

Comhairle Cathrach Chorcaí Cork City Council

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

Barry Murphy Murphy Consulting Engineers SIAC House Ballycureen Cross, Airport Rd, Cork

07/05/2019

RE: Section 5 R507/19 11 Kyle Street, Cork

Dear Sir/Madam,

I refer to your request for a section 5 Declaration at the above named property.

Having regard to —

• Article 10 (6) of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed *conversion of ground floor retail at No. 11 Kyle Street to a proposed single residential residence* (to incorporate the existing apartment unit at upper floors) of 11 Kyle Street Is Development and is Exempted Development.

Yours Faithfully,

Paul Hartnett

Assistant Staff Officer
Strategic Planning & Economic
Development
Cork City Council



Barry Murphy
Murphy Consulting Engineers
SIAC House
Ballycureen Cross, Airport Rd,
Cork

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Paul Hartnett

Assistant Staff Officer Strategic Planning & Economic Development Cork City Council



OFFICE ADDRESS: SIAC HOUSE BALLYOURREEN CROSS AIRPORT ROAD

phonecall +

MOB.NO. 086 8677774 TEL. NO. (021) 4318377 FAX. NO. (021) 4318377

access on

banymurphyengineer@gmail.com

email

The Development Management Section,

Strategic Planning & Economic Development Directorate,

Cork City Council,

City Hall,

Anglesea Street,

Cork

15 March 2019

MUR190123/BM/S5D

Dear Sir/Madam,

Re: Section 5 Declaration Application -

Proposed Change of Use of an existing property from a vacant retail unit, on the ground floor, to a proposed single residence, including the 2 upper floor levels, at 11 Kyle Street Cork.

On behalf of my Client, Mr Tom Kent, we attach 2 No. copies of the relevant documentation in support of the Section 5 Declaration application at the above address.

We also enclose the required fee of $\ensuremath{\in} 80.00$, cheque made payable to the Cork City Council.

The property at the above address extends over 3 floors and is arranged as follows: a vacant retail unit on the ground floor level, to the front, complete with storage & toilet facilities and an open yard area all to the rear. The upper 2 floors accommodate a 2 bedroomed maisonette complete with a shower room, a living room area and a kitchen. A roof garden is located over the roof to the rear of the property and is accessed by means of a folding access ladder through an opening velux window section.

The property has been in my Client's family for over 100 years and predominantly served as a family home. In 2005 my Client was granted permission to extend the property to the rear and to convert the ground floor level to a retail space. (Ref: Planning Reg. T.P.05/30391)

However, the retail unit of the property was never successful due to the lack of footfall on this street.

Therefore, my Client's intention is to reincorporate the retail aspect of the property to serve again as part of the original dwelling house, maximising the use of the carrent under utilised.

Comparise Cathrach Chorcaí space and so facilitating the provision of additional housing supply to the City.

Cork City Council

1 5 MAR 2019

PROJECT MANAGERS CIVIL ENGINEERS PLANNING-CONSULTANTS FIRE SAFETY CERTIFICATES

Strategic Manning & Economic
PRE-PURCHASE DWELLING SURVEYS
PUTY Development Directorate

SITE SUITA

ph. no. (021) 4318377 / mob. no. (086) 8877774



OFFICE ADDRESS; SIAC HOUSE BALLYCURREEN CROSS AIRPORT ROAD CORK

MOB.NO. 086 8677774 TEL. NO. (021) 4318377 FAX. NO. (021) 4318377

barrymurphyengineer@gmail.com

(Note: The proposed internal conversion Works could potentially include converting the ground floor level to an open planned kitchen / dining / living area along with a utility room to the rear and converting the second floor level to a further bedroom complete with en-suite. There is no intention to alter the elevations to the property)

The exemption application is been made under Amendment No.2 of the current Planning & Development Regulations 2018 (S.I. No. 30 of 2018) providing exemptions in relation to change of use of vacant commercial premises for residential purposes.

We trust the above is to your satisfaction, should you have any further enquiries please contact the undersigned.

