurements of the dimensions of the new dwelling house, and to identify the precise location on which is built, and to consider same in the context of the extant planning permission pursuant to which it was purportedly constructed (DLRCC reference D015A/0750, as already exhibited at DF16 to the Grounding Affidavit of Darragh Fegan, and I beg to refer to same when produced. The purpose of our inspections was to take measurements of the dimensions of the new dwelling house, and to identify the precise location on which is built, and to consider same in the context of the extant planning permission pursuant to which it was purportedly constructed (DLRCC reference D015A/0750).
5. Following our first survey, I reported to my client, the Applicant herein, that in my opinion the new dwelling house was not constructed as per the grant of planning permission D015A/0750 and there were aspects of the construction that were not permitted by the said permission.

6. We then conducted a second survey of the locations described above, where I repeated and verified the detailed survey measurements of the new dwelling house, its dimensions and its position relative to the existing buildings including Shamrock Cottage.
7. Thereafter, my client instructed a consultant town planner, Mr. John O'Malley, of Kieran O'Malley & Co., Town Planning Consultants, Blackrock, County Dublin. Following his own independent inspection and analysis, I then liaised with Mr. O'Malley wherein we discussed our respective findings and compared them with the documentation submitted with the planning application pursuant to which the new dwelling house was purportedly constructed (D015A/0750). In this respect, I beg to refer to the Affidavit of John O'Malley when produced.
8. Mr. O'Malley and I conducted a comprehensive joint review following our independent surveys. We worked together on a set of detailed drawings based on the survey measurements and the documentation submitted with the planning application pursuant to which the new dwelling house was built. These drawings plot the actual location of the relevant properties, versus the planned / proposed location of the new dwelling house. I beg to refer to a true copy of 11 drawings dated 1 February 2018 upon which pinned together and marked with the letters and numeral "VOB1" I have signed my name prior to the swearing hereof.
9. 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 and numeral "VOB2" I have signed my name prior to the swearing hereof.
10. Accordingly, my affidavit herein should be considered together with that of Mr. O'Malley, as we each refer to the same diagrams which we considered and prepared together. Insofar as any findings are made and opinions expressed as and between us respectively, where I do not deal with any specific issue in this affidavit, then Mr. O'Malley has dealt with same in his affidavit. In that respect, I say that I have read Mr. O'Malley's affidavit and that I fully agree with and adopt the contents therein.

11. In making this affidavit I summarise my key findings from my surveys, which are set out below under three headings in ease of the court:

- a) New dwelling house
- b) The old derelict property
- c) Impact on Shamrock Cottage

New Dwelling House

12. A new property has been constructed to the rear of Shamrock Cottage. The new dwelling is a two storey house and I note that planning permission was obtained for this. I have reviewed the planning files in detail and can confirm that there are three relevant planning permissions as follows:

- i. Planning register reference D07A/0507
- ii. Planning register reference D15A/0363
- iii. Planning register reference D15A/0750

13. The original planning application D07A/0507 was for a two storey house and this was granted. The plans clearly showed that the two storey house did not encroach in any way on Shamrock Cottage. Notably, there were no windows at first floor level on the western elevation.

14. However, at a later stage, a second planning application was made on behalf of the Second Named Respondent to alter the property and the main gist of this was to extend the property at ground floor level by 900mm. This involved extending the property to the west. i.e., in front of Shamrock Cottage.

15. On the 22nd July 2015, Dun Laoghaire Rathdown County Council in refusing permission (as already exhibited at DF12), stated:

“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 the adjacent dwelling and depreciate the value of properties in this vicinity and is therefore contrary to the proper planning and sustainable development of the area”

16. The applicants for the adjoining property then submitted a further planning application register reference D15A/0750. Again, the owners of Shamrock Cottage did not object to this because, I am instructed, among other things they were satisfied the application indicated that there was no western balcony overlooking the property. In this regard I defer to the Grounding Affidavit of Darragh Fegan when produced. Furthermore, drawings submitted with the application were grossly inaccurate, suggesting that the property was located *adjacent* to Shamrock Cottage to the East, rather than standing in front of Shamrock Cottage, to the East.
17. Furthermore, the roof lights were not actually shown on the planning drawings and the window heights to the western elevation appear to be inaccurate. When all of this is considered holistically, I am of the view that the development as constructed is in breach of the planning permission as granted and that the breach is not immaterial. In my opinion, it clearly constitutes unauthorised development. 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.
18. I say that I initially carried out a preliminary survey on 29th May 2017 and it was apparent and appeared to the naked eye that the new property was constructed in the wrong place. I am advised and believe that around this time, the First Named Applicant was seeking the assistance of the planning enforcement section of the planning authority, Dun Laoghaire Rathdown County Council, and in that regard I beg to refer to the Grounding Affidavit of Darragh Fegan when produced.

19. I say that we undertook a detailed follow up inspection on the 8th August 2017 with a view to verifying the precise position of the new property. The inspection was undertaken from the public road and adjoining properties and no access was gained to the new dwelling or its immediate environs on its own land. However, we did have the benefit of the use of electronic equipment which allowed us to pick up accurate data on the precise location and positioning of the properties. In this respect, we were able to take accurate dimensions and clearly see that the new property was not built tight up against the boundaries as per the original plan. We were also able to observe that there are considerable gaps here which effectively pushes the property to the west and which results in it over-sailing Shamrock Cottage. In this regard I beg to refer to Drawing Nos. 170508/01, 170508/02, 170508/03, 170508/11 in exhibit **VOB1**, clearly showing the actual position of the properties on the ground versus that shown on the planning drawings. In this respect it is clear to see that the new dwelling house is constructed approx. 470mm further to the west at the upper level, however the lower level roof is considerably further over by approx. 970mm. This is in direct contradiction of the information submitted as part of the planning application. So, even though the second planning permission seeking permission to enlarge the property by extending to the west was refused on the basis of loss of amenity and visual impact, this is effectively what has been done and I conclude that this not only severely detracts from Shamrock Cottage, but it also results in a devaluation of said property.

20. In addition to the visual impact, impact on amenity both outside and within Shamrock Cottage (and the associated devaluation) this aspect of unauthorised development has a number of further implications, particularly at foundation and roof level. Although I was not present at the time of construction, I have viewed photographs in our client's possession (as seen within the slide presentation at DF10 to the Grounding Affidavit of Darragh Fegan) which clearly show work in close proximity to the base of the rear wall to Shamrock Cottage. This appeared to involve some encroachment and could have given rise to a risk of damage to the foundation structure. In my view, this inevitably gives rise to a risk of settlement and or cracking to Shamrock Cottage and this could take some time to manifest itself. I did, however, note some considerable evidence of cracking to Shamrock

Cottage and this is relatively fresh and, therefore, recent. I say this is clearly indicative of some recent movement in Shamrock Cottage, and that it is likely to deteriorate further over time.

21. Furthermore, it is clear to see that the roof to the new dwelling house actually over sails the roof to Shamrock Cottage. However, I note that this has been subsequently cut back following the apparent removal of the guttering and drainpipe that was originally constructed (again, photographs at DF10 of the Applicant's Grounding Affidavit refer), but now the rainwater drainage provisions are incomplete and once these have been completed, which will have to be done, this will once again result in over sailing of the Shamrock Cottage. The alternative outcome is that if the rainwater drainage provisions are not provided to the over sailing part of the new dwelling house, then the water run-off will inevitably give rise to a risk of water damage to Shamrock Cottage where it is not properly dealt with.
22. Furthermore, photographs taken by our client at the time of construction, which I have reviewed, clearly show that the foundations to the new dwelling house actually undermine the foundations or base structure for Shamrock Cottage. This aspect of the development was not contemplated by the planning application D015A/0750 and was not permitted. Indeed, it goes without saying, this constitutes an act of trespass to the Applicant's property. I am instructed and believe that no consent was requested, or given, for the said encroachment.
23. I say that it is also clear that the window in the west wall of the new dwelling, together with the three roof lights / windows above the ground-floor single storey on the western side, are clearly visible from the rear sitting room window in Shamrock Cottage. The high-level window clearly overlooks Shamrock Cottage, which is contrary to the grant of permission and giving rise to a loss of privacy where it overlooks the north-facing window of the main living area of Shamrock Cottage. In addition, there will also be an inevitable glare of light from the windows / roof lights in the evening and at night time which of itself will have a significant impact on the north-facing sitting room window of Shamrock Cottage.

24. As averred to above, your deponent has exhibited a number of photographs at exhibit VOB2, and in particular the issues referred to above can be better understood by reference to photographs nos. 1 – 10 therein, which endeavour to identify and clarify these material issues (and same should also be considered in light of the photographs exhibited within exhibit DF10 of the Applicant's Grounding Affidavit, as already identified above).

The Old Derelict Property

25. There is a two-storey derelict property located to the West and rear of Shamrock Cottage. I am advised and believe that this derelict property has not been lived in for a considerable period of time. I was only able to view this property from the exterior. However, it is clear to see that the property is in extremely poor condition. In fact, a significant support steel structure has been erected to the rear of the property in order to keep it propped in place. I am further advised and believe that a considerable stock pile of gravel had been placed at the base of the structure by Dun Laoghaire Rathdown County Council to support it, but I am also advised and believe that this was not only removed by the First named Respondent but that much of the gravel removed was then used in the construction of the base / foundation to the new dwelling house. Clearly, 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.

26. Although my inspection was limited to the exterior of the derelict property, it is clear to see that this property is in very poor condition. In particular, the roof is in poor condition with evidence of slipped and missing slates. Furthermore, the junction between the roof and the rear wall of Shamrock Cottage is in very poor condition with considerable evidence of weed and vegetation growth here which is indicative of water retention and or penetration. More significantly, there is extensive evidence of cracking to the walls of the derelict property. These cracks are clearly indicative of settlement and or movement and if it were not for the additional support offered by the steel frame, the building would have collapsed by now. 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 the derelict property for support. In addition to the structural concerns, the cracking and poor condition of the roof gives rise to clear gaps for water penetration which is presently having, and will continue to have, an adverse impact on Shamrock Cottage.

27. 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 had an impact on the stability of the derelict dwelling which in turn would have an impact on the support to Shamrock Cottage.

28. As already stated, I have exhibited a number of photographs at exhibit VOB2, and in particular the issues referred to above can be better understood by reference to photographs nos. 11 – 20 therein, which help to clarify and illustrate the condition of the derelict property and the potential for impact on Shamrock Cottage.

Impact on Shamrock Cottage

29. During my surveys, I conducted a detailed inspection on the interior of Shamrock Cottage and observed a number of issues within the house which are having a major impact on the property. These include loss of amenity and value, dampness and cracking and the following observations occur to me in respect of these issues:

Loss of Amenity and Value

30. 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. When one looks out through the sitting room window, the new dwelling house is effectively tight up against the property and indeed it encroaches beyond the window so that when one is looking out through the sitting room window of Shamrock Cottage, the side wall of the new dwelling house is

very apparent and one is directly overlooking the roof to the lower section. This also gives rise to reduced day light and a loss of view across Dublin Bay and the Irish Sea. The situation is compounded by the fact there are windows in the west elevation at first floor level, together also with rooflights on top of the single-storey ground floor level which is directly beneath the sitting room window of Shamrock Cottage. Quite apart from giving rise to a loss of privacy, these works are, in my opinion, unauthorised development. The impact is excessive and I would agree with the reasons given by the planning department of Dun Laoghaire Rathdown County Council when it refused the second planning permission (D015A/0363) that by enlarging the property to the west, beyond the grant of permission in D015A/0750, this has effectively given rise to a visually obtrusive structure, a loss of residential amenity and ultimately to a significant loss in value for Shamrock Cottage.

Dampness

31. There is clear evidence of damp penetration through the rear wall of Shamrock Cottage where it is in direct contact with the derelict property to the rear. This is having an impact on two of the bedrooms and the main staircase area. The dampness is so bad within the children's bedroom to the rear at ground floor level that this room is no longer fit for use. Very high moisture meter readings were detected to the wall lining and apart from appearing unsightly, this also gives rise to a health hazard. There is clear evidence of both dampness and mould growth to the rear wall of the bedroom. I also detected high levels of dampness to the ceiling and rear wall above the wardrobe in the master bedroom at first floor level which is having an impact on this room. I also detected some dampness to the walls within the staircase area. These problems will deteriorate with time and, unfortunately, it is not possible to address the matters from within Shamrock Cottage as one is entirely dependent on the owner of the derelict cottage carrying out the necessary remedial works externally to prevent the water getting in in the first place. If these issues are not addressed, there will be a risk that Shamrock Cottage will no longer be fit for occupation at all.

Cracking

32. There is considerable evidence of cracking to Shamrock Cottage as a result of the works. In particular we noted some fresh cracking to the ceiling within the sitting room which is indicative of recent movement. There is also extensive cracking to the internal walls together with cracking at the floor and skirting junctions, all of which is indicative of movement. Perhaps more significantly, there is considerable evidence of cracking to the external face of the walls, and whilst we were unable to view these closely (there was no access gained to the rear site) at the time of inspection, I was able to review digital photographs which our client had previously taken. I would also caution that cracking of this nature can take some time to develop and the situation is likely to deteriorate and this will have to be monitored for some time. 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.
33. I beg to refer again to the photographic schedule exhibited at VOB2 which helps to identify and clarify the issues in discussion and, in particular, photograph nos. 21- 27 which help to illustrate the above. (There are also some additional photographs in respect of these same issues within the slide presentation prepared by the Applicant and exhibited at DF10 to the Grounding Affidavit of Darragh Fegan.)

Conclusions

34. I say that it is clear that the new dwelling house has been built in the wrong place and this is detracting significantly from Shamrock Cottage in terms of visual obtrusion, loss of residential amenity and ultimately a loss of value to Shamrock Cottage. There has also been some over sailing of the roof and a risk of damage to the foundation structure of Shamrock Cottage which results directly from the construction works. There are also significant variations between what has been built and what has been shown on the approved drawings.

35. When all of this is considered together, in my opinion the new dwelling house, as constructed, is substantially different to that which was approved by permission D015A/0750 and, therefore, it is unauthorised development within the meaning of the Planning and Development Act, 2000, as amended.

36. I say further that the derelict property to the rear is in extremely poor condition with considerable evidence of cracking and or movement which is giving rise to considerable damp penetration to Shamrock Cottage. I say that this damp penetration is rendering one of the bedrooms unusable and is having a severe impact on the master bedroom and on the staircase area and this will deteriorate with time. There is also some cracking within Shamrock Cottage which is likely to be emanating from recent movement with the derelict property and or the manner in which new dwelling house was constructed. The issues within Shamrock Cottage cannot be addressed until such times as the inherent issues with the derelict property are attended to.

37. Whilst it is noted that much of the problems are emanating from the poor condition of the derelict property it is also noted that part of the deterioration in the derelict property is due to the development of the new dwelling house including the removal of the gravel at ground level which was offering some support to the derelict structure.

Sworn by the said VAL O'BRIEN on the ~~16~~¹⁷ day of April 2018 at

before me a Practising Solicitor / Commissioner for Oaths and

(i) I know the deponent

(ii) the deponent is identified to me by _____ who is known to me and who has certified his personal knowledge of the deponent

(ii) the identity of the Deponent has been established to me by reference to

Val O'Brien

Declan Gosh

DEPONENT
FOR OATHS

PRACTISING SOLICITOR / COMMISSIONER

Filed on the _____ day of April 2018 by Mallin O'Toole Law Firm

30 Upper Pembroke Street, Dublin 2, Solicitors for the Applicant

Exhibit 2

THE HIGH COURT

Record No. 2018 /

**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 AND NOREEN FARRAR

Respondents

AFFIDAVIT OF JOHN O MALLEY

I, **John O' Malley**, Town Planning Consultant, of Saint Heliers, Saint Heliers Copse Blackrock, Co. Dublin aged eighteen years and upwards **MAKE OATH** and say as follows:-

1. I am a Director in the firm of Kiaran O'Malley and Company Limited, Town Planning Consultants, of Saint Heliers, Saint Heliers Copse Blackrock, Co. Dublin. I am a Chartered Town Planner and Member of the Irish Planning Institute and the Royal Town Planning Institute and have acted for clients in relation to all aspects of land use, planning and project development for more than 22 years. I make this Affidavit for and on behalf of the Applicant herein, from facts within my own knowledge save where otherwise appears and where so otherwise appearing I believe same to be true and accurate in every respect.
2. I beg to refer to the proceedings had herein and, in particular, the verifying affidavit of Darragh Fegan sworn and also the affidavit of Val O'Brien when produced.

3. On the 24th November 2017 I attended at Shamrock Cottage and the adjoining property at 24 Ardbrough Road, Dalkey, County Dublin (hereinafter referred to as “**the site**”) to carry out an inspection.
4. The purpose of my inspection was to review the approved plans at the above property and to identify any differences there may be between the approved house authorised pursuant to grants of permission (Reg. Ref. Nos. D07A/0507 and D15A/0750) and the ‘as built’ house currently under construction on the site. In this affidavit, I outline and evaluate the planning significance of the deviations I have observed between the approved plans and the development ‘as built’.
5. I say that I attended at the site with Darragh and Alison Fegan on Friday, November 24th 2017 and that I relied on the copies of the approved plans obtained at Dun Laoghaire Rathdown County Council and other documents furnished to me. I also referred to the findings and observations made by Val O’Brien & Associates (VOB) and I beg to refer to the affidavit of Mr O’Brien when produced.
6. I refer in particular to Drawing Nos. 1 to 11 prepared by Val O’Brien & Associates, as exhibited at “**VOB1**” to his Affidavit. I say that the ‘as built’ house is shown in red and superimposed upon the relevant plan or elevation drawing from the approved plans at Reg. Ref. No. D15A/0750. The approved house is outlined in green on these drawings. A legend on each VOB drawing indicates the various features of the particular drawing.

Summary

7. On January 3rd 2008, permission (Reg. Ref. No. D07A/0507) was granted for a two-storey dwelling house on this site adjacent to 24 Ardbrough Road, subject to 9 no. conditions. I beg to refer to the said Planning Permission as already exhibited at “**DF7**” to the verifying affidavit of Darragh Fegan
8. I say that Dun Laoghaire Rathdown County Council refused permission (Reg. Ref. No. D15A/0363) for alterations to the house including a 0.9m ground floor extension and a first floor balcony as already exhibited at “**DF12**” to the

verifying affidavit of Darragh Fegan. I say that in its decision of July 22nd 2015, the Council stated that "...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."

9. I say that Permission Reg. Ref. No. D15A/0750 was granted on March 3rd 2016 for alterations to the approved house comprising an enlarged ground floor plan, by extending 0.9m to the west, and a first floor balcony, to the north, subject to 10 no. conditions as exhibited at "DF16" to the verifying affidavit of Darragh Fegan.

10. I say that following a site inspection and a detailed review of the survey data prepared by Val O'Brien and Associates, it is clear that the house is not built in the approved position as per the lodged plans and particulars at Reg. Ref. Nos. D07A/0507 and D15A/0750. I have identified the following significant deviations between the approved plans and the 'as built' structure.
 - (i) Position of the 'as built' house
 - (ii) Roof of Ground Floor Extension
 - (iii) Roof Plane Windows
 - (iv) Over-sailing at Southern Site Boundary
 - (v) High Level Windows in West Elevation
 - (vi) Ground Floor Windows in South Elevation

11. I say that the location of the west façades with respect to Shamrock Cottage was a critical planning consideration in every application for permission at this site. The proposed position of the house and the buildings lines are shown on the lodged drawings and are easily understood by reference to fixed points on site, notably the northeast corner of Shamrock Cottage.

12. The 'as built' house is located generally to the west of its approved position. The ground floor west façade is built approximately 650-700mm to the west of

the approved building line. The 'as built' ground floor occupies a larger footprint at the west of the approved house than the ground floor extension refused at Reg. Ref. No. D15A/0363. I say that it is reasonable to infer that permission for the 'as built' enlarged ground floor would likely be refused on similar planning grounds to safeguard amenity at Shamrock Cottage.

13. I say that the 'as built' first floor west façade is located approximately 430-450mm to the west of its approved position so this entire wall is closer to the north facing window at Shamrock Cottage than the approved façade. It is, therefore, significantly more overbearing and more visually obtrusive upon Shamrock Cottage. Consequently, a gutter and downpipe are in plain view from the sitting room window at Shamrock Cottage, further injuring the residential and visual amenity there.
14. I say that the roof of the ground floor extension is not built in accordance with the approved plans. The 'as built' roof is 800-880mm wider and over 2000mm longer than the approved roof. The roof extends to cover the landing area at the top of the entrance steps and it extends to the rear, over the space at the rear of the ground floor extension.
15. I say that no roof plane windows at all are indicated on the plans for the roof of the approved ground floor extension, so the three roof plane windows are obviously unauthorised.
16. It is stated in the application letter (Reg. Ref. No. D15A/0750) that the '*high level window*' in the west elevation is "*at such a height as not to generate a problem of overlooking*". I say that a 3D image, the only document showing the proposed elevation in relation to the nearby sitting room window at Shamrock Cottage, indicates that the cill level of the high level window level is significantly higher than the top of the sitting room window at Shamrock Cottage. I say that the planning authority clearly accepted that no overlooking would occur having specific regard to this 3D image, as provided by the Respondents. However, I say that the 'as built' high level window is clearly not constructed in accordance with the 3D image.

