

Comhairle Cathrach Chorcaí Cork City Council

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

Eamonn Barry,
18 Briarscourt,
Shanakiel,
Cork.

15/11/2022

RE: Section 5 Declaration R741/22 71 Blarney Street, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received 19th September 2022 and further information received 14th October 2022, I wish to advise as follows:

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

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 10(6) of the Planning and Development Regulations 2001 (as amended),

It is considered that the proposed change of use at 71 Blarney Street **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 15th November 2022.

Is mise le meas,

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



We are Cork.

PLANNER'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R741/22		
Application type	Section 5 Declaration	
Description	<i>Is the proposed change of use at 71 Blarney Street, exempted development?</i> Change of use from commercial to residential.	
Location	71 Blarney Street, Cork	
Applicant	Eamonn Barry	
Date	14/11/2022	
Recommendation	<i>Is development and is not exempted development.</i>	

This report should be read in conjunction with the previous report on the file dated 13/10/2022.

1. FURTHER INFORMATION REQUESTED

- 1) You are requested to indicate under which part, or parts, of the *Planning and Development Act 2000* (as amended) and / or the *Planning and Development Regulations 2001* (as amended) you consider the proposed development to be exempt.
- 2) If you are relying upon the exemption set out by Article 10(6) of the *Planning and Development Regulations 2001* (as amended) please provide, in detail, how the proposed development complies with the criteria for the exemption set out therein (detailed drawings including floor plans and elevations should be provided in this regard).
- 3) If relying upon any other exemption, please similarly set out why you believe the proposed development complies.

2. FURTHER INFORMATION RECEIVED

The applicant submitted a response to the further information request on 03/11/2022 consisting of a set of drawings including floor plans and elevations.

No cover letter or schedule of accommodation was submitted with the response to the further information request. It is unclear from the information submitted whether the applicant is relying on the exemption set out by Article 10(6) of the *Planning and Development Regulations 2001* (as amended). The floors plans submitted with the further information response have the areas of each room annotated. This allows for an assessment to be carried out against the criteria set out in Article 10(6).

3. ASSESSMENT

As set out in my report dated 13/10/2022, I consider that the proposed change of use and associated works constitutes development.

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

The key considerations in this regard is whether the proposed change of use (and associated works) complies with Article 10(6) of the *Planning and Development Regulations 2001* (as amended).

As outlined above, no cover letter was submitted with the response to the further information request and the applicant has not demonstrated how the proposal complies with the requirements of Article 10(6). However, sufficient information has been submitted to allow an assessment of the proposal to be undertaken against the criteria listed in Article 10(6). In the absence of information stating otherwise, it is assumed that the applicant is relying upon the exemption set out by Article 10(6) is the part of the Planning and Development Regulations and this is assessed in detail below.

ARTICLE	REQUIREMENT	ASSESSMENT
10(6)(b)	This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1	<p>It is stated on the application form that the ground floor was is use as a shop and the existing floor plans submitted indicate that the ground floor was is use as a butcher shop.</p> <p>I am satisfied that the proposal comprises a change of use to residential from Class 1 (shop).</p> <p>It appears that the rear of the ground floor was in use as owners accommodation with the living accommodation (kitchen, dining and living room and WC.) at ground level and bedroom accommodation at first floor level. It is unclear if this residential unit is still in use or if this is also vacant. In any event, the proposed change of use relates solely to the vacant commercial unit and associated storerooms.</p> <p>Based on the information provided the proposed change of use accords with this sub-article.</p>
10(6)(c)(i)	The structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018	The structure was constructed prior to the making of the regulations.
10(6)(c)(ii)	The structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6	<p>The site has been vacant for quite some time. There was a fascia sign above the shop until at least 2019 (based on google street view imagery). The sign indicates that the unit was in use as a shop.</p> <p>I am satisfied that the proposed change of use accords with this sub-article.</p>
10(6)(c)(iii)	The structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development	<p>It is stated in the application form that the unit has been vacant for 20 years. No information has been submitted to demonstrate same. Google street view indicates that the unit has been vacant since at least 2009.</p> <p>I am satisfied that the proposed change of use accords with this sub-article.</p>
10(6)(d)(i)	The development is commenced and completed during the relevant period	The applicant is required to comply with this requirement.

10(6)(d)(ii)	Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall – (I) primarily affect only the interior of the structure, (II) retain 50 per cent or more of the existing external fabric of the building, (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.	<p>A review of the existing and proposed floor plans indicates that minimal works are required.</p> <p>At ground floor level the works consist primarily of the provision of partitions internally. Some minor layout changes are proposed at first floor level (relocation of bathroom and bedroom etc.) but this is outside the scope of the question being asked in this instance.</p> <p>The changes to the external fabric include the removal of the existing door/ shop front window and the provision of new openings to accommodate new doors and window. New uPVC sliding doors with side panel glazing are proposed on the rear elevation in lieu of the existing large window.</p> <p>I am satisfied that the proposed external works do not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.</p>
10(6)(d)(iii)	Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures	<p>As outlined in 10(6)(d)(ii) above, the existing shopfront is to be removed and replaced by new openings to provide for a new door and windows. The proposed replacement door and windows are residential in character. I am of the view that the alterations are consistent with the fenestration details and architectural and streetscape character of the remainder of the structure and of neighbouring structures.</p> <p>I am satisfied that the proposed change of use accords with this sub-article.</p>
10(6)(d)(iv)	No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.	<p>The subject site is zoned ZO 1 – Sustainable Residential Neighbourhoods.</p> <p>Residential development is acceptable within this zoning. The proposed change of use accords with this sub-article.</p>
10(6)(d)(v)	No development shall consist of or comprise the carrying out of works which exceeds the provision of more	The proposed change of use accords with this sub-article.