Yours Sincerely

BARRY MURPHY

MURPHY CONSULTING ENGINEERS

cc. Mr Tom Kent

Encl.

- o Completed Section 5 Declaration Application Form (2 No. copies)
- o Ordnance Survey Map 1/100 (2 No. copies)
- o Existing Floor Layouts (Ground, First, Second & Roof garden) (2 No. copies)
- Proposed Ground & Second Floor Layouts (2 No. copies)

COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

Strategic Planning & Economic Development Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

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

Fón/Tel: 021-4924564/4321 Líonra/Web: <u>www.corkci</u>ty.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

Is the construction of a shed at No 1 Wall St, Cork development and if so, is it

11 KYLE STREET, CORK.

2. QUESTION/ DECLARATION DETAILS PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question:

Note: only works listed and described under this section will be assessed under the section 5 declaration. WHETHER THE CHAUCIE OF USE OF AM EXISTING PROPERTY TROM A MACANT RETAIN CHAIT, ON THE CIRCUMY FLOOR, TO A PROPOSED SINGLE RESIDENCE, INCLUDING THE 2 UPPER FLOORS AT IN KYLE STREET CORK IS DEVELOPMENT. ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT: (Use additional sheets if required). PLAST REFER TO THE ATTACHED COVER LETTER AND EXEMPTION APPLICATION IS BIFLY MADE CURRING AUGUSTANIA OF THE ATTACHED COVER LATTER AND EXEMPTION APPLICATION IS BIFLY MADE CURRING AUGUSTANIA OF THE CURRING PLANNING & KNOWNERS	exemptea development?	
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(Use additional sheets if required). PLEAST REFER TO THE ATTACHED COVER LETTER AND THE ATTACHED PRAYINGS, INCLUDING EXISTING AND PROPOSED FLOOR LAYOUTS. THE EXEMPTION APPLICATION IS BIFLY MADE LINDER.	PROPERTY FROM A VACANT RETAIN LINIT, ON THE CROWN FLOOR, TO A PROPOSED SINCHE RESIDENCE, INCLUDING THE 2 UPPER FLOORS AT	
(Use additional sheets if required). PLEAST REFER TO THE ATTACHED COVER LETTER AND THE ATTACHED PRAVILLOS INCLUDING EXISTING AND PROPOSED FLOOR LAYOUTS. THE EXEMPTION APPLICATION IS BIFLY MADE LINER.	15 EXEMPTED DEVELOPMENT.	
THE EXEMPTION APPLICATION IS BIFLY MADE LIMPTER	ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT: (Use additional sheets if required).	
THE EXEMPTION APPLICATION IS BIFLY MADE LINDER AMENIDARINT NO 2 OF THE CURRINT PLANNING & PLYHOPKENT	PLEASE RETER TO THE ATTACHED COVER LETTER AND THE ATTACHED DRAWINGS, INCLUDING EXISTING AND PROPOSED FLOOR LAYOUTS.	
XIGURITIONS 2018 (5.1, No 30 of 2018)	TECH AND DO	EXT

3. 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 exist	ing/proposed structur	e/s	77M2		
(b) If a domestic extension, have any previous			Yes No No		
extensions/structu	ires been erected at t	his	If yes, please provide floor areas. (sq m)		
location after 1 st C	October, 1964, (includi	ng those	T 07 10 00 1		
for which planning	permission has been	•	1P 05/30301.		
obtained)?		d / or building(s), please state the following:			
Existing/ previous use (ple	Existing/ previous use (please circle)		Proposed/existing use (please circle)		
VACALIT RETAIN WHIT		SINCILE RESIDENCE.			
4. APPLICANT/ CONT					
Name of applicant (princ	ipal, not agent):	MR Tou KENT			
Applicants Address	601	<u>'V</u>	10,42 12,794		
	111 155	ADELL	•		
	11100	ADENV ROCICIH HIN, CO CORK.			
	11/14/2/100	NOCICI.	HHIM, WOOK.		
Person/Agent acting on	Name:	BARRY MURTHY			
behalf of the Applicant	Address:	1 TOXX	y 14 MX PHY		
(if any):	, (44)		/ (
		Mu	rphy Consulting Engineers		
	Telephone:	Ī			
		님			
	Fax:				
	E-mail address:				
Should all correspondence	e he cont to the abou	.~ - 4 4	2 12 [7		
(Please note that if the answer is 'No'	all correspondence will be se	nt to the Applic	Yes No No		
address)		in in in the			
5. LEGAL INTEREST					
Please tick appropriate bo	x to show applicant's	A. Own	er B. Other		
legal interest in the land o	r structure		V		
Where legal interest is 'Ot	her', please state		7.		
your interest in the land/s	tructure in question		N/Å.		
If you are not the legal ow	ner, please state the		NA.		
name and address of the o	wner if available		11/1		
			N/+/		