17. I say that there is a clear conflict between the west elevation details on DRG. No. PP-01 and the 3D image in respect of the high level window. One or both must be incorrect. The position of the high level window 'as built' facilitates significant injurious overlooking between the proposed house and Shamrock Cottage because of the cill levels of the windows and the exceptionally limited separation distance between the two windows. As a result, it is possible to look directly into the first floor of the proposed house from the sitting room window of Shamrock Cottage (which is the only window in that room). In my opinion, the 'as built' layout entailing a horizontal 'high level window' facing an existing sitting room window at Shamrock Cottage, hardly 2m away, creates a profound negative impact upon the residential amenity of Shamrock Cottage, and would never be granted permission.
18. I say that the drawings and photographs exhibited to Val O'Brien's affidavit confirm that the roof of the 'as built' house over-sails Shamrock Cottage, or it did so prior to the removal of a section of guttering at the southwest corner of the new house. I say that this adjustment also creates a further difficulty as rainwater from the roof is not collected and it flows directly onto Shamrock Cottage.
19. I say that two windows have been constructed at ground floor level within the south elevation of the development. Neither of these windows are authorised by the grants of permission [Reg. Ref. No. D07A/0507 or D15A/0750] and the installation of same is clearly in breach of the grants of permission.
20. I say that it is well established in planning matters, having regard to the principle established by the courts in the *XJS Investments* judgment, that planning documents and conditions in a grant of permission must be given their ordinary meaning as they would be understood by members of the public without legal training or expertise. Having regard to this principle, the 'as built' house is in material breach of the terms of the grants of planning permission. I say that any party inspecting the planning file would rely upon the lodged plans and particulars including the 3D images furnished by the Respondents, which clearly show the nature and extent of the development proposed.
21. I say that the applicant and his wife examined the plans (Reg. Ref. No. D15A/0750) and they did not object because they were satisfied that the

proposed house would be located to the east of the northeast corner of Shamrock Cottage and that the 'high level window' would not create overlooking of their home. Similarly, is it clear from a review of the planning files that the planning authority relied upon the information provided by the Respondents as is clearly stated in its assessment of this development proposal.

22. I say that the house as built on the site is not constructed in accordance with the approved plans in several key respects, as described above. I say that these deviations involve substantial works, not authorised by either permission, which give rise to serious injurious impacts upon the amenity at Shamrock Cottage.
23. I say that my opinion is supported by the Council's own assessment of two planning applications. In particular, I say that Permission Reg. Ref. No. D15A/0363 was refused for an enlarged ground floor at the west of the approved house citing, inter alia, its visual obtrusiveness and adverse impact on amenity at Shamrock Cottage. The design of the ground floor extension with respect to Shamrock Cottage was a critical planning consideration enabling the Respondents to convert a refusal (D15A/0363) into a grant (D15A/0750). I refer to the assessment of the alterations at Reg. Ref. No. D15A/0750 whereby the planning authority approved the modified works having particular regard to the position of the house in relation to Shamrock Cottage and to the avoidance of overlooking by means of a high level window in the west elevation. I say that the 'as built' house is in breach of both important requirements and seriously injures the amenity of Shamrock Cottage.
24. Accordingly, I say that, in my professional opinion, the extent of the deviations from the approved plans has a profound adverse impact on the residential amenity of Shamrock Cottage and is clearly significant in planning terms and constitutes unauthorised development.
25. It must be noted that the precise extent of the deviations from the approved drawings is not easily quantified because of the difficulty in establishing the true position of the approved house and correlating these details with the survey information provided by Val O'Brien & Associates. The lodged plans and particulars contain virtually no information as to the levels on the application site and the details of the adjoining Shamrock Cottage are incorrect. This would not have been apparent to the lay person inspecting the planning application,

however. Indeed, the planning authority accepted the information presented in the application documents, which clearly show the relationship between the proposed house and surrounding properties, including Shamrock Cottage. However, the 'as built' house does not correspond with the details shown in the approved plans in key respects as described herein. The deviations from the approved plans have serious negative consequences upon amenity enjoyed at Shamrock Cottage.

Site Description

26. The subject site is located on the south side of Ardburgh Road near the old Quarry. The site is outlined red on the Site Location Map attached to the application for permission (Application Reg. Ref. No. D15A/0750), as exhibited at "DF14" and "DF15" to the verifying affidavit of Darragh Fegan. I say that Ardburgh Road is a narrow road with a footpath on its north side only. The area is elevated and enjoys panoramic views of Dublin Bay. There is a mix of old and new housing in the area. The older buildings comprise mainly single storey cottages, built originally for the quarry workers. More recent development in the area comprise both single and two storey houses.
27. I say that the site is bounded by a three-storey house, "*The Ardburgh*", to the east. The Ardburgh has no direct vehicular access at Ardburgh Road, access is at the rear, via a cul de sac. The site abuts three properties to the south including two houses on higher ground overlooking the site, i.e. Shamrock Cottage and a derelict cottage to the west, which is propped up by a large steel frame structure which stands within the site owned by the Respondents. Shamrock Cottage has one sitting room window overlooking the site with views towards Dublin Bay. To the west, the site adjoins a two-storey structure at Ardburgh Road.
28. From the plans, the subject plot is roughly rectangular with approximately 16m road frontage. The site is approximately 11m deep at its east, reducing to approximately 9m deep at the western third. The site area is stated to be 0.016 hectares. At the time of my site visit, extensive construction works had already been carried out and a two-storey house is now substantially complete on the site.

Planning History

29. I say that there is a lengthy planning history at this site dating back to 1998. I will focus upon the three most recent planning applications as follows.

- i. Reg. Ref. No. D07A/0507
- ii. Reg. Ref. No. D15A/0363
- iii. Reg. Ref. No. D15A/0750

(i) Reg. Ref. No. D07A/0507 [Parent Permission - House]

30. An application for permission to construct a two-storey dwelling house with a total floor area of 99.5 sq. m. on this 0.016 hectare site at Ardrugh Road was lodged in April 2007. Dun Laoghaire Rathdown County Council's decision to grant permission on 13th June 2007 was appealed to An Bord Pleanála. On 3rd January 2008, An Bord Pleanála granted permission for the house subject to 9 no. conditions. I beg to refer to a true copy of said decision dated 3rd January 2008 as already exhibited at "DF8" of the verifying affidavit of Darragh Fegan.
31. I say that Conditions Nos. 2, 3, 4 and 5 are noted by An Bord Pleanála. Condition No. 2 (car parking area materials) and Condition No. 5 (external finishes) require specific details to be agreed with the planning authority prior to the commencement of development. Condition No. 3 excludes specific ordinarily exempted development being carried out without a grant of permission. Condition No. 4 specifies that the site excavation shall be overseen by a suitably qualified Structural Engineer.
32. The life of this grant of permission was subsequently extended to 3rd January 2018.

ANALYSIS

33. I say that amongst the documents in the planning application is a plan generated by Kenny Kane Associates, reference DRG. No. PP-01, which includes a 1:250 scale site layout. I beg to refer to a copy of DRG. No. PP-01 from application Reg. Ref. No. D07A/0507 upon which marked with the letters and numeral

“JOMI” I have signed my name prior to the swearing hereof. DRG. No. PP-01 refers to Ordnance Survey Map No. 3394-23, which is a 1:1000 scale Urban Place Map. It is not stated that the position and dimensions of adjoining properties including Shamrock Cottage were obtained from a measured survey at the site or whether the information on the site layout plan on DRG. No. PP-01 is based upon an enlarged OS Urban Plan Map. Spot levels are indicated on the drawings, but it is not stated whether these levels are based on a topographic survey of the site and environs. It is also not stated that the levels refer to Ordnance Datum or to an arbitrary datum.

34. The two floor plans on DRG. No. PP-01 indicate the proposed ground floor and first floor plans in relation to the application site boundaries and adjoining properties including Shamrock Cottage. The proposed house abuts the east and south boundaries of the application site. The east façade abuts The Ardrbrugh at the east. At the south, the façade extends to the boundary at The Ardrbrugh and a derelict site between The Ardrbrugh and Shamrock Cottage. The positions of the walls of the proposed house are clearly shown on the plans, on the south and west elevations and on Section AA. The south west corner of the proposed house is shown relative to the northeast corner of Shamrock Cottage on the ground and first floor plans at 1:100 scale.
35. No roof plan for any part of the house is provided except as shown on the 1:250 scale site layout plan on DRG. No. PP-01. From the west and south elevations, when read in conjunction with the proposed ground and first floor plans, it is likely that any guttering designed to collect rain water from the roof at the south end of the roof must over sail adjoining property including Shamrock Cottage. The notes attached to the grant of planning permission provide some clarity here. I refer to Notes 2 and 3 in this regard. Note 2 states that the proposed development ‘...shall not overhang or oversail the adjoining property without the consent of the owner of the property’. Where written agreement is not obtained, as is the case here, and where the guttering oversails Shamrock Cottage, ‘...the development shall be modified only insofar as is required to do avoid overhanging or oversailing’. Note 3 refers to Section 34(13) of the Planning and Development Act 2000, as amended. (“A person shall not be entitled solely by reason of a permission under this section to carry out any development”.) Thus, the approved dwelling house cannot oversail the adjoining property without the written consent of the relevant property owner(s).

36. From the front elevation, the approved heights of the various sections are shown as follows: 3536mm (ground), 3235mm (first) and 1330mm (roof). No first-floor windows are indicated in the west elevation.

37. I say that the reason cited for attaching Condition No. 3, which prohibits the carrying out of exempted development described at Class 1 or 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, is “*in the interest of residential amenities.*” Condition No. 3 was inserted by An Bord Pleanála at the decision stage.

(ii) Reg. Ref. No. D15A/0363 [Refusal – Alterations to Approved House]

38. I say that permission was sought in May 2015 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*”. I beg to refer to a copy of DRG. No. PP-01 from application Reg. Ref. No. D15A/0363 upon which marked with the letters and numeral “JOM2” I have signed my name prior to the swearing hereof.

39. The main works consisted of a 0.9m wide ground floor extension to the west, a wraparound balcony to the west and north elevations and windows in the west elevation. The proposed ground floor extension is wider at the northern end where it includes an approximately 4600mm long x 750mm wide section to accommodate a larger bedroom and an entrance porch.

40. I say that permission was refused for the alterations for the following reasons.

“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 dwelling and depreciate the value of properties in the vicinity and is therefore, contrary to the proper planning and sustainable development of the area. (Emphasis added.)

41. I say that the planning rationale for refusing permission for the enlarged ground floor element cites the adverse impact of the “*proposed enlarged ground floor*” upon the residential amenity at Shamrock Cottage. Val O’Brien & Associates DRG. No. 11 shows the proposed footprint of the enlarged ground floor extension outlined with a broken brown line in plan.

ANALYSIS

42. I say that the position of the development relative to the south and east boundaries is identical to that shown on the original approved plans at Reg. Ref. No. D07A/0507. The development abuts The Ardrugh at the east and the site southern boundary at the rear. Additional works are proposed at the northern and western elevations. The information in this application appears to rely upon the original plans from application Reg. Ref. No. D07A/0507 and it is not stated that the lodged plans and drawings are based upon a topographic survey of the application site and adjoining properties.
43. The proposed changes involved extending to the west at ground floor level, a balcony around the north and west façades and new first floor windows to the west elevation. The proposed balcony is intended to offset the reduction in open space at the west side of the house to 63.5 sq. metres due to the ground floor extension. I note the following comment in the Planning Officer’s Report in respect of the proposed open space (as already exhibited at “DF12” to the verifying affidavit of Darragh Fegan).

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.

44. I also note the extract from the Assessment in the Planning Officer's Report:

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. Drawing no. PP-01 ground floor plan shows the proposed enlarged ground floor to be located 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. (Emphasis added.)

45. I say that the fundamental planning basis for refusing to grant permission for a 0.9m wide ground floor extension is clearly that the proposed development will be visually obtrusive and will seriously detract from the residential amenity of Shamrock Cottage. This reasoning is cited in the Council's decision to refuse Reg. Ref. No. D15A/0363.

(iii) Reg. Ref. No. D15A/0750 [Permission – Alterations to Approved House]

46. A planning application was lodged in November 2015 seeking 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". I beg to refer to a copy of DRG. No. PP-01 and DRG. No. PP-03 from application Reg. Ref. No. D15A/0750 upon which pinned together and marked with the letters and numeral "JOM3" I have signed my name prior to the swearing hereof.

47. I say that Kenny Kane Associates' cover letter dated 25th November 2015 (as already exhibited at "DF14" to the verifying affidavit of Darragh Fegan)

contains that the revised proposals address the reasons for refusal at Reg. Ref. No. D15A/0363 as follows.

- (i) *The wraparound balcony proposed in D15A/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 buildings in this area. [Emphasis added.]*
 - (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 to be overlooking adjoining properties and is fitted with clear glass in order that the occupants can survey the private and (sic) open space relating to the house. [Emphasis added.]*
48. The application documents provided by the Respondents include 3D images showing the house within its immediate context. One particular 3D view on DRG. No. PP-03 from Ardbrough Road, looking southeast towards the infill site, shows the relationship between the west elevation of the proposed house and Shamrock Cottage.
49. The 1:100 scale front elevation (north) on DRG. No. PP-01 clearly shows that the proposed first floor west façade is located to the east of the window at Shamrock Cottage. Scaling from this front elevation, the first floor façade is located approximately 550mm to the east of the sitting room window at Shamrock Cottage.
50. The position of the ground floor west façade relative to the window at Shamrock Cottage above is also shown on the 3D image, and their relative positions is shown on the 1:100 scale front elevation on DRG. No. PP-01. The ground floor west façade overlaps the window at Shamrock Cottage by approx. 350mm.

51. In the absence of any written dimensions, these estimated dimensions of the positions of the west facades from the nearest edge of the sitting room window at Shamrock Cottage are scaled from the approved elevations. As noted above, it is not clear whether these drawings are based upon a measured survey of the application site and the adjoining properties.

52. The proposed first floor west elevation comprises two vertical windows, one with frosted glass, and a horizontal high level window (cill level 1685mm over first floor) to the kitchen to avoid overlooking between the proposed house and Shamrock Cottage. I say that the lodged plans and elevations do not in fact show the relationship between the proposed west elevation and the existing sitting room window at Shamrock Cottage. In particular, I say that the drawings do not show the cill height and dimensions of the existing window at Shamrock Cottage relative to the proposed 'high level window' in the west elevation on one drawing, which would allow a proper assessment of the potential impact upon Shamrock Cottage. These details are only shown on a 3D image on DRG. No. PP-03. This 3D image indicates that the cill level of the proposed high level window is level with the top of the wall at Shamrock Cottage and is *higher than the top of the sitting room window at Shamrock Cottage*.

53. Permission Reg. Ref. No. D15A/0750 (as already exhibited at "DF16" to the verifying affidavit of Darragh Fegan), was granted on 3rd March 2016 subject to 10 no. planning conditions, including Condition No. 1 and 2, which state as follows.
 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.*

 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.*

54. I say that the original grant of permission clearly requires certain matters to be submitted and agreed with the planning authority prior to the commencement of development, and these obligations are re-stated in this grant of permission.

ANALYSIS

55. The ground floor extension is 0.9m wide along the west side of the approved house (Reg. Ref. No. D07A/0507) and the south end of the ground floor extension is set back from the site boundary by 500mm. The Planning Officer's Report confirms that the planning authority was satisfied that the modified plans addressed its reason for refusal at Reg. Ref. No. D15A/0363. These modifications involve the omission of the west balcony, altered glazing to the west elevation (first floor) and a reduced ground floor extension. With regard to the enlarged ground floor element, the following extracts from the Planning Officer's Report are noted:

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 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....*

Enlarged Ground Floor Plan:

The ground floor of the proposed dwelling is to be enlarged 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 there will be no impeding of the views 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 now considered not to detract from the residential amenity of this building. (Emphasis added.)

56. I say that these extracts confirm that the planning authority had specific regard to the position of the ground floor extension relative to the north facing window at Shamrock Cottage. Explicit pre-planning advice to the Applicant directed that the enlarged ground floor should not block the north facing window at Shamrock Cottage and that this should be shown clearly in the planning application. The planning authority, and indeed any interested party inspecting the planning file, such as Darragh and Alison Fegan, quite reasonably relied upon the lodged plans and particulars including the 3D images, which clearly show that the extension would not block views from this window. The planning authority refers to these details in its assessment of the development proposal. Permission was granted, inter alia, on this basis thereby overcoming the grounds for refusal at Reg. Ref. No. D15A/0363.
57. It is worth noting that the difference between the floor areas in the proposed ground floor extensions in the two 2015 planning applications is relatively small being approx. 4 sq. m. [i.e. 4600mm x 750mm plus 900mm x 500mm]. Nonetheless, the planning authority refused permission at Reg. Ref. No. D15A/0363 citing its visual obtrusiveness and adverse impact upon amenity at Shamrock Cottage, yet it was satisfied to grant permission at Reg. Ref. No. D15A/0750 for a slightly reduced ground floor extension at the west of the approved house. Evidently, there is a fine line between permission being refused at Reg. Ref. No. D15A/0363 and permission being granted at Reg. Ref. No. D15A/0750, which illustrates the importance of the existing view from this window at Shamrock Cottage to the amenity enjoyed at that property. Both of the Council's decisions attribute considerable weight to the protection of existing amenity at Shamrock Cottage, which is worth keeping in mind when assessing the significance of the deviations between the 'as built' house and the permitted development at Reg. Ref. Nos. D07A/0507 and D15A/0750.

58. I say that it is important to note that the reduced ground floor extension is not the only modification from the alterations refused at Reg. Ref. No. D15A/0363. The modified scheme at Reg. Ref. No. D15A/0750 omits a balcony at the west side of the house and also entails reduced finished floor levels compared with the proposals refused at Reg. Ref. No. D15A/0363. Table 1 shows the finished floor levels in the three planning applications.

Floor/Application	Ref. D07A/0507	Ref. D15A/0363	Ref. D15A/0750
Ground	75.769	75.769	75.42
First	78.819	78.819	78.195

Table 1: Finished Floor Levels [all levels to arbitrary datum, no datum stated on plans]

59. I say that the approved ground floor level at D15A/0750 is 349mm lower than the original permitted ground floor level at D07A/0507. The approved first floor level is 624mm lower than the original permitted first floor level. These are considerable reductions from the original approved finished floor levels at D07A/0507, which is seen by comparing the front elevations, yet neither the Respondents, in the application, nor the planning authority, in its assessment, place any emphasis on the reduced floor levels.
60. I am instructed that Darragh and Alison Fegan were satisfied that the modifications set out in the planning application (Reg. Ref. No. D15A/0750) addressed their concerns regarding the relationship between the proposed development and their home and I note that Mr Fegan deposes to this fact in his verifying affidavit. I understand they relied in particular on the 3D images on Kenny Kane Associates DRG. No. PP-03, exhibited at "JOM3", one of which clearly shows that the proposed development and ground floor extension do not block the view from the window at Shamrock Cottage or would be visually obtrusive from Shamrock Cottage. On the basis of the information in the lodged planning documents, they did not object to this application. The absence of an objection from Shamrock Cottage is another key factor taken into account by the planning authority in the making of its decision on the application. Indeed, if the house were completed as per the lodged plans, Darragh and Alison Fegan would have no objection because the plans demonstrate that there is no adverse impact upon Shamrock Cottage.

Compliance Submissions [Reg. Ref. No. D15A/0750]

61. I say that Dunbar Lunn Consulting Engineers filed a compliance submission dated 19th October 2016 in relation to Condition No. 2 of permission Reg. Ref. No. D07A/0507 for the car parking area to the west of the new dwelling house. I beg to refer to a true copy of the said compliance submission and the decision of the planning authority upon which pinned together and marked with the letters and numeral "JOM4" I have signed my name prior to the swearing hereof.
62. I say that no compliance details were filed in respect of Condition No. 5 of the grant of permission Reg. Ref. No. D07A/0507.

The 'As Built' House

63. I say that I attended at the site on Friday 24th November 2017. I say that I subsequently liaised with the Applicants' consultant surveyor, Val O'Brien, for the purposes of conducting a joint review exercise. In this regard I say that I have had the opportunity to read the contents of Mr O'Brien's affidavit and I agree with the contents therein.
64. I refer in particular to Drawing Nos. 1 to 11 prepared by Val O'Brien & Associates and exhibited at "VOB1" to the affidavit of Val O'Brien. I say that these drawings show the position of the 'as built' house outlined red and superimposed on the approved house (outlined green) as shown on the Kenny Kane Associates plan, reference DRG. No. PP-01 exhibited at "JOM3". I also refer to the photographs already exhibited at "VOB2" to the affidavit of Val O'Brien and I wish to comment on the following items:

- (i) Position of the 'as built' house
- (ii) Roof of Ground Floor Extension
- (iii) Roof Plane Windows
- (iv) Over-sailing at Southern Site Boundary
- (v) High Level Windows in West Elevation
- (vi) Ground Floor Windows in South Elevation

(i) **Position of the 'as built' house**

65. In considering the position of the new dwelling house "as built", it is necessary to choose a reference point to align the 'as built' house with the position of the house as shown on the approved plans. In plan, the northeast corner of Shamrock Cottage is selected at the overlay reference point. This corner is an existing fixed point "on the ground" and the south west corner of the approved house is adjacent to it, so it appears to us to be an appropriate reference point for aligning the two sets of plan drawings [i.e. the approved drawings on Kenny Kane Architects DRG. No. PP-01 and the 'as built' survey drawings prepared by Val O'Brien & Associates and exhibited at "VOB1"].
66. The key drawings are Val O'Brien & Associates drawing Nos. 1-3, at exhibit "VOB1", which indicate the footprint of the 'as built' house (red) superimposed on the footprint of the approved house plan (green). The approved position abuts the east and south site boundaries. My site visit showed, and these drawings confirm, that the 'as built' house does not in fact abut the east and south boundaries [see photos 7 & 8 exhibited at "VOB2"]. The set back at the east boundary ranges from 420 to 460mm and the equivalent set back at the south boundary ranges from 580 to 710mm as shown on DRG. No. 3.
67. DRG. No. 2 shows the ground floor plans. The southwest corner of the 'as built' house is located 580mm to the north and 430mm to the west of its permitted position. The ground floor extension at the west side of the house is located 650mm to 700mm to the west of its approved position. The extent of the unauthorised development at the west side of the house is shaded yellow on DRG. No. 2.
68. DRG. No. 3 [first floor comparison] shows that the 'as built' first floor building line is located 430mm to 450mm to the west of its permitted position. The extent of unauthorised development is shaded yellow on DRG. No. 3.
69. The above analysis confirms that the 'as built' house is not built at the approved position as shown on the plans at Reg. Ref. Nos. D07A/0507 and D15A/0750.
70. Existing surrounding property details including Shamrock Cottage are outlined blue on DRG. Nos. 1 to 11. It is evident that the boundary lines, building lines and other features as measured on site by Val O'Brien & Associates do not correspond with the details shown on Kenny Kane Associates DRG. No. PP01.