	than 9 residential units in any structure.	
10(6)(d)(vi)	Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.	Please see separate discussion below.
10(6)(d)(vii)	Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.	The proposed change of use accords with this sub-article.
10(6)(d)(viii)	No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.	The site is not a protected structure. The proposed change of use accords with this sub-article.
10(6)(d)(ix)	No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.	Permission was refused under planning reg. 08/33361 for the change of use of a ground floor butchers shop to a bookmakers, including minor elevational alterations and to construct a first floor extension to existing first floor apartment to the rear of the property. There is no other planning history pertaining to the subject site. The proposed change of use accords with this sub-article.
10(6)(d)(x)	No development shall relate to any structure in any of the following areas: (I) an area to which a special amenity area order relates; (II) an area of special planning control; (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.	The proposed change of use accords with this sub-article.
10(6)(d)(xi)	No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix)	The proposed change of use accords with this sub-article.

	of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.	
10(6)(d)(xii)	No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.	N/A

It appears from the existing floor plans submitted that there is an existing residential unit within the property (living accommodation to rear of ground floor and bedroom accommodation on the first floor). It is likely that that this was occupied by the owner of the shop. It is unclear if this residential element is still in use or if this is also vacant. In any event, the proposed change of use relates solely to the vacant commercial unit and associated storerooms. The plans indicate that the existing sitting room would form part of the living accommodation for the proposed residential unit.

The proposed apartment is assessed below against the requirements of the Apartment Guidelines. It is not stated whether the proposed unit is a 2-bed, 3-person apartment or a 2-bed, 4-person apartment. It will be assessed against the requirements for a 2-bed, 3-person unit.

Minimum Overall Apartment Floor Area

Two-bed (3 person) apt	Proposed
65m ²	65m ²

Min. aggregate floor area for living/ dining/ kitchen rooms and min. widths for the main living/ dining room

Apt type***	Min. required living room width	Min. required aggregate floor area of living/ kitchen/ dining area	Proposed
2-bed (3 person)	3.6m	28m ²	3.7m + 29m ²

Min. bedroom floor areas/ widths

	Min. Required Width	Min. Required Floor Area	Proposed
Single Bedroom	2.1m	7.1m ²	2.3m + 8m ² - (Bedroom 2)
Double bedroom	2.8m	11.4m ²	2.4m + 9m ² - (Bedroom 1)

Minimum aggregate bedroom floor area

	Min. area (m ²)	Apt B
2-bed (3 person)	13m ² + 7.1m ² = 20.1m ²	9m ² + 8m ² = 17m ²

Min. storage space requirements

	Min. required	Proposed
2-bed (3 person)	5m ²	1.12m ²

Min. floor area for private amenity space

	Min. required	Apt B
2-bed (3 person)	7m ²	Not indicated.

Compliance with Apartment Standards

it is clear from the above assessment that the proposed apartment does not comply with Apartment Standards. The main bedroom (bedroom 1) is below the minimum size requirement for a double bedroom, the width of this bedroom is also below the minimum requirement. The overall aggregate bedroom floor area is less than the minimum standards as set out in the Apartment Guidelines. The level of designated storage space falls below the minimum requirement. There is a rear garden/ yard to the rear to the site which could be used for as private amenity space. However, an area has not been identified for the proposed unit. In any event, the apartment is deficient in other areas and does not comply with the required minimum floor areas and standards set out in Appendix 1 of the Apartment Guidelines and as such the development does not accord with the requirements set out in Article 10(6)(d)(vi) of the Planning and Development Regulations.

4. ENVIRONMENTAL ASSESSMENT**4.1 Screening for Environmental Impact Assessment**

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that an environmental impact statement is not required to be submitted.

4.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

5. RECOMMENDATION

In view of the above and having regard to –

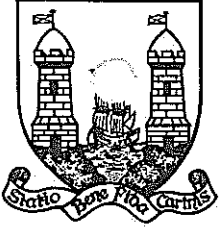
- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended), and
- Article 10(6) of the Planning and Development Regulations (as amended),

It is considered that the proposed change of use at 71 Blarney Street Is Development and Is Not Exempted Development.

Jan Oosterhof

Jan Oosterhof
Assistant Planner
14/11/2022

Melissa Walsh
Senior Executive Planner
14/11/2022



Comhairle Cathrach Chorcaí Cork City Council

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

Eamonn Barry,
18 Briarscourt,
Shanakiel,
Cork

14/10/2022

RE: Section 5 Declaration R741/22 71 Blarney Street, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, I wish to advise under the provisions of section 5(2)(b) of the Planning and Development Act 2000, as amended, that the following further information is required in order to properly assess this application:

- 1) You are requested to indicate under which part, or parts, of the *Planning and Development Act 2000* (as amended) and / or the *Planning and Development Regulations 2001* (as amended) you consider the proposed development to be exempt.
- 2) If you are relying upon the exemption set out by Article 10(6) of the *Planning and Development Regulations 2001* (as amended) please provide, in detail, how the proposed development complies with the criteria for the exemption set out therein (detailed drawings including floor plans and elevations should be provided in this regard).
- 3) If relying upon any other exemption, please similarly set out why you believe the proposed development complies.

