

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 499/19
Description: Whether the change of use of an office to use as a hairdresser is or is not development and is or is not exempted development.
Applicant: Valerie Cahill.
Location: 19 South Mall, Cork

1. PURPOSE OF REPORT

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

2. SITE LOCATION

The site is located at 19 South Mall.

3. SITE HISTORY

On this site:

T.P. 87/13759: Permission granted to Olive O’Driscoll for alterations to the façade.

T.P. 79/8207: Permission granted to the City of Dublin Bank Limited for the erection of a sign.

4. RELEVANT PLANNING POLICY/OBJECTIVES

Cork City Development Plan 2015-2021

The site is zoned ‘ZO2 City Centre Commercial Core Area’ in Map 1 Volume 2 of the Plan which has as its objective: *‘To support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses in the commercial core area (apart from comparison retail uses).’*

Paragraph 15.8 goes on to state that *‘the Commercial Core Area reflects the commercial and employment zone of the City Centre extending from the City Centre Retail Area. All uses are permitted throughout the CCA, except comparison retail uses, which are restricted to the City Centre Retail Area. Retail uses serving local needs only are open for consideration in this zone (Chapter 13).’*

Chapter 13 of the Plan deals with city centre and Dockland developments. Paragraphs 13.27 – 13.28 relate to development along South Mall and state as follows:

‘13.27 South Mall is Cork’s main traditional prestigious office location. It has, for many years, been the home of professional service firms (accountants, lawyers and property advisors), finance institutions, banks and marketing professionals. The buildings are a mix of distinguished classical buildings and more recent development in the 1960s and 1970s. Many of the buildings have a very attractive character but require continual investment to ensure the space is attractive to potential occupiers. If upgraded the heritage buildings on South Mall have potential to attract small- and medium-sized office users interested in a prestigious office building of character. The later 20th century buildings have larger floorplates but also need to be refurbished to meet modern standards. The City Council recognises that there are relatively high levels of vacancy on the street, particularly above first floor level and is actively exploring ways of improving this by considering development models, architectural feasibility and finance issues.’

13.28 The City Council will seek to promote the retention of office uses in South Mall in order to provide suitable office space for small- to medium-sized business. Ground floor uses on the street should support the office district and its business profile and should ensure the conservation of heritage assets and ensure proper access to upper floors is maintained. The preferred use at ground floor level will be retail office. Non-offices uses at ground floor level, such as restaurants, will only be open for consideration in the part of the street east of Morrison's Street on the south side and east of Beasley Street on the north side (as these areas form a book-end to the street and have the potential to interact with nearby public spaces), where it can be clearly shown that they would support the primary office uses and do not detract from heritage assets or the character of the street. Non-office uses on upper floors of heritage buildings will be open for consideration where they do not have a negative impact on the area or on the heritage asset. Uses that will be considered favourably in this circumstance are residential, hotel or serviced accommodation.'

Objective 13.10 'City Centre Office Development' states as follows:

'It is the objective of Cork City Council to support office development within the City Centre by:

- a. Facilitating the development of an expanded office quarter, including large floor plate office development, on suitable sites in the eastern end of the City Centre, and extending into Docklands as shown in Figure 13.1; and in other suitable sites in the Commercial Core Area and City Centre Retail Area, subject to the need to respect the character and profile of the City Centre. The Cork City Council will work with other public agencies and the private sector to bring forward office developments in these areas;*
- b. Supporting the development of supported space for start-up and grow-on businesses in suitable buildings in the City Centre by working with other public and private sector stakeholders;*
- c. Seeking to promote and enable the retention of office uses in South Mall in order to provide suitable office space for small-to medium-sized businesses in this premier office location (as outlined in 13.27 and 28);*
- d. Implementing environmental improvements and measures to improve transport and access to the City Centre as outlined in Chapter 5.'*

The site also lies within Flood Risk Zone A (and B to the rear).

