

Comhairle Cathrach Chorcaí Cork City Council

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

Damien O mahony Keystone Planning Ltd Rossbrin Frankfield View Old Youghal Road Cork

14/10/2020

RE: Section 5 Declaration R602/20 Windsor Hotel, 54 – 55 McCurtain Street, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

- having regard to Article 9 (1)(a) of the Planning and Development Regulations 2001 (as amended) it is considered that the increase in the height in the design of the lift shaft, which was mandated by the Fire Safety Certificated issued for the development Is Development and is Not Exempted Development.

Is misa le meas,

Kerry Bergin

Community, Culture and Placemaking Directorate

Cork City Council



PLANNER'S REPORTED Ref. R602/20	Cork City Council Culture, Community and Placemaking	
Application type	Section 5 Declaration	
Description	Is the increase in the height in the design of the lift shaft, which was mandated by the Fire Safety Certificated issued for the development, exempted development?	
Location	Windsor Hotel, 54 – 55 McCurtain St.	
Applicant	MacCurtain Street Hoteliers Limited	
Date	12/10/2020	
Recommendation	Is Development and Is Not 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 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.

2. 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 increase in the height in the design of the lift shaft, which was mandated by the Fire Safety Certificated issued for the development, exempted development?

The following additional details were provided on the form:

The increase in the height in the design of the lift shaft was required by the Fire Safety Certificate issued for the development which post-dated both the grant of permission and the modifications required by Condition 2 of the said permission. Our understanding is that such a modification is exempted development pursuant to Class 41 (e) of the exempted developments as defined in the Planning & Development Regulations, 2001 (S. I. 600/2001).

3. Site Description

The property in question is located on the north eastern corner of the junction between York Street and McCurtain Street. The site formerly operated as the Windsor Inn. It is being redeveloped as a hotel under Planning Application Reg. Ref. No. 17/37657.

4. Relevant Planning History

17/37657 Permision is sought by MacCurtain Street Hoteliers for a development. The proposed development will comprise of: (1) the part demolition of the existing structures on the site of 546.07sqm; (2) the construction of a part 5, part 6, part 7 and part 8 storey over basement guest accommodation facility (of 73 rooms providing 90 bedspaces) with an

overall area of 1,949sqm; (3) the provision of a public bar facility on the ground floor with an external courtyard and (4) all necessary site works, not limited but including ancillary works.

Condition 1 The development shall be carried out in accordance with the plans and particulars submitted to the planning authority on 4 December 2017, except where otherwise altered or amended by conditions contained in this schedule.

Reason:

To define the scope of the permission, and to enable the planning authority to check the proposed development when completed, in the interests of proper planning and sustainable development.

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 $\underline{\text{or}}$ 'the making of any material change in the use of any structures or other land'

Section 4 (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or
- (ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).
- (b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.
- (c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

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 Regs

Article 6 (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act....

(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.

Schedule 2, Part 1, Exempted Development - General

Column 1	Column 2	
Description of Development	Conditions and Limitations	
CLASS 41 Works consisting of or incidental to— (e) the carrying out of development in compliance with a condition or conditions attached to a fire safety certificate granted in accordance with Part III of the Building Control Regulations, 1997 other than the construction or erection of an external fire escape or water tank,		

6. ASSESSMENT

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.

'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 that the proposed alterations to the permitted development on site constitutes development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. I note that the subject building is not a Protected Structure and does not form part of an Architectural Conservation Area.

The applicant is relying wholly upon a form of development that they state is exempt as set out in *Article 6 (1)* of the Regulations – as a class of development specified in column 1 of Part 1 of Schedule 2. Specifically, the cover letter states that the development accords with Class 41 (e), Schedule 2, Part 1, Exempted Development – General. As set out above Class 41 (e) states that works consisting or incidental to the following are exempt:

the carrying out of development in compliance with a condition or conditions attached to a fire safety certificate granted in accordance with Part III of the Building Control Regulations, 1997 other than the construction or erection of an external fire escape or water tank.

There are no conditions or limitations set out in Column 2.

I note that it could be argued that the proposed fire-fighting stair core, which will be outside of the existing structure, does not comply with this exemption as it is an external fire escape. Further the applicant has not provided any evidence that the alterations to the permitted design are mandated. For instance, a copy of the condition or conditions attached to a fire safety certificate to demonstrate the applicability of this exemption.

