



Comhairle Cathrach Chorcaí Cork City Council

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

Brendan Ryan (Pauline Kerins),
Mercer,
23-35 South Terrace,
Cork

12/08/2019

RE: Section 5 R526/19 – Mercer, 23-25 South Terrace, Cork

Dear Sir/Madam,

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

Further Information is requested as follows:

1. The last known application for this property, 23-25 South Terrace, is TP13948/87 which was for new dwelling(s). In order for the change of use to be considered ancillary to the office use, it would need to be confirmed that the office use itself is authorised. You are requested to submit details demonstrating that the existing office use is currently authorised.
2. Please submit the full address(es) of the legal owner of the property (as requested under Section 5 of the Application form)
3. **Request for information under s. 5(2)(c) of the Act:** Based on the response to Item No. 2, you are requested to forward this full further information request to the legal owner and to supply details to the Planning Authority demonstrating same.

(For attention, the owner of the subject premises, listed below)

**Pauline Kerins,
Politmore/Zion Management Company Ltd
23-25 South Terrace,
Cork**

Please note that a request for a declaration under section 5 of the Planning and Development Act 2000, as amended, in relation to land(s) and/or structure(s) within your ownership has been received by Cork City Council. Section 5 provides that 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 request in writing from the relevant planning authority a declaration on that question.

The planning register reference number is R526/19 and the request is available for inspection at the Planning public counter on the ground floor of City Hall, Cork.



We are Cork.

The matter relates to whether the converting of an internal office space into a shower room is exempt from planning permission within the meaning of the Planning and Development Act 2000 (as amended), and the Planning and Development Regulations 2001 (as amended).

Having regard to the provisions of section 5(2)(c) of the Planning and Development Act 2000, as amended, you are requested to submit any information you consider may be relevant in order to enable the planning authority to issue the declaration on the question.

Please ensure that any information you may wish to submit is received by the planning authority as expeditiously as possible.

In accordance with section 5(2)(a) of the abovementioned Act, you will be issued with the declaration on the question that has arisen and the main reasons and considerations on which the decision of the planning authority is based.

Yours Faithfully,



p.p Assistant Staff Officer
Community, Culture & Placemaking
Cork City Council

PLANNER'S REPORT
Ref. R526/19

Cork City Council
Development Management
Strategic Planning and Economic
Development

Application type	Section 5 Declaration
Description	<i>Whether the converting of an internal office space into a shower room is exempt from planning permission.</i>
Location	"Mercer", 23-25 South Terrace, Cork. T12 X3TW
Applicant	Brendan Ryan
Date	08/08/2019
Recommendation	<i>Further Information Required.</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. THIRD-PARTY DECLARATION

It is noted that this section 5 declaration application has been submitted by a person or party who is not the owner of the land in question.

While the provisions of the Act are clear in that "*any person*" may request a section 5 declaration from a planning authority (subject to certain requirements such as the payment of the fee, etc), and that the planning authority is fully entitled to process and determine a section 5 declaration application in these circumstances subject to notifying the person who made the request *and* the owner and occupier of the land in question of its decision, regard must be had to the principle of "*audi alteram partem*" (Latin for 'hear the other side').

This was highlighted in a case relating to a section 5 declaration issued in 2011 by the planning authority under reference R 298/11, where the declaration was requested by a person who had no legal interest in the affected property.

It is now understood that, notwithstanding the provisions of section 5 of the Act, the owner and occupier of lands that are the subject of a section 5 declaration request where the request was made by another person or party should be notified and afforded an opportunity to make submissions or observations to the planning authority before a decision is made on the request.

The applicant has provided details of the owner of the lands in question as

Pauline Kerins,
Poltimore/Zion Management Co. Ltd.

In view of the above, I recommend that, in the interests of the principle of “*audi alteram partem*” and notwithstanding the provisions of section 5 of the Act or the fact that the owner of the lands in question has already submitted correspondence with and in support of the request, the owner and occupier of the premises concerned in this section 5 declaration be requested under section 5(2)(c) of the Act to submit any information that may be relevant for the planning authority to issue the declaration.

The owner of 23-25 South Terrace, Cork appears to be:

**Pauline Kerins,
Poltimore/Zion Management Co. Ltd.**

There has been no address supplied. Applicant to supply same.

