

COMHAIRLE CHONTAE CEATHARLOCHA
CARLOW COUNTY COUNCIL



C A R L O W
C O U N T Y C O U N C I L



COMHAIRLE CHONTAE CEATHARLOCHA

COUNTY BUILDINGS, ATHY ROAD, CARLOW.

Tel: Phone: 059-9170300/ Fax: 059-9170836

Website: www.carlow.ie

Application Form for Section 5 Declaration on Development & Exempted Development

1. Name of applicant: Laurence Phelan/Ronan Phelan, Springhill Properties Ltd
2. Address of applicant: [REDACTED]
3. Name and address for correspondence: Sean Mahon Architect, SM Architects Ltd, 35 The Willows, Pollerton, Carlow town

Tel. No: [REDACTED] Fax No: NA E-mail: [REDACTED]

4. Location of Development: Townland: 1 Chapel Street, Graiguecullen, Carlow town

Postal Address: (if different from Townland): As Above

5. Name and Address of Agent: Sean Mahon Architect, SM Architects Ltd, 35 The Willows, Pollerton, Carlow town

-
6. Outline clearly the description of the development / proposal: PROPOSED 2M HIGH BOUNDARY WALL BETWEEN NO'S 1 AND 2 AND DISABILITY ACCESS SIDE GATE 2M HIGH

FROM SIDE STREET (40M2 EXTENSION AND RE ROOFING OF KITCHEN ALREADY DEALT WITH IN SEC5/22/32) at 1 Chapel Street, Graiguecullen, Carlow town

7. Is this a Protected Structure or within the curtilage of a Protected Structure: No

8. List any previous applications relating to the site: 20/ 62 and sec5/22/32

9. Are you aware of aware of any enforcement proceedings relating to this site: No

10. Please state applicant's interest in this site:

Owner

11. List of plans, drawings etc. submitted with this application:

Existing House: Plans/Elevations/Section 1.100/Site Plan 1.500

Extension to House: Plans/Elevations/Section 1.100/Site Plan 1.500

Site Map 1.1000

Signed: L. Phelan

(Signature of Applicant)

Date: 20/11/23

Note: This application must be accompanied by:

Payment of Fee: This application must be accompanied by the statutory fee of €80

Lodgement: The application should be forwarded to:
Planning Department
Carlow County Council
Athy Road
Carlow

OFFICE USE ONLY

Date Received: _____

Date Decision Due: _____

Date of Decision: _____

Recommendation: _____

Advice Note:

This is a non-statutory advice note prepared by Carlow County Council for the purposes of advising applicants what information is required for a decision to be made under Section 5 by the Planning Authority.

Under Section 5 of the Planning and Development Act 2000 as amended any person may request in writing from the Planning Authority as declaration as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Planning and Development Act 2000 as amended.

The Planning Authority is required to make a decision within 4 weeks of receipt of a Declaration Request under Section 5, along with the prescribed fee, however the Planning Authority can also request Additional Information if it is considered that insufficient information has been submitted.

Therefore, it is advised that the following information should be submitted to enable the Planning Authority to make a qualified decision within the prescribed period:

- A site location map (Scale 1:2500 in rural area and 1:1000 in an urban area), with the site clearly outlined in red.
- Site Layout Map (Scale 1:500) in compliance with Article 23 of the Planning and Development Regs 2001 as amended.
- Drawings (Scale 1:50) Where development involves any construction of a new structure, increase in size of existing structure or alterations to an existing structure, scaled floor plans and elevations. Drawings should differentiate between the original building, all extension and proposed development.