5. RELEVANT LEGISLATION

Planning and Development Act, 2000 as amended

Section 2(1) of the Act Planning and Development Act, 2000 as amended proffers the following interpretations:

'structure' means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
 - (i) the interior of the structure,*
 - (ii) the land lying within the curtilage of the structure,*
 - (iii) any other structures lying within that curtilage and their interiors, and*
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);*

'alteration' includes—

- (a) plastering or painting or the removal of plaster or stucco, or*

(b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34 of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

“unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

“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.

Article 3 (1) of the Act offers the following meaning of “development”:

‘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) of the Act relates to ‘exempted development and lists exempted development for the purposes of the Act including (h) *‘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 57 (1) states *‘Notwithstanding section 4(1)(h), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*

(a) the structure, or

(b) any element of the structure which contributes to its special

architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.'

Planning and Development Regulations, 2001 (as amended)

Article 5(1) of Part 2 'Exempted Development' defines 'shop' as follows:

'Shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

(a) for the retail sale of goods,

(b) as a post office,

(c) for the sale of tickets or as a travel agency,

(d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,

(e) for hairdressing,

(f) for the display of goods for sale,

(g) for the hiring out of domestic or personal goods or articles,

(h) as a launderette or dry cleaners,

(i) for the reception of goods to be washed, cleaned or repaired,

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;'

Class 14 of Part 1 of Schedule 2 outlines the following exempted development:

'Development consisting of a change of use

(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop.'

Part 4 of the Second Schedule outlines 'Classes of Use' with:

Class 1 -

'Use as a shop'.

CLASS 2 -

'Use for the provision of—

(a) financial services,

(b) professional services (other than health or medical services),

(c) any other services (including use as a betting office),

where the services are provided principally to visiting members of the public.'

CLASS 3 -

'Use as an office, other than a use to which class 2 of this Part of this Schedule applies.'

Article 6(1) of the Regulations states as follows:-

"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) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, (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"...

(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,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified 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.'

6. PLANNING ASSESSMENT & RECOMMENDATION

The proposed change of use relates to the ground floor only and proposes a change from office to retail use. It is stated that interior modifications are limited the fit out. No proposed floor plan of the unit has been submitted. It is stated that proposed opening hours would coincide with usual business hours on the Mall and that the unit would not open on weekends. Signage would be limited to a minimal and discreet square plate on the door.

The structure is a Protected Structure but the ground floor unit appears to have no special features remaining although it is not clear for instance if there are any ceiling features remaining (behind the modern ceiling). The windows to the front elevation are not original (see photograph). Although file T.P. 13759/87 was unavailable from archives the decision to grant shows that permission was granted for 'alterations to the façade' (presumably for these windows?). Condition 1 of that permission required the fitting of timber sash windows to the upper floors, Condition 2 that the replacement door and frame match the existing and Condition 3 that the railings to the front be retained. As it is not clear when the interior works to 'modernise' the *interior* of the ground floor of this Protected Structure took place I am unable to conclude whether the structure is or is not an unauthorised structure (restriction on exemption 9(1) (viii) of the Regulations.)

The proposed use comes within the definition of a shop within Article 5 (1) (a) (i) of the Regulations (as amended). The applicant's agent states that a change of use to retail was permitted in 1987 however the only planning application I can find for that year/property is the one for signage (T.P. 13759/87). The established use is in use as an estate agent's office. From the planning history the use evolution appears to be as follows:

In 1979 when the signage application (T.P. 79/8207) was made the use was as the City of Dublin Bank Limited (a forerunner of Anglo Irish Bank). By 1987 the use appears to have changed to an auctioneer's office as the application for the alterations to the facade (T.P. 87/13759) was made in the name of Olive O' Driscoll and it is reasonable to presume that O' Driscoll Auctioneers were in situ at that time. No change of use application was received between this time and 1987 however I note under the Planning and Development Regulations 1977 that only one class related to office use – Class 2 - which was defined as 'Use as an office for any purpose' and changes of use within a Use Class were considered exempted development therefore no permission was required at the time to alter from a bank to an auctioneers office. The use as an auctioneer's office use ceased some time ago and the property is currently vacant.