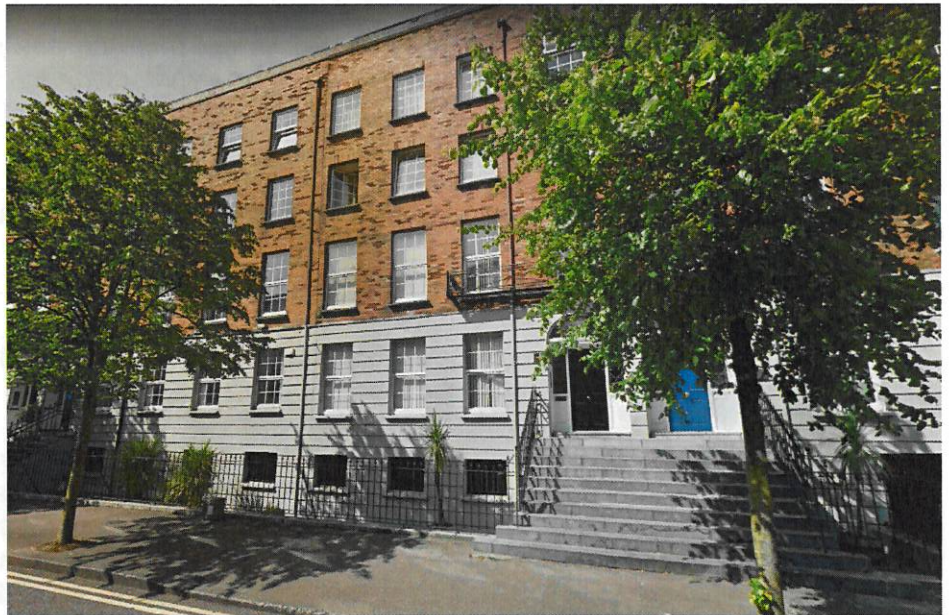
3. The Question before the Planning Authority

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

“Is the converting of an internal office space into a shower room exempt from planning permission?”

4. Site Description

The property in question is a 5-storey mid terrace Georgian unit. The ground floor is partly located underneath footpath level while access is up steps at the first floor section.



5. Planning History

There is one known historical application for this site.

TP13948/87: Permission granted for new dwelling(s) at 23-25 South Terrace.

6. Legislative Provisions

6.1 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.

6.2 The Regulations

Article 6 (1)

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

Article 9 (1)

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

- (a) if the carrying out of such development would --
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - (vii) 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,
 - (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.

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

7. ASSESSMENT

6.1 Development

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

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.

‘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’.

It is considered that the proposed change of use from office to shower room will involve the alteration of the office space to a shower room and is therefore works. As the proposal involves works, it is considered development.

While the proposal itself is somewhat minor in nature namely changing a small office area to a shower room for use of the employees, it is noted that it will involve the loss of existing office space.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The last known application for this property – 23-25 South Terrace is TP13948/87 which was for new dwelling(s). In order for the change of use to be considered ancillary to the office use, it would need to be conformed that the office use itself is authorised. Further information to be requested from applicant to confirm that the current use is authorised.

8. ENVIRONMENTAL ASSESSMENT

8.1 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.

8.2 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.

9. RECOMMENDATION

Further Information to be requested demonstrating that the existing use is authorised.

Further Information:

1. The last known application for this property, 23-25 South Terrace, is TP13948/87 which was for new dwelling(s). In order for the change of use to be considered ancillary to the office use, it would need to be confirmed that the office use itself is authorised. You are requested to submit details demonstrating that the existing office use is currently authorised.
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(For attention, the owner of the subject premises, listed below)

**Pauline Kerins,
Politmore/Zion Management Company Ltd
23-25 South Terrace,
Cork**

Please note that a request for a declaration under section 5 of the Planning and Development Act 2000, as amended, in relation to land(s) and/or structure(s) within your ownership has been received by Cork City Council. Section 5 provides that 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 request in writing from the relevant planning authority a declaration on that question.

The planning register reference number is R526/19 and the request is available for inspection at the Planning public counter on the ground floor of City Hall, Cork.

The matter relates to whether the converting of an internal office space into a shopper room is exempt from planning permission within the meaning of the Planning and Development Act 2000 (as amended), and the Planning and Development Regulations 2001 (as amended).

Having regard to the provisions of section 5(2)(c) of the Planning and Development Act 2000, as amended, you are requested to submit any information you consider may be relevant in order to enable the planning authority to issue the declaration on the question.

Please ensure that any information you may wish to submit is received by the planning authority as expeditiously as possible.

In accordance with section 5(2)(a) of the abovementioned Act, you will be issued with the declaration on the question that has arisen and the main reasons and considerations on which the decision of the planning authority is based.