These matters are however considered mute as the proposed changes to the proposed development do not comply with Article 9 which sets out further limits to exempted development. In particular I note that the development cannot be exempt due to the implications of Article 9(1)(a)(i) and (viii).

Article 9 (1) states that Development to which article 6 relates <u>shall not be exempted development</u> 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....

(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.

The proposed development is still under construction. In this regard I note that Condition No. 1 states that:

The development shall be carried out in accordance with the plans and particulars submitted to the planning authority on 4 December 2017, except where otherwise altered or amended by conditions contained in this schedule.

The proposed alteration to the development would therefore be in contravention of Condition 1. Article 9(1)(a)(i) therefore applies. The proposal must be fully constructed as permitted before any exempted development as set out in Schedule 2 can be relied upon.

Further to this I note that there is a current application for retention being considered by Council. This was lodged on foot of ongoing enforcement proceedings. Accordingly, the developer cannot rely upon the exemption as set out in Class 41 (e), Schedule 2, Part 1, Exempted Development – General.

To conclude the proposed alterations to the permitted development known as the Windsor Hotel are development and are not exempted development.

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. CONCLUSION

The question has been asked:

Is the increase in the height in the design of the lift shaft, which was mandated by the Fire Safety Certificated issued for the development, exempted development?

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed works constitute development and that said works are not exempted development.

9. RECOMMENDATION

In view of the above and having regard to Article 9 (1)(a) of the Planning and Development Regulations 2001 (as amended) it is considered that the increase in the height in the design of the lift shaft, which was mandated by the Fire Safety Certificated issued for the development is Development and is Not Exempted Development.

Agneed
Melisse Walth
SEP.
14/10/20

Martina Foley
Executive Planner

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The Secretary,
Planning Department,
Cork City Council,

City Hall, Cork. 1 8 - 09 - 2020 Strategic states MD.

18th September 2020

Re: Application for a Declaration pursuant to Section 5 of the Planning & Development Acts 2000 (as amended) in relation to extention of height of lift shaft at former Windsor Hotel, 54-55. MacCurtain Street, Cork. Ref: T.P. 1737657

Dear Sir/Madam,

We act for MacCurtain Street Hoteliers Limited, who are currently developing the above sleeper hotel, permitted pursuant to TP 17/37657, which was granted on the 5th March 2018.

As the project advanced and, as per statutory requirements, a Fire Safety Certificate and Disability Access Certificate were applied for before the commencement of construction works.

During the process of the Fire Safety Certificate application, and through dialogue with the Fire Department, a fire-fighting lift stair core and lift shaft were required as part of the overall strategy to ensure compliance with Building Regulations. The required fire-fighting lift shaft requires a specific lift which is designed and installed in accordance with BS9999:2017. This differed from the lift originally envisaged during the planning stage.

The relevant Regulations were changed at the end of 2017 which has resulted in an increase in head height required for service and installation of lifts i.e. EN-81_20 & EN-81_50 superseded EN-81_1.

The original proposal for the lift was based on the previous standard which was current at the time of application. The Applicant is now, of course, obliged to comply with the newer regulations and a lift was chosen which had the minimum over run possible but still complied with relevant standards. This lift provides access to all levels for both the general public and the firefighting team and is therefore essential to the safety of the building in the event of fire. Great care has been taken to minimise the visual impact of the lift overrun and its strategic location away from the building edge assists in minimising its visual impact.

The Design Team had no option but to comply with the requirements of the Fire Safety Certificate and our understanding is that such requirements are regarded as exempted development as they

fall within Class 41 (e) of the Schedule of Exempted Developments contained in the Planning & Development Regulations 2001 (S. I. 600 of 2001). In addition we would respectfully submit that the positioning of the shaft minimises any potential negative impact on the building or its immediate environment.

We would welcome the Planning Authority's direction on this matter. We hope that the Council concur with the advice we have received. However, should it be ultimately deemed that the revised design is not exempt, our Clients will move to address the matter without delay.

We trust you will find this application satisfactory and we look forward to the Planning Authority's decision in due course.

Yours Faithfully,

D. O'Mahony

Damien O'Mahony, BCL, LLM, MPRII.



COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

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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

Development of new sleeper hotel at former Windsor Hotel, 54-55 MacCurtain Street, Cork

2. QUESTION/ DECLARATION DETAILS

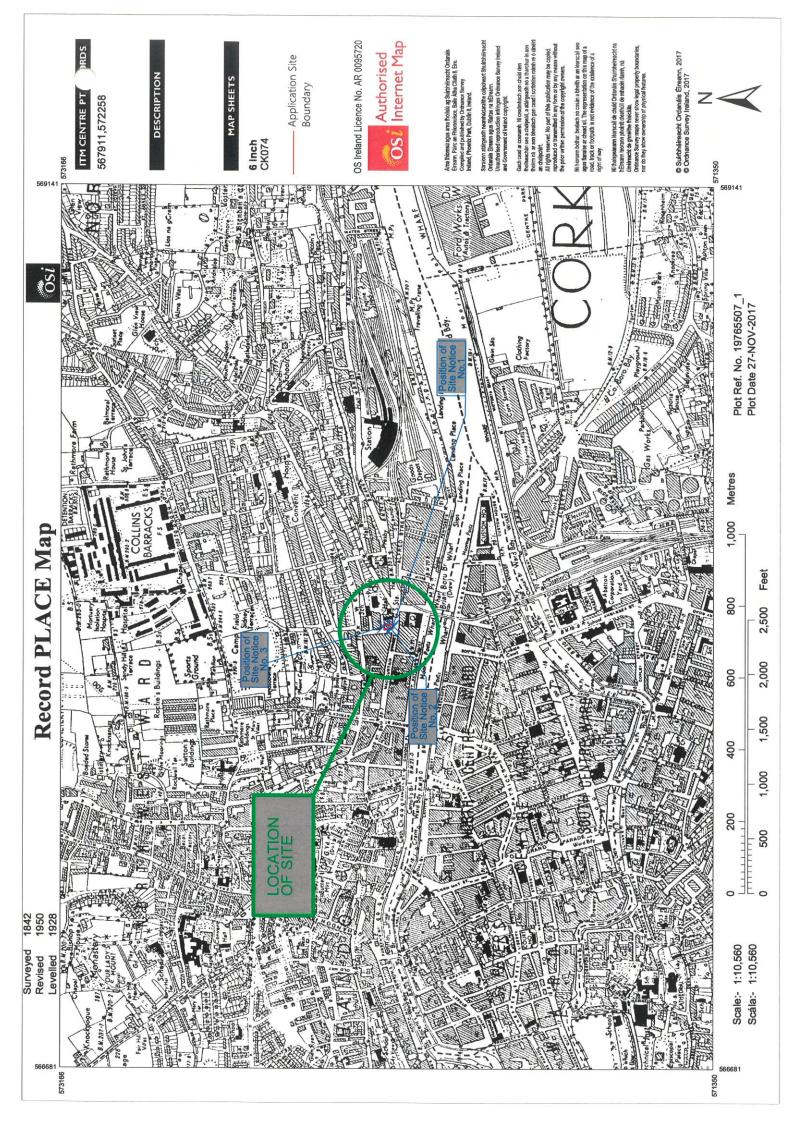
PIFACE STATE THE COE	CIEIC OLIECTION FOR MULICILA DEGLA D
Sample Overtice	CIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:
Sample Question:	Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?
Note: only works listed and	described under this section will be assessed under the section 5 declaration.
Is the increase in the	height in the design of the lift shaft, which was mandated by the
Fire Safety Certificate	issued for the development, exempted development?
ADDITIONAL DETAILS RE (Use additional sheets if req	GARDING QUESTION/ WORKS/ DEVELOPMENT: uired).
The increase in the heigh	nt in the design of the lift shaft was required by the
Fire Safety Certificate iss	sued for the development which post-dated both the grant
Our understanding is that	difications required by Condition 2 of the said permission. t such a modification is exempted development pursuant
Development Regulations	s, 2001 (S. I. 600/2001).