While I note Class 14 of Part 1 of Schedule 2 which outlines the following exempted development:
'Development consisting of a change of use

(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop' I note too restriction on exemption 9(1) (ix) of the Regulations.

The listed restrictions on exemptions outlined in Article 9 are discussed on P. 10/163 of Vol. III of the publication 'Irish Planning Law and Practise' with restriction on exemption 9(1)(ix) described/paraphrased as development that would '*affect a use for which the Development Plan has an objective to ensure its continuance.*' Paragraph 13.28 states that the City Council will seek to promote the retention of office uses in South Mall with changes of use to 'non office uses' only open for consideration in certain specific locations on the street which are outside of the current site area. Objective 13.10 of the Cork City Development Plan is to seek '*to promote and enable the retention of office uses in South Mall*'.

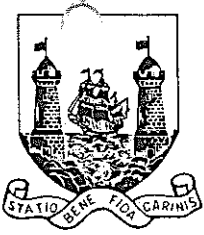
While the words 'change of use' is not specifically mentioned in 9(1) (ix) or specifically included in the statements of what the term 'alteration' includes I note that neither is it excluded from its interpretation. I also note P. of Vol. II of the publication 'Irish Planning Law and Practise' where it discusses various meanings to 'alteration' imparted under s 4(1) (h) and S 2) of the Act and concludes that '*expressions have to be given their reasonable meanings in the particular context in which they are used*'. There is no doubt that the alteration wrought by a change of use to a hairdressers (a shop) would preclude the retention of an office use in this property contrary to the objectives for the area outlined in the Development Plan.

It is concluded that the change of use proposed is a material change of use and is 'development' by virtue of it being a material change from Class 2 to Class 1 of the Classes of Use as outlined in of the Planning and Development Regulations 2001 (as amended). It is concluded however notwithstanding Class 14 of Part 1 of Schedule 2 of the Regulations that it is not exempted development by virtue of the restriction of exemption 9(1) (ix) and of the Planning and Development Regulations 2001 (as amended) and having regard to planning objectives outlined in Paragraph 13.28 and Objective 13.10 of the Cork City Development Plan 2015-2021 to enable the retention of offices uses in South Mall.

The proposed change of use from an office use to use as a hairdressers therefore '**is development and is not exempted development.**'



Evelyn Mitchell
Senior Executive Planner.



Halla na Cathrach
Corcaigh
T12 T997

City Hall
Cork
T12 T997

John Buttt
Brian O'Kennedy Consulting Engineers
Shannon House
Church Road, Douglas
Cork

20/03/2019

RE: Section 5 R499/19 19 South Mall, Cork

Dear Sir/Madam,

I am asked by Mr. Patrick Ledwidge, Director of Services, Strategic Planning & Economic Development to refer to your request for a section 5 Declaration at the above named property.

The proposed change of use relates to the ground floor only and proposes a change from office to retail use. It is stated that interior modifications are limited the fit out. No proposed floor plan of the unit has been submitted. It is stated that proposed opening hours would coincide with usual business hours on the Mall and that the unit would not open on weekends. Signage would be limited to a minimal and discreet square plate on the door.

The structure is a Protected Structure but the ground floor unit appears to have no special features remaining although it is not clear for instance if there are any ceiling features remaining (behind the modern ceiling). The windows to the front elevation are not original (see photograph). Although file T.P. 13759/87 was unavailable from archives the decision to grant shows that permission was granted for 'alterations to the façade' (presumably for these windows?). Condition 1 of that permission required the fitting of timber sash windows to the upper floors, Condition 2 that the replacement door and frame match the existing and Condition 3 that the railings to the front be retained. As it is not clear when the interior works to 'modernise' the *interior* of the ground floor of this Protected Structure took place I am unable to conclude whether the structure is or is not an unauthorised structure (restriction on exemption 9(1) (viii) of the Regulations.)