Mary Doyle
Executive Planner

12/08/2019.
Agreed. J. Jordan 12/8/2019

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

Comhairle Cathrach Chorcaí
Cork City Council

19 JUL 2019

Strategic Planning & Economic
Development Directorate
R-Post/E-Mail planning@corkcity.ie
Fon/Tel: 021-4924564/4321

Lionra/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

Mercer, 23 - 25 South Terrace, Cork. T12 X3TW

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.

Is the converting of an internal office space into a shower room exempt from planning permission? The offices are located at Mercer, 23-25 South Tee, Cork.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

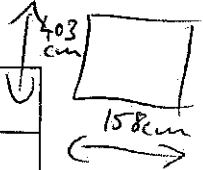
This is a business premises in which Mercer are a long-term tenant. The landlord has asked to check if there are any requirements for planning converting an internal office room into a shower room. Due to increased staffing levels another shower room is required.

The room in question has a raised floor and has waste and water from the kitchen next door. There are no external works required.

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 existing/proposed structure/s	6.37 m ²
(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 checked="" 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)
_____	_____
_____	_____
_____	_____



4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Breandan Ryan (Pauline Kering)	
Applicants Address		Mercel 23-25 South Terrace Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Breandan Ryan	
	Address:	Mercel 23-25 South Tee Cork.	
	Telephone:		
	Fax:		
	E-mail address:		
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

5. LEGAL INTEREST

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

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

Signature: Brendan Ryan

Date: 12/07/19

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.

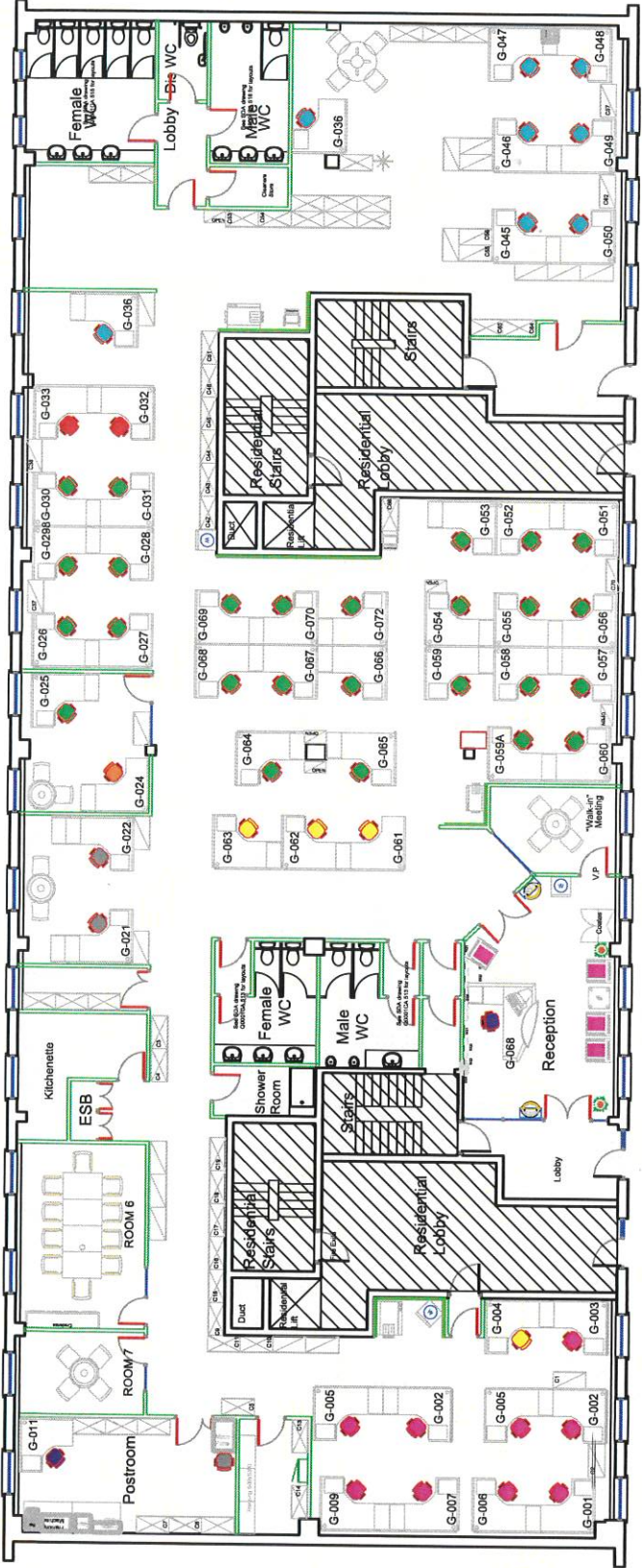
- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any 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