Is mise le meas,

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



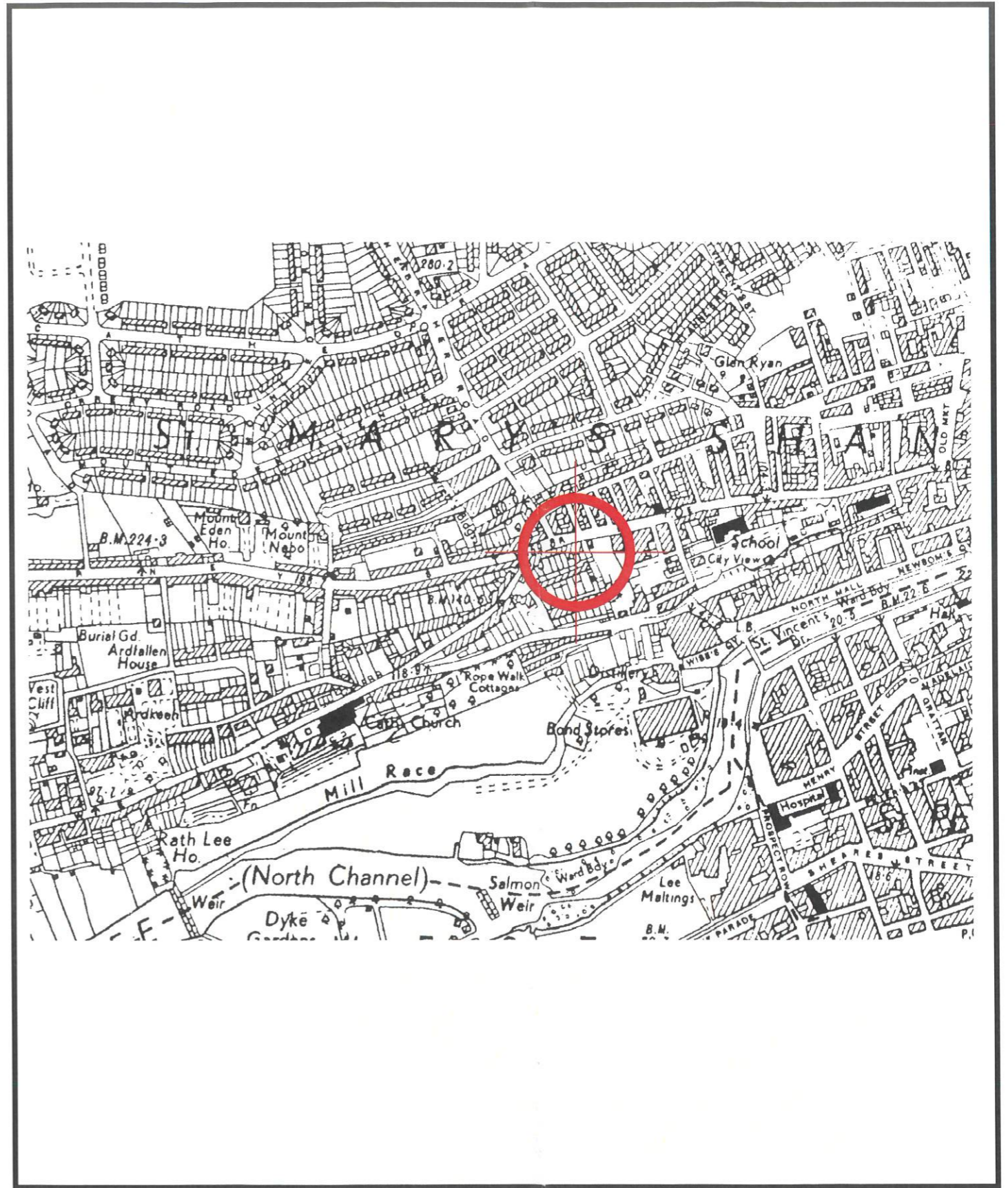
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Site Location Map



Scale 1:1000



6" Location Map



Scale 1:10560

CLIENT: **Eamon Barry, 71 Blarney Street, Cork.**



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Rev.	AMENDMENT DESCRIPTION	DATE
A	Issued for Information	24/06/22

Site Location Map 1/1000
6" Location Map 1/10560

SCALE 1/1000
DRAWN K.M.

JOB-DRAWING No.

EB-0001

REVISION

A



Proposed Ground Floor

Scale 1:100



Proposed First Floor

Scale 1:100

Required Minimum Floor Areas and Standards

Minimum overall apartment floor areas	
Studio	37 sq m (n/a)*
One bedroom	45 sq m (38 sq m)*
Two bedrooms (3 person)**	63 sq m (n/a)*
Two bedrooms (4 person)	73 sq m (55 sq m)*
Three bedrooms	90 sq m (70 sq m)*

* Figures in brackets refer to 1995 guidelines
** Permissible in limited circumstances

Minimum aggregate floor areas for living/dining/kitchen rooms, and minimum widths for the main living/dining rooms

Apartment type***	Width of living/dining room	Aggregate floor area of living / dining / kitchen area*
Studio	4m**	30 sq m**
One bedroom	3.3 m	23 sq m
Two bedrooms (3 person)	3.6m	28 sq m
Two bedrooms (4 person)	3.6 m	30 sq m
Three bedrooms	3.8 m	34 sq m

* Note: An enclosed (separate) kitchen should have a minimum floor area of 6.5 sq. metres
** Note: Combined living/dining/bedspace, also includes circulation
*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas

Minimum bedroom floor areas/widths***

Type	Minimum width	Minimum floor area
Studio	4m**	30 sq m**
Single bedroom	2.1 m	7.1 sq m
Double bedroom	2.8 m	11.4 sq m
Twin bedroom	2.8 m	13 sq m

* Note: Minimum floor areas exclude built-in storage presses that are contributing to storage space requirements
** Note: Combined living/dining/bedspace
*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas

Sustainable Urban Housing:

Design standards for new apartments

Required minimum floor areas and standards

FIRE LEGEND

FD30	Fire Door 30min
FD30S	Fire Door 30min With Smoke Seal
FD60S	Fire Door 60min With Smoke Seal
AP60S	Access Panel 60min With Smoke Seal
EXIT	Exit Sign
DRY	Dry Riser Connection Point
EB	Electrical Board
FS	Firemans Switch - Automatic Opening Vent
AOV	Automatic Opening Vent
HR	Hose Reel

FIRE ALARM SYSTEM - INDIVIDUAL UNITS

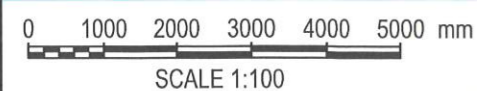
SD	Smoke Detector & Sounder (in accordance with I.S. 3218 : 2013)
HD	Heat Detector & Sounder (in accordance with I.S. 3218 : 2013)
EL	Emergency Light (in accordance with I.S. 3217 : 2013)
CD	Carbon Monoxide Detector & Sounder (in accordance with I.S. 3218 : 2013)
AS	Alarm Sounder
CP	Control Panel
BGU	Break Glass Unit

	60 min Fire Resisting Construction
	30 min Fire Resisting Construction
	1.40 x 0.90 Refuge (Including Call Point)

	Ventilated Lobby
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Layout of Fire Alarm System is Indicative only and should be designed in accordance with I.S. 3218 : 2013
Layout of Emergency Lighting System is Indicative only and should be designed in accordance with I.S. 3217 : 2013

CLIENT: **Eamon Barry, 71 Blarney Street, Cork.**



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Rev.	AMENDMENT DESCRIPTION	DATE
A	Issued for Information	24/05/22

Proposed Floor Plans

SCALE 1/100

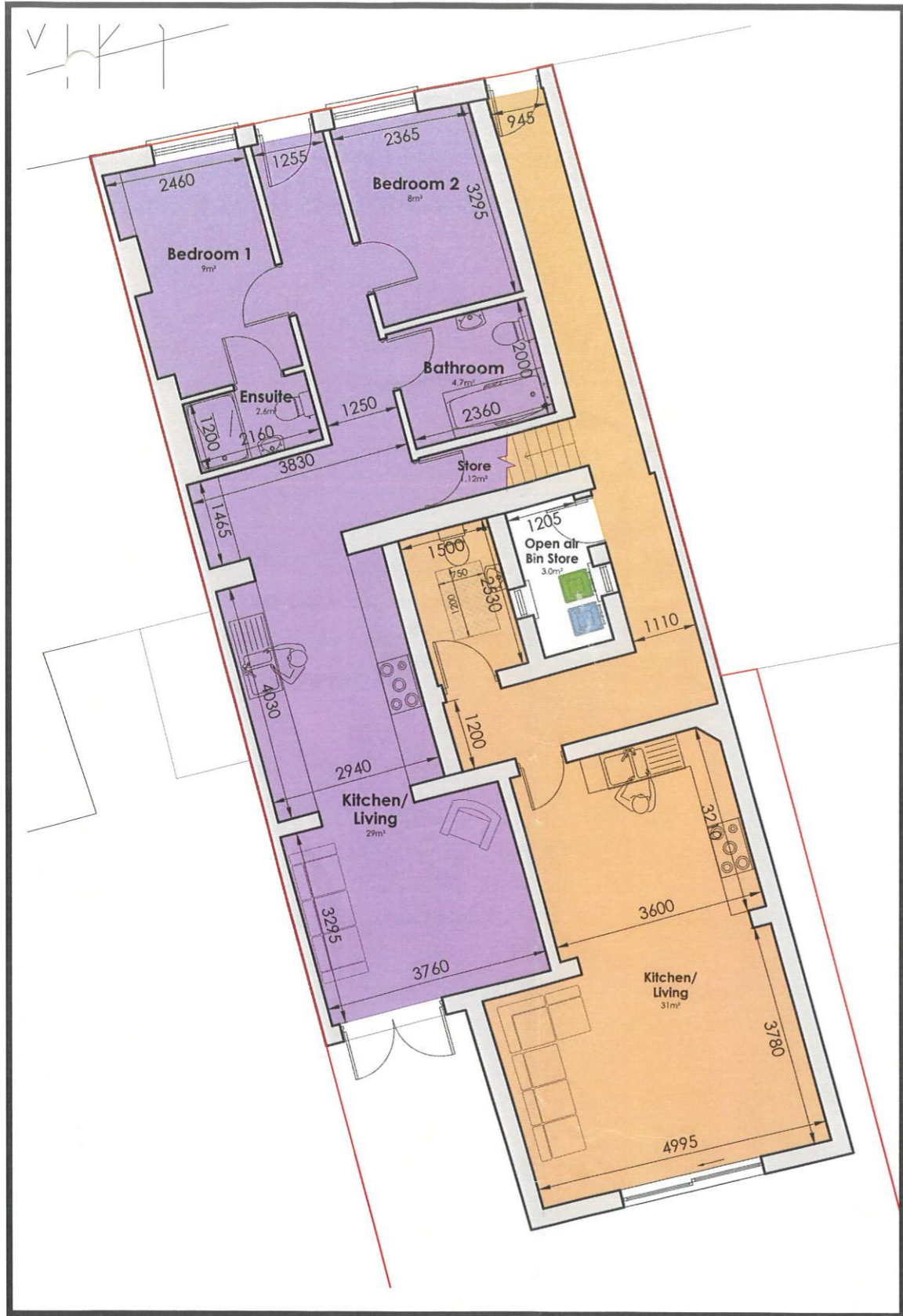
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JOB-DRAWING No.