Deviation at Ground Floor Level

71. DRG. No. 2 shows that the ground floor building line extends 700mm to the west of the approved façade at the north end and 650mm to the west of the approved façade at the south end, so this entire section of the 'as built' ground floor is not built in accordance with the grant of permission [Reg. Ref. No. D15A/0570].

Deviation at First Floor Level

72. DRG. No. 3 shows the 'as built' first floor footprint over the approved first floor house plan. The 'as built' first floor west façade is located 430-450mm to the west of its approved position, so this entire wall is closer to the window at Shamrock Cottage than the approved façade. It is, therefore, more overbearing and more visually obtrusive on Shamrock Cottage.
73. I say that because the first floor is located west of its approved position, a gutter and a large diameter orange downpipe are now in plain view from the sitting room window at Shamrock Cottage [see photos 3, 21 & 22 to the photographic exhibit "VOB2" in the affidavit of Val O'Brien]. I say that the downpipe detracts from visual amenity and seriously injures the residential amenity at Shamrock Cottage. The approved plans show that the roof drainage details were tucked into the south corner of the west façade so they could not be seen from Shamrock Cottage (see first floor plan on DRG. No. PP-01).

SIGNIFICANCE OF THESE DEVIATIONS

74. I say that every development must be examined within its own individual context and circumstances. In many instances, the effect of building a house up to a metre or so from its approved position would not be significant. Indeed, such deviations would be hardly noticeable in many cases, but in other situations, these changes may be highly significant in planning terms. It simply depends on the site development context and the relationship between the proposed development and adjoining properties.
75. I say that in this case the position of the house was a vital part of the assessment of the development proposal. In fact, the design of the ground floor extension

and its relationship with the neighbouring property, Shamrock Cottage, was the critical planning consideration enabling the applicant to turn a refusal (D15A/0363) into a grant of permission (D15A/0750). It is clear in the extract from the Planning Officer's Report at Reg. Ref. No. D15A/0750 above, exhibited at "DF16" of Mr Fegan's verifying affidavit, that the planning authority placed considerable weight upon the position of the house relative to the view enjoyed from the sitting room window at Shamrock Cottage. I say that this is, therefore, the relevant context within which the significance of the deviations must be evaluated.

76. This evaluation of the relevant context is corroborated in the following extract from page 4 of the Planning Officer's Report in respect of the decision to grant permission Reg. Ref. No. D07A/0507, wherein the Planning Officer refers to the development being "*in line*" with the building line of Shamrock Cottage:

...I agree that the building should be located as close to the large structure (The Ardbrough) as possible to reduce its impact on the structures behind, and clear of the line of any building/window.
[Emphasis added.]

77. The above extract recognises the real sensitivity of the position of the proposed house in relation to Shamrock Cottage, and notes that the approved position at both first and ground floor levels is clear of the established building line and the window at Shamrock Cottage. I say that prior to the commencement of construction, this position was easily identifiable on site by an outcropping section of the retaining wall jutting out under Shamrock Cottage and I beg to refer to two photographs of the site prior to the construction of the dwelling house upon which pinned together and marked with the letters and numeral "JOM5" I have signed my name prior to the swearing hereof.

78. I say that DRG. Nos. 4 to 7 inclusive, as exhibited at "VOB1" in the affidavit of Val O'Brien, show the deviations between the approved (green) front elevation and the 'as built' (red) front elevation at 1:100 scale. I say that each drawing has the same horizontal reference point as the plans, i.e. the northeast corner of Shamrock Cottage, but each has a specific vertical reference point as noted on the drawing. These drawings show the extent of the encroachment on the sitting room window at Shamrock Cottage at both levels. The 'as built' first floor building line is located 430-450mm to the west of its approved position

substantially reducing the approximately 550mm separation from the window at Shamrock Cottage indicated on the approved front elevation. The 'as built' ground floor building line is located approximately 650-700mm to the west of its approved position as is seen from the red and green lines on the front elevation comparison drawings.

79. I say that, in my professional opinion, these are quite significant deviations from the grant of permission, such that they give rise to a profound adverse impact on the residential amenity of Shamrock Cottage. My view is corroborated by the planning history where permission Reg. Ref. No. D15A/0363 was refused for a slightly larger ground floor element than that which was ultimately granted. The reasons for refusal at Reg. Ref. No. D15A/0363 explicitly refer to the impact of the enlarged ground floor element on Shamrock Cottage as the following extract from this decision confirms.

...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...

GROUND FLOOR

80. The front elevations on DRG. Nos. 4-7 show that the 'as built' ground floor extension extends approximately 950mm across the sitting room window at Shamrock Cottage. The roof extends across virtually the entire window.
81. DRG. No. 11 shows the 'as built' ground floor superimposed upon the ground floor plan for which application Reg. Ref. No. D15A/0363 was refused. The footprint of the refused ground floor plan is outlined in brown and the 'as built' ground floor plan is outlined in red so these two footprints can be easily compared. DRG. No. 11 shows that the 'as built' ground floor occupies a larger ground floor area at the west of the approved house than the extension refused at Reg. Ref. No. D15A/0363.
82. Dun Laoghaire Rathdown County Council refused permission for a ground floor extension at the west side of the approved house citing its visual obtrusiveness from the windows of Shamrock Cottage, thereby detracting from

the residential amenity enjoyed there. From this decision at Reg. Ref. No. D15A/0750, and the rationale underpinning the decision, it is clear that the protection of the adjoining residential amenity, and in particular the amenity at Shamrock Cottage, was the crucial planning consideration in the Council's assessment of that proposal. It is reasonable to infer that permission for the 'as built' enlarged ground floor, with a larger footprint than the extension refused at Reg. Ref. No. D15A/0363, would also be refused on identical grounds to safeguard amenity at Shamrock Cottage.

FIRST FLOOR

83. I say that, as averred to at paragraph 72 herein, the 'as built' first floor west façade is more overbearing and more visually obtrusive upon Shamrock Cottage than the approved first floor primarily because the 'as built' façade is located 430-450mm to the west of the approved building line. This deviation has serious negative consequences for amenity at Shamrock Cottage because of the overbearing impact of the façade and the associated visual obtrusiveness of the gutter and downpipe viewed from the living room at Shamrock Cottage.
84. I say that another potential negative implication arises from the relationship between the high level kitchen window and its proximity to the sitting room window at Shamrock Cottage facilitating injurious overlooking and the perception of overlooking at Shamrock Cottage which is clearly quite oppressive in nature. (This is examined further below.)
85. I say that, having regard to the main reasons and considerations underpinning the Council's refusal at application Reg. Ref. No. D15A/0363, I believe permission would be refused for the 'as built' first floor west façade for similar planning reasons and to protect amenity at neighbouring residential property.

INTERPRETATION OF THE PLANNING DOCUMENTS

86. It is reasonable for the planning authority and for any person examining the application to rely upon the position of the proposed development in relation to certain fixed or known points on the site as shown in the lodged plans and particulars. I say that having regard to the principle established in the judgment

in the case of *XJS Investments v Dun Laoghaire Corporation* [1986 IR 750] - that a grant of planning permission must be given its ordinary meaning as it would be understood by members of the public without legal training or expertise, as well as by developers and their agents, unless such documents, read as a whole necessarily indicate some other meaning - the following further observations occur:

87. Permission Reg. Ref. No. D15A/0750 was granted for the ground floor extension because the planning authority was satisfied "*this ground floor extension has been altered to ensure there will be no impeding of the views from this window.*" The Planning Officer's Report confirms that Dun Laoghaire Rathdown County Council explicitly required the applicant to demonstrate that the proposed house would not detract from the visual and residential amenity of Shamrock Cottage. The planning assessment relies upon the lodged plans and 3D images [DRG. No. PP-03], all of which clearly show the junction of the proposed house and Shamrock Cottage. Although it is not stated in the planning application that these details are based upon a topographical survey of the site and its environs, the planning authority accepted the information insofar as it shows the position of the approved house in relation to Shamrock Cottage.
88. I say that at paragraph 70 herein I have noted the discrepancies between the information in the planning applications and the details of existing neighbouring properties, including Shamrock Cottage, measured by Val O'Brien & Associates and outlined blue on DRG. Nos. 1 to 11 exhibited at "VOB1". I say that the boundary lines and property details as measured do not correspond with the details on Kenny Kane Associates DRG. No. PP-01 in key respects.
89. The 'as built' house is located generally to the west of its approved position as is shown on DRG. Nos. 1 to 3. Based upon the information available, *none* of the four corners of the 'as built' house is at the position indicated on the approved plans.
90. I say that the ground floor and first floor plans, associated elevations, and the 3D images show the position of the approved house relative to adjoining property, including Shamrock Cottage. All of the drawings in the three applications consistently showed that the southwest corner of the proposed house is flush, in respect of alignment, with the northeast corner of Shamrock

Cottage in plan at first floor level. Disregarding the practical implication of this juxtaposition, which is likely to result in illegal and unauthorised over-sailing at adjoining property, this is the house position indicated on the approved plans. The application documents showed beyond any dispute that the first floor façade did not extend to the west of the corner of Shamrock Cottage. Indeed, at this level, the distance from the southwest corner of the proposed house to the nearest edge of the window at Shamrock Cottage is 550mm as per the north elevation.

91. Similarly, I say that the front elevation (north) on DRG. No. PP-01 shows that the extended ground floor overlaps the window at Shamrock Cottage by approximately 350mm. However, the 'as built' ground floor extension is located to the west of the ground floor building line in respect of which application Reg. Ref. No. D15A/0363 was refused in order to protect amenity at adjoining residential property. Viewed from the north (i.e. front), the 'as built' ground floor element extends across 950mm of the 1250mm wide sitting room window at Shamrock Cottage, so clearly it is not as shown on the approved front elevation and the 3D image. A comparison between the 'as built' and the approved front elevations confirms that there is a 600mm difference between the positions of the ground floor extensions relative to the window at Shamrock Cottage (i.e. 350mm overlap approved versus a 950mm 'as built'), which is a material breach in planning terms.
92. In conclusion, having regard to the magnitude of the deviations in relation to the approved position of the house on site and the serious negative amenity consequences arising thereto, I certainly do not consider these deviations to be minor in nature. I say that the deviations in question constitute significant breaches of the grant of permission which, in the context of the sensitive setting of Shamrock Cottage, give rise to a profound permanent adverse impact upon amenity at Shamrock Cottage. The Respondents did not build the house in the permitted location on site as indicated in the planning documents and in accordance with the final grant of permission. In my professional opinion, the extent of the non-compliance here is not trivial, or *de minimus* in planning terms, and the 'as built' house is, therefore, unauthorised development.

(ii) Roof of Ground Floor Extension

93. The lodged plans do not include a roof plan for the proposed house or the ground floor extension. The roof of the ground floor extension is shown on the first floor plan and on the west elevation on DRG. No. PP-01, which bears a drawing note '*flat roof*'. No materials, external finishes or other details are indicated in the documents. The flat roof is also shown on the 3D image on DRG. No. PP-03. I can find no evidence that the Respondents filed any compliance details in respect of the roof as per Condition No. 5 of Reg. Ref. No. D07A/0507.
94. The 'as built' roof does not comply with the approved plans. DRG. No. 1 shows the 'as built' roofs for the main section of the house and the ground floor extension depicted with a solid red line. The roof of the approved ground floor extension at the west side of the house is indicated with a broken green line. The approved roof of the main section of the house is set out on the 1:250 scale plan, which is the only information available on the planning file.
95. DRG. No. 1 shows that the roof of the ground floor extension is not built in accordance with the approved plans. Specifically, the 'as built' roof is approximately 800-880mm wider and over 2000mm longer than the approved roof extending to 9840mm to cover the external landing area at the top of the steps at the north and an area at the rear of the extension. The approved west elevation on DRG. No. PP-01 and the 3-D image on DRG. No. PP-03 clearly show that the northern end of the flat roof terminates at the ground floor bedroom. The extent of non-compliance (i.e. additional roof area) is shaded yellow on DRG. No. 1 as exhibited in the affidavit of Val O'Brien.
96. The elevations on DRG. Nos. 4 to 10 also confirm that the 'as built' roof is higher and has a different profile than the permitted flat roof. The 'as built' roof comprises a copper finish and is highly prominent when seen from the sitting room at Shamrock Cottage (photograph 22 in exhibit "VOB2" to the affidavit of Val O'Brien). By virtue of its copper colour, the extent of the roof area and its height relative to the floor level at Shamrock Cottage, the 'as built' roof is visually incongruous and seriously detracts from amenity at Shamrock Cottage. DRG. No. 11 shows that the extent of the 'as built' ground floor is larger than the ground floor element refused permission at Reg. Ref. No. D15A/0363. The 'as built' roof is over 2m longer than the 'as built' ground floor extension.

97. In refusing the proposed ground floor extension at Reg. Ref. No. D15A/0363, the planning authority justified its decision on the basis that the ground floor element will be "*visually obtrusive... and will seriously detract from the residential amenity of this dwelling*" (i.e. Shamrock Cottage) due to its location in front of the window at Shamrock Cottage.
98. Having regard to the size of the 'as built' roof relative to the footprint of the ground floor extension at Reg. Ref. No. D15A/0363 and the reason for refusal in that case, it follows that the 'as built' roof is visually obtrusive from this window at Shamrock Cottage and seriously detracts from the visual and residential amenity enjoyed at this dwelling. On this basis, the deviation is significant. The roof of the ground floor extension as constructed is not built in accordance with the plans and it is therefore unauthorised.

(iii) Roof Plane Windows

99. I note from my site visit that three roof plane windows, or 'roof lights', have been installed in the unauthorised roof of the ground floor extension. I say that these roof plane windows have been inserted into the roof of the ground floor extension. These roof plane windows are shown hatched on DRG. No. 1. I note that the width of the roof lights (approx. 800mm) is equivalent to the width of the permitted flat roof of the ground floor extension [DRG. No. 1 shows the 'as built' roof lights extending beyond in relation to the west edge of the permitted roof of the ground floor extension, which is indicated with a broken green line].
100. I say that these 'roof lights' involve works so they constitute 'development' as defined at Section 3(1) of the Planning and Development Acts, 2000-2016 ("the Act"). The descriptions of the proposed development in the public notices in both planning applications, Reg. Ref. Nos. D07A/0507 and D15A/0750, do not refer to any 'roof lights'. No roof plan for the house or the ground floor extension was submitted in either application. The approved floor plans granted pursuant to permission Reg. Ref. No. D15A/0750 do not indicate any roof lights within the flat roof of this extension, so there is no authority to construct any such roof lights on foot of this grant of permission.
101. I say that the roof light windows in the ground floor extension are unauthorised development because they are not permitted pursuant to the grant of permission Reg. Ref. No. D15A/0750. These windows have been installed within a roof

that significantly deviates from the terms of the grant of permission, so the entire roof, including the roof light windows, is therefore unauthorised development.

(iv) Over-sailing at Southern Site Boundary

102. I say that it is clear from the analysis and the photographs in Val O'Brien's affidavit that the roof of the 'as built' house over-sails Shamrock Cottage, or it did so prior to the removal of the guttering at the southwest corner. This adjustment created another problem as rainwater runs off this roof onto Shamrock Cottage because it is not collected in a gutter and discharged to the public surface water sewer. This aspect of the development is referred to elsewhere by Val O'Brien and Darragh Fegan and I beg to refer to their respective affidavits, when produced.
103. From a planning standpoint, a grant of permission does not authorise any works on lands that are not indicated as being within the developer's control, so a grant of permission does not provide any legal right to carry out works that entail the over-sailing of adjoining property. This is expressly provided for at Section 34(13) of the Planning and Development Act (*"A person shall not be entitled solely by reason of a permission under this section to carry out any development"*).
104. I say that, for the avoidance of doubt, planning authorities frequently attach conditions to this effect to a grant of permission. No condition was attached in either grant of permission, however this is clearly addressed at Notes 2 and 3 to permission Reg. Ref. No. D15A/0750.
105. I note the lodged plans indicate the proposed gutters and the downpipe at the west side of the proposed house in elevation and plan. This information is also clearly shown in the 3D image on DRG. No. PP03. However, given the core difficulty pertaining to the position of the 'as built' house, as discussed above, if the house is not built in the approved position it must follow that the gutters and downpipes are also constructed in the wrong position. The adverse impact of these breaches upon Shamrock Cottage is described above.

(v) 'High Level Window' in West Elevation

106. The approved first floor west elevation comprises two vertical windows, one with frosted glass, and a horizontal 'high level window' (cill level 1685mm over first floor) to the kitchen to avoid overlooking between the proposed house and Shamrock Cottage. The following section focuses upon the high level window, which is nearest to Shamrock Cottage.
107. Kenny Kane Associates, in its cover letter dated 25th November 2015, exhibited at "DF14" contends that the revised proposals address the Council's reasons for refusal at Reg. Ref. No. D15A/0363. This cover letter states as follows in relation to the fenestration in the proposed west elevation.

(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 to be overlooking adjoining properties and is fitted with clear glass in order that the occupants can survey the private and (sic) open space relating to the house. [Emphasis added]

108. It is explicitly stated that the windows are "at such a height as not to generate a problem of overlooking". This statement is corroborated by the 3D image of the west elevation on DRG. No. PP-03 exhibited at "JOM3", which shows the cill level of the high level window is level with the top of the wall at Shamrock Cottage and is higher than the top of the living room window at Shamrock Cottage. Overlooking is avoided as shown on the 3D image and the planning authority accepted that there is no overlooking as this extract from the DLR Planning Officer's Report (Reg. Ref. No. D15A/0750) confirms.

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...

109. However, the lodged plans and elevations do not adequately show the proposed west elevation and the existing window at Shamrock Cottage. Specifically, the dimensions and the cill level of the window at Shamrock Cottage are not shown in relation to the proposed high level window on a single drawing enabling a proper assessment of the relationship between the high level window and the existing window at Shamrock Cottage. The west elevation on Kenny Kane Associates DRG. No. PP-01 shows the high level window but not the window at Shamrock Cottage, and the front (north) elevation on the same drawing shows the window at Shamrock Cottage (incorrectly) but it does not show the proposed high level window details. As already noted, these details are shown together only on the 3D image.

'AS BUILT' HIGH LEVEL WINDOW IN WEST ELEVATION

110. I say that the drawings prepared by Val O'Brien, and in particular DRG. Nos. 8-10 inclusive, show the 'as built' elevation (side) outlined in red superimposed upon the west elevation as shown on Kenny Kane Associates DRG. No. PP-01 and outlined in green at a 1:50 scale. These drawings were prepared with different vertical reference points marked "A" to enable a comparison between the 'as built' west elevation and the approved west elevation. These drawings also facilitate comparisons between the relative positions of the existing sitting room window at Shamrock Cottage and (1) the proposed high level window as shown in the west elevation and (2) the 'as built' high level window. A single horizontal reference point, the north façade of Shamrock Cottage was selected for these three elevation drawings. This reference point is used in all of the drawings prepared by Val O'Brien & Associates.

111. I say that DRG. Nos. 8-10 show the sitting room window at Shamrock Cottage marked blue in section. These drawings suggest that the true position of the proposed high level window in relation to the existing sitting room window at Shamrock Cottage is materially different to that shown in the 3D image in the planning application on DRG. No. PP-03. In DRG. Nos. 8 & 9, the proposed high level window is at a similar level to the existing window at Shamrock Cottage. DRG. No. 10 shows that the cill level of the proposed high level window is actually below the cill level of the window at Shamrock Cottage. In my opinion, none of these arrangements between the proposed west elevation and the existing sitting room window at Shamrock Cottage would be contemplated by any planning authority or An Bord Pleanála because the

proposed "high level window" gives rise to very serious and quite obvious overlooking and loss of privacy at an adjoining residential property. I say that, in my professional opinion, planning permission would almost certainly be refused on that basis.