Planning Pack Map

CENTRE
 COORDINATES:
 ITM 671433 676726
 ORDER NO.: 412

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 AND GOVERNMENT OF IRELAND
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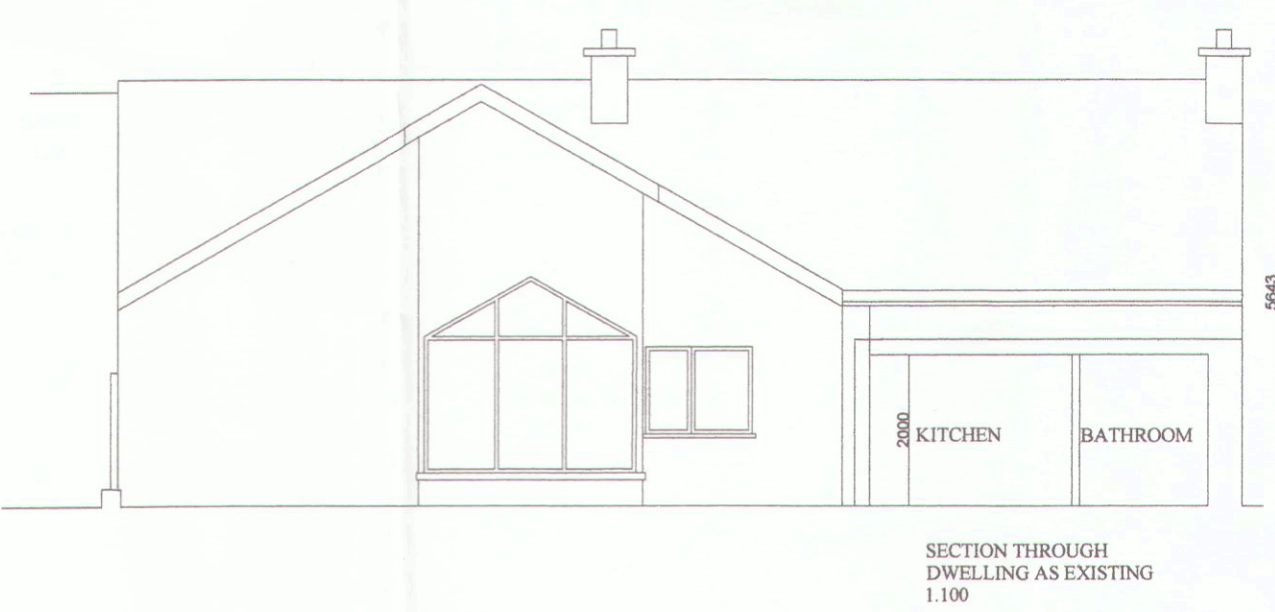
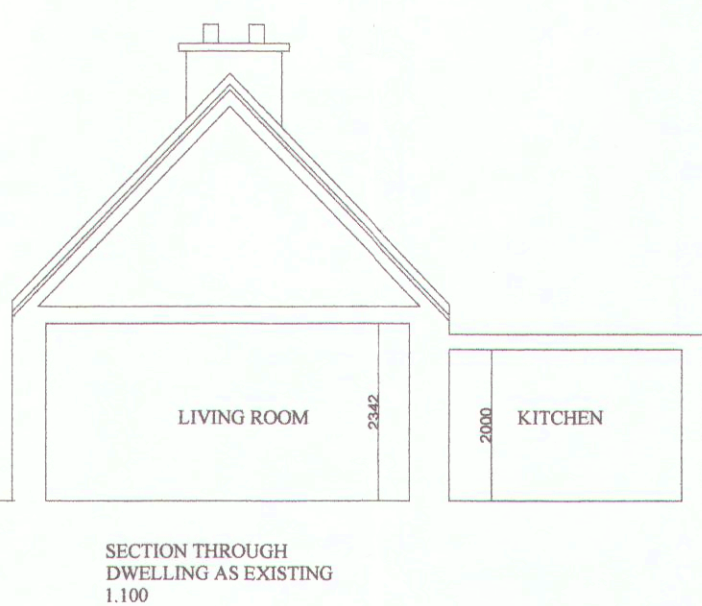
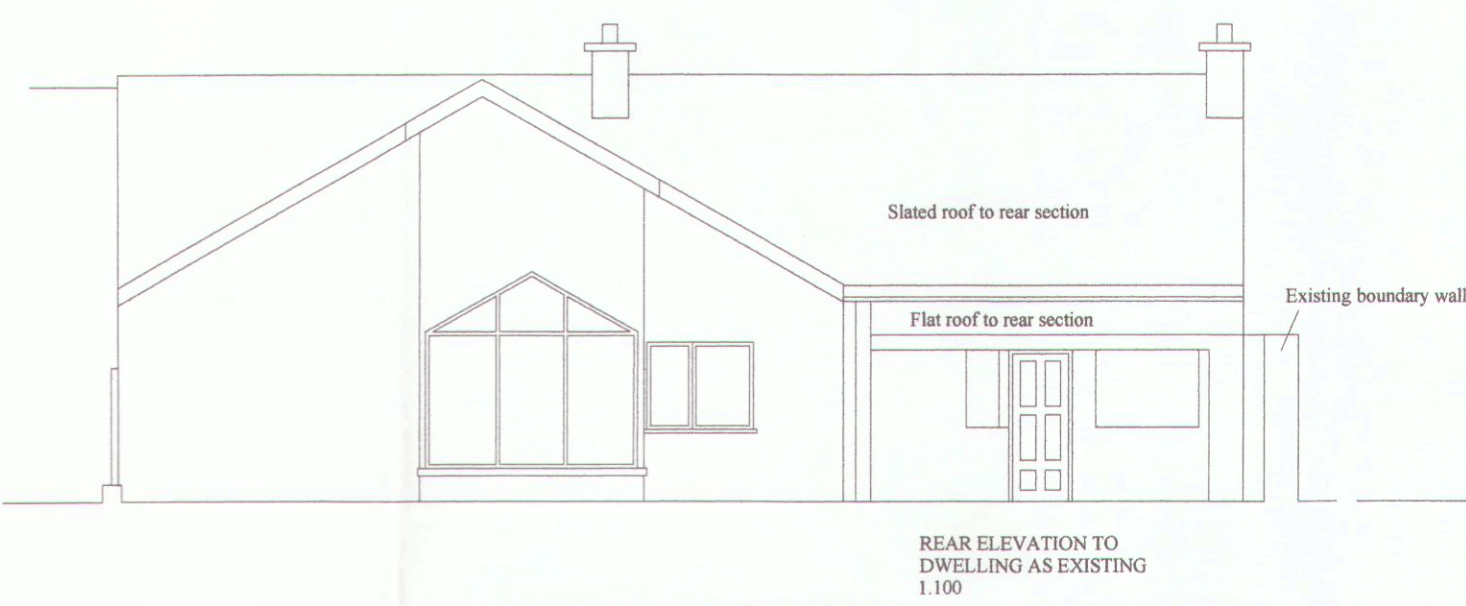
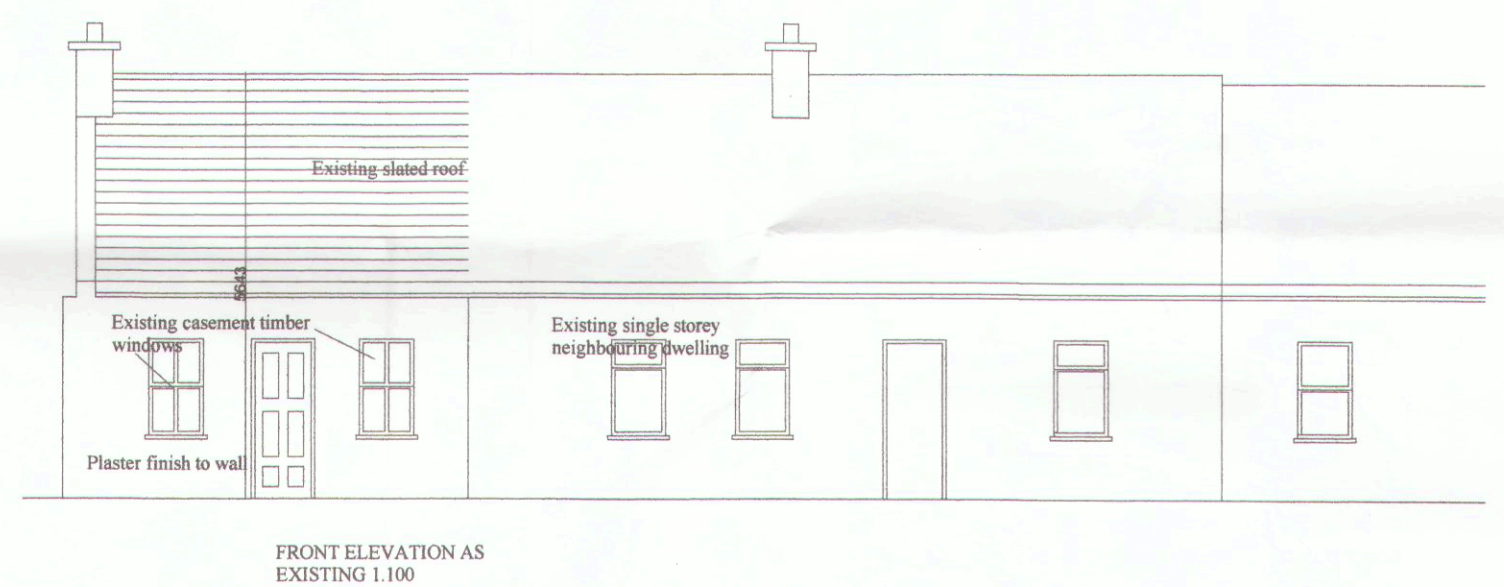