Signature: DARY MURDHY ACKLY OF BEHAY OF APPLICANT Date: 15 MARCH 2019.

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:

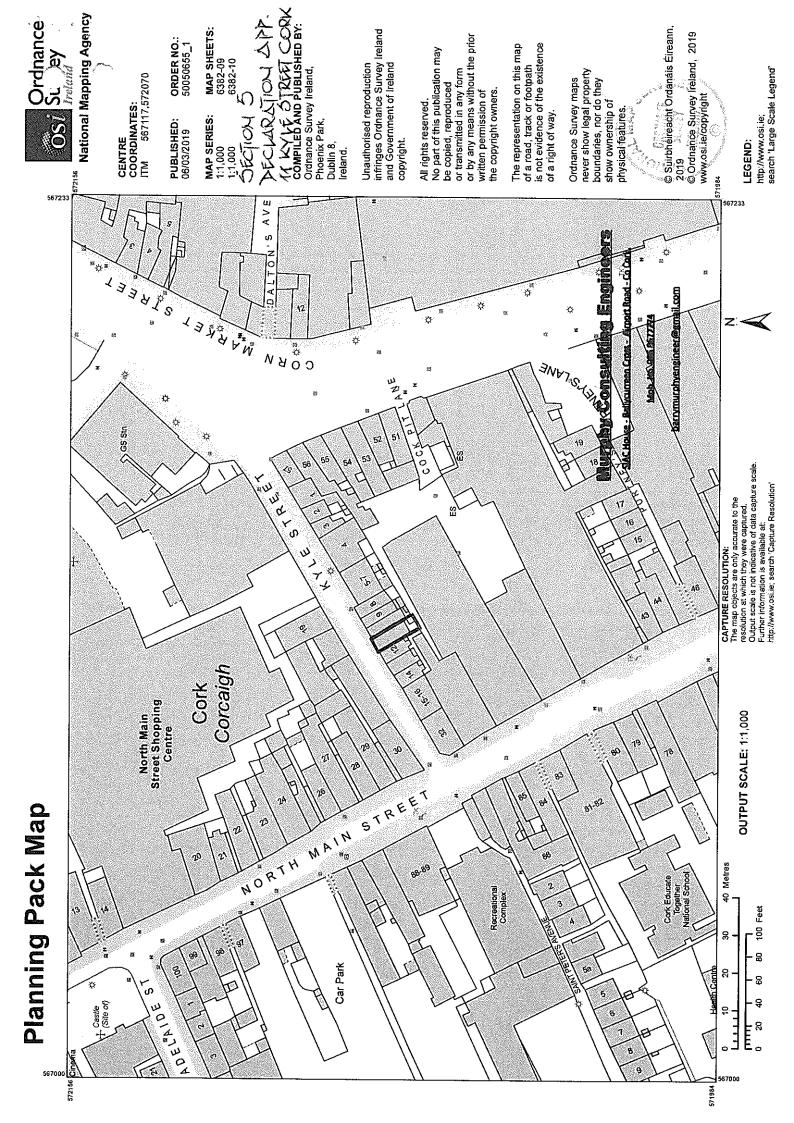
The Development Management Section, Strategic Planning & Economic Development Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- 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