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Planning and Development Regulations 2001 (as amended) and having regard to planning objectives outlined in Paragraph 13.28 and Objective 13.10 of the Cork City Development Plan 2015-2021 to enable the retention of offices uses in South Mall.

The proposed change of use from an office use to use as a hairdressers therefore **'is development and is not exempted development.'**

Yours Faithfully,



Paul Hartnett
Assistant Staff Officer
Strategic Planning & Economic
Development
Cork City Council



**BRIAN O KENNEDY
& ASSOCIATES LTD**
Consulting Engineers & Architects

Shannon House,
Church Road,
Douglas,
Cork.

Tel: 021-4899854
Fax: 021-4899864
Email: info@bok.ie
Web: www.bok.ie

Our Ref: BOK/JB/18/5719

Your Ref:

Date:

8th January 2019

Planning Department,
Cork City Council,
City Hall,
Cork.

COVER LETTER

**Re: Section 5 Reference – Ground Floor, 19, South Mall, Cork City.
Existing Planning Status of Ground Floor Office Unit**

Applicants: Valerie Cahill
Ikon Hair Design
9 Oliver Plunkett St.
Cork

Agent: Brian O'Kennedy & Associates
Consulting Engineers
Shannon House
Church Road
Douglas
Co. Cork

Development Directorate
Strategic Planning & Economic
14 JAN 2019
Cork City Council
Comhairle Cathrach Chorcaí

Correspondence to: Agent

Location of development: 19 South Mall, Cork

Nature of development: Change of use of ground floor office to retail on basis that permission was granted previously for alteration.

1.0 Introduction

We make the following submission to the City Council under the provisions of Section 5 of the Planning and Development Act 2000 (as amended). This submission is made on behalf of Valerie Cahill of Ikon Hair Design, 9 Oliver Plunkett Street, Cork, potential leasee of the ground floor premises to which this reference applies.

The submission is accompanied by cheque made payable to Cork City Council in the amount of €80.

2.0 Section 5 Reference

The reference relates to a question as to whether the change of use we propose made to the building is exempt.

The building at 19 South Mall, Cork is part of the main South Mall street. It is a 4 storey building comprising of office use. The building is not a protected structure, nor is it sited within an area of conservation (ACA).

3.0 Conclusion & Case Made

- We submit that the premises was permitted for change of use to retail in 1987. X
- We submit that current policy for South Mall allows for retail use in certain cases.
 - We submit that the proposed use under 'retail', a hair design studio would not be injurious to the professional image of South Mall, and that any signage would be minimal and discreet, i.e. not larger than a 300x300mm square plate side of door sign.
 - We submit that proposed opening hrs of the premises under the proposed use would coincide with usual business hrs on South Mall and not open on weekends.
 - We submit that there are no internal or external modification proposed to the building other than fit-out for the new use.

4.0 Submitted Documents

- 2no. Copies of Section 5 Declaration Application Form.
- 2no. Copies of Plan and Front Elevation.
- 2no. Copies of Site Location Map.

We trust everything is in order regarding this application, please don't hesitate to contact us with any queries.



John Butt MRIA PSDP
Brian O'Kennedy & Associates Ltd

Coolowen
Blarney
Co Cork

30th October 2018

Ms Evelyn Mitchell
The Planning Department
Cork City Council
City Hall
Cork

Re: Ground Floor, 19 South Mall, Cork

Dear Madam

I, Olive O'Driscoll am the owner of the above mentioned property. I wish to confirm that I give Valerie Cahill of Ikon Hair Design / her planning consultant permission to engage formally with the planner for the area, Ms Evelyn Mitchell.