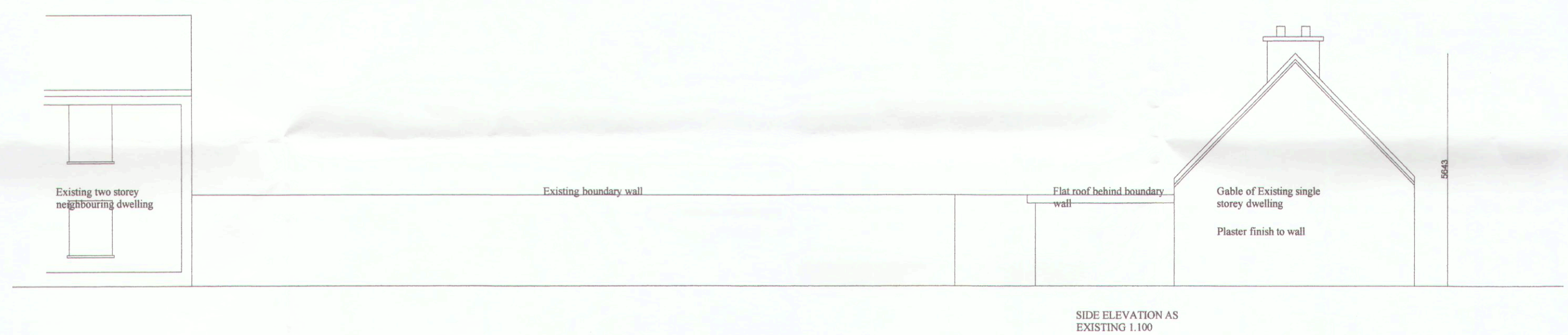
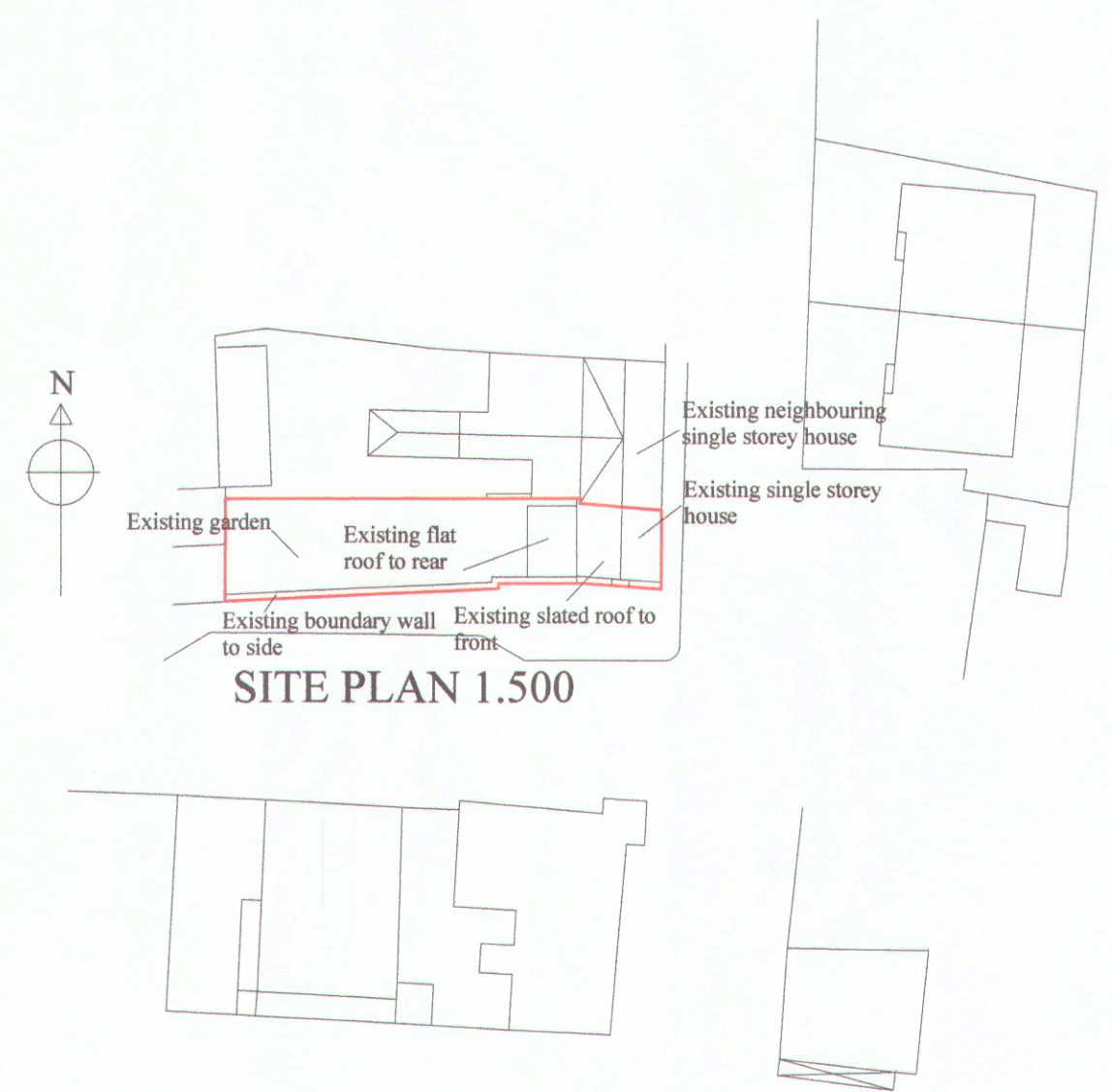
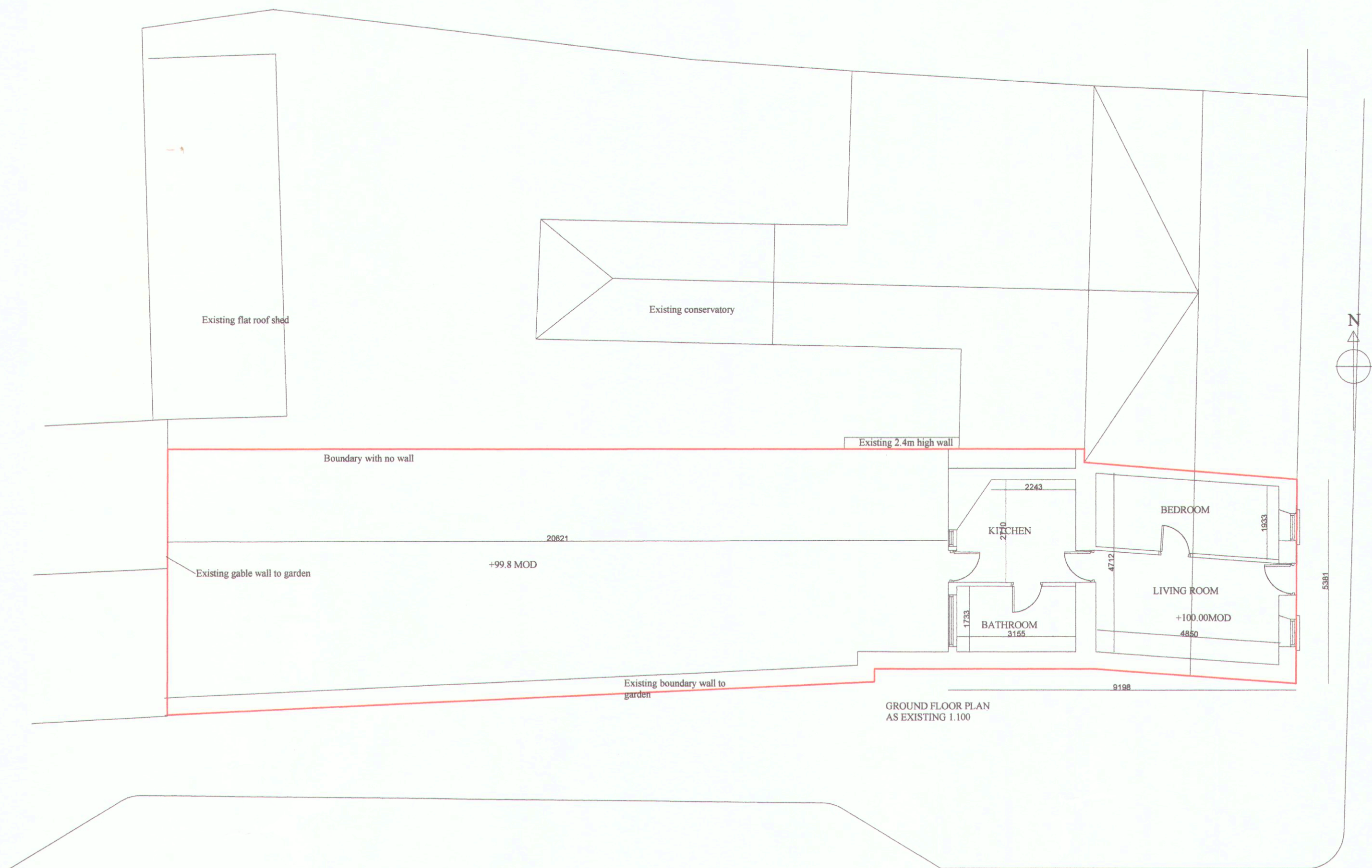
LEGEND:
<http://www.ors.ie>
 search 'Large Scale Legend'