112. However, the planning authority did not have this information when it assessed the planning application (Reg. Ref. No. D15A/0750). Instead, the Council's assessment of the likely impact of the high level window on Shamrock Cottage is based upon the statement in the cover letter and in particular the 3D image on DRG. No. PP-03, which shows the cill of the high level window above the entire window at Shamrock Cottage. I say that DRG. Nos. 8-10 confirm that the 3D image contains significant and material errors and demonstrate that there is a conflict between the elevations on DRG. No. PP-01 and the details shown on the 3D image. However, the 3D image, the only document showing both windows together and upon which DLR relied in making its decision, is manifestly incorrect and seriously misleading.
113. The 'as built' west elevation is shown in red on DRG. Nos. 8-10. I say that all three drawings indicate that the 'as built' high level window is higher than the approved high level window in the west elevation as per Kenny Kane Associates DRG. No. PP-01. The difference between the cill levels of the approved high level window and the 'as built' window ranges from 340mm to 970mm, which is a considerable deviation from the approved drawing with material negative planning consequences for the occupants of Shamrock Cottage. The cill level of the 'as built' high level window is approximately 200mm below the top of the existing sitting room window at Shamrock Cottage so this window is not built as shown on the 3-D image on DRG. No. PP-03 where the cill level of the high level window is clearly *higher* than the top of the window at Shamrock Cottage. Since there is no scale on the 3D image, the deviation between the window on the 3D image and the 'as built' window cannot be measured.
114. The position of the high level window now built facilitates quite serious and profound overlooking between the developed house and the sitting room at Shamrock Cottage. In plan, the distance from the 'as built' high level window to the existing window at Shamrock Cottage is less than 2m. It is possible to look directly into the first floor level of the 'as built' house from the existing sitting room window at Shamrock Cottage, which is patently contrary to any conception of good planning. Permission would almost certainly be refused for the arrangement as now built because the relative levels and close direct

proximity of the windows allows, and in fact necessitates, injurious overlooking between the houses.

115. I say that even if the high level window were opaque glazed, the perception of overlooking would still arise and this perception would be exacerbated by the extremely limited separation (< 2m) between the high level window and the sitting room window at Shamrock Cottage. In addition, artificial lighting of the open plan living / kitchen / dining area at first floor level would also give rise to light pollution and distraction which directly, and uniquely, diminishes the privacy and amenity enjoyed at Shamrock Cottage.
116. I say that, as a rule of thumb, a 22 metre minimum separation distance is generally provided between the opposing first floor windows in a residential context. Typically, the first floor windows are bedroom windows, which have less overlooking potential than windows in more heavily trafficked areas of the house such as the kitchen, living rooms or other reception rooms. In this case, the bedrooms in the new development are at ground floor level, and the first floor accommodation includes the key living areas, obviously to avail of the views to the north. The window at Shamrock Cottage also serves a sitting / living room, so the relationship between these two windows is, therefore, considerably more sensitive than a bedroom to bedroom situation where 22 metres minimum separation is usually provided to safeguard amenity at both properties. I say that, in my opinion, the 'as built' layout whereby the horizontal "high level" window is hardly 2m from an existing window at Shamrock Cottage would never be granted permission for these reasons.
117. I say that, as noted at paragraphs 72 and 73 herein, the 'as built' first floor façade has been constructed to the west of its approved position so this entire wall is 430-450mm closer to Shamrock Cottage than the approved building line thereby exacerbating the injurious impact. The 'as built' first floor façade is, therefore, more overbearing and more visually obtrusive when viewed from the sitting room window at Shamrock Cottage.
118. I say that DRG. Nos. 8-10 reveal serious discrepancies in relation to the proposed horizontal high level window and for that matter the entire west elevation as shown on DRG. Nos. PP-01 and PP-03. These drawings Nos. 8-10 prepared by Val O'Brien and Associates confirm that the information on the elevations showing the proposed high level window with respect to the existing window at Shamrock Cottage is not consistent with the equivalent information

on the 3D image. The application documents show the positions of the proposed high level window very differently and cannot be reconciled. This suggests that the survey work upon which the application drawings and/or the 3D image were prepared is seriously flawed because it does not accurately indicate the position of the existing sitting room window at Shamrock Cottage.

(vi) Ground Floor Windows in South Elevation

119. I say that during the site visit Mr Fegan directed me to the two ground floor windows within the 'as built' south elevation. These windows are below the ground level of the adjoining lands at the rear and can only be seen from within the curtilage of The Ardbrough and the adjoining site between The Ardbrough and Shamrock Cottage. The 'as built' house is not constructed to the southern site boundary as per the approved plans, so the windows allow some limited natural light into the ground floor from above.
120. These additional windows are not authorised by either grant of permission, i.e. Reg. Ref. No. D07A/0507 or D15A/0750. The installation of the two windows is, therefore, in breach of the terms of the grants of permission and clearly constitutes unauthorised development.

Conclusion

121. It is clear that the house has not been constructed in the position shown on the lodged plans and particulars at Reg. Ref. Nos. D07A/0507 and D15A/0750.
122. The 'as built' ground floor and first floor building lines are located approximately 650 to 700mm and approx. 430 to 450mm respectively to the west of their approved positions.
123. The 'as built' roof of the ground floor extension is 800-880mm wider and over 2m longer than the approved roof. This area of the 'as built' roof is greater than the enlarged ground floor in respect of which permission Reg. Ref. No. D15A/0363 was refused because of its visual obtrusiveness and adverse impact upon residential amenity at Shamrock Cottage.

124. The 'as built' first floor west elevation is not constructed as per the approved drawings. The Respondents stated that the high level window in the west elevation is "*at such a height as not to generate a problem of overlooking*". The planning authority accepted that no overlooking occurs having regard to a 3D image, the only document in the planning application showing the proposed west elevation and the nearby window at Shamrock Cottage. The 3D image indicates the cill level of the proposed high level window level is higher than the top of the living room window at Shamrock Cottage. However, the elevation details conflict with the 3D image in respect of the high level window. One or both must be incorrect.
125. The 'as built' high level window is not constructed as shown in the approved west elevation as per Kenny Kane Associates DRG. No. PP-01. The 'as built' high level window is also not constructed as per the 3D image on DRG. No. PP-03, the key drawing upon which the planning authority determined that there is no overlooking. However, the high level window as constructed facilitates serious and injurious overlooking between the proposed house and Shamrock Cottage because of the cill levels of the two windows and the minimal separation provided between them. In my expert opinion, the 'as built' layout entailing a horizontal 'high level window' facing an existing sitting room window at Shamrock Cottage only 2m away, even at a non-opposing angle, would never be granted permission.
126. Other unauthorised works include the installation of three roof light windows within the roof of the ground floor extension, the over-sailing of the southern site boundary and the addition of two ground floor windows in the south elevation.
127. On the basis of the information to hand, in my professional opinion, the extent of the deviations from the approved plans are not minor and must be regarded as significant in planning terms. These deviations involve substantial works, not authorised by either grant of permission, which give rise to permanent and serious injurious impacts upon the amenity at Shamrock Cottage.
128. My opinion is founded upon and supported by the Council's assessment of two planning applications. First, I refer to the main reasons and considerations cited by the planning authority in its decision (Reg. Ref. No. D15A/0363) to refuse an enlarged ground floor element at the west of the original approved house. Second, I refer to the assessment of the alterations at Reg. Ref. No. D15A/0750 whereby the planning authority approved the modified extension having regard

to the reduced ground floor footprint, the position of the house in relation to the established building line at Shamrock Cottage and the avoidance of overlooking by incorporating a high level window in the west elevation. The 'as built' house breaches these fundamental requirements and seriously injures the amenity of Shamrock Cottage. For these reasons, I consider that the 'as built' development is not built in accordance with the grants of permission and is therefore unauthorised.

129. I note the Enforcement Department's reply of May 15th 2017, as exhibited in the verifying affidavit of Darragh Fegan, wherein it confirms the house was not built in the exact position as per the grant of permission, and it states that the deviations are "*minor in nature*" and are not material to an extent that would necessitate the benefit of a new grant of permission and as such does not warrant enforcement action. I do not concur with this assessment of the deviations from the permitted plans for the main reasons, considerations and arguments set out above.
130. As such, I am of the opinion that the 'as built' house on the site constitutes unauthorised development.

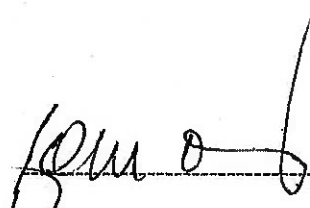
JK

Sworn by the said JOHN O'MALLEY on the 18th day of April 2018 at
Stillorgan, Co. Dublin
before me a Practising Solicitor / Commissioner for Oaths and

(i) I know the deponent

(ii) ~~the deponent is identified to me by _____ who is known to me and who has certified his personal knowledge of the deponent~~

(ii) ~~the identity of the Deponent has been established to me by reference to~~



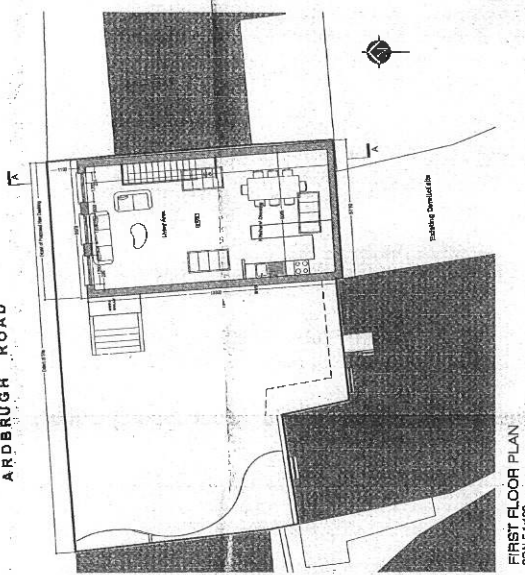
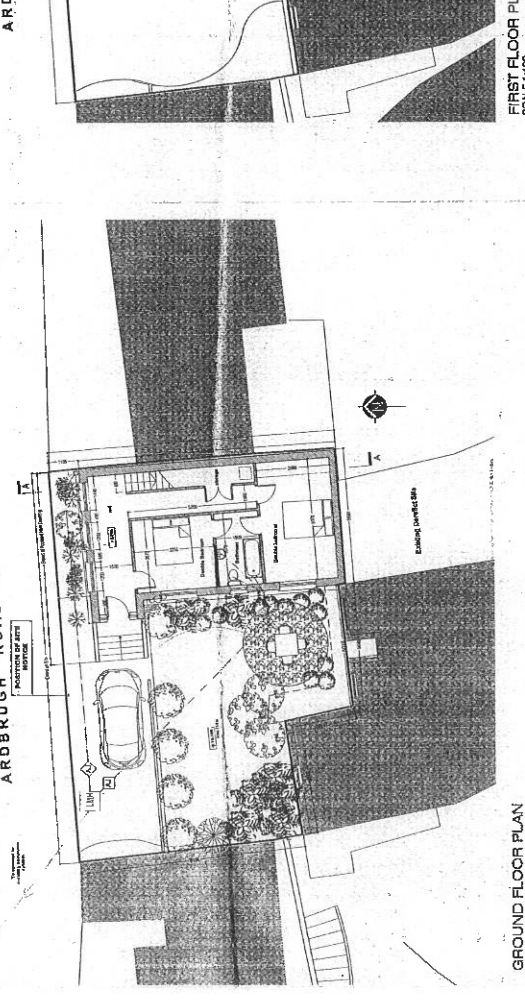
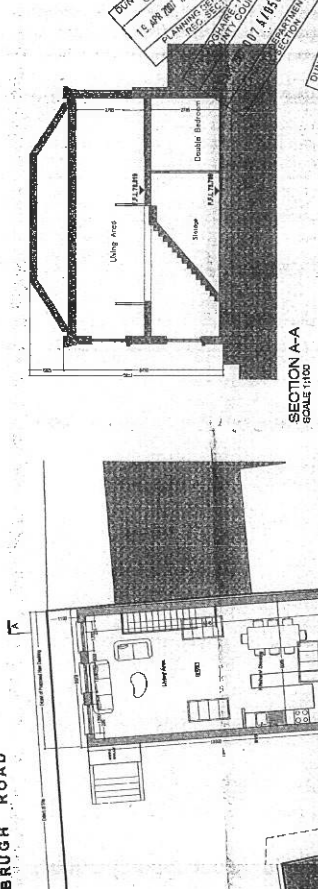
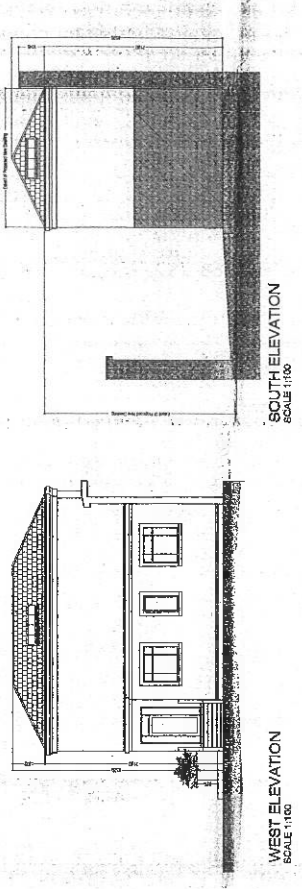
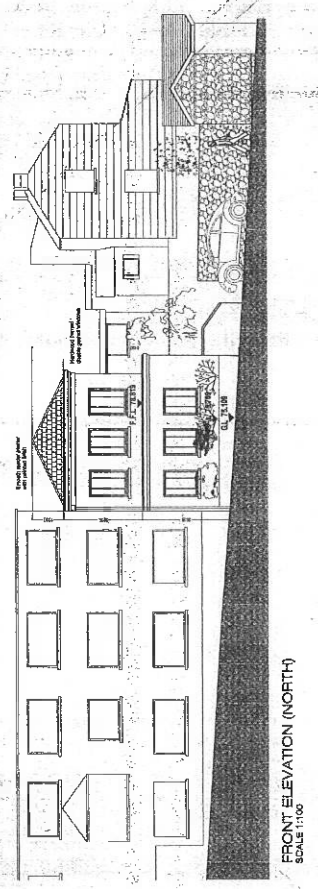
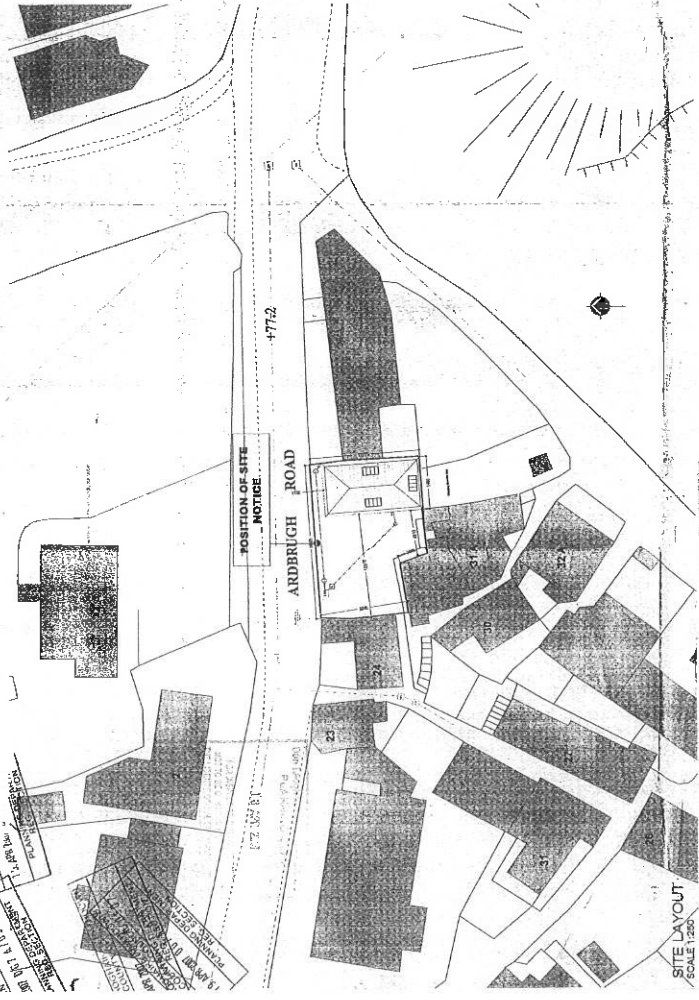
DEPONENT
OATHS



PRACTISING SOLICITOR / COMMISSIONER FOR
FRANK MURPHY SOLICITOR
Commissioner for Oaths
Priory House,
Priory Hall Office Park, Stillorgan Road,
Stillorgan, Blackrock, Co. Dublin
Filed on the _____ day of April 2018 by Mallin O'Toole Law Firm 353 1 2835252
E-Mail: fmurphy@fmlaw.ie

30 Upper Pembroke Street, Dublin 2, Solicitors for the Applicant

Exhibit JOM 1



15 APR 2009 10:14 01/09
19 APR 2009 10:14 01/09
19 APR 2009 10:14 01/09
19 APR 2009 10:14 01/09
19 APR 2009 10:14 01/09

DOYAL & CO ARCHITECTS
PLANNING DEPARTMENT
19 APR 2009 10:14 01/09

kennykane
17A, Park Street, Old Leighlin, County Dublin
tel: 01-454-8811
www.kennykane.ie

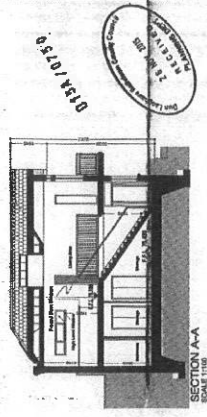
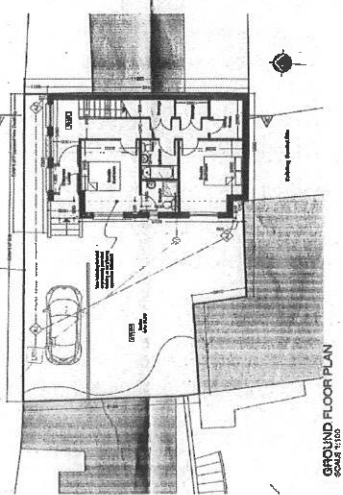
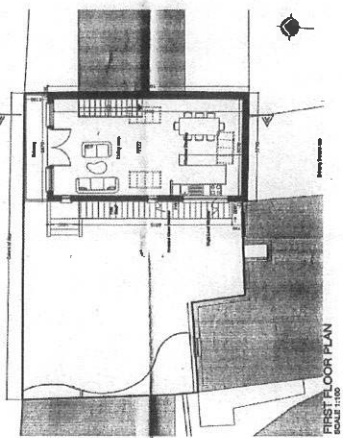
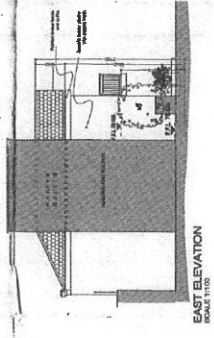
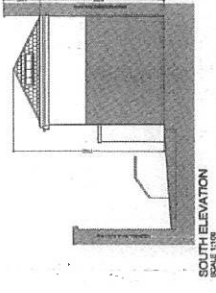
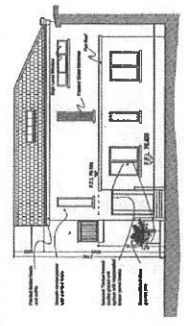
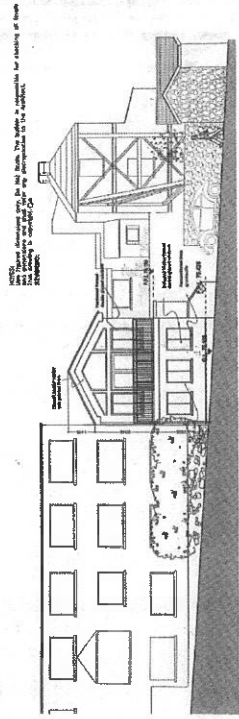
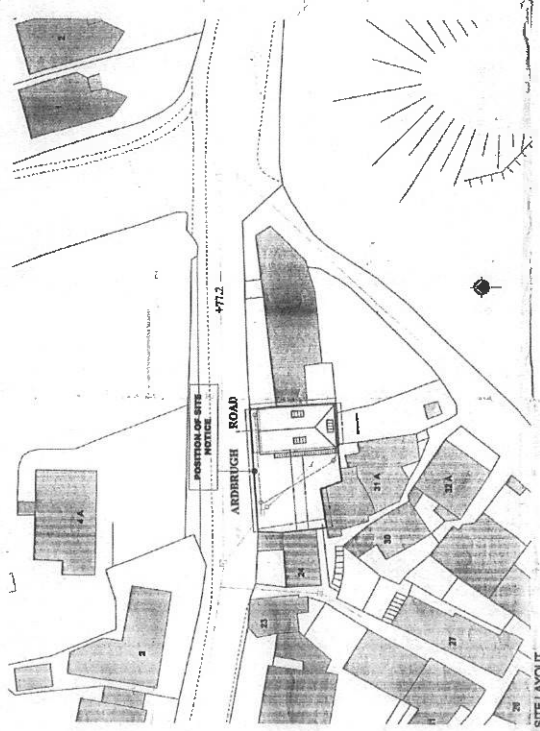
OS REF. NO. 3384-23