EB-0002

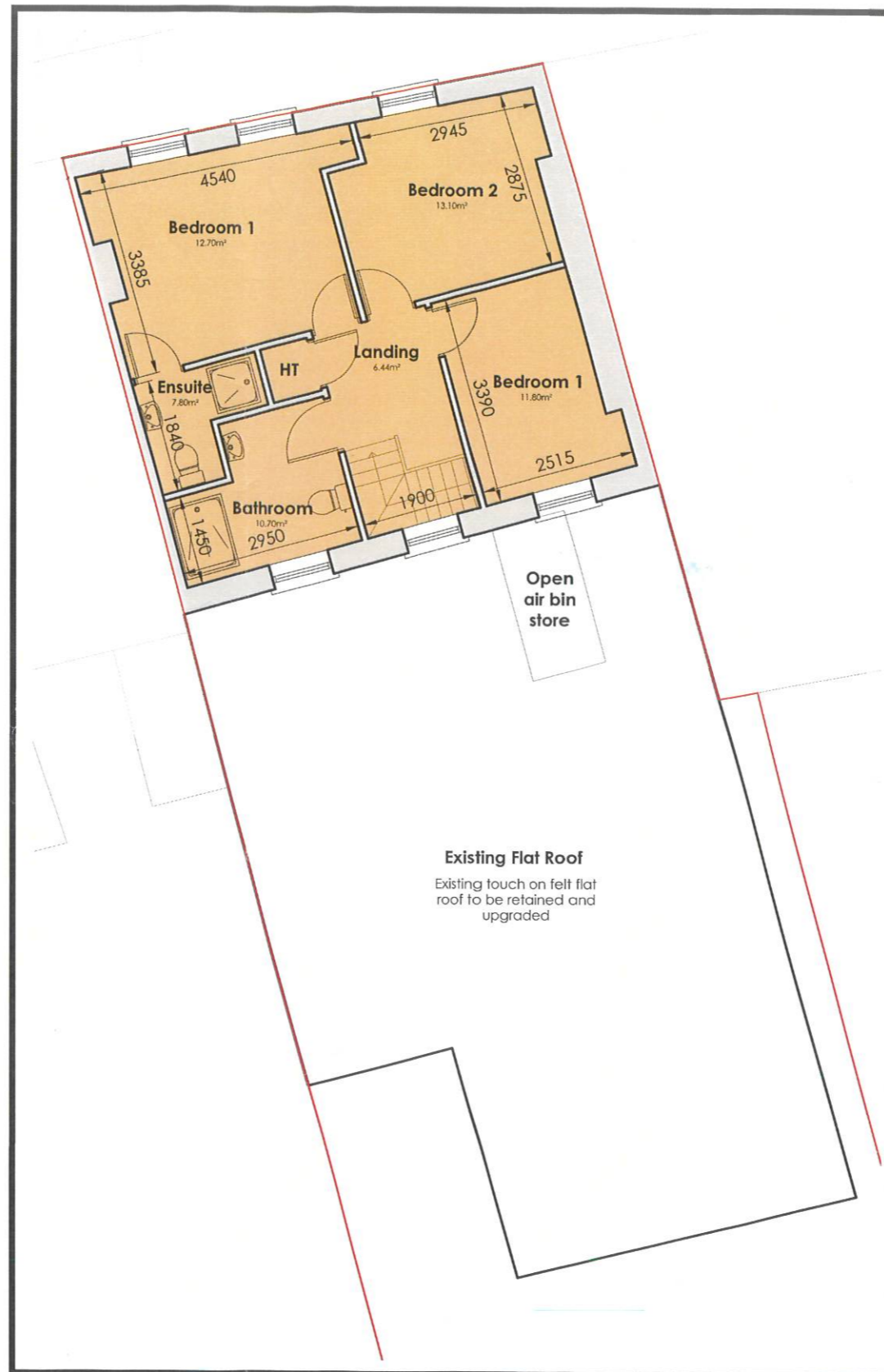
REVISION

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Proposed Ground Floor

Scale 1:100



Proposed First Floor

Scale 1:100



Required Minimum Floor Areas and Standards

Minimum overall apartment floor areas	
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** Permissible in limited circumstances

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** Note: Combined living/dining/bedspace, also includes circulation
*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas

Minimum bedroom floor areas/widths***		
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Twin bedroom	2.8 m	13 sq m

* Note: Minimum floor areas exclude built-in storage presses that are contributing to storage space requirements
** Note: Combined living/dining/bedspace
*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas

Sustainable Urban Housing:

Design standards for new apartments

Required minimum floor areas and standards

Cork City Council

03 NOV 2022

Community, Culture and Placemaking

TOTAL FLOOR AREAS:
 Apartment A = 99.81m²
 Apartment B = 65.26m²

CLIENT: **Eamon Barry, 71 Blarney Street, Cork.**



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Rev.	AMENDMENT DESCRIPTION	DATE
A	Issued for Information	24/05/22

Proposed Floor Plans

SCALE 1/100

DRAWN K.M.

JOB-DRAWING No.

EB-0002

REVISION

A



Existing Site Layout



Scale 1:250

Existing Ground Floor



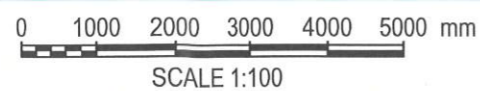
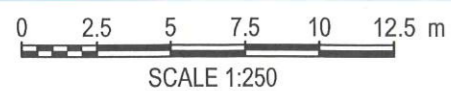
Scale 1:100

Existing First Floor



Scale 1:100

CLIENT: **Eamon Barry, 71 Blarney Street, Cork.**



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Rev.	AMENDMENT DESCRIPTION	DATE
A	Issued for Information	24/06/22

Existing Site Plan
Existing Floor Plans

SCALE 1/250-&-1/100

DRAWN K.M.