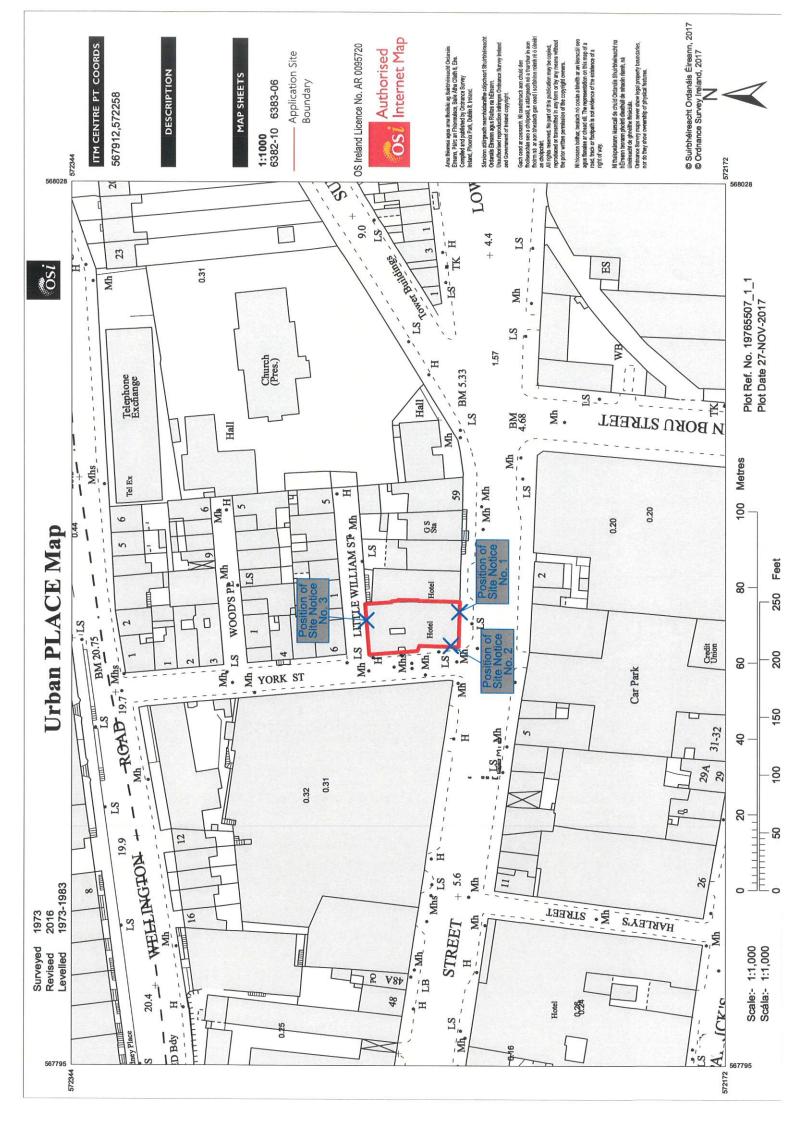
4.	Is this a Protected Structure or within the lifyes, has a Declaration under Section 5	7 of the Planning &	Development Act 2000 hoon
5.	requested or issued for the property by		-
3,	Was there previous relevant planning a lf so please supply details: 173765		ite? 🔽 Yes
6.	APPLICATION DETAILS		
swer t	he following if applicable. Note: Floor areas e indicated in square meters (sq. M)	are measured from the	inside of the external walls and
(a)	Floor area of existing/proposed structur	e/s Text	
(b)	If a domestic extension, have any previous extensions/structures been erected at the location after 1 st October, 1964, (including for which planning permission has been	nis If ves ni	No 🗹 ease provide floor areas. (sq m)
	obtained)?		
(c)	obtained)? If concerning a change of use of land and	d / or building(s), ple	ase state the following:
(c) xisting	obtained)?	Proposed/existing u	and the contract of the contra
xisting LEGAL ease	obtained)? If concerning a change of use of land and previous use (please circle) INTEREST Cick appropriate box to show applicant's previous use the land or structure	Proposed/existing u	se (please circle)
EGAL ease t	obtained)? If concerning a change of use of land and previous use (please circle) INTEREST Ick appropriate box to show applicant's	Proposed/existing u	se (please circle)