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

Yours faithfully


Olive O'Driscoll
Olive O'Driscoll



S. 5.
19 South Mall







CENTRE COORDINATES:
ITM 567584,571709

PUBLISHED:
18/12/2018
ORDER NO.:
50039461_1

MAP SERIES:
1:1,000
MAP SHEETS:
6382-15

SITE OUTLINED IN RED

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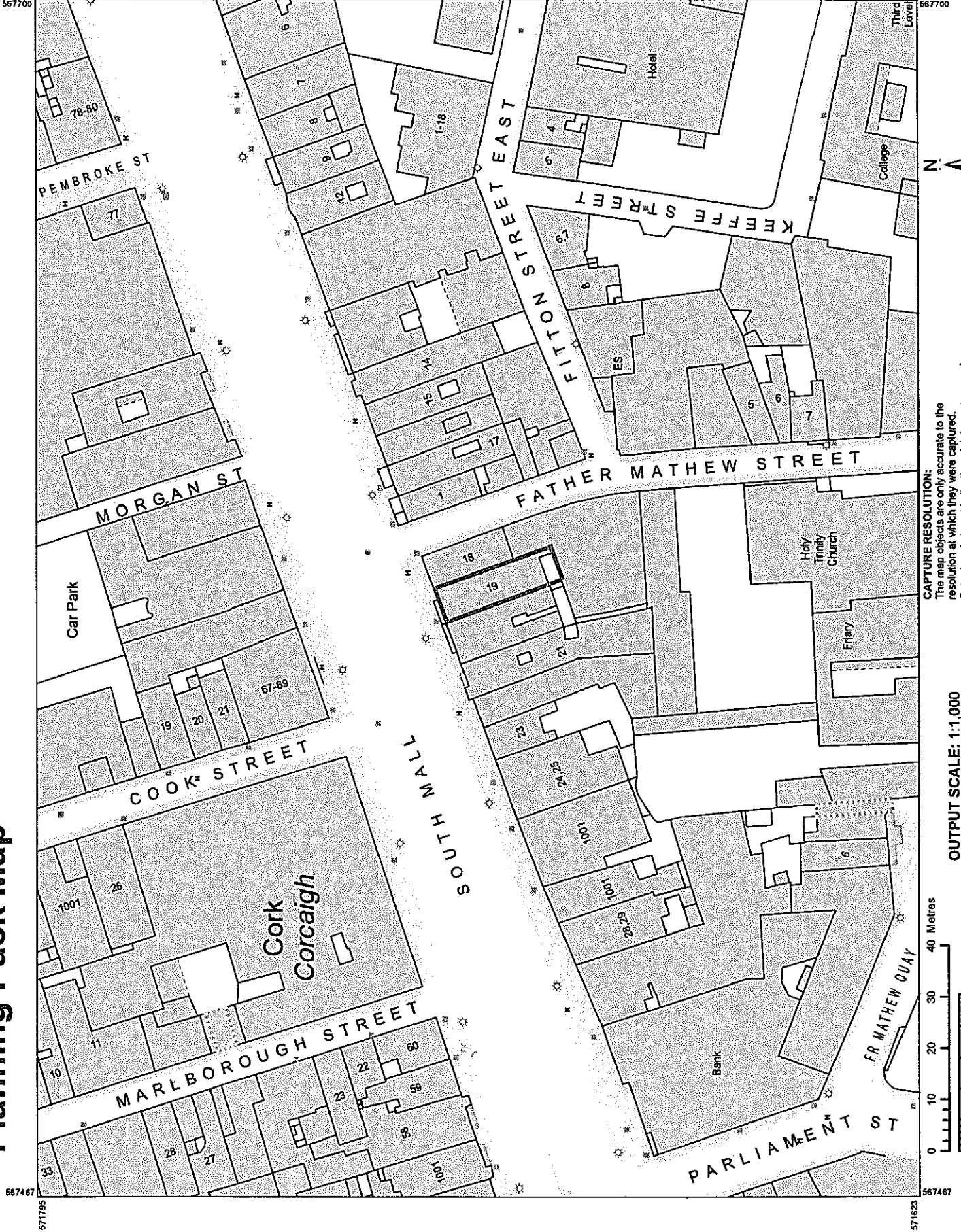
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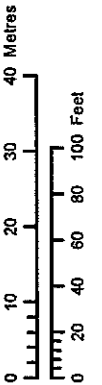
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Planning Pack Map