JOB-DRAWING No.

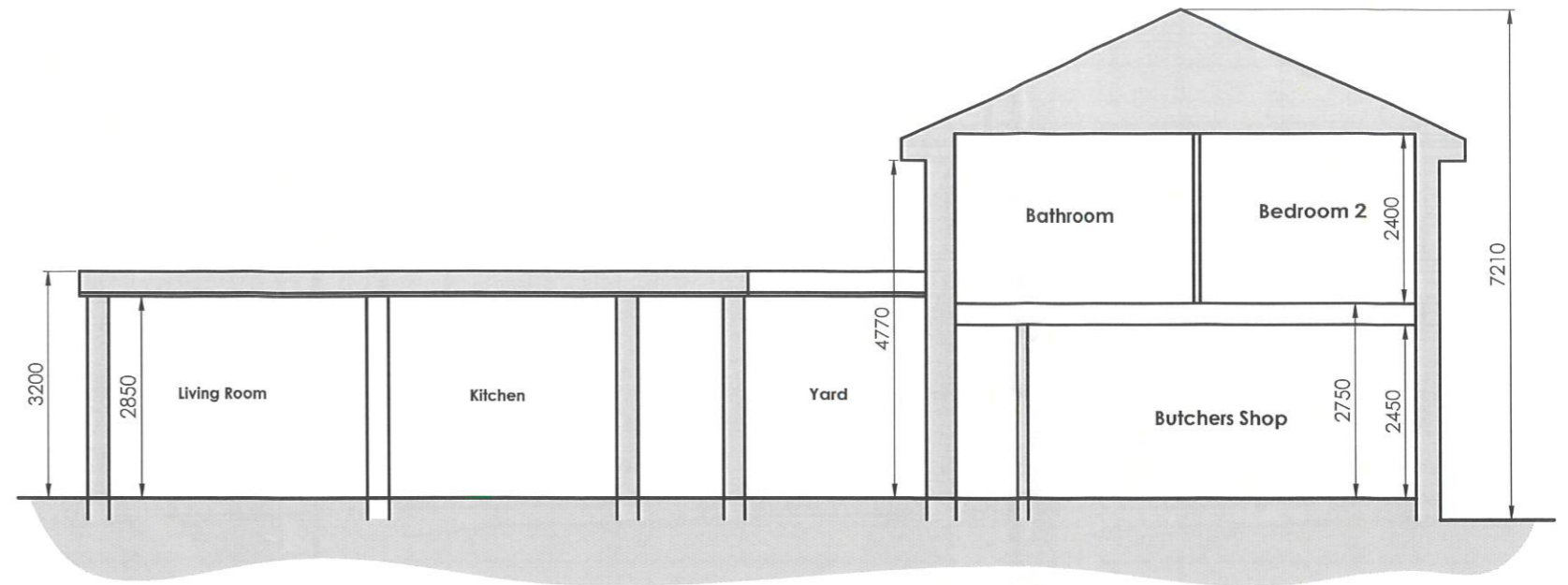
EB-0003

REVISION

A



ex.Front Elevation
Scale :1 :100



ex.Section
Scale :1 :100



ex.Rear Elevation
Scale :1 :100



ex.Front Image



ex.Rear Image

Existing Elevations / Sections / Images

Scale 1:100

CLIENT: **Eamon Barry, 71 Blarney Street, Cork.**



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Rev.	AMENDMENT DESCRIPTION	DATE
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Existing Elevations
Existing Section

SCALE 1/100

DRAWN K.M.

JOB-DRAWING No.

EB-0005

REVISION

A



Existing windows to be serviced & upgraded where necessary.

Existing Door/Window to be removed and blocked up. New ones created for new PVC door / windows