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution



PLANNER'S RE Ref. R507/19	PORT	Cork City Council Development Management Strategic Planning and Economic Development	
Application type	Section 5 Declaration	ţ*	
Description	Whether the change of use of an existing property from a vacant retail unit on the ground floor to a proposed single residence, (including the 2 upper floors) at 11 Kyle Street is exempted development as per Planning and Development Regulations 2018 (Amendment No. 2)		
Location	11 Kyle Street		
Applicant	icant Barry Murphy		
Date	23/04/2019		
Recommendation Is Development and Is Exempted Development			

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 DeclarationSection 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:

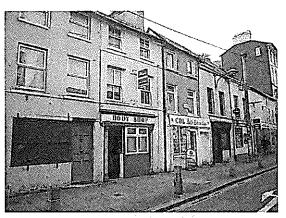
"Whether the change of use of an existing property from a vacant retail unit on the ground floor to a proposed single residence, (including the 2 upper floors) at 11 Kyle Street is development of exempted development.

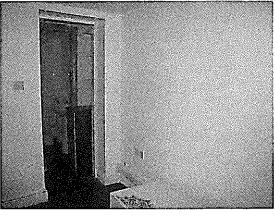


The property in question is a 3 storey mid terrace unit with a vacant ground floor (formerly retail/commercial use) and the two upper floors are in use as a 2-bed apartment.

4. Planning History

TP05/30391: Permission granted for demolition of the existing flat roof extension to the rear of the property. The proposed extension and renovation of the remaining two floors to a two bedroom apartment with the addition of a roof garden.





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(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 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 the making of these Regulations until 31 December 2021.

- (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.
- (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 or 6, 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 affect only the interior of the structure and shall 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), (vii), (viii), (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 sub-paragraph (b) relates, then he or she shall accordingly notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of 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, and
- (II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, 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 and 2022, 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. ENVIRONMENTAL ASSESSMENT

6.1 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.

6.2 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.

7. ASSESSMENT

7.1 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.'.

The proposed change of use from retail/commercial to residential is considered to be a material change is use and therefore constitutes development. Internal works are required to alter the retail/commercial space to residential and therefore the proposal will require the carrying out of works in the structure including alterations. Based on this, the proposal also constitutes works.

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Whether the proposal to change the use from vacant retail/commercial to residential to come within the new exemptions permitted such change of use namely Article 10 (6) of the Planning and Development regulations 2001 -2018 (as amended).

From the site inspection it was observed that there are active occupants at the upper floors (the apartment); and the ground floor, which is vacant, was in use as a beauty parlour. The owner has sent an email detailing that this was vacated in January 2017. The property complies with its 2005 planning permission.

The unit is located in the North Main Street ACA. It is not a protected structure or listed on the NIAH. Objective 9.29 seeks to "preserve and enhance the designated Architectural Conservation Areas in the City". The exemptions do not allow such changes of use where the structure is subject to Special Planning Control. There is no adopted Special Planning Control scheme for the North Main Street ACA.

There are no proposed changes to the external facade.

8. Conclusion

The question has been asked whether the conversion of ground floor retail at No. 11 Kyle Street to a proposed single residential residence (to incorporate the existing apartment unit at upper floors) is exempted development as per Planning and Development Regulations 2018 (Amendment No. 2). Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed change of use and altered layout is development and is exempted development.

9. RECOMMENDATION

In view of the above and having regard to -

Article 10 (6) of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed conversion of ground floor retail at No. 11 Kyle Street to a proposed single residential residence (to incorporate the existing apartment unit at upper floors) of 11 Kyle Street is Development and is Exempted Development.

Mary Doyle

Executive Planner

Agoed 2. Miller (50p) 7.9.04.2019.

ryle, 29/04/2019

Mary Doyle

From:

Tom Kent [tom@ymca-ireland.net] 23 April 2019 12:35

Sent:

To:

Mary Doyle

Subject:

Declaration 5 - 11 Kyle Street, Cork.