CAPTURE RESOLUTION
 The map objects are only accurate to the
 resolution at which they were captured.
 Output scale is not indicative of data capture scale.
 Further information is available at
<http://www.ors.ie> search 'Capture Resolution'

OUTPUT SCALE: 1:1,000





NOTE:
Refer to note relevant to job stage.
DESIGN: All drawings are for discussion purposes only and are not to be used for any other purpose.
PLANNING: All drawings are for planning purposes only and are not to be used for any other purpose. Any changes made to these drawings are subject to approval by the Architect prior to any work commencing. It should also be noted that any changes at this stage can have planning implications. Figured dimensions only to be taken from this drawing.
CONSTRUCTION: Drawings are to be checked on site by the contractor before work shall commence. The Architect is to be informed of and discrepancy immediately. Figured dimensions only to be taken from this drawing.
All drawings are copyright and as such cannot be distributed or used for any purpose without the consent of SM Architects Ltd.

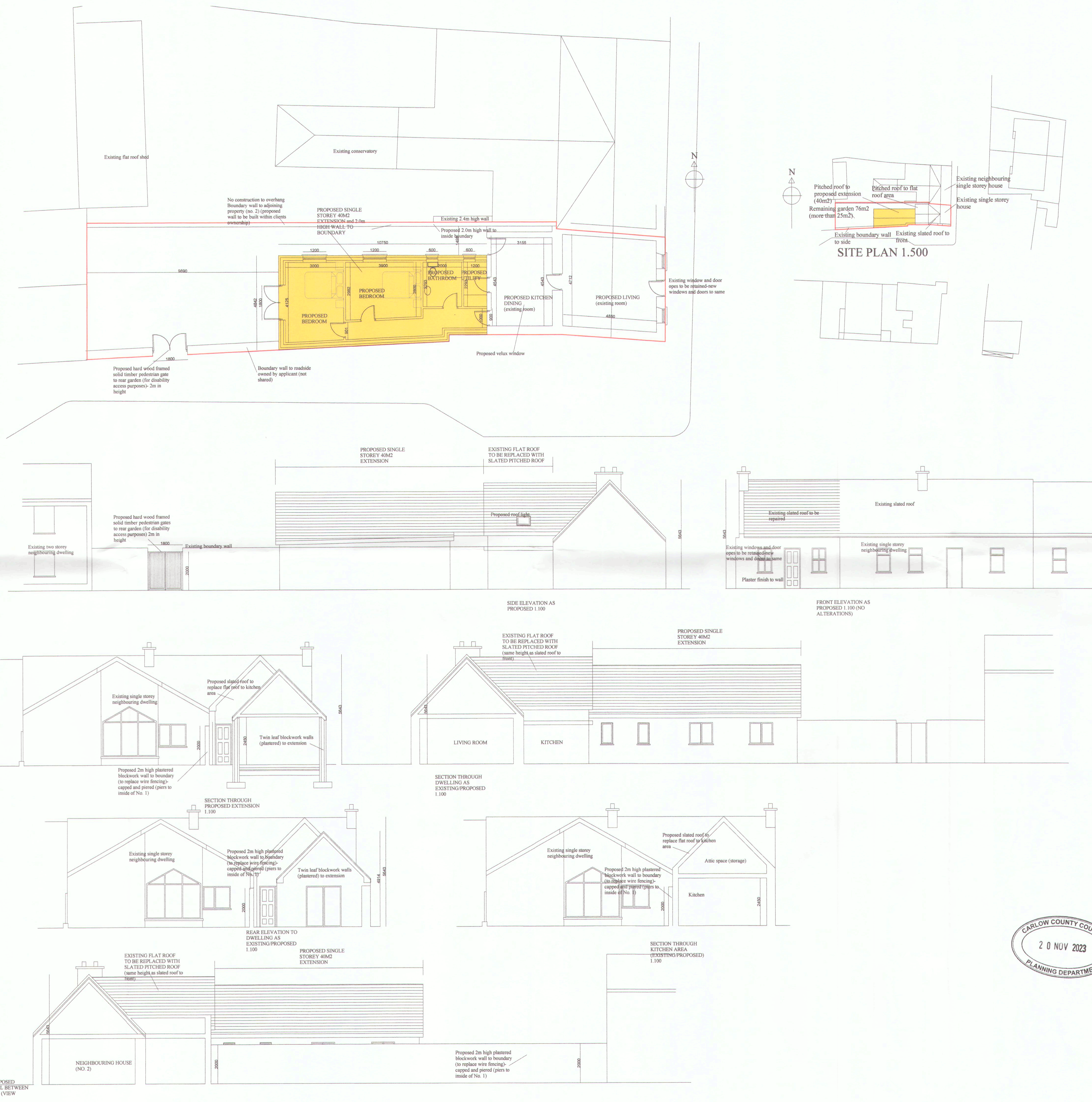
Revision	
Date	Rev.