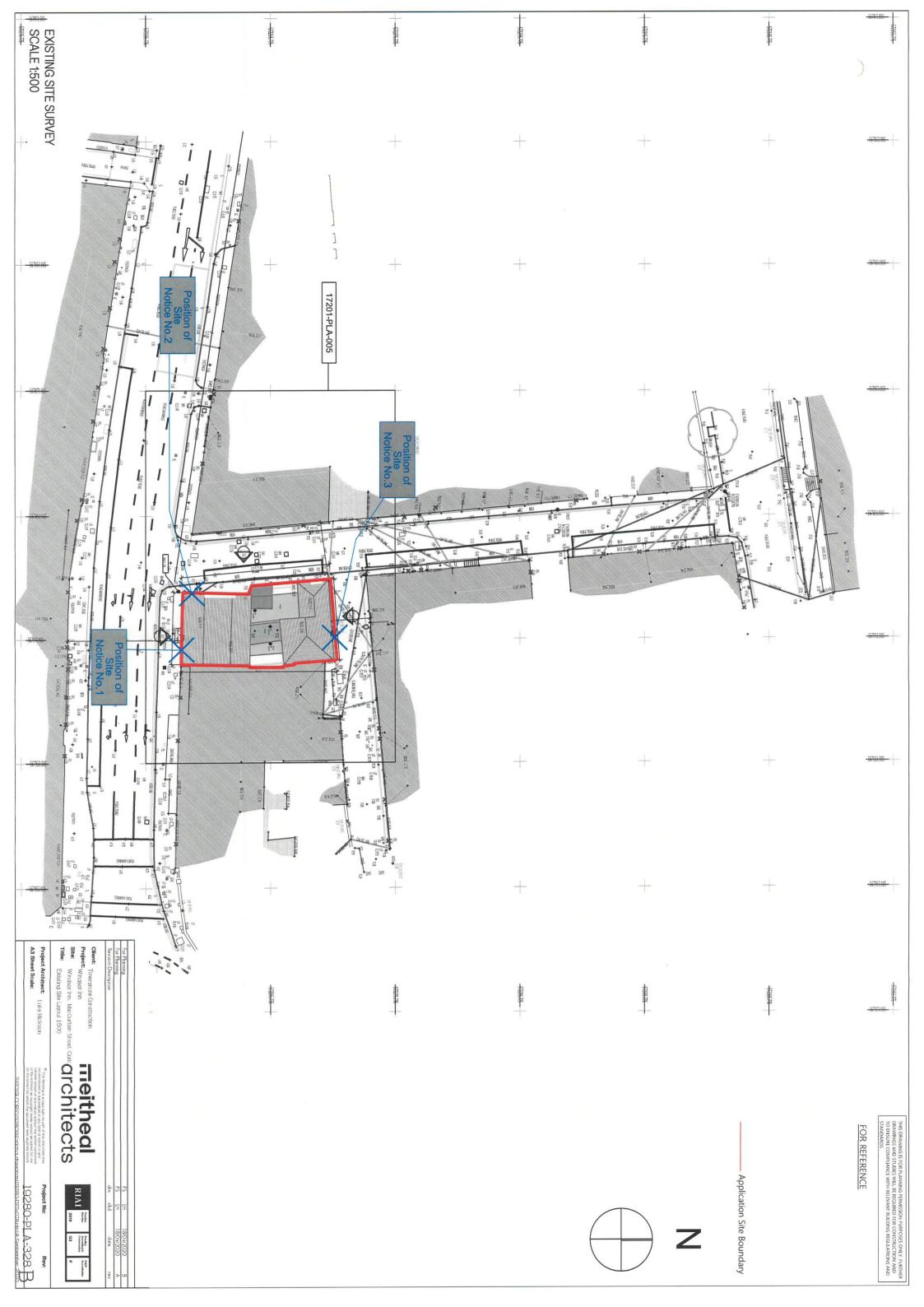
- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any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