Mr. Peter Dunphy

**SITE LAYOUT, PLANS
ELEVATIONS, SECTION 07-01**

256 - 5/4

JOM 3



OS REF. NO. 3364-23

DATE: 10/15/20

PROJECT: JOM 3

CLIENT: KENNY/COTE

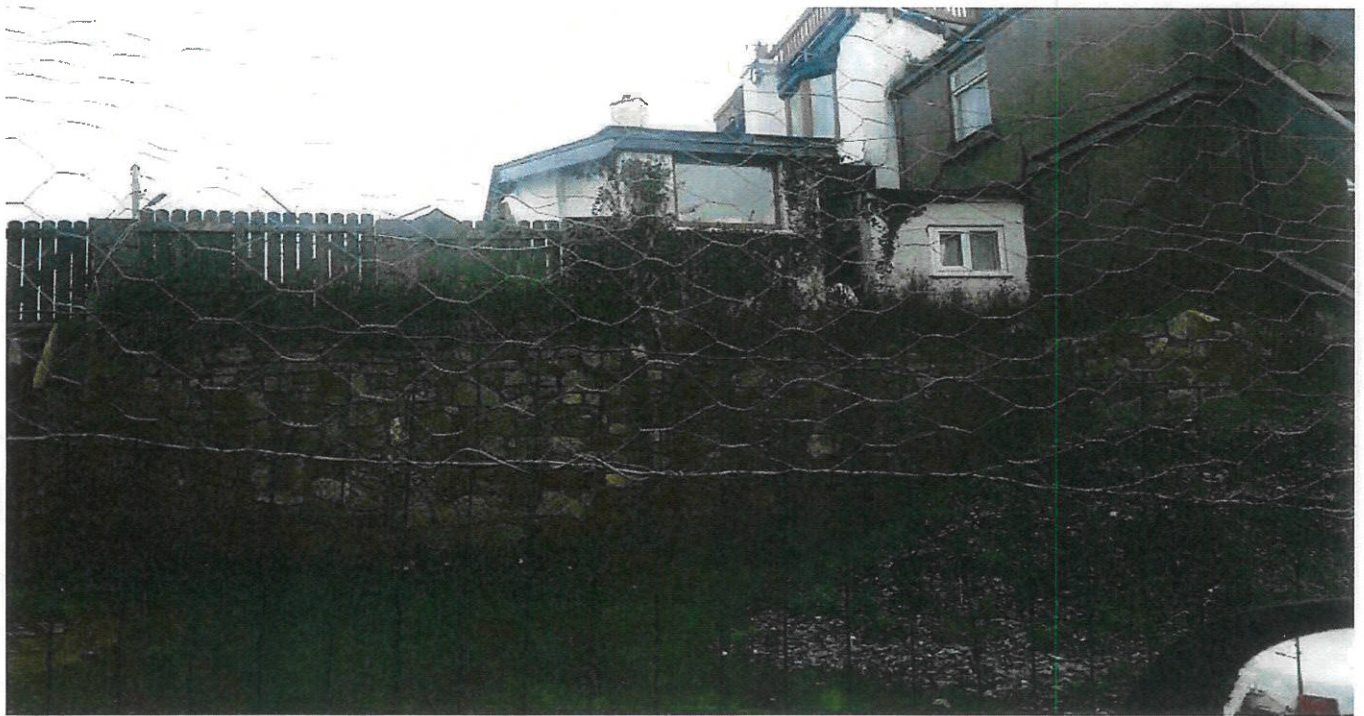
DESIGNER: KENNY/COTE

DATE: 10/15/20

SCALE: 1:100

SECTION: SITE LAYOUT PLANS, ELEVATIONS, SECTION

PP-01



JOM SJOM

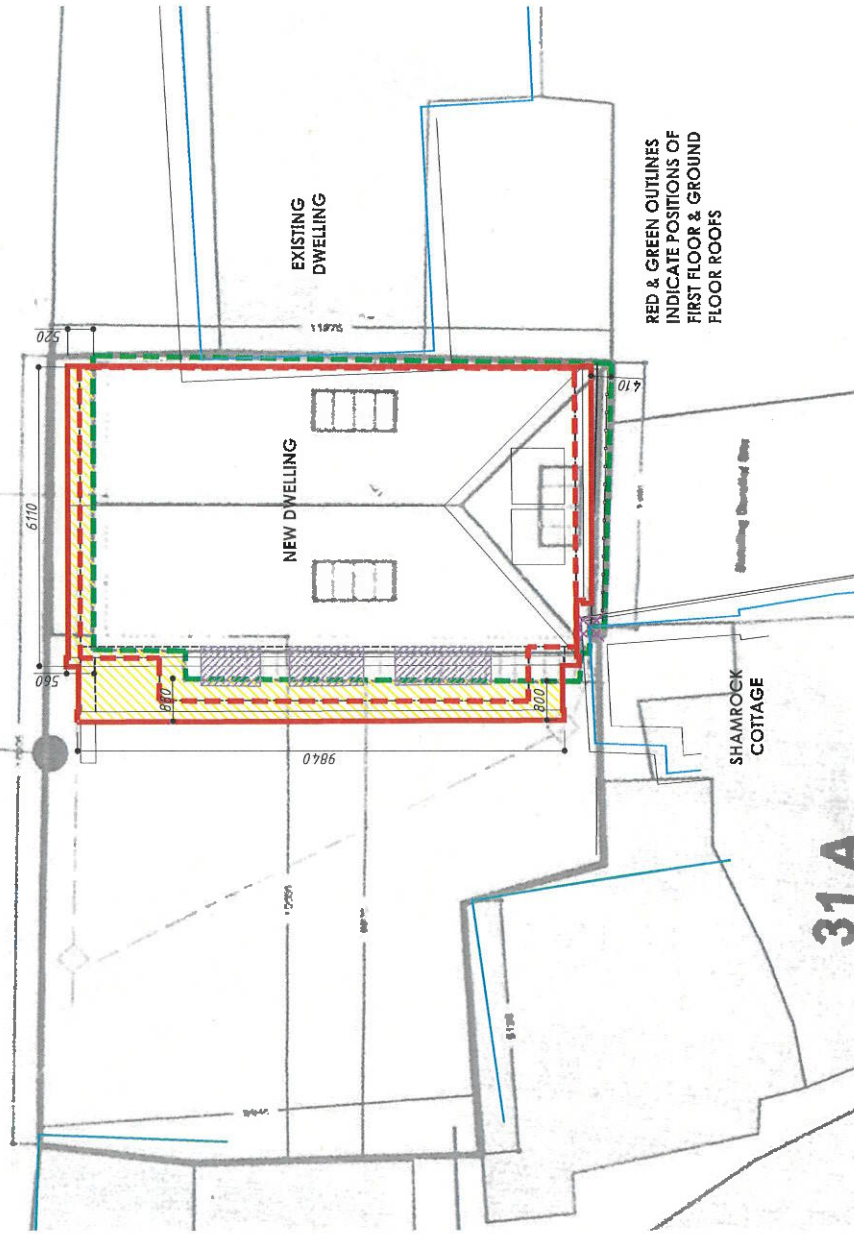
Plate 1

Plate 2



Exhibit VOB 1 - 11

ARDBRUGH ROAD



LEGEND

	NEW DWELLING (APPROVED POSITION)
	NEW DWELLING (ACTUAL POSITION)
	GROUND FLOOR FOOTPRINT (ACTUAL POSITION)
	ROOF PLANE WINDOWS (ACTUAL)
	SURVEY REFERENCE LINES
	EXTENT OF NON COMPLIANCE
	OVERLAY REFERENCE POINT

VAL O'BRIEN & ASSOCIATES
 chartered building surveyors
 62 The Esplanade, Sea View, Dublin 1
 01608 1910 • info@vob.ie • www.vob.ie

Client: **Darragh Fegan**

Job: **Shamrock Cottage, Ardbrough Rd., Dublin**

Drawing: **Roof Comparison**

Dwg: 170508-01 Date: 2018-02-01

Scale: 1:100 @A3 Drawn By: BM

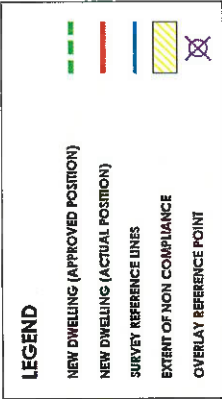
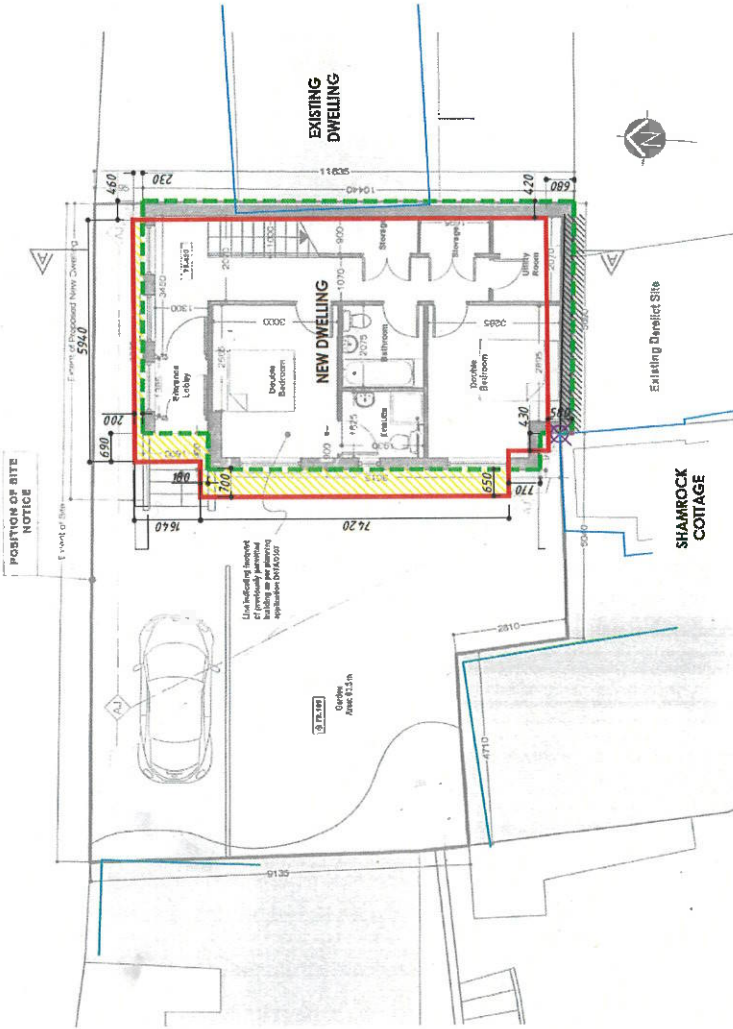
Revisions:

NOTES:

- * THESE DRAWINGS ARE FOR PLANNING PURPOSES ONLY
- * ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH CURRENT BUILDING REGULATIONS
- * DO NOT SCALE FROM THIS DRAWING
- * USE FIGURED DIMENSIONS ONLY
- * ALL DIMENSIONS TO BE CHECKED ON SITE

Shamrock Cottage-170508-02 Ground Floor Comparison

ARDBRUGH ROAD



GROUND FLOOR PLAN
 Kenny Kane Associates Reference Underlay Drawing PP-01, Ground Floor Plan
 PL. REF. D15A/0750

VAL O'RIEN & ASSOCIATES
 40 The Shamrock Estate, Dublin 1
 Tel: 01 855 1815 Fax: 01 855 1816 www.voa.ie

Client: **Darragh Fegan**

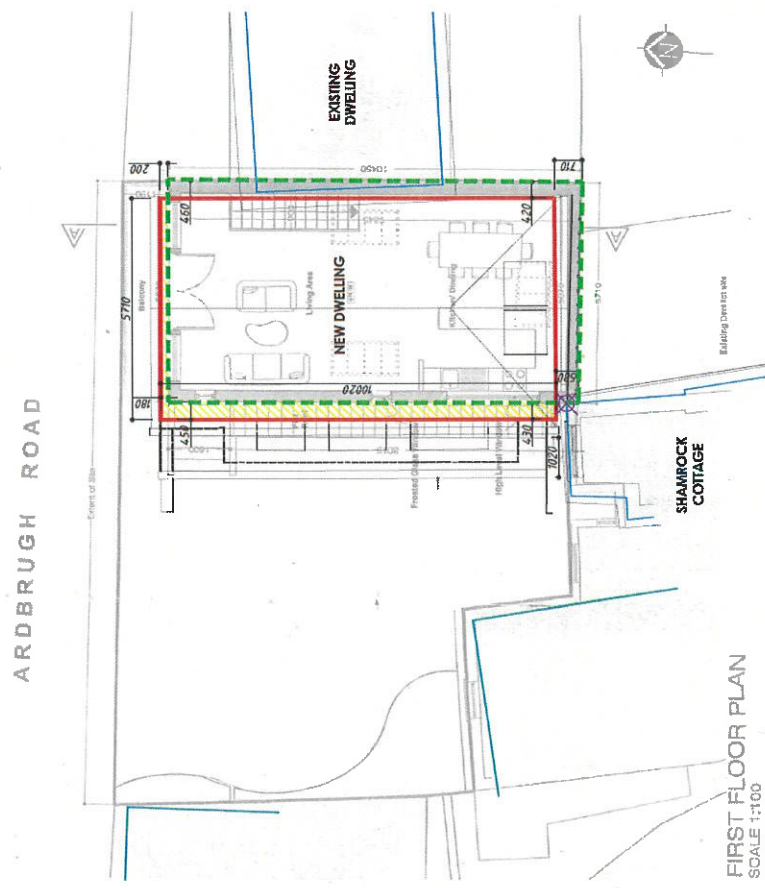
Job: **Shamrock Cottage, Ardbrough rd., Dublin**

Drawing: **Ground Floor Comparison**
 Dwg: 170508-02 Date: 2018-07-01
 Scale: 1:100 (A3) Drawn: P.K. 188

Notes:
 * THESE DRAWINGS ARE FOR PLANNING PURPOSES ONLY
 * DO NOT SCALE FROM THIS DRAWING
 * ALL DIMENSIONS TO BE CHECKED ON SITE

Revisions:

Shamrock Cottage-170508-03 First Floor Comparison



Kenny Kane Associates Reference Underlay Drawing PP-01, First Floor Plan
PL. REF. D15A/0750

VAL O'BRIEN & ASSOCIATES
 100, The Exchange, Edge Street, Dublin 1
 Tel: 01 673 1113 @valogobrien www.valobrien.ie

Client: Darragh Fagan

Job: Shamrock Cottage, Ardbrough Rd., Dublin

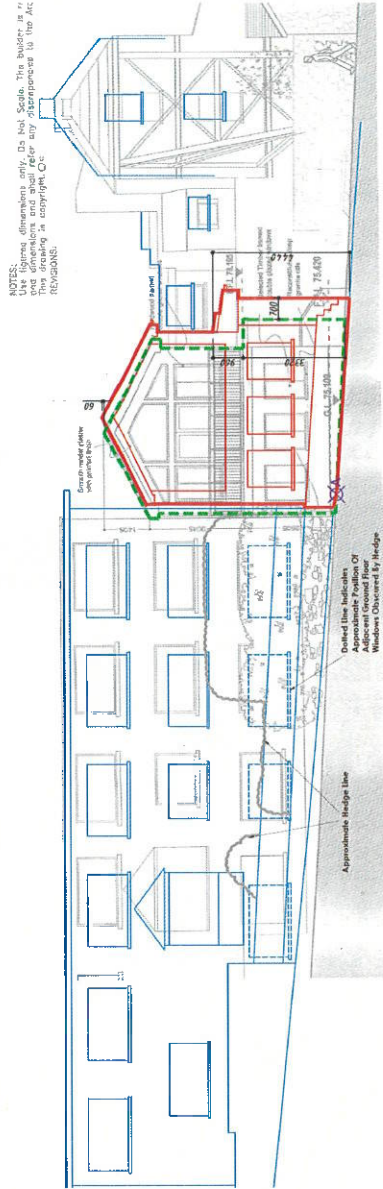
Drawing: First Floor Comparison
 Date: 2014.04.01
 Scale: 1:100 @A3
 Drawn by: BM

Notes:

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- * ALL DIMENSIONS TO BE CHECKED ON SITE

Shamrock Cottage-170508-04 Front North Elevation Opt 1

OVERLAY POSITION OPTION 1 (HORIZONTAL POSITION AS PER FLOOR PLANS)



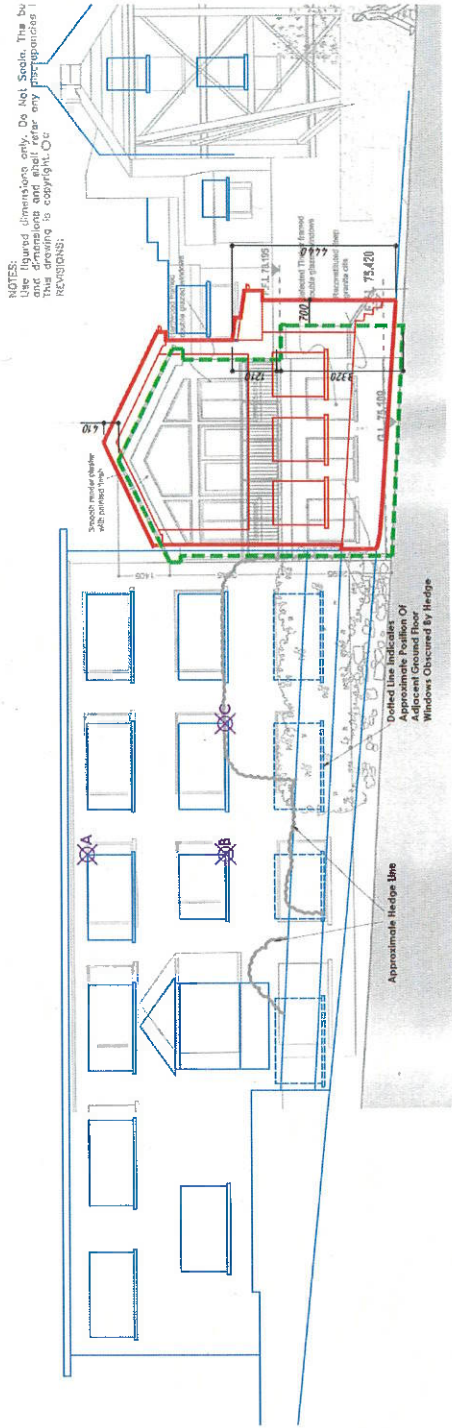
Kenny Kame Associates Reference Underlay Drawing PP-01, Front Elevation (North)
PL. REF. D15A/0750

LEGEND	
	NEW DWELLING (APPROVED POSITION)
	NEW DWELLING (ACTUAL POSITION)
	SURVEY REFERENCE LINES
	VERTICAL REFERENCE POINT (ROAD LEVEL)
	HORIZONTAL POSITION REFERENCE (AS PER FLOOR PLANS)

VAL O'BRIEN & ASSOCIATES ARCHITECTS 100 The Diamond, (1st Floor, Dublin) DUBLIN D02 8R40 www.valobrien.com	
Drawing Ref: Shamrock Cottage Drawing Name: Shamrock Cottage, Rathfarnham Rd., Dublin Drawing Date: 2018-04-24	
Job No: Shamrock Cottage, Rathfarnham Rd., Dublin Drawing No: Front/ North Elevation Comparison Date: 2018-04-24	
Notes: - ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE - ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH - IRELAND'S BUILDING REGULATIONS - USE FINISHED DIMENSIONS ONLY	Revisions:

Shamrock Cottage-170508-06 Front North Elevation Opt 3

OVERLAY POSITION OPTION 3 (HORIZONTAL POSITION AS PER FLOOR PLANS)



FRONT ELEVATION (NORTH)
SCALE 1:100

Kenny Kane Associates Reference Underlay Drawing PP-01, Front Elevation (North)
P.L. REF. D15A/0750

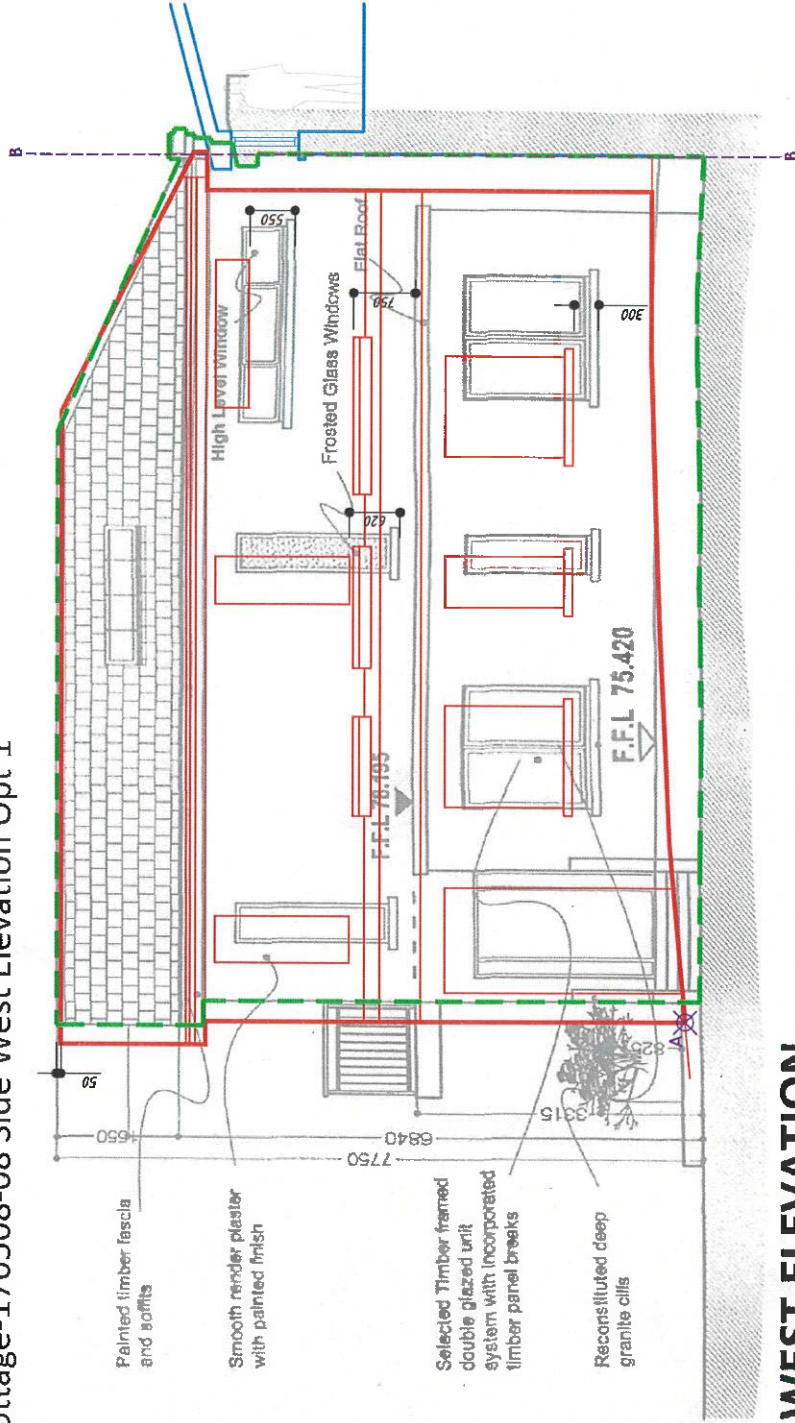
LEGEND	
---	NEW DWELLING (APPROVED POSITION)
---	NEW DWELLING (ACTUAL POSITION)
---	SURVEY REFERENCE LINES
⊗A	VERTICAL REFERENCE POINT (THE ARDBURGH WINDOW CORNER)
⊗B	VERTICAL REFERENCE POINT (THE ARDBURGH WINDOW CORNER)
⊗C	VERTICAL REFERENCE POINT (THE ARDBURGH WINDOW CORNER)
---	HORIZONTAL POSITION REFERENCE (AS PER FLOOR PLANS)