Dear Mary,

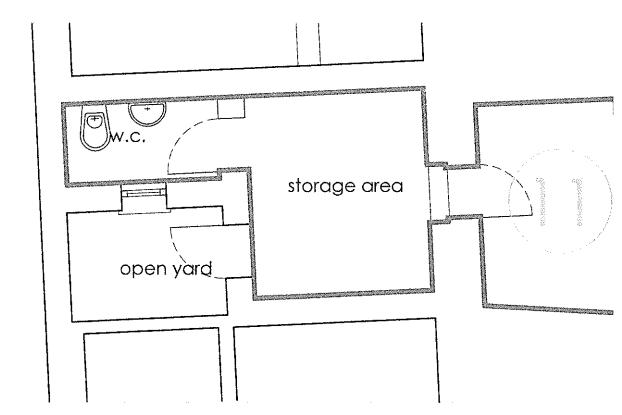
Further to our meeting this morning, I wish to confirm that commercial area on the ground floor of the property has not been occupied since January 2017.

If you require any further information please let me know.

Kind regards,

Tom Kent 0870564369

neighbouring property no.



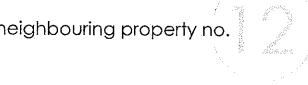
neighbouring property no.

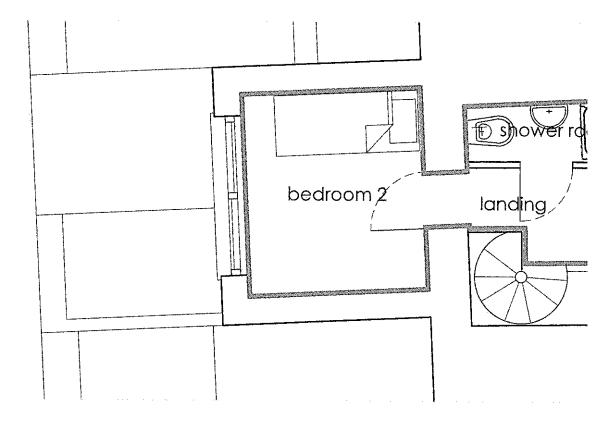
existing ground floor layout

(internal floor area edged in red - 23.50 sq.mtrs. / 252

COPYRIGHT: No part of this document may be reproduced or transmitted in any form or stored in any retrival system of any nature without the written permission of Murphy Consulting Engineers as copyright holders: notes: DRAWING NOT TO BE SCALED this drawing is for planning purposes only <u>Murphy</u> CONSULTING ENGINEERS OFFICE ADDRESS: SIAC HOUSE BALLYCURREEN CROSS AIRPORT ROAD CORK TEL, NO. (021) 4316377 FAX, NO. (021) 4318377 barrymurphyengineer@gmail.com section 5 declaration application at 11 kyle street cork city CLIENT: mr tom kent existing f section 5 declaration DRAWING TITLE: (internal floo existing first floor plan PROJECT NO: 190219 SCALES: 1/50 DATES: 15.03.2019 section 5 declara 190219-02 REVISION: COPYRIGHT: THIS DRAWING CANNOT BE REPRODUCED OR TRANSMITTED WEHOUT WRITTEN CONSOLT FROM MURPHY CONSULTING BIGMEERS.

neighbouring property no.



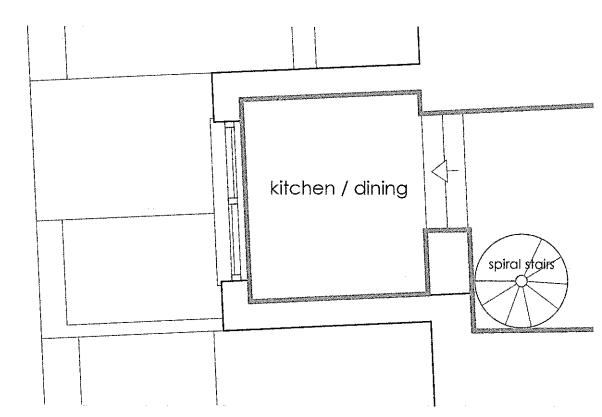


neighbouring property no.

existing first floor layout

(internal floor area edged in red - 20.50 sq.mtrs. / 220

neighbouring property no.