DO NOT SCALE FROM DRAWING



○ Ground Floor Plan

Practices \ Team	Offices	Snr	W/S	Std	W/S	Totals
RET	0	0	0	2	2	2
Business Support	0	0	0	4	4	4
ADM-Fund	0	0	0	9	9	9
ADM-DC	0	0	0	1	1	1
ADM-DB	0	0	0	26	26	26
Marsh	0	2	0	6	8	8
Spare	0	2	0	0	2	2
Facilities	0	0	0	2	2	2
Total	0	4	0	50	54	54

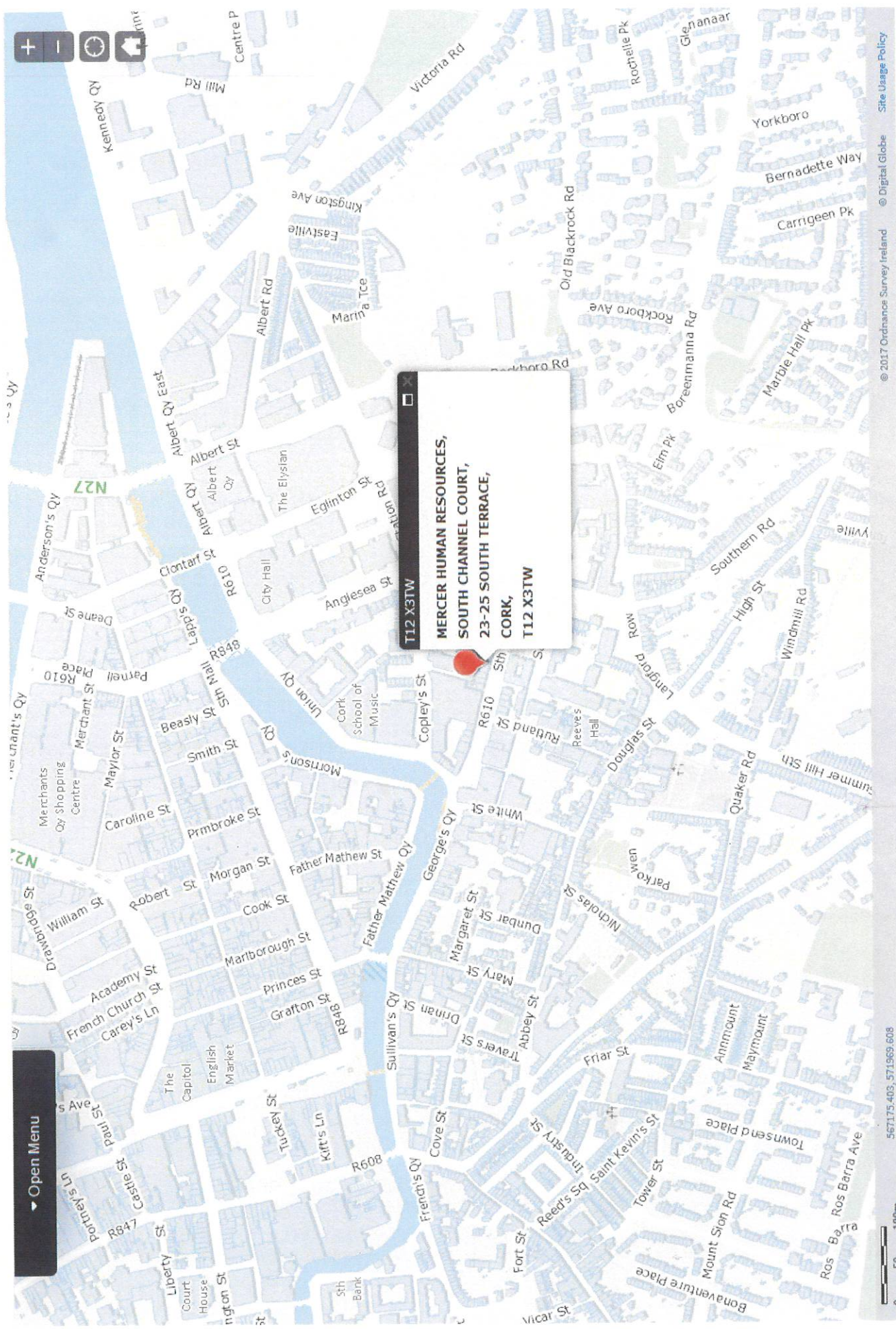


Rev: 01/14	Description	Appr: Date
Client:		
Location:	23-25 SOUTH TERRACE CORK	
Title:	GROUND FLOOR EXISTING LAYOUT	
Date:	23.03.14	Scale:
Drawn:	VH	1:150@A3
Approved:		
Location:	Year:	Floor:
		Rev:
		CK-14-GRND-EX