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OUTPUT SCALE: 1:1,000



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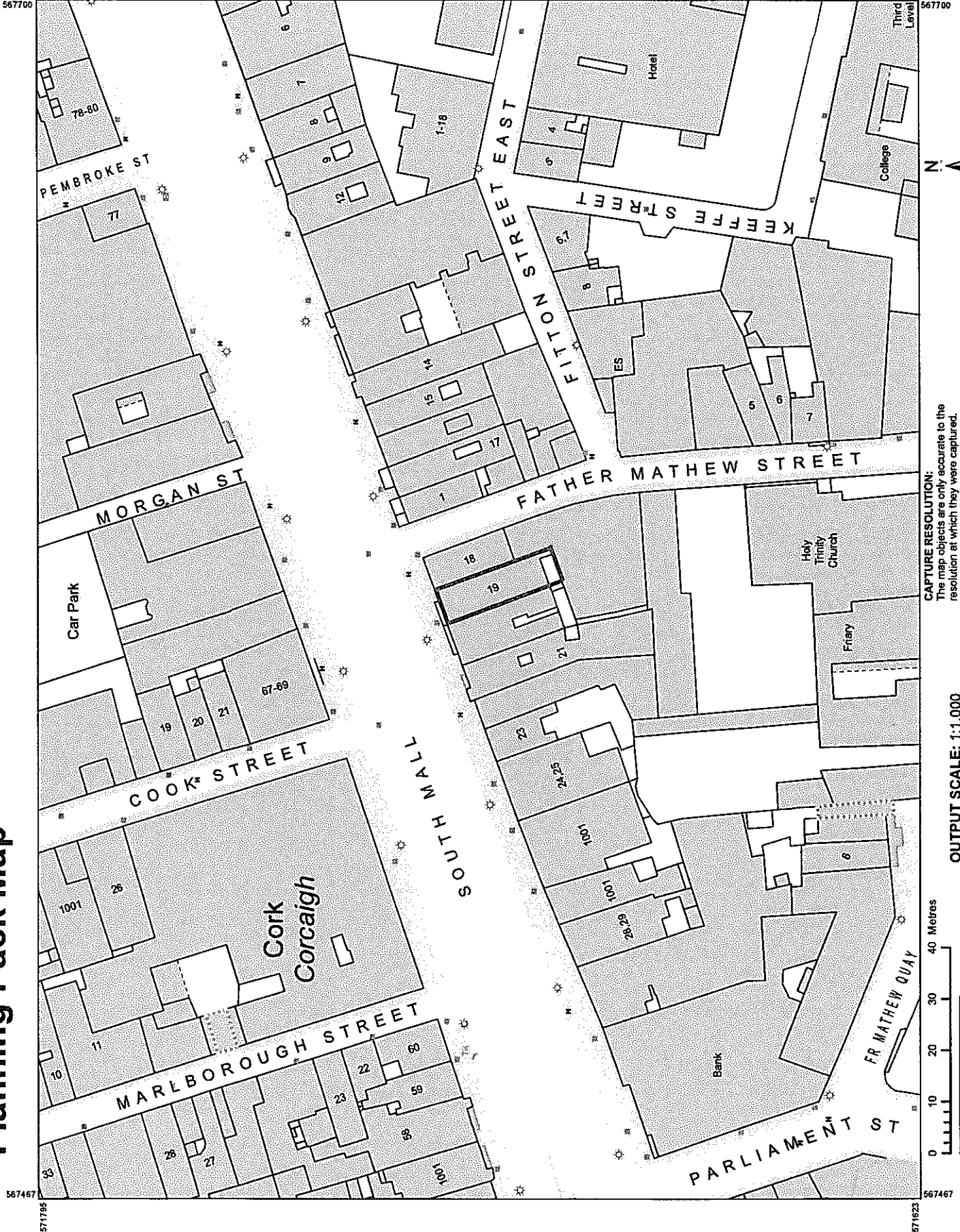