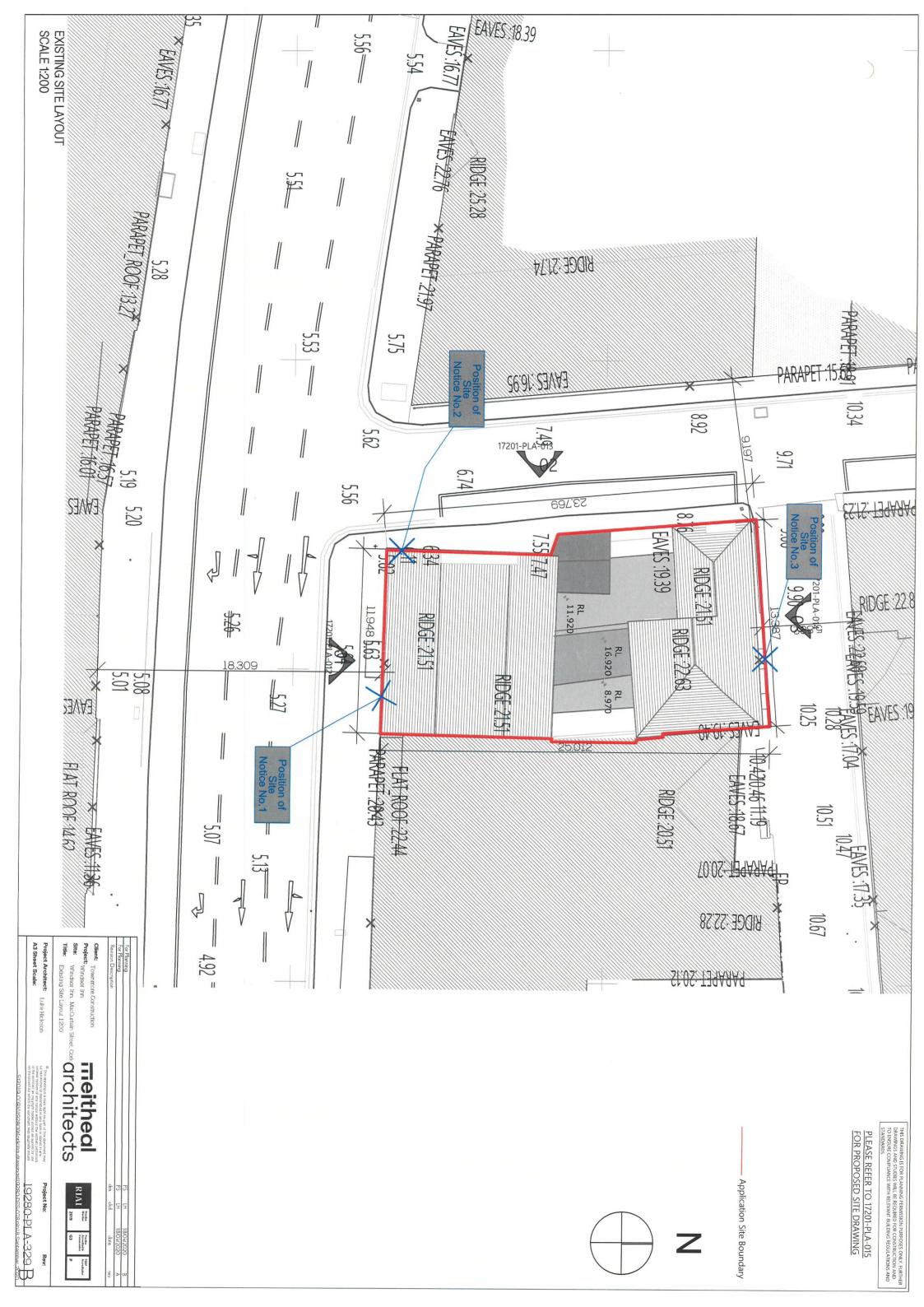
The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation 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.