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**MERCER HUMAN RESOURCES,
SOUTH CHANNEL COURT,
23-25 SOUTH TERRACE,
CORK,
T12 X3TW**



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T12 X3TW
**MERCER HUMAN RESOURCES,
SOUTH CHANNEL COURT,
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Q 23-25 south terrace cork

GEOHIVE MAP

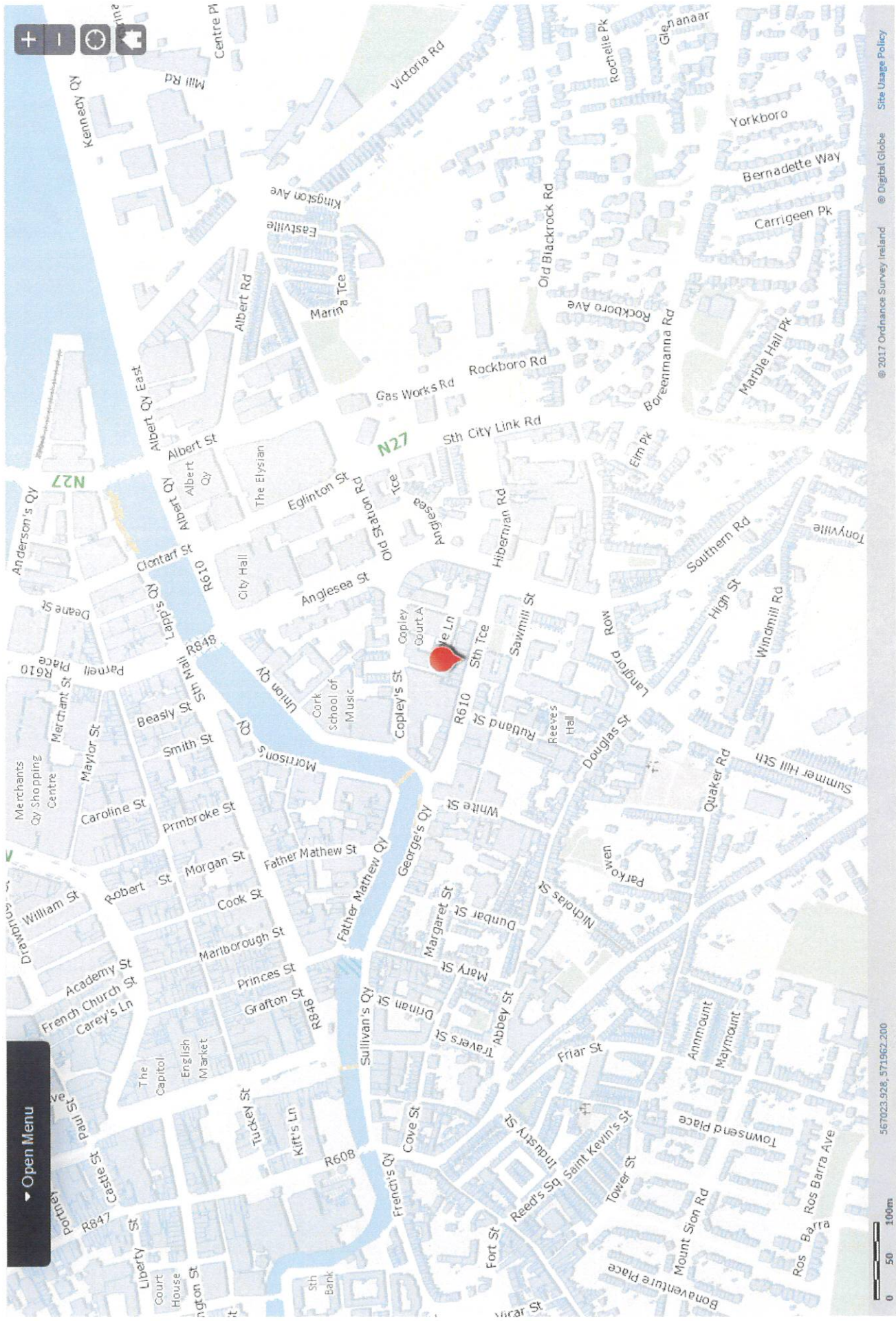


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