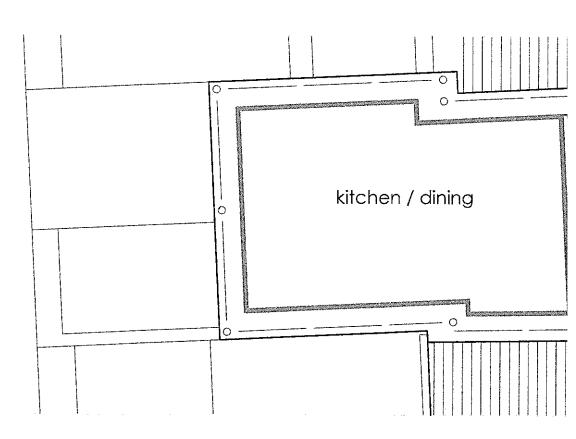


neighbouring property no.

existing second floor layout

(internal floor area edged in red - 23.00 sq.mtrs. / 247.

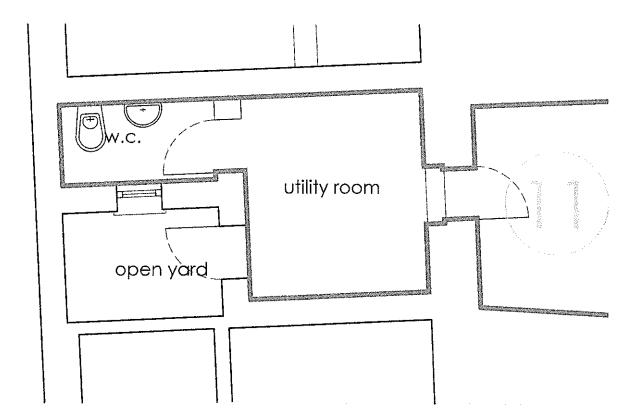
neighbouring property no.



neighbouring property no.

existing roof garden layout

neighbouring property no.

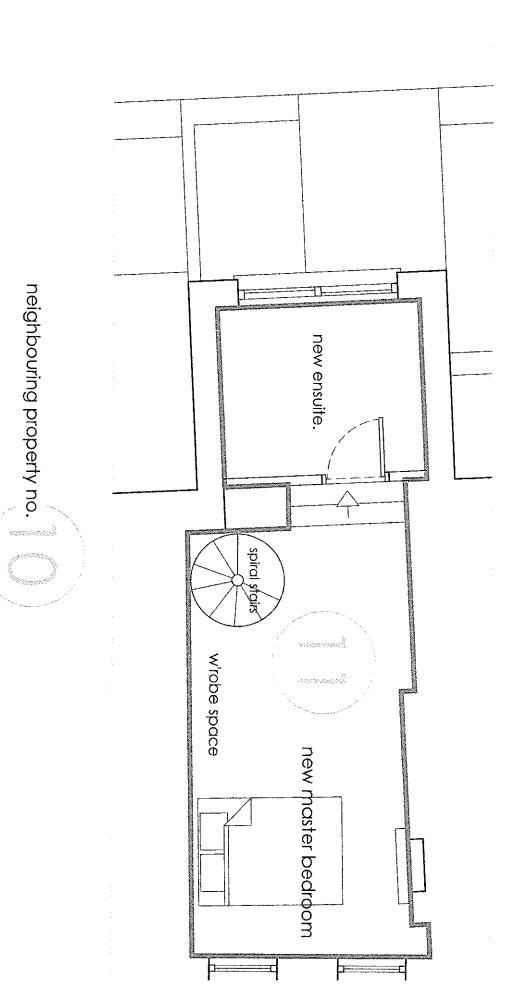


neighbouring property no.

proposed ground floor layout

(internal floor area edged in red - 23.50 sq.mtrs. / 252

neighbouring property no.



proposed second floor layout (internal floor area edged in red - 23.00 sq.mtrs. / 247.57 sq/ft.)