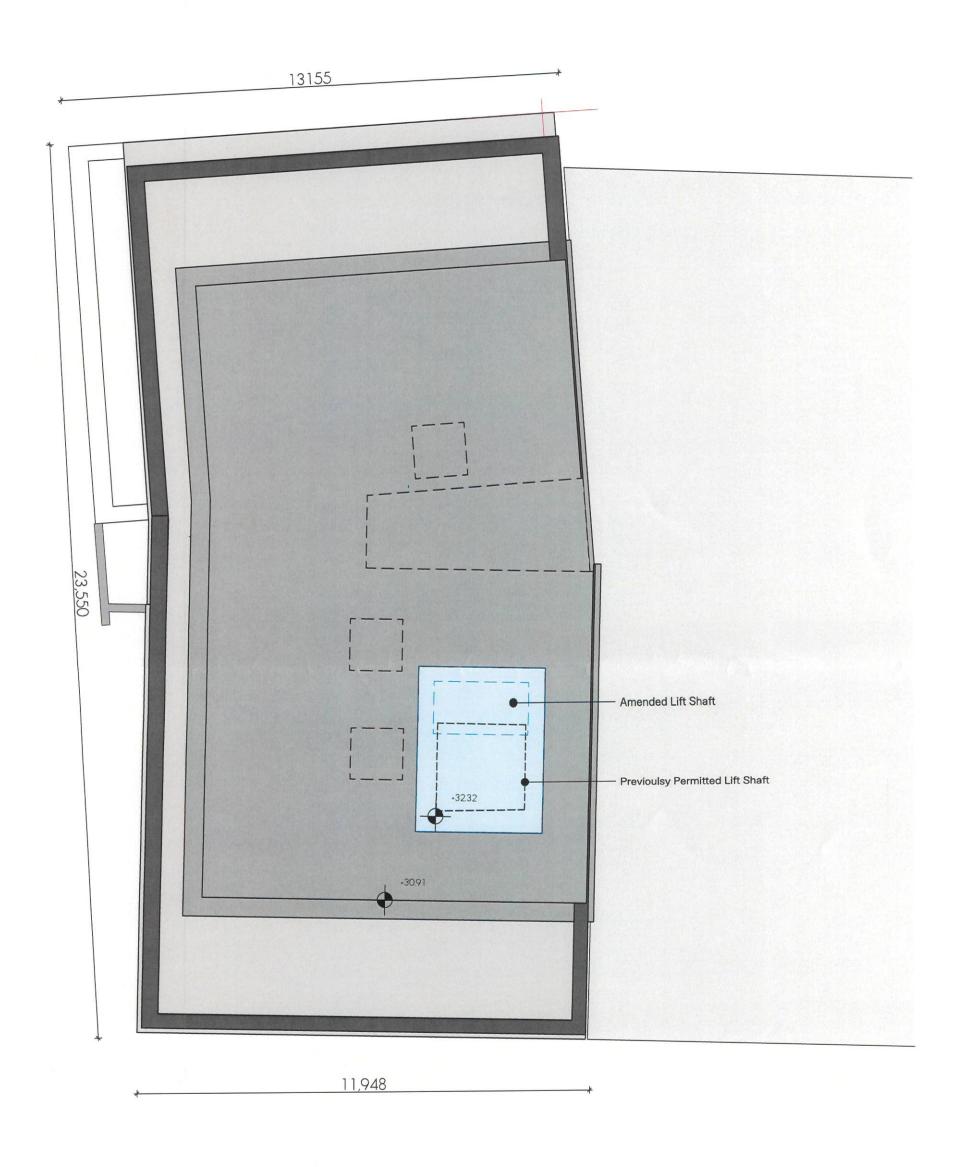
DATA PROTECTION: The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution.