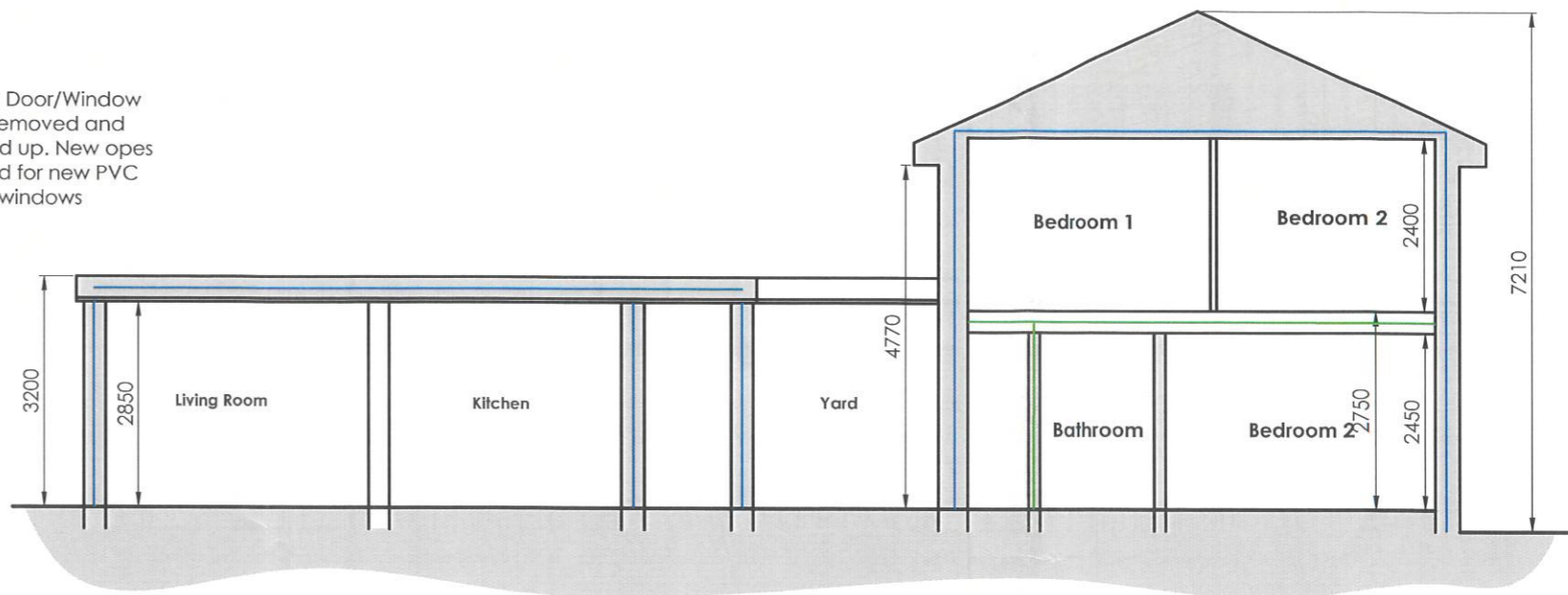
Pro. Front Elevation
Scale :1 :100



Existing windows to be serviced & upgraded where necessary.

New PVC sliding door with side panel glazing

Pro. Rear Elevation
Scale :1 :100



Pro. Section
Scale :1 :100

	60 min Fire Resisting Construction
	30 min Fire Resisting Construction

Proposed Elevations / Sections

Scale 1:100

CLIENT: **Eamon Barry, 71 Blarney Street, Cork.**



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Rev.	AMENDMENT DESCRIPTION	DATE
A	Issued for Information	24/06/22

Proposed Elevations
Proposed Section

SCALE 1/100

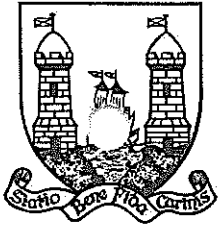
DRAWN K.M.

JOB-DRAWING No.

EB-0004

REVISION

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Comhairle Cathrach Chorcaí Cork City Council

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

Eamonn Barry,
18 Briarscourt,
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14/10/2022

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Is mise le meas,

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



We are Cork.

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Application type	Section 5 Declaration	
Description	<i>Is the proposed change of use at 71 Blarney Street, exempted development?</i> Change of use from commercial to residential.	
Location	71 Blarney Street, Cork	
Applicant	Eamonn Barry	
Date	13/10/2022	
Recommendation	<i>Request further information</i>	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. REQUIREMENTS FOR A SECTION 5 DECLARATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the planning authority, the applicant states in Q2 of the application form:

Turn shop into an apartment.

The intention of the request is clear, and it is reasonable to consider the question before the planning authority as being;

Is the proposed change of use from shop to apartment at 71 Blarney Street, exempted development.

3. SITE DESCRIPTION

The subject site is located on the southern side of Blarney Street. The building addresses the street and there are two points of access. One into the commercial unit (vacant) at ground floor level and another door which provides access to the upper floors.

4. PLANNING HISTORY

Subject Site

08/33361 – Permission refused for the change of use of a ground floor butchers shop to a bookmakers, including minor elevational alterations and to construct a first floor extension to existing first floor apartment to the rear of the property.

5. LEGISLATIVE PROVISIONS

5.1 The Act

Section 2(1),

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

Section 3(1),

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

Section 4(1)(h),

The following shall be exempted developments for the purposes of this Act-development consisting of the carrying out of works for the maintenance, improvement, or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section

5.2 The Regulations

Article 9 (1)(a)

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

- (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,*

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned.

Article 10(6)

(a) In this sub-article—

‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from 8 February until 31 December 2025.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12 and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d) (i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall

(I) primarily affect the interior of the structure

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

- (viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.
- (ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.
- (x) No development shall relate to any structure in any of the following areas:
 - (I) an area to which a special amenity area order relates;
 - (II) an area of special planning control;
 - (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.
- (xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.
- (xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.
- (e)(i) Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;
- (ii) Details of each notification under subparagraph (i), which shall include information on—
 - (I) the location of the structure,
 - (II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and
 - (III) the Eircode for the relevant property,
 Shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority’s website.
- (iii) During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).

6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether it falls within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

6.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘the carrying out of any works on, in, over or under land’, or ‘the making of any material change in the use of any structures or other land’.

In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried

out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.’

I consider the proposed change of use constitutes development. No drawings (floor plans/ elevations etc) have been submitted with the section 5 reference and the extent of works proposed is unclear. However, the change of use would likely require works to facilitate the proposed change of use and I consider that these works would constitute development.

CONCLUSION:

- **Change of use and associated works constitutes development.**

6.2 Exempted development

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

As noted above, the applicant has not provided any drawings (floors plans/ elevations) showing the proposed change of use or the extent of associated site works.

It may be that the proposed development could be exempt in accordance with Article 10(6) of the *Planning and Development Regulations 2001* (as amended). The applicant has not submitted the information required to demonstrate compliance with this exemption. Therefore, it is not possible to assess whether the proposed development is exempt without further information.

CONCLUSION:

- **Request further information.**

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that an environmental impact statement is not required to be submitted.

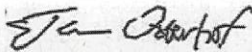
7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

8. RECOMMENDATION

Request further information.

- 1) You are requested to indicate under which part, or parts, of the *Planning and Development Act 2000* (as amended) and / or the *Planning and Development Regulations 2001* (as amended) you consider the proposed development to be exempt.
- 2) If you are relying upon the exemption set out by Article 10(6) of the *Planning and Development Regulations 2001* (as amended) please provide, in detail, how the proposed development complies with the criteria for the exemption set out therein (detailed drawings including floor plans and elevations should be provided in this regard).
- 3) If relying upon any other exemption, please similarly set out why you believe the proposed development complies.