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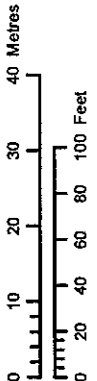
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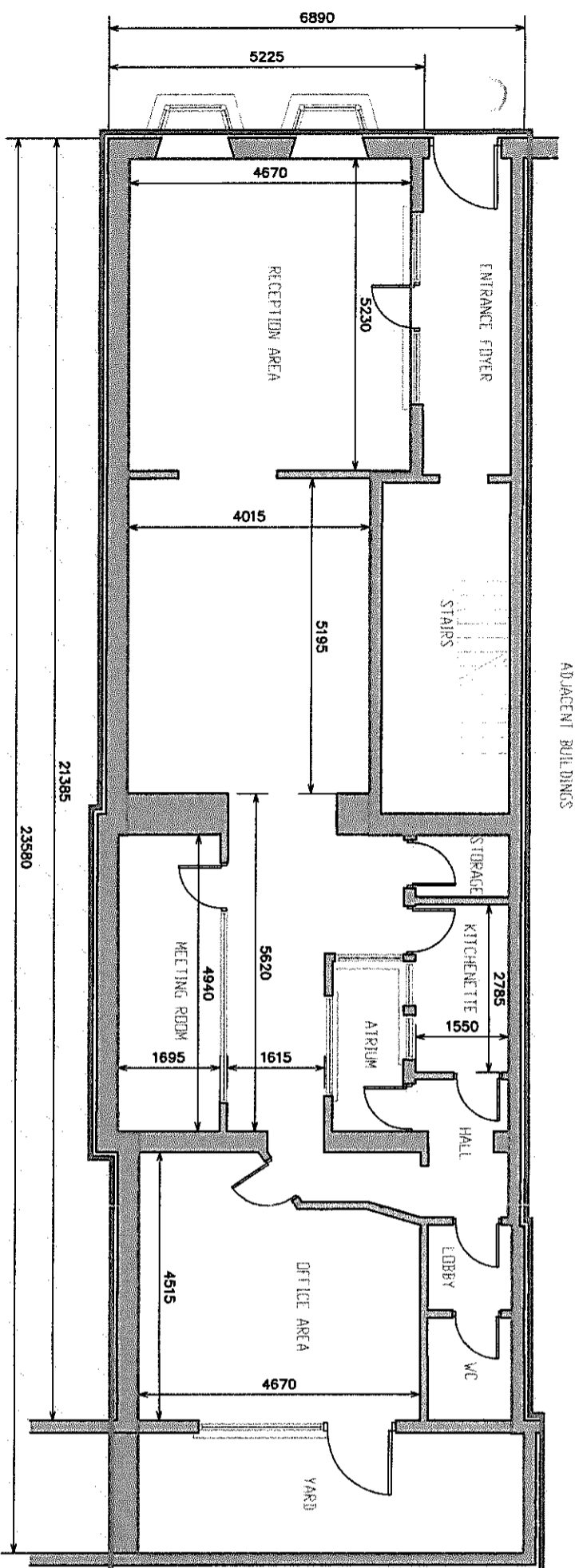
Planning Pack Map