8. Roof Level (Section 5) 1:100



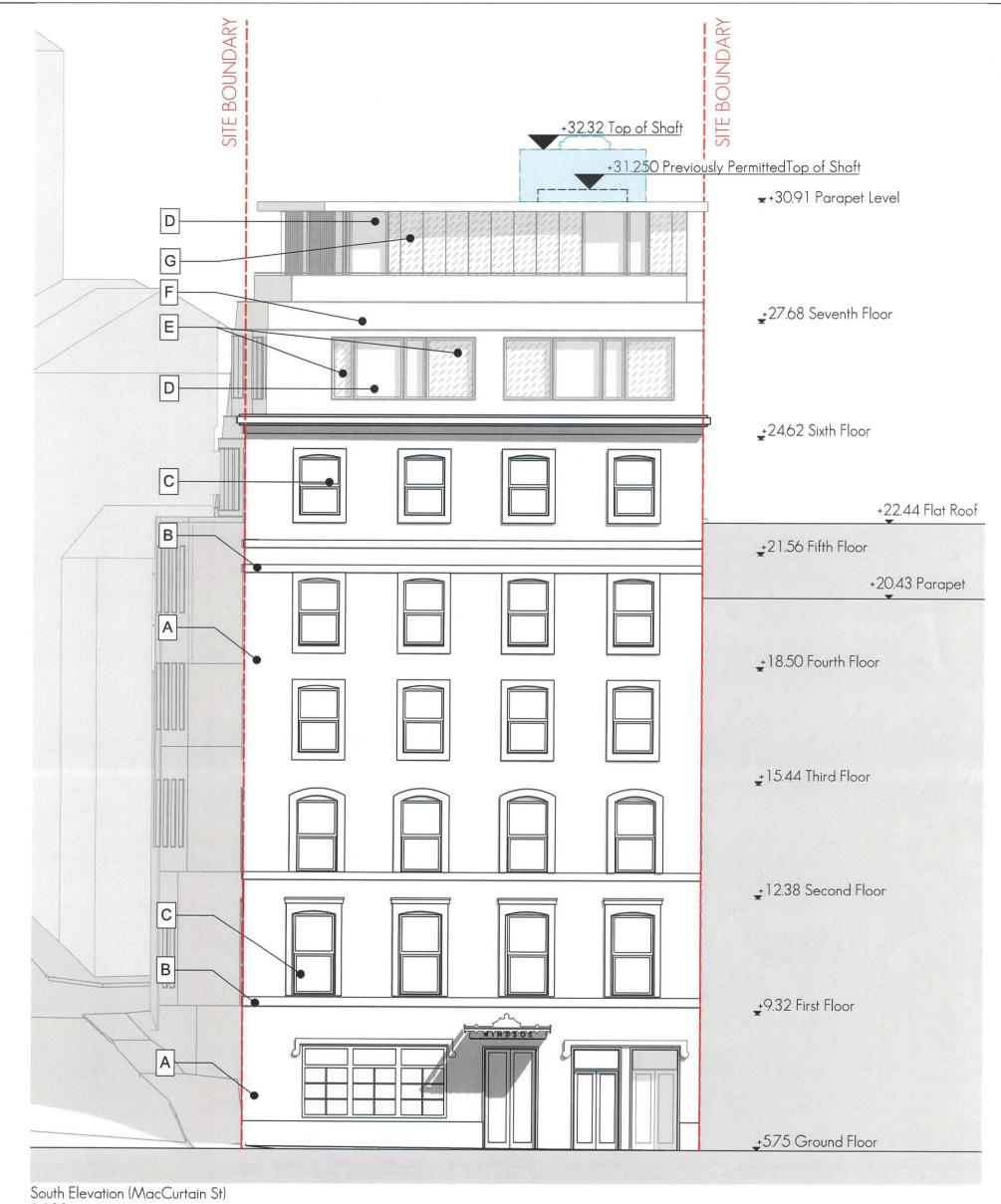


THIS DRAWING IS FOR PLANNING PERMISSION PURPOSES ONLY FURTHER DRAWINGS AND STUDIES WILL BE REQUIRED FOR CONSTRUCTION AND TO ENSURE COMPILANCE WITH RELEVANT BUILDING REGULATIONS AND STANDARDS.

Client: Townmore Construction
Project: Windsor Inn
Site: Windsor Inn. MacCurtain Street. Cork architects
Title: Proposed Roof Plan Title: Proposed Roof Plan Project Architect: Luke Hickson od system of any nature without the written primitison is a character of any nature without the written primitison is a character of which the obscillation was distributed in which the obscillation was distributed in which the obscillation of the written of the obscillation of the written o A3 Sheet Scale:

Project No:

AREA FOR SECTION 5 - NON MATERIAL AMENDMENT



1:100

SCHEDULE OF FINISHES

Α	SAND OR CEMENT PAINTED RENDER TO SELECTED RAL
В	PLASTER PAINTED BAND TO SELECTED RAL
С	HARDWOOD TIMBER FRAME WINDOWS PAINTED TO SELECTED RAL
D	POWDERCOATED ALUMINIUM FRAME WINDOW TO SELECTED RAL
Е	POWDERCOATED ALUMINIUM SPANDREL PANEL TO MATCH FRAME
F	METAL CLADDING TO SELECTED RAL IN LIGHT GREY COLOUR
G	METAL CLADDING TO SELECTED RAL IN GREY COLOUR
Н	BRICK TO SELECTED FINISH
J	POWDERCOATED ALUMINIUM LOUVRES TO MATCH WINDOW RAL



AREA FOR SECTION 5 - NON MATERIAL AMENDMENT