Client:
SPRINGHILL PROPERTIES LTD
Job:
PROPOSED ALTERATIONS TO EXISTING DWELLING
Location :
NO.1, CHAPEL STREET, CARLOW
Drawing Title:
HOUSE AS EXISTING:FLOOR PLANS/ELEVATIONS/SECTIONS

SM architects ltd
Sean Mahon Architect
Director
35 The Willows, Pollerton,
Carlow town
Tel 0599135661
www.smarchitects.ie

SECTION5
job no 14-00
date -
scale 1/50
drawn by -
cad ref no CAD
planning ref no PLANREFNO
fire ref no FIREREFNO
dac ref no FIREREFNO
drawing no 302





Refer to note relevant to job stage.

DESIGN: All drawings are for discussion purposes only and are not to be used for any other purpose.

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Revision	
Date	Rev.

Client:
SPRINGHILL PROPERTIES LTD

Job: PROPOSED ALTERATIONS TO EXISTING DWELLING

Location:
NO. 1, CHAPEL STREET, CARLOW

Drawing Title:
PROPOSED EXTENSION: FLOOR PLANS/ELEVATIONS/SECTIONS

SM architects ltd

Sean Mahon Architect
Director

**35 The Willows, Pollerton,
Carlow town**

Tel 0599135861
www.smarchitects.ie

RIA

SECTION 5

job no	14-00
date	-
scale	1/50
drawn by	-
cad ref no	CAD
planning ref no	PLANREFNO
fire ref no	FIREREFNO
dac ref no	FIREREFNO
drawing no.	301

CARLOW COUNTY COUNCIL
PLANNING DEPARTMENT

SECTION 5 DECLARATION



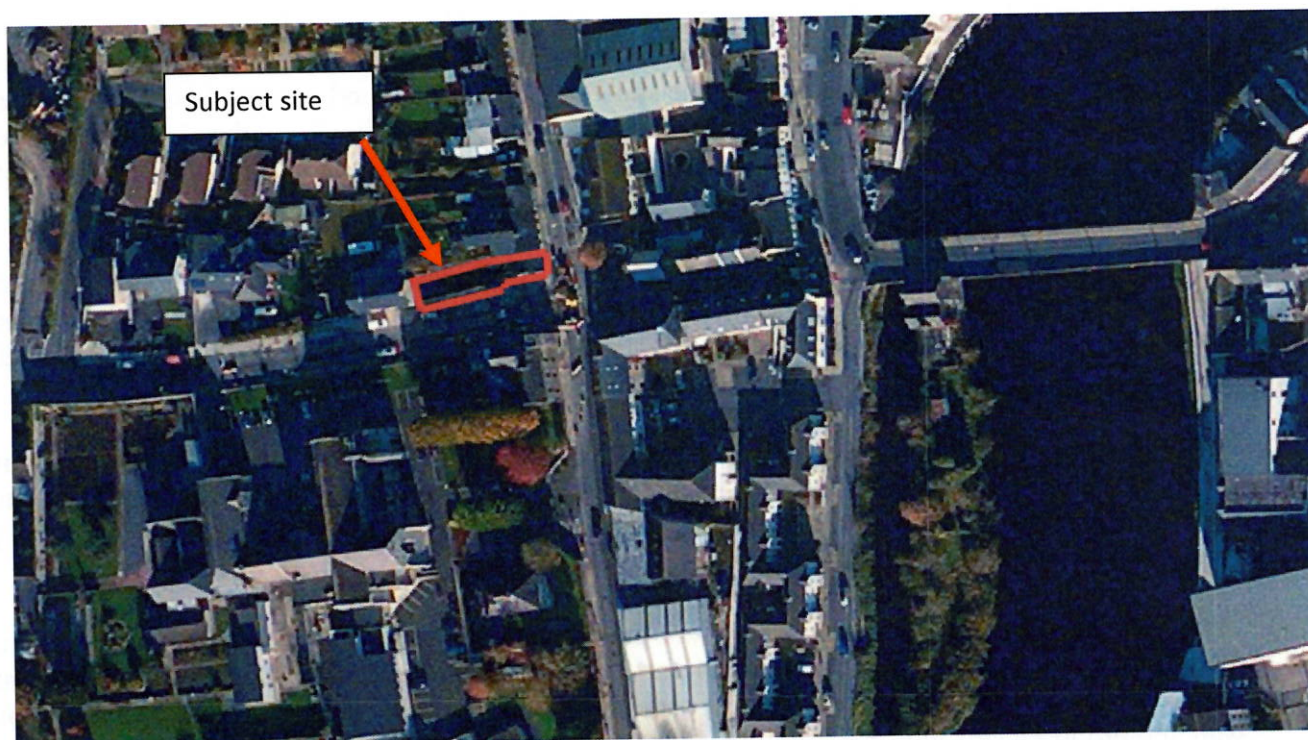
COMHAIRLE CONTAE
CHEATHARLACH
CARLOW COUNTY COUNCIL

Reg. Ref.	SEC5/23/38
Name of Applicant	Laurence Phelan/ Ronan Phelan, Springhill Properties Ltd
Address of Development	1 Chapel Street, Graiguecullen, Carlow Town
Site Visit	22/11/2023
Development Description	Proposed 2m high boundary wall between no.'s 1 and 2, and disability access side gate 2m high from side street (40m2 extension and re-roofing of kitchen already dealt with in Sec5/22/32).