VAL O'BRIEN & ASSOCIATES
 Chartered Building Surveyors
 45 The Quadrant, Long Walk, Dublin 15
 Tel: 01 274 4444 Fax: 01 274 4445
 www.valobrien.ie

Client: Shamrock Cottage
 Location: Shamrock Cottage, Ardaraugh Rd., Dublin 15
 Drawing: Front/ North Elevation Comparison
 Date: 2018-02-21
 Scale: 1:100 (A3)

Notes:
 * THESE DRAWINGS ARE FOR PLANNING PURPOSES ONLY
 * ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH
 COMING BUILDING REGULATIONS
 * USE FIGURED DIMENSIONS ONLY
 * ALL DIMENSIONS TO BE CHECKED ON SITE

Shamrock Cottage-170508-08 Side West Elevation Opt 1



WEST ELEVATION

1:50

Kenny Kane Associates Reference Underlay Drawing PP-01, West Elevation
 PL. REF. D15A/0750

LEGEND

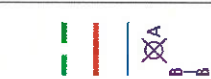
NEW DWELLING (APPROVED POSITION)

NEW DWELLING (ACTUAL POSITION)

SURVEY REFERENCE LINES

VERTICAL REFERENCE POINT (ROAD LEVEL)

HORIZONTAL POSITION REFERENCE B-B (SHAMROCK COTTAGE WALL LINE)



Revisions:

- * THESE DRAWINGS ARE FOR PLANNING PURPOSES ONLY
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- * DO NOT SCALE FROM THIS DRAWING
- * ALL DIMENSIONS TO BE CHECKED ON SITE

VAL O'BRIEN & ASSOCIATES
 Chartered Building Practitioners
 62 The Shewports, Foley Street, Dublin 1
 01 856 19 10 val@vob.ie www.vob.ie

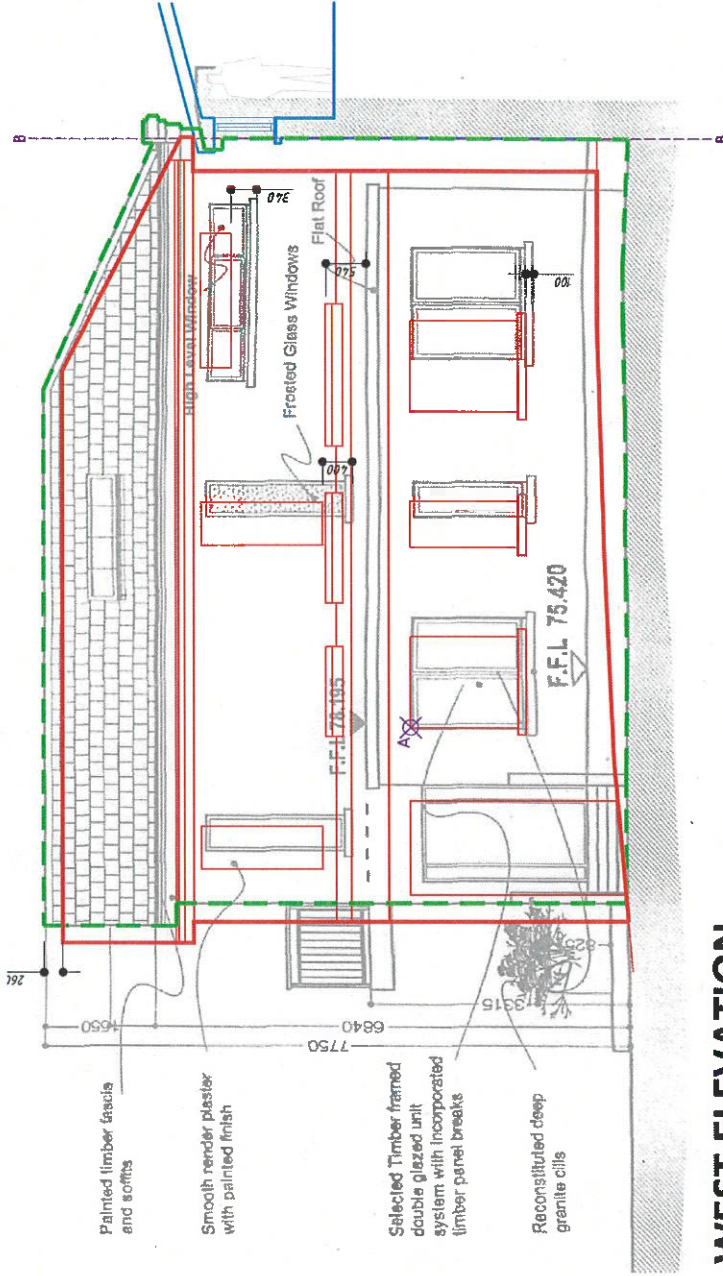
Client: **Dunraigh Fegan**

Job: **Shamrock Cottage, Acclagh Rd., Dublin**

173

Drawing: **Side / West Elevation Comparison**
 Date: 2018-02-21
 Dwg: 170508-08
 Scale: 1:50 @A3
 Drawn By: BM

Shamrock Cottage-170508-09 Side West Elevation Opt 2



WEST ELEVATION

1:50

Kenny Kane Associates Reference Underlay Drawing PP-01, West Elevation
 PL. REF. D15A/0750

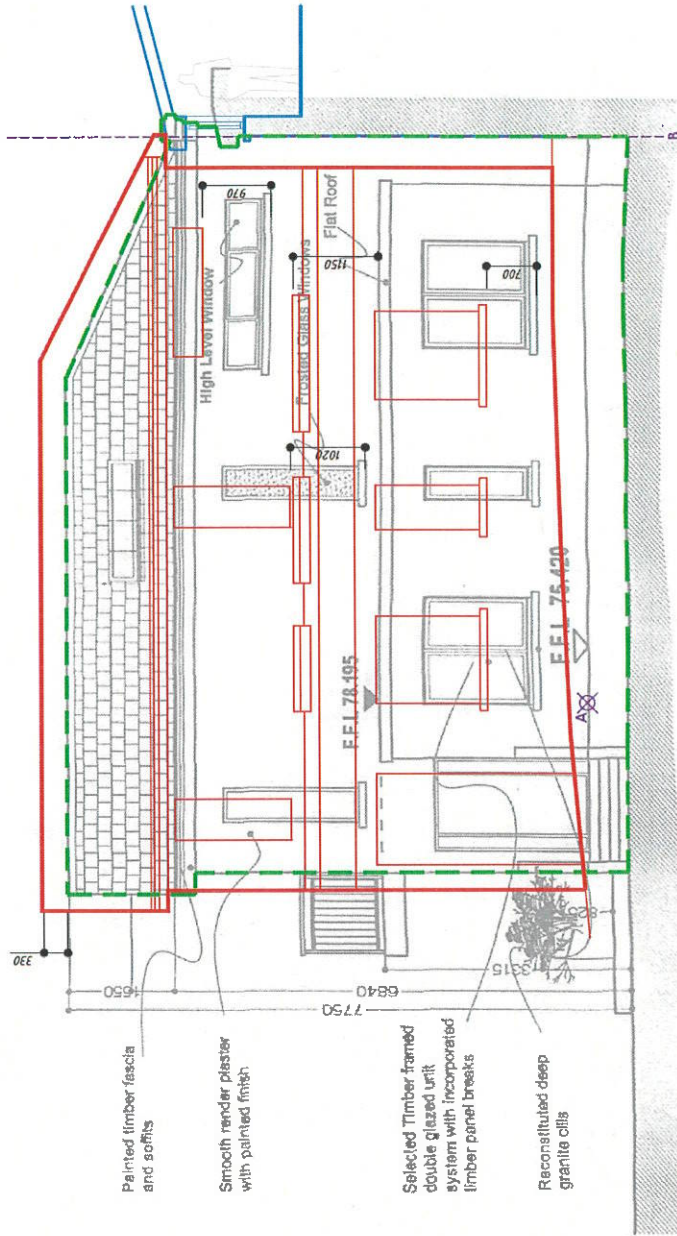
LEGEND	
	NEW DWELLING (APPROVED POSITION)
	NEW DWELLING (ACTUAL POSITION)
	SURVEY REFERENCE LINES
	VERTICAL REFERENCE POINT (GROUND FLOOR WINDOW HEAD)
	HORIZONTAL POSITION REFERENCE B-B (SHAMROCK COTTAGE WALL LINE)

VAL O'BRIEN & ASSOCIATES
 Chartered building supervisors
 110, Pearse Street, Dublin 1
 Tel: 01 856 1818 | Email: info@valobrien.ie | Website: www.valobrien.ie

Client: Darragh Pagan
 Job: Shamrock Cottage, Ardraugh Rd., Dublin
 Drawn: Sida/ West Elevation Comparison
 Date: 2018.02.01
 Scale: 1:50 @A3
 Drawn By: AM

Notes:
 * THESE DRAWINGS ARE FOR PLANNING PURPOSES ONLY
 * ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF THE TENDERS
 * DO NOT SCALE FROM THIS DRAWING
 * USE FIGURED DIMENSIONS ONLY
 * ALL DIMENSIONS TO BE CHECKED ON SITE

Shamrock Cottage-170508-10 Side West Elevation Opt 3



WEST ELEVATION

1:50

Kenny Kane Associates Reference Underlay
 Drawing PP-01, West Elevation
 P.L. REF. D15A/0750

LEGEND

- NEW DWELLING (APPROVED POSITION)
- NEW DWELLING (ACTUAL POSITION)
- SURVEY REFERENCE LINES
- VERTICAL REFERENCE POINT (75.420 FT. ON PLANNING DRAWING v ACTUAL GFS LEVEL)
- HORIZONTAL POSITION REFERENCE B-B (SHAMROCK COTTAGE WALL LINE)

VAL O'BRIEN & ASSOCIATES
 chartered building surveyors
 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000

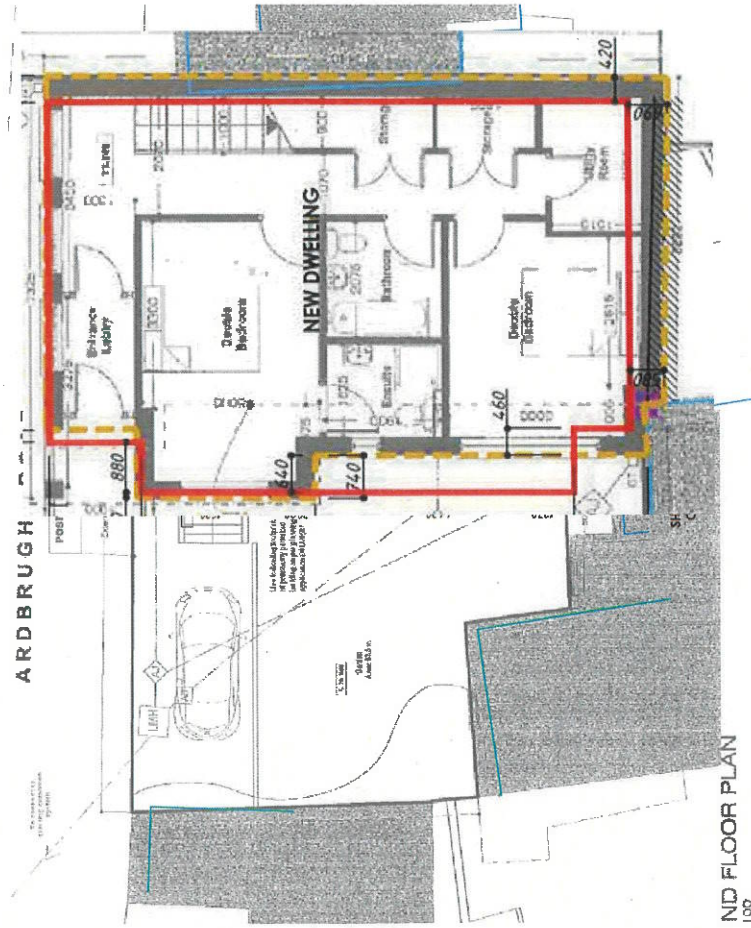
Client: Darragh Fegan

Job: Shamrock Cottage, Avdabright Rd., Dublin

Drawn: **Slide/ West Elevation Comparison**
 Date: 2018-02-01
 Scale: 1:50 (BA3)
 Drawn by: RBK

Notes:
 * THESE DRAWINGS ARE FOR PLANNING PURPOSES ONLY
 * ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH
 * DO NOT SCALE FROM THIS DRAWING
 * USE DIMENSIONS TO BE CHECKED ON SITE
 * ALL DIMENSIONS TO BE CHECKED ON SITE

Shamrock Cottage-RevA-170508-11 2015 Refusal Ground Floor Comparison



Kenny Kane Associates Reference Underlay Drawing PP-01, Ground Floor
 PL. REF. D15A/0363

- Notes:**
- THESE DRAWINGS ARE FOR PLANNING PURPOSES ONLY
 - DO NOT SCALE FROM THIS DRAWING
 - CURRENT BUILDING REGULATIONS
 - ALL DIMENSIONS TO BE CHECKED ON SITE

Revisions:

VAL O'BRIEN & ASSOCIATES
 ARCHITECTS & PLANNERS
 100 The Shillelagh, Filly Street, Dublin 1
 01 856 1110 valobrien.ie

Clerk:
 Darragh Fegan

Job:
 Shamrock Cottage, Ardbrugh Rd., Dublin

Drawing:
 Ground Floor Comparison (2015 Refusal)
 Dwg: 170508-11 Date: 2016-02-01
 Scale: 1:100 (A3)

Exhibit 3a



Exhibit 3b



Exhibit 3c



Exhibit 4



No. P711378 / 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. 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/Q507). 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 **Dated:** 17/07/15.
 Case Planner

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 cut-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.

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.

JB

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVES 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 this submission can be summarised as follows:

- On previous planning applications, permission was refused 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.

(JB)

(JB)

(JB)

(JB)

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:

✓ 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 window, in 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.

Ref 1378. 10.

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 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 window 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 window 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.

A. J. B. 20/7/15

Senior Executive Planner

Endorsed: A. Leonard 20/7/15
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**

the impact of the proposed development by overlooking adjacent dwellings and the proposed development will be visually obtrusive and result in overlooking of the area.

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:  Dated: 24/3/2015
Approved Officer

Theaunto empowered by order of Príomhcheadhbheanach, Comhairle Contae Dúin Laoghaire-Ráth An Dúin, Order No. 150 dated 13/03/15 delegating to me all her powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.

Exhibit 7

SETTLEMENT AGREEMENT

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

-and-

NOREEN FARRAR

Respondents

CONSENT ORDER

In full and final settlement of all disputes between the parties in these proceedings:

1. The proceedings will be struck out;
2. The Respondents will pay the Applicant's costs to be taxed in default of agreement at the Circuit Court scale;
3. Such costs to be discharged within 3 months of finalization of the taxation of costs;
4. The parties consent to the Court certifying for senior counsel;
5. Within 8 weeks of the date of this order, the Respondents will:
 - i. Permanently remove the high level window in the west elevation of the premises the subject of the above mentioned planning permission;
 - ii. Close the three roof plane windows in the roof of the ground floor extension of the said premises such that the roof will be a flat mono-pitched lean to structure;
6. The parties acknowledge that their consent to the said orders is without prejudice to either parties' entitlement to carry out development or otherwise exercise their lawful entitlements pursuant to the Planning and Development Act 2000 (as amended);
7. Liberty to apply

Exhibit 6

(3D Images PP-03 as part of the Developers Application for Planning D15A/0750)



Green line shows where roof should have gone to

"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 shows the junction of the two buildings in this area. The proposed development will not now not detract from the residential amenity of this dwelling" - Local Authority Planners Report- D15A/0750 - Grant permission

Kenny Kane Architects Planning Application
(D15A/0750)

"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"

(As Built)



Redline shows where roof is now fully
Underneath my Living room window

Exhibit 7

SETTLEMENT AGREEMENT

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

-and-

NOREEN FARRAR

Respondents

CONSENT ORDER

In full and final settlement of all disputes between the parties in these proceedings:

1. The proceedings will be struck out;
2. The Respondents will pay the Applicant's costs to be taxed in default of agreement at the Circuit Court scale;
3. Such costs to be discharged within 3 months of finalization of the taxation of costs;
4. The parties consent to the Court certifying for senior counsel;
5. Within 8 weeks of the date of this order, the Respondents will:
 - i. Permanently remove the high level window in the west elevation of the premises the subject of the above mentioned planning permission;
 - ii. Close the three roof plane windows in the roof of the ground floor extension of the said premises such that the roof will be a flat mono-pitched lean to structure;
6. The parties acknowledge that their consent to the said orders is without prejudice to either parties' entitlement to carry out development or otherwise exercise their lawful entitlements pursuant to the Planning and Development Act 2000 (as amended);
7. Liberty to apply

Exhibit 8a

Despite the Bord and Local Authority's Planning Inspectors efforts to avoid the development being obtrusive, the deviations and a lack of enforcement have destroyed the amenity of our home. This is what we now see from the only window in our Living room



Exhibit 8b

This has been mentally distressing and hence we close our blinds particularly when guests arrive as our amenity has been obliterated by this development and we are simply embarrassed by what people see from our Living Room. This is not good planning practice and completely against the zoning of the site.