Jan Oosterhof
Assistant Planner

13/10/2022

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924709

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

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

71 BLARNEY ST. CORK.

2. QUESTION/ DECLARATION DETAILS

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

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

TURN SHOP INTO AN APARTMENT

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Cork City Council
19 SEP 2022
Community, Culture
and Placemaking

3. Are you aware of any enforcement proceedings connected to this site?
 If so please supply details:

4. Is this a Protected Structure or within the curtilage of a Protected Structure?

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

5. Was there previous relevant planning application/s on this site?
 If so please supply details:

6. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
DERELICT SITE	2 BED APARTMENT
FOR 20 YRS PLUS	

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		

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

Signature: James Barry

Date: 19/9/2022

CONTACT DETAILS

9. Applicant:


Name(s)	EAMONN BARRY
Address	18 BRIARSCOURT SHANAKILCE. CORK

10. Person/Agent acting on behalf of the Applicant (if any):


Name(s):	
Address:	
Telephone:	
E-mail address:	
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

11. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

Tel. No. 

Mobile No. SAME

Email Address: 

For Office Use Only: File Ref. No. _____

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

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

- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

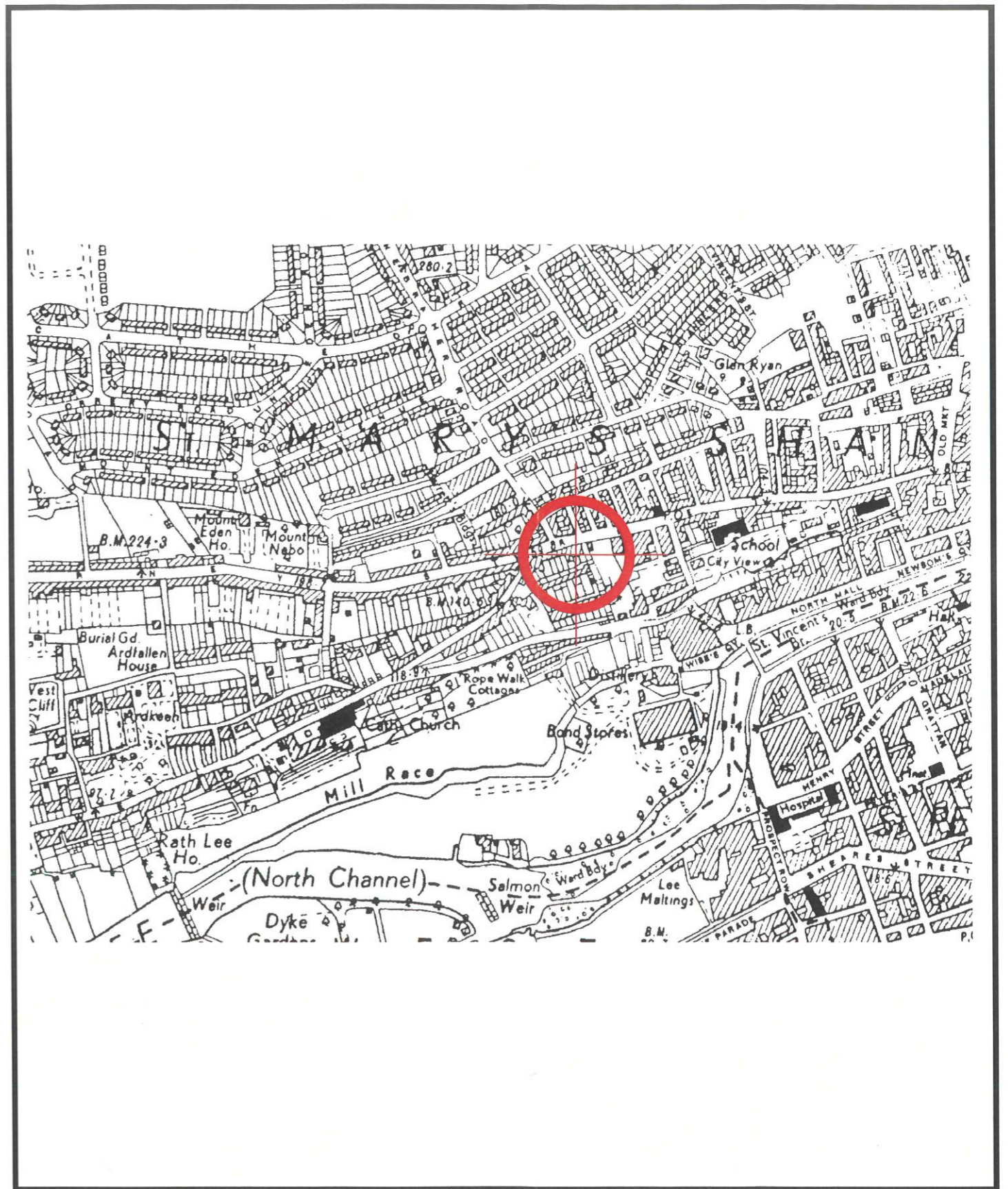
"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>.

We request that you read these as they contain important information about how we process personal data.



Site Location Map

Scale 1:1000



6" Location Map

Scale 1:10560



CLIENT: **Eamon Barry, 71 Blarney Street, Cork.**



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Rev.	AMENDMENT DESCRIPTION	DATE
A	Issued for Information	24/06/22

Site Location Map 1/1000
6" Location Map 1/10560

SCALE 1/1000
DRAWN K.M.

JOB-DRAWING No.
EB-0001

REVISION
A