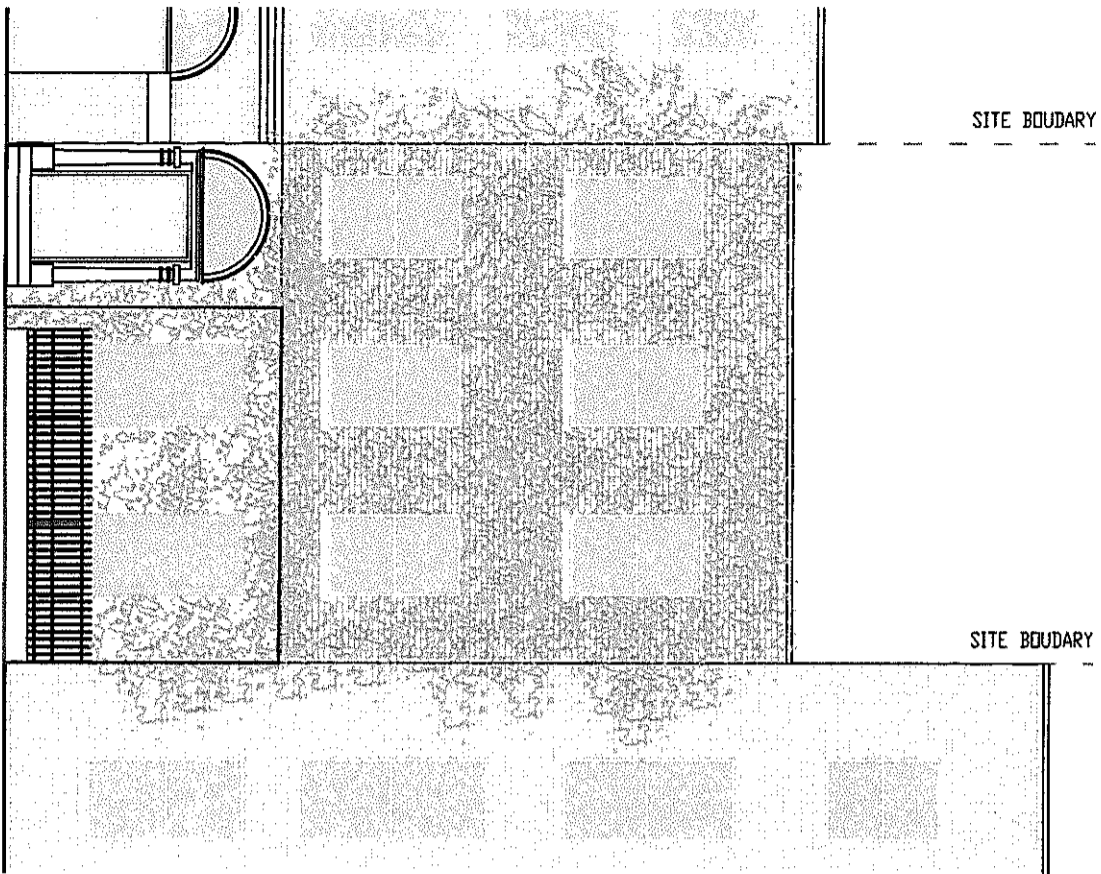
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OUTPUT SCALE: 1:1,000





GROUND FLOOR PLAN & SITE LAYOUT PLAN
Scale 1 : 100



FRONT ELEVATION
Scale 1 : 100



BUILDING IN SITU
ND SCALE

SITE OUTLINED IN RED
AREA FOR DECLARATION IN MAGENTA

- Notes:
1. This drawing is for planning purposes only - it is not a contract.
 2. Do not scale, agreed dimensions only to be taken.
 3. Engineer to be informed of any discrepancies before work proceeds.
 4. Contractor to check all dimensions and conditions on site before commencing work.
 5. Drawing to be read in conjunction with current Building Regulations.
 6. All components and materials to be installed in accordance with manufacturers instructions.

BRIAN O KENNEDY & ASSOCIATES LTD
Consulting Engineers

Shannon House,
Church Road,
Douglas,
Co. Cork

Tel: 021-4899854
Fax: 021-4899464
Email: info@bok.ie
Web: www.bok.ie

Project:
**19 SOUTH MALL,
CORK CITY**

Client:
VALERIE CAHILL

Drawing Title:
PROPOSED FLOOR PLANS

Scale	3000 EA3	Date	DEC 2018	Revision
Drawn By	EF	Checked By	18/5/19-PL-01	