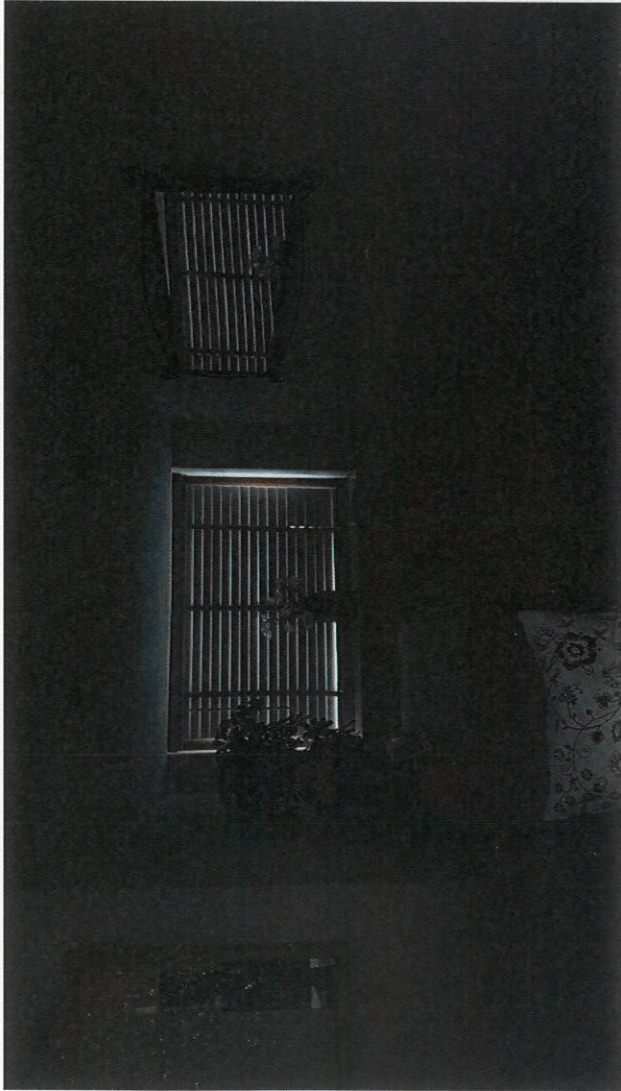
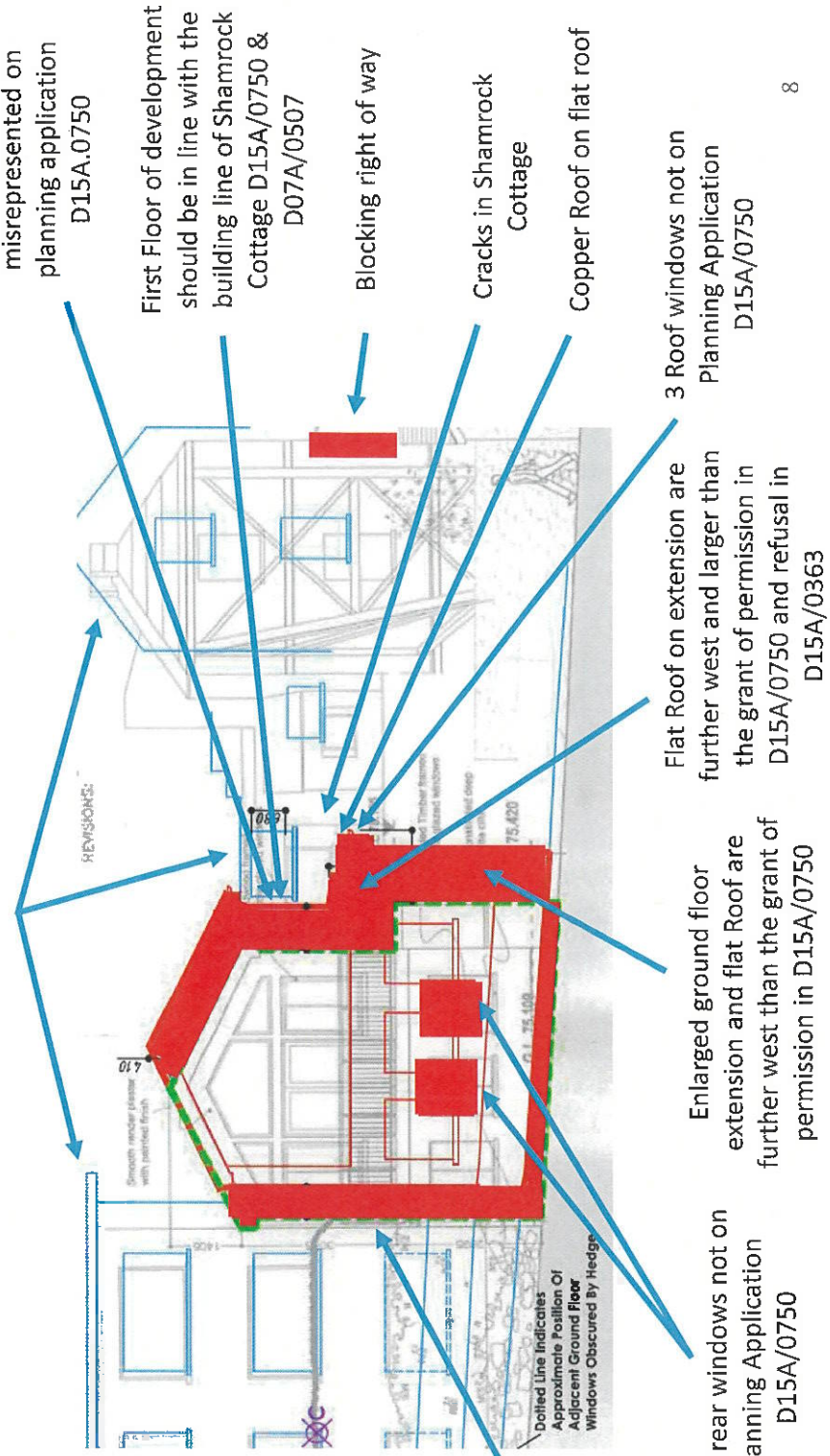


Exhibit 9

An inaccurate site survey has led to heights and locations of neighbouring property's being grossly misrepresented on planning application D15A/0750

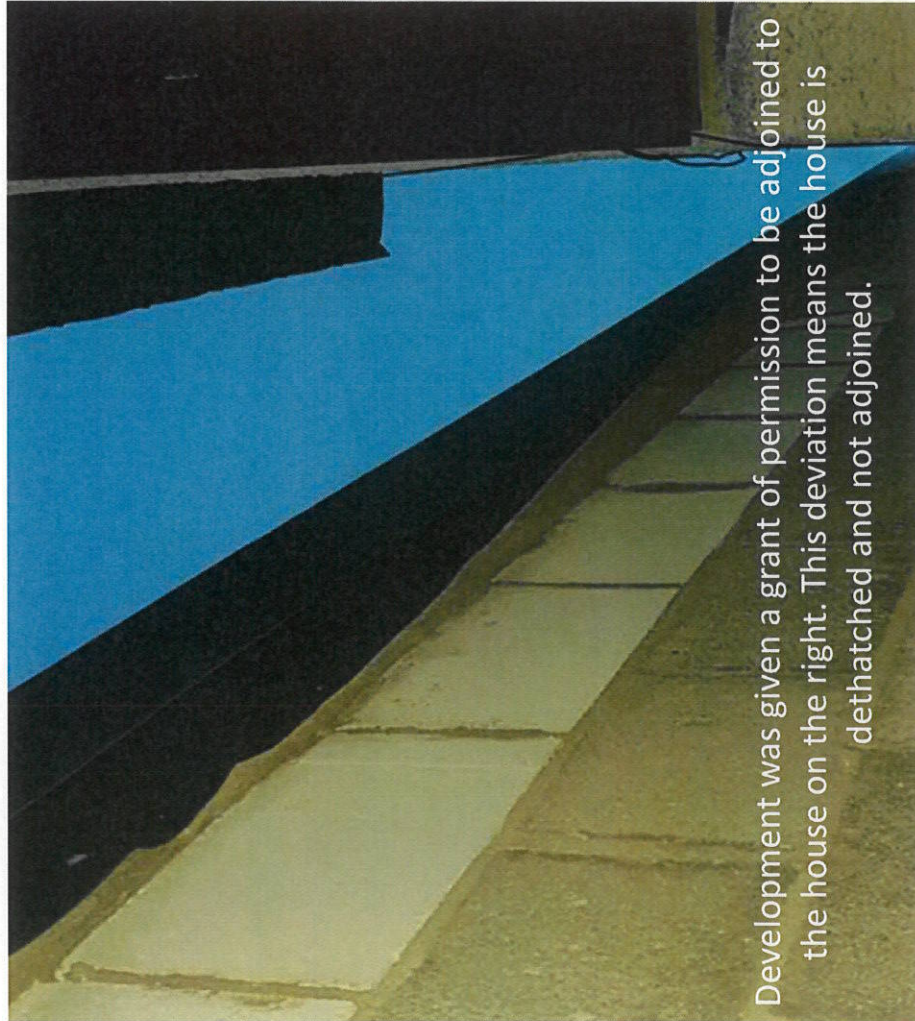
Roof over sailing at rear of development over Shamrock Cottage and deviates from planning application D07A/0507

'As Built' development not located on site as per Planning Application D15A/0750 and not uptight against 'The Ardbrugh'



3 Roof windows not on Planning Application D15A/0750

Exhibit 10



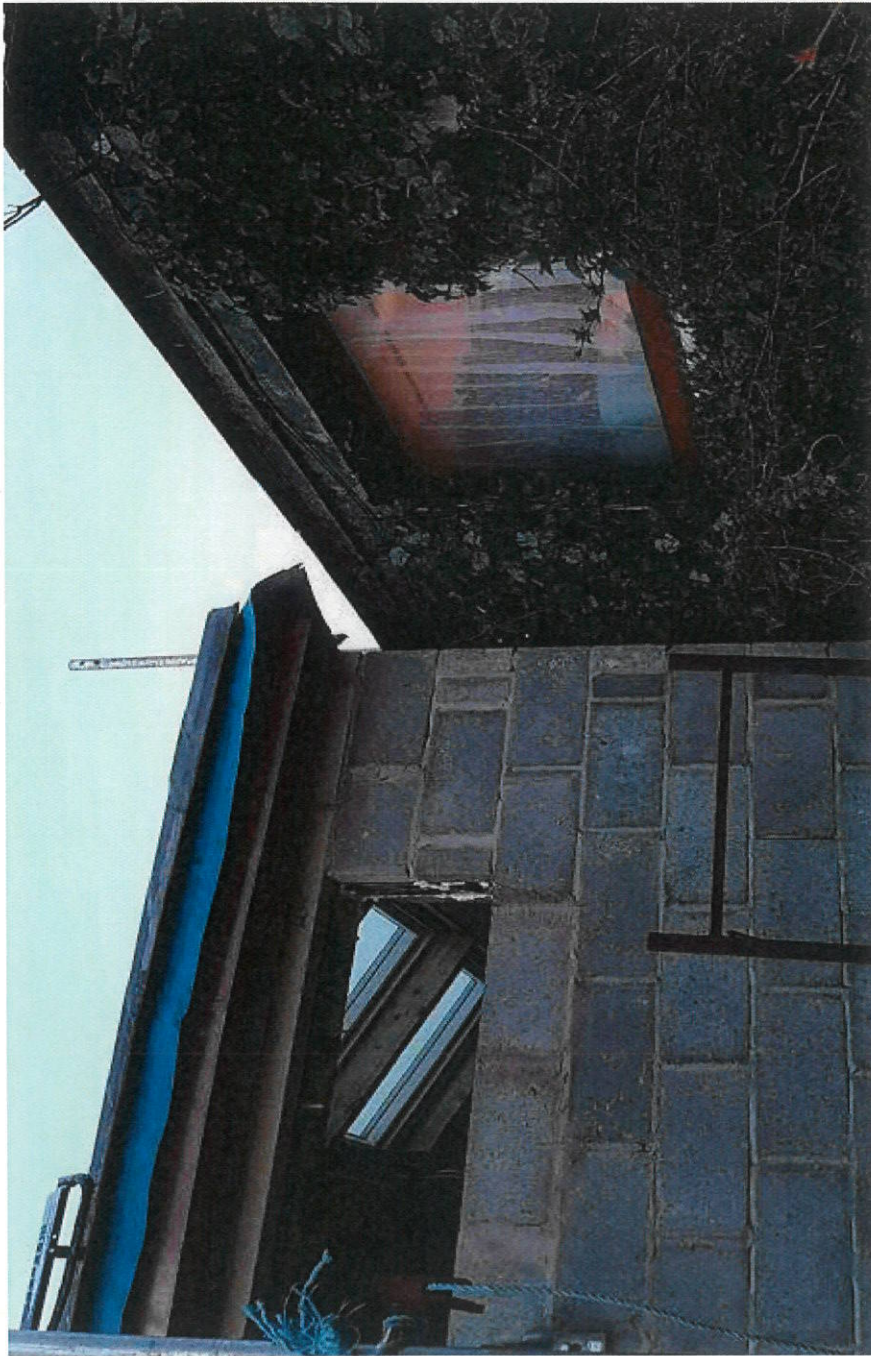
Development was given a grant of permission to be adjoined to the house on the right. This deviation means the house is detached and not adjoined.

The Developer's Engineer in an email exchange with a neighbour who then sent me a copy of the email lets it slip that the developer (Michael Mc Donagh) has no issue deviating from the grants of permission or conditions

"I was speaking to Michael yesterday, and he has no issue with providing a clear separation between the buildings"

Exhibit 11a

This window was never granted permission to be adjacent to our Living room window.



"The objective of Dún Laoghaire-Rathdown County Council is to achieve high standards of design and layout to create and foster high quality, secure and attractive areas for living. The following criteria will be taken into account when assessing applications: Levels of privacy and amenity - The relationship of buildings to one another, including consideration of overlooking, sunlight/daylight....."

DLRCC Local Authority Development Plan:

Exhibit 11b

On the left is the 3D image submitted in the D15A/0750 application. This is what the Planning Inspectors at the time of granting permission and ourselves thought how it would look. It looks like we were all misled. In fact the only person who cannot see there maybe a matter of overlooking is the enforcement inspector Mr Cassidy

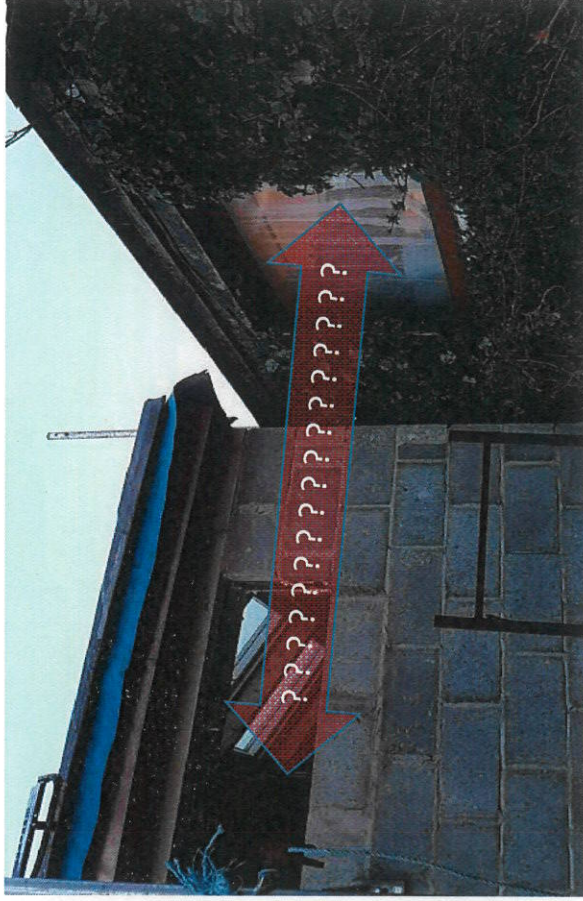
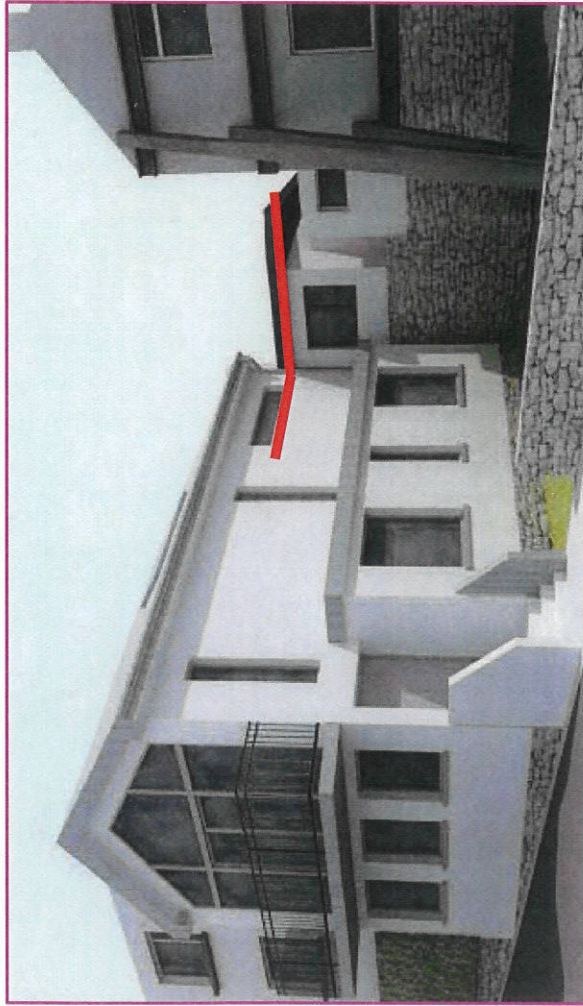


Exhibit 12

DLRCC Planners Report
D15A/0363 – 2015

"The permitted development (D07A/0507) shows the proposed dwelling in line with the building line of the dwelling to the south, Shamrock cottage."

Bord Pleanála D07A/0507
(224147) 2007

"The line of the proposed dwelling is clear of the bedroom window to No. 32A Ardbrugh Road and of the living room of Shamrock Cottage."

Bord Pleanála D04A/1189
(213210) 2004

"I agree that the building should be located as close to the large structure (The Ardbrugh) as possible to reduce its impact on the structures behind (Shamrock Cottage) and clear of the line of any building/window"

Bord Pleanála (213210)- D04A/1189

"I agree that the building should be located as close to the large structure (The Ardbrugh) as possible to reduce its impact on the structures behind (Shamrock Cottage) and clear of the line of any building/window"

Bord Pleanála D03A/1157 (206288) -
2003

"It is considered that while the proposed development would project in front of the dwelling to the east, it is in keeping with the building line to the west" (Shamrock cottage)

Bord Pleanála D07A/0507 (224147) -
2007

"The proposed dwelling is two storeys in height, adjoins the large structure to the east (The Ardbrugh), has a vertical emphasis and is clear of the line of any building/window to the rear"

DLRCC D07A/0507 – 2007

"I agree that the building should be located as close to the large structure (The Ardbrugh) as possible to reduce its impact on the structures behind, and clear of the line of any building/window"

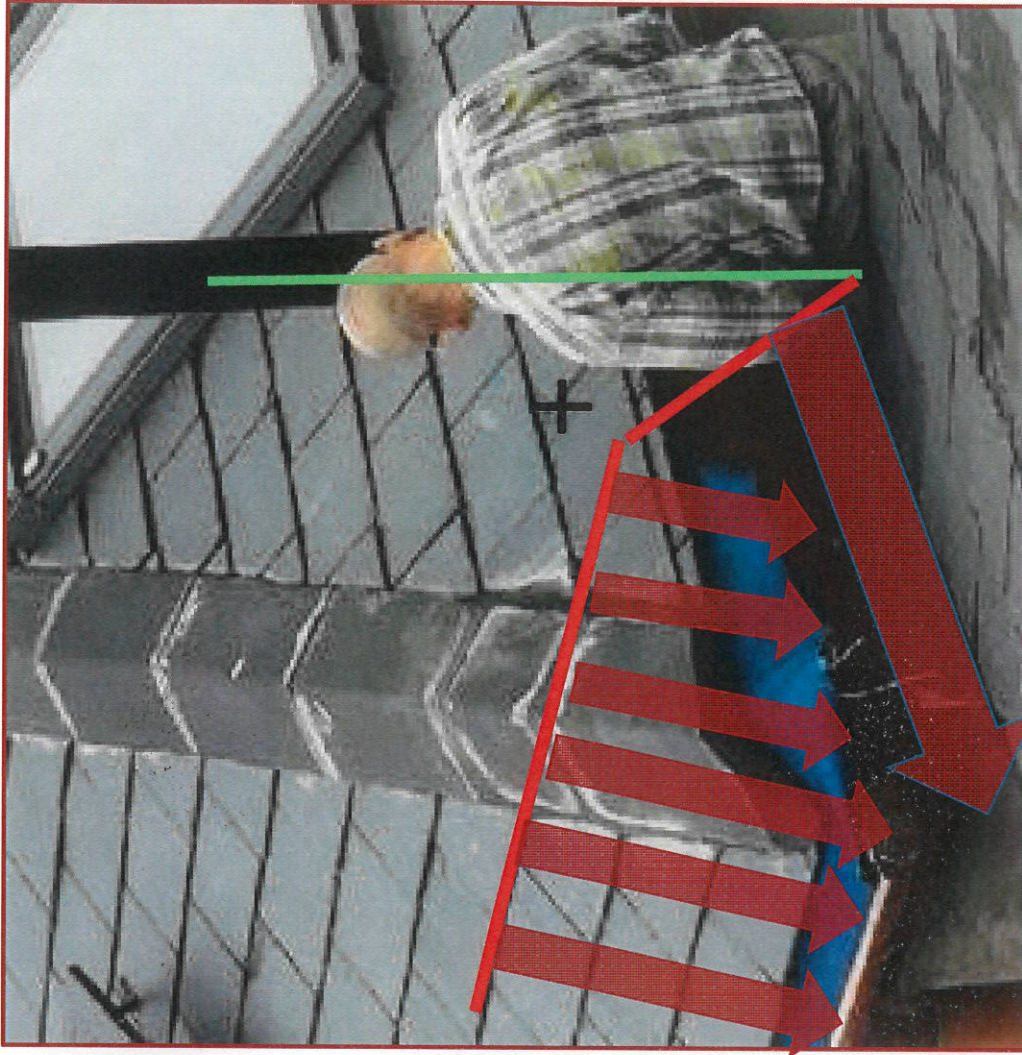


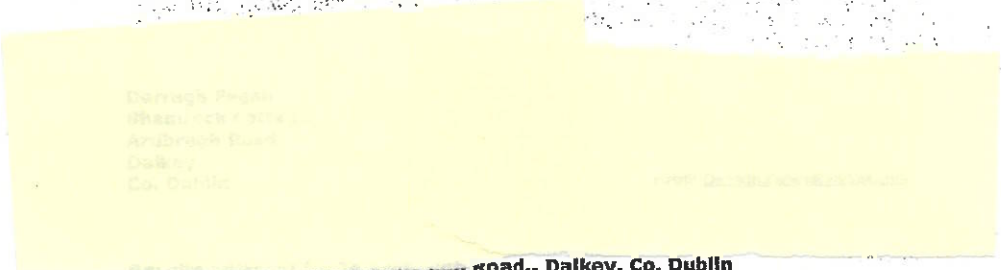
Exhibit 13a

SB 29

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 13516

Date: 31st August, 2016.



25th August, 2016, 25 Ardaraugh Road,, Dalkey, Co. Dublin

Dear Mr Fegan

I refer to previous correspondence advising you of the service of a Warning Letter pursuant to Section 152(1) of the Planning and Development Act 2000 (as amended) for alleged unauthorised development comprising **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 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.

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:-**

Exhibit 13b

RE: RE: site adjacent to, 24 Ardbrough Road, Dalkey, Co. Dublin - ref ENF 13516

Page 1 of 4

RE: RE: site adjacent to, 24 Ardbrough Road, Dalkey, Co. Dublin - ref ENF 13516

Cassidy Martin

Sent: 15 September 2016 14:36

To: Planning Enforcement

19

Theresa

I have nothing to add to my report of the 30th August 2016. As of inspection dated 25th August 2016 I am satisfied that the development conforms with planning and that no unauthorised development was being carried out.

Regards

Martin

From: Planning Enforcement

Sent: 15 September 2016 12:26

To: Cassidy Martin

Subject: FW: RE: site adjacent to, 24 Ardbrough Road, Dalkey, Co. Dublin - ref ENF 13516

Hi Martin,

This file is out today. I would be obliged for your comments/opinion as to what response should be issued to Mr. Fagan.