1) Site Location/Context

The Section 5 declaration relates to the construction of a 2m high boundary wall between no.'s 1 and 2, and disability access side gate 2m high from side street. The site is accessed along Chapel Street (L-4002).

Aerial View of Site Location



2) Relevant Planning History

03/5159 – Permission for the demolition of existing uninhabitable dwelling and its replacement with 1 No. self-contained apartment at Chapel Street, Graiguecullen, Carlow and the construction of 1 No. 4 bedroom apartment at Castlecomer Road, Graiguecullen, Carlow.

07/5857 – Permission for the demolition of a single storey derelict residential building at number 1 Chapel Street and the development of (2) two storey townhouses comprising 139sq.m.'s and 98sq.m.'s and a semi private courtyard at No. 1 Chapel Street, Graiguecullen, Carlow. Further Information requested on the 11/05/2007. Application deemed withdrawn.

20/54 – Permission to construct a toilet extension to an existing house and to construct 2 single occupancy apartments at 1 Chapel Street, Graiguecullen, Carlow. Invalid/Incomplete Application.

20/62 - Permission to construct a toilet extension to an existing house and to construct 2 single occupancy apartments at 1 Chapel Street, Graiguecullen, Carlow, Co. Carlow. Permission Refused subject to 2 number reasons as follows –

1. Notwithstanding the zoning of the lands as 'Town Centre' within the historic urban centre and the policy of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 to encourage infill development, it is considered that the proposed development by reason of its design, scale, mass, layout, its relationship to adjoining properties and potential for overshadowing would represent an unacceptable overdevelopment of the site contrary to policy 11.3.2 Site Coverage of the Carlow County Development Plan, 2015 -2021, would seriously injure the visual and residential amenities of the area and of property in the vicinity. In addition, the proposed development would be contrary to a number of policies in the Joint Spatial Plan including DBF P16 which requires infill development to be carefully considered and appropriate to the scale of the site addressing such matters as building lines, urban grain, privacy, light and materials and DBF P17 which requires that back land development does not adversely affect the residential amenity of the area. The proposed development would therefore materially contravene the provisions of the Joint Spatial Plan and would be contrary to the proper planning and sustainable development of the area.
2. In the absence of Daylight and Shadow Projection Diagrams/Analysis the Planning Authority is not satisfied that the proposed development would not impact negatively on the residential amenities of adjoining residential properties adjoining the site along its northern and western boundaries in terms of overshadowing and loss of light to these existing properties. Accordingly, in the absence of same, the proposed development is considered contrary to the proper planning and sustainable development of the area.

Sec5/22/32- Split decision noting;

- a) The proposed replacement of the flat roof over part of the property and the proposed 40m² extension to the rear of the existing dwelling as declared meets the conditions and limitations set out in column 2 of Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). It is therefore considered that it constitutes **development and is exempted development**.
- b) The proposed wall to the boundary between No.1 and No.2 does not meet the conditions and limitations set out in column 2 of Class 5, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). It is therefore considered that the proposed boundary wall and proposed side gate constitutes **development and is not exempted development**.
- c) The proposed side gate into the property from the footpath for disability access purposes does not meet the conditions and limitations set out in column 2 of Class 5, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). It is therefore considered that the proposed boundary wall and proposed side gate constitutes **development and is not exempted development**.

3) Description of the Referral/Proposal

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) to determine whether or not the development of a 2m high boundary wall between no.'s 1 and 2, and disability access side gate 2m high from side street constitutes exempted development.

4) Relevant Legislative/Regulatory Provisions
Planning and Development Act 2000 (as amended)

- Section 2

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

- Section 3(1)

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

Planning and Development Regulations 2001 (as amended)

- Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

- Article 9(1)

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

(a) if the carrying out of such development would—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 meters in width,*
- (iii) endanger public safety by reason of a traffic hazard or obstruction of road users.*

- Class 5 in Part 1 of Schedule 2 (Exempted Development- General)

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

5) Assessment

Class 5, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended) applies to the proposal regarding;

- (a)** The proposed wall to the boundary between No.1 and No.2
- (b)** The proposed side gate into the property from the footpath for disability access purposes.

- Class 5 in Part 1 of Schedule 2 (Exempted Development- General)

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

Obtaining an exempted development status under Class 5 requires compliance with the 3 No. conditions/limitations outlined below.

Assessment of the proposed wall to the boundary between No.1 and No.2.

1.	<i>The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.</i> Assessment: As evident on Drawing No:301 received by the Planning Authority on 20/11/2023, the proposed wall is 2m in height.
2.	<i>Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</i> Assessment: As evident on Drawing No:301 received by the Planning Authority on 20/11/2023, the proposed wall consists of a plastered blockwork wall and will be capped and pierced (piers to be located inside of No.1 boundary).
1.	<i>No such structure shall be a metal palisade or other security fence.</i> Assessment: As evident on Drawing No:301 received by the Planning Authority on 20/11/2023, the proposed wall consists of a plastered blockwork wall and will be capped and pierced.

Assessment of the proposed side gate into the property from the footpath for disability access purposes.

1.	<i>The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.</i> Assessment: As evident on Drawing No:301 received by the Planning Authority on 20/11/2023, the proposed access gate is 2m in height.
2.	<i>Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</i> Assessment: N/A.
3.	<i>No such structure shall be a metal palisade or other security fence.</i> Assessment: As evident on Drawing No:301 received by the Planning Authority on 20/11/2023, the proposed access gate finishes include hard wood framed solid timber pedestrian gates.