Thanks,
Theresa

From: Planning Enforcement

Sent: 01 September 2016 13:28

To: Cassidy Martin

Subject: FW: RE: site adjacent to, 24 Ardbrough Road, Dalkey, Co. Dublin - ref ENF 13516

Martin,

See further email from complainant following receipt of our letter of yesterday (copy attached hereto fyi)

I would be obliged for your comments/opinion in response to same.

Thanks a million,

Grainne.

Exhibit 13c

20

Planning and Organisational Innovation Department
An Rannóg Pleanála agus Nuála Eagraíochta
Enforcement Section
Direct Tel: 012054864
Fax: 01 2803122
Email: planningenforcement@dli.gov.ie

Our Ref: ENF 13516

Date: 16th September, 2016.

Darragh Fegan
Shamrock Buildings
Ardbrugh Road
Dalkey
Co. Dublin

email: Darragh.Fegan@veritas.com

Re: site adjacent to, 24 Ardbrugh Road,, Dalkey, Co. Dublin

Dear Mr Fegan

I refer to your email correspondence of 01-Sept-2016, in response to our letter dated 31-August-2016, the content of which has been noted.

I wish to advise you that the Planning Authority is satisfied that the development, as inspected on 25-August-2016, is compliant with the permission granted, and no further enforcement action is required in this regard.

The only remaining issue from a planning enforcement perspective, is the compliance details required under Condition No. 2 of D15A/0750 and Condition No. 2 of PL06D.224147 (D07A/0507), and this matter is being pursued.

I trust that this clarifies the position of the Planning Authority in relation to this development.

Yours sincerely,

 Gráinne Proctor
Enforcement Section
Planning and Organisational Innovation Department
Tel: 205 4864

Exhibit 13d

PLANNING MEMO: ENFORCEMENT

42

To: Planning Enforcement
From: Martin Cassidy
Date: 5th May 2017
Re: Site adjacent to ~~24~~ Ardburgh Road, Dalkey.
Enf: 135 / 16

Most Recent Planning History

D15A/0750, planning permission granted for development comprising 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 Comment

I re-inspected the development on the 2nd May 2017 and attached photos of the as constructed house to date.

D16

There have been no amendments to the development from previous inspection of 26th August 2015 at which time it was considered that the house being constructed conformed to the planning permission as granted with regards to positioning, size and format.

It is physically impossible to construct this house in the exact position as indicated on drawings submitted with the planning application due to the existence of the site boundary wall on the southern boundary, the existence of the roof overhang to Shamrock Cottage and The Ardburgh dwelling house on the eastern side. Therefore the as constructed house is constructed within the said site boundaries as opposed to on the site boundaries. This has resulted in the south west corner rubbing beyond the north east corner of Shamrock Cottage.

I consider this to be minor in nature, not material to an extent that would necessitate the benefit of a new planning permission and as such not warranting enforcement action.

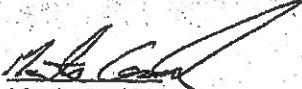

Martin Cassidy
Planning Inspector.

Exhibit 13e

O'Grady Dennis

From:
Sent:
To:
Cc:
Subject:

[Redacted email header content]

In respect of previous submissions and the e-mail content below,

It is acknowledged that the house as constructed is not positioned as per planning drawings regarding the north west corner and that this corner is circa 300mm further north and and 340mm further west of the Shamrock Cottage house despite the actual building width itself being as per planning drawings. It can only be concluded that the site as depicted on planning drawings did not fully concur with the on site reality and that the adjoining house buildings were incorrectly depicted.

It is also considered that the reason for refusal on the D15A/0363 application was in reference to the western part of the wraparound balcony that would give rise to overlooking and the enlarged ground floor element below this balcony that would be located in front of part of the easternmost window of Shamrock Cottage and be visually obtrusive from this window, seriously detract from the residential amenity of this dwelling and be contrary to the proper planning and sustainable development of the area.

The D15A/750 application addressed the above by omitting the wraparound balcony and the enlarged ground floor element below but also provided for a ground floor extended element that was accepted by planning as not resulting in any visual obtrusion and or cause any impact on residential amenities.

I consider that the current building position and size inclusive of permitted west facing elevation windows and west side ground floor roof construction / design would not give rise to overlooking of adjoining properties, would not result in injury or loss to residential amenity of adjoining properties and is not visually obtrusive.

Regards

Martin

From: C
Sent: 11
To: Gill
Cc: Brov
<planen
Subject:

[Redacted email header content]

O.I.E>
Planning Enforcement

FYI

Exhibit 14

"The permitted development shows the proposed dwelling in line with the building line of the dwelling to the south, Shamrock Cottage on the boundary with the subject site."

Local Authority D15A/0363

The proposed dwelling is two storeys in height, adjoins the large structure to the east (The Ardrugh), has a vertical emphasis and is clear of the line of any building/window to the rear"
D07A/0507 / (224147)

"I agree that the building should be located as close to the large structure (The Ardrugh) as possible to reduce its impact on the structures behind (Shamrock Cottage) and clear of the line of any building/window"

Bord Pleanala (213210)- D04A/1189

"it is considered the applicant has reduced the form, mass and design significantly to address the reason for refusal by the board. However, it is noted that no eastern elevation has been submitted. It is considered reasonable to request the applicant to submit an eastern elevation together with a photomontage taken from a vantage point eastern east of the application site. This is considered necessary to enable the planning authority to make an informed decision with regards to the visual impact of the two-storey blank wall which protrudes beyond the front building line of Shamrock Cottage (to the east)"

D04A/1189 / (213210)

"The line of the proposed dwelling is clear of the bedroom window to No. 32A Ardrugh Road and of the living room of Shamrock Cottage"

Bord Pleanala D07A/0507

"It is important that the building has a more vertical rather than a horizontal emphasis"

Bord Pleanala D04A/1189

"It is considered that while the proposed development would project in front of the dwelling to the east, it is in keeping with the building line to the west" (Shamrock Cottage)

D03A/1157 / (206288)

"I consider that a slim two storey dwelling on the site as proposed provides the opportunity to have an area of open space to serve the proposed dwelling and to allow for a reasonable separation between the proposal and the adjoining properties to the south and west"

Bord Pleanala (224147) D07A/0507

"It is important however that the building has a vertical rather than a horizontal emphasis, and at a height in proportion to the surrounding properties, other, than the formerly commercial building to the east. I agree that the building should be located as close to the large structure as possible to reduce its impact on the structures behind, and clear of the line of any building/window".

Local Authority D07A/0507

"I consider the proposed development unacceptable in terms of its scale and in particular its design. In my view it would be out of character with the pattern of development in this unique area and would seriously injure the amenities of the adjoining properties"

Bord Pleanala (213210)

"Having regard to the restricted nature of this infill site and its relationship to adjoining properties".....

Bord Pleanala (213210)

"the main issues in this appeal are related to the scale and design of the proposed development and its impact on adjoining properties"

Bord Pleanala (213210)

"The site is a difficult site to develop, due to its restricted size and proximity to other dwellings..."

Bord Pleanala (206288)

"sensitive infill site"

DLRCC (D04A/1189)

"It is considered that a house of the scale and height proposed on this site in close proximity to existing residential properties to the side and rear would be seriously injurious to the residential amenity of adjoining properties"

DLRCC (D98A/0832)

"The proposed house is located close to rear and side boundaries and would affect the light and amenity at present available to dwelling to the rear"

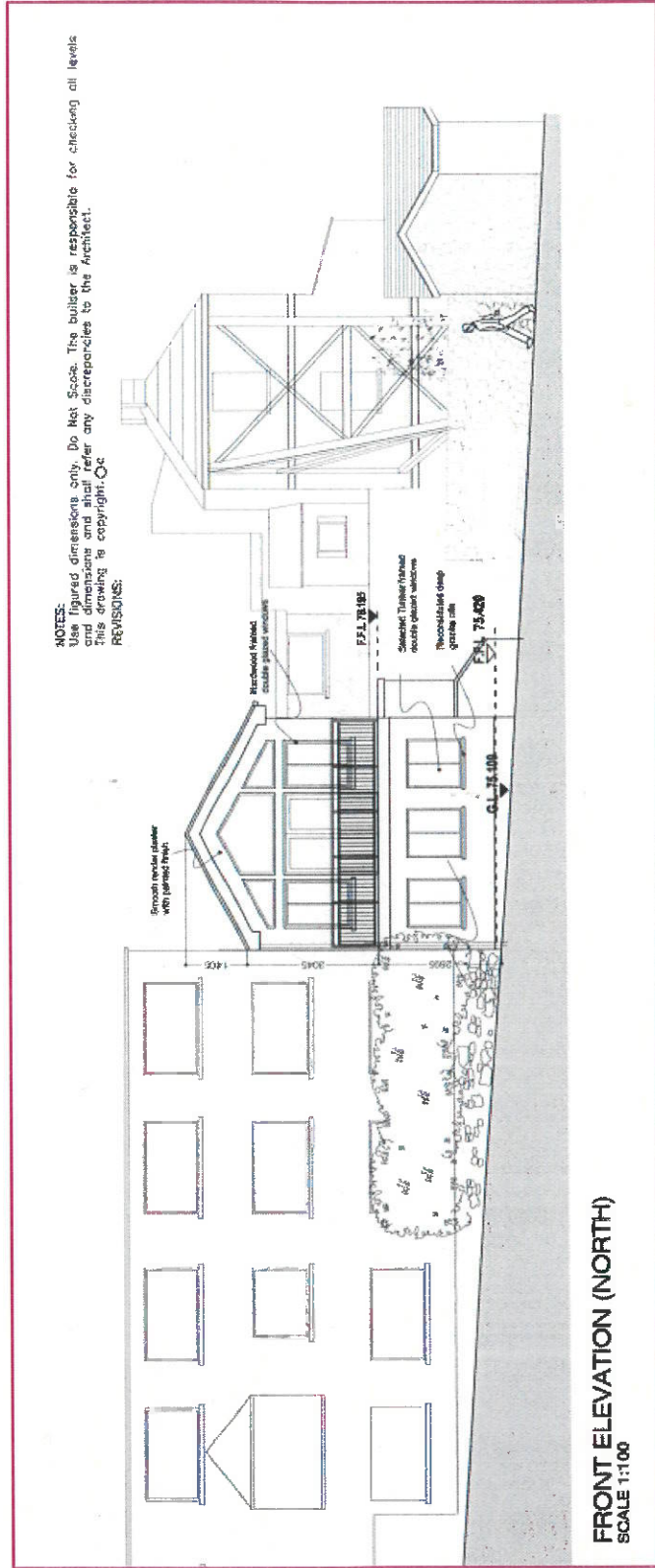
DLRCC (D98A/0832)

"Having regard to the restricted size of the site and its close proximity to adjoining houses, it is considered that the proposed three-storey development, by reason of its height, bulk and scale, would constitute overdevelopment of the site. It is considered that the proposed development would seriously injure the amenities and depreciate the value of existing residential properties in the vicinity"

Bord Pleanala (109657)

Exhibit 15

D15A/0750 Planning Application submitted by McDonagh/Farrar



OS REF. NO. 3394-23

Project Name: McDonagh/Farrar

Project No: PP-03

Project Type: VISUALIZATION

Project Status: Validation

Project Location: 15-16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

D15A/0750 Planning Application submitted by McDonagh/Farrar



OS.REF. NO. 3394-23

DATE: 15/03/2011

PROJECT: VISUALIZATION

PP-03

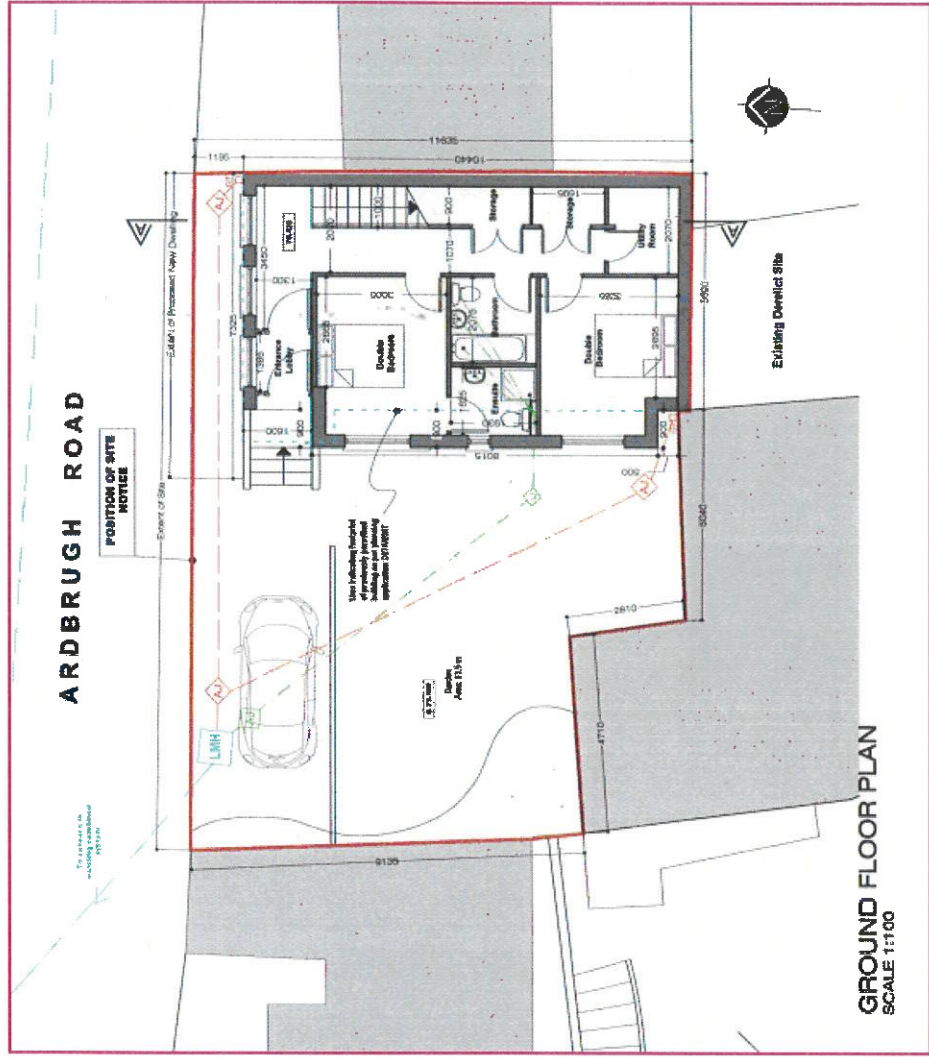
Kenny ASSOCIATES

Visualisation

McDonagh/Farrar

15/03/2011

PP-03



D15A/0750
 Planning
 Application
 submitted by
 McDonagh/Farrar

OS REF NO. 5304-23

Project No. 15/16/17

Project Name: 15/16/17

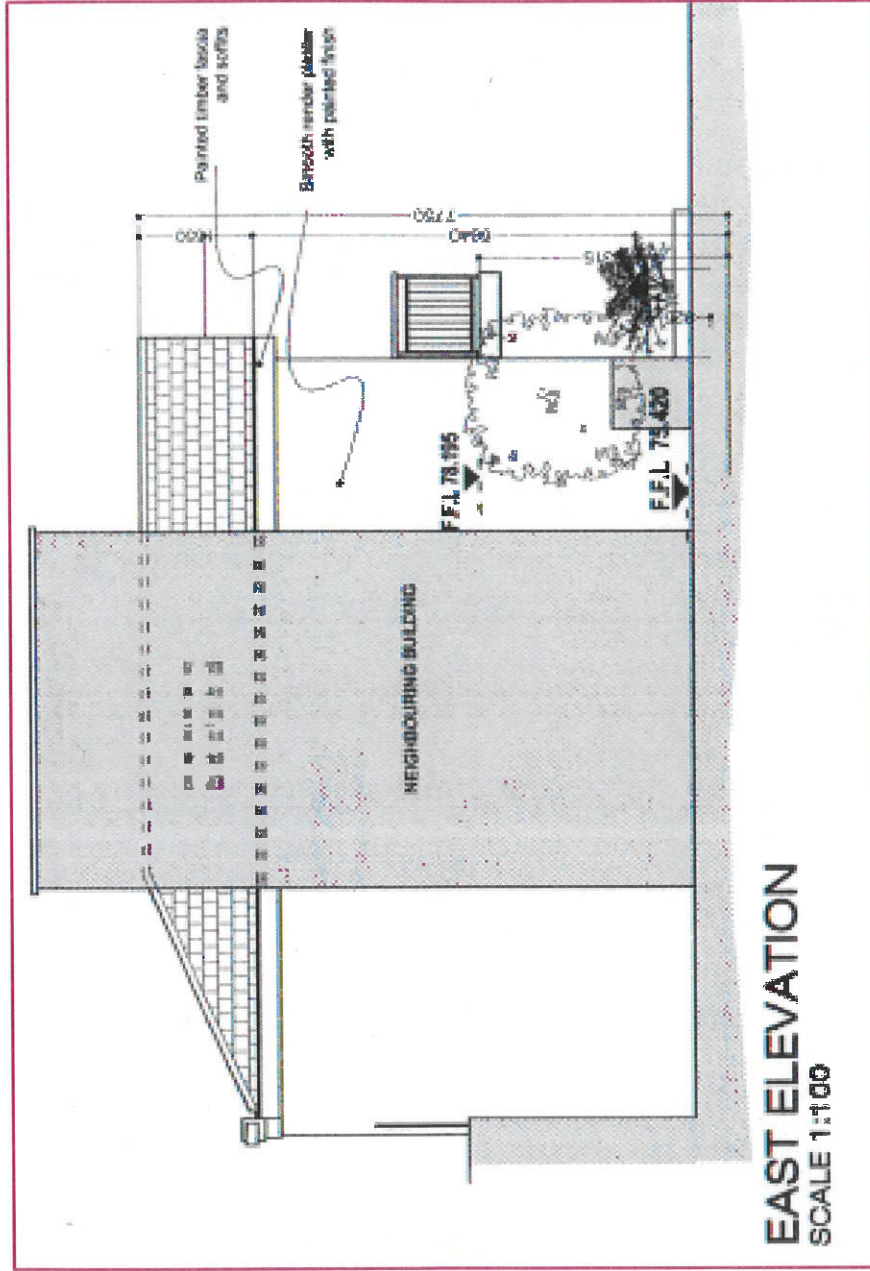
Client: U. Khan

Project Type: VISUALIZATION

PP-03

Kenny Architecture & Design

D15A/0750 Planning Application submitted by McDonagh/Farrar



OS. REF. NO. 3994-23

10/07/2013

U. Units

35803

Project Name: **McDonagh Farrar**

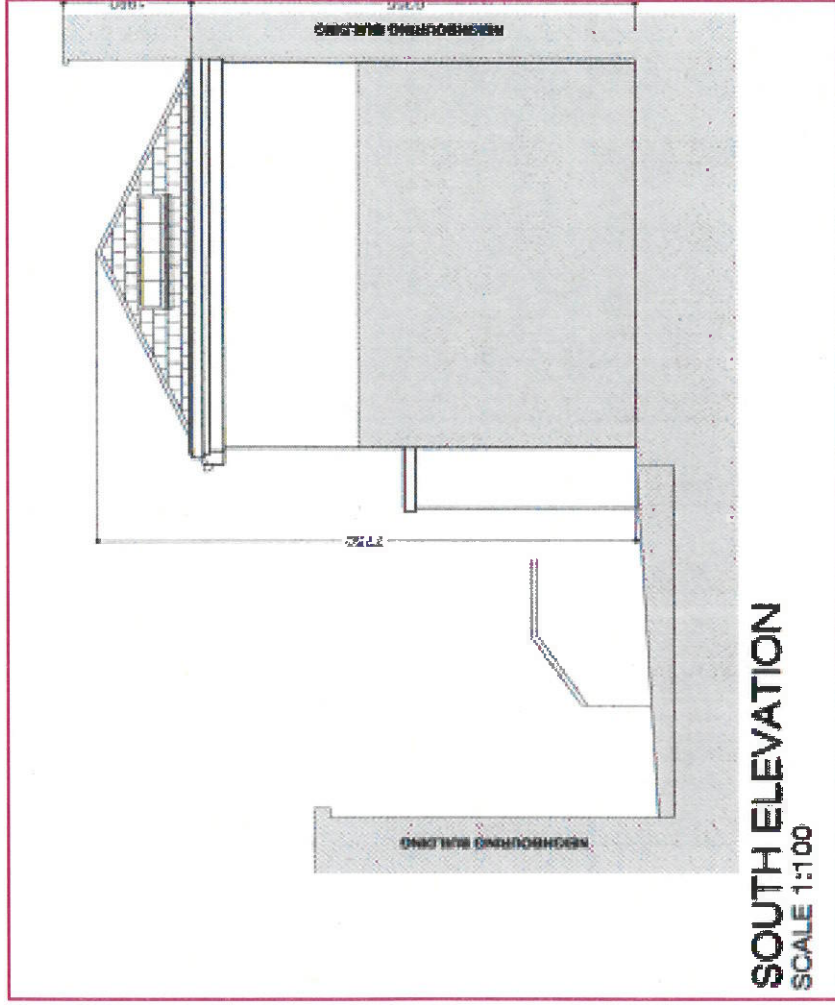
Project Type: **ASSOCIATES**

Project Status: **VALIDATION**

Project ID: **PP-03**

Kenny
ASSOCIATES
170-172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000

D15A/0750 Planning Application submitted by McDonagh/Farrar



OS REF. NO. 3394-23

Kenny
ASSOCIATES

DESIGNER VISUALIZATION

PP-03

10/2012

10/2012