6) Conclusion

Based on the information submitted to the Planning Authority on 20/11/2023, the proposed boundary wall located between the no.1 and no.2 satisfactorily falls under Class 5 exempted development general as the proposed wall has a max height of 2m and consists of a plastered blockwork wall with capping.

Based on the information submitted to the Planning Authority on 20/11/2023, the proposed pedestrian gateway satisfactorily falls under Class 5 exempted development general as the proposed access gate has a max height of 2m and the proposed finishes include hard wood framed solid timber gate.

7) Recommendation

Overall having regard to the details and drawings submitted with the referral it is considered that:—

- a) The proposed wall to the boundary between No.1 and No.2 satisfactorily meets the conditions and limitations set out in column 2 of Class 5, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). It is therefore considered that the proposed boundary wall and proposed side gate constitutes **development and is exempted development**.
- b) The proposed side gate into the property from the footpath for disability access purposes satisfactorily meets the conditions and limitations set out in column 2 of Class 5, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). It is therefore considered that the proposed boundary wall and proposed side gate constitutes **development and is exempted development**.

A draft order is set out below.

**Declaration on Development & Exempted Development
Section 5 of the Planning and Development Act 2000 (as amended)**

Reg. Ref: SEC5/23/38

WHEREAS a question has arisen as to whether a proposed 2m high boundary wall between no.'s 1 and 2, and disability access side gate 2m high from side street at 1 Chapel Street, Graiguecullen is development and whether it is or is not exempted development.

AS INDICATED on the plans and particulars received by the Planning Authority on 20th of November 2023.

AND WHEREAS Laurence Phelan/ Ronan Phelan, Springhill Properties Ltd, C/o Sean Mahon Architects, SM Architects Ltd, 35 The Willows, Pollerton, Carlow, requested a declaration on the said question from Carlow County Council;

AND WHEREAS Carlow County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and
- c) Schedule 2, Part 1 Class 5 of the Planning and Development Regulations 2001 (as amended)

AND WHEREAS Carlow County Council has concluded that:

- a) The proposed wall to the boundary between No.1 and No.2 would come within the scope of exempted development provisions in Class 5, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- b) The proposed side gate into the property from the footpath for disability access purposes would come within the scope of exempted development provisions in Class 5, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

NOW THEREFORE Carlow County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that;

- a) The proposed wall to the boundary between No.1 and No.2 as detailed on the submitted declaration drawings **is development and is exempted development**; and
- b) The proposed side gate into the property from the footpath for disability access purposes as detailed on the submitted declaration drawings **is development and is exempted development**.


A/Assistant Planner

Date: 27/11/2023


Senior Planner

Date: 26/11/23

Appendix 1

APPROPRIATE ASSESSMENT SCREENING REPORT

Planning Application Reg. Ref: SEC5/23/38

A. DESCRIPTION OF PROJECT AND LOCAL SITE

Site Location:	1 Chapel Street, Graiguecullen, Carlow Town
Total Site Area:	Unknown.
Floor Area of Proposed Development:	Unknown.
Identification of Natura 2000 site(s):	River Barrow and River Nore cSAC
Is the application accompanied by an EIS?	No.

B. IDENTIFICATION OF RELVANT NATURA 2000 SITE(S):

The reasons for the designation of the Natura 2000 site:(A site synopsis can be obtained from www.npws.ie)The conservation objectives/qualifying interests of the site and the factors that contributes to the conservation value of the site:

C. NPWS ADVICE:

Summary of advice received in written form:	None Received.
Advice received over the over phone:	None Received.

D. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

(Purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).If answer yes to any of the questions, below then the effect is significant.

1.1	Would there be any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance)	No.
1.2	Would there be a reduction in habitat area on a Natura 2000 site?	No.
1.3	Would there be direct/indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site?	No.
1.4	Would there be serious/ongoing disturbance to species/habitats for which the Natura 2000 site is selected (e.g. because of increased noise, illumination and human activity)?	No.
1.5	Would there be direct/indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site?	No.
1.6	Would the project interfere with mitigation measures put in place for other plans/projects? (Look at in-combination effects with completed, approved but not completed, and proposed plans/projects. Look at projects/plans within and adjacent to Natura 2000 sites and identify/)	No.

E. SCREENING CONCLUSION

At its closest point, the River Barrow is circa 77m west of the site. The River Barrow forms part of the River Barrow and River Nore SAC. Having regard to the scale of the proposed development, there is no connecting pathway (direct or indirect) between this site and the European site.

The development as proposed has been assessed having regard to the requirements of the EU Habitats Directive. Given the proximity of the nearest European Site and the nature and extent of the development on the site and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, a Stage 2 Appropriate Assessment is not required.

Signed: *Sadhana Power*

Position: A/Assistant Planner

Date: 27/11/2023





Declaration on Development & Exempted Development
Section 5 of the Planning and Development Act 2000 (as amended)
Reg. Ref: SEC5/23/38

WHEREAS a question has arisen as to whether a proposed 2m high boundary wall between No.'s 1 and 2, and disability access side gate 2m high from side street at 1 Chapel Street, Graiguecullen, Carlow, is development and whether it is or is not exempted development.

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- b) The proposed side gate into the property from the footpath for disability access purposes as detailed on the submitted declaration drawings **is development and is exempted development.**

Signed: Nicola Landler

Date: 05/12/2023