

Comhairle Cathrach Chorcaí Cork City Council

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

McCutcheon Halley Planning Consultants 6 Joyce House Barrack Square Ballincollig Cork

21/10/2020

<u>RE:</u> Section 5 Declaration R609/20 The Lee Clinic (Block2) Lee Road, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise and having regard particularly to:

In view of the above and having regard to Article 4(1)(h) of the *Planning and Development*Act 2000 (as amended) it is considered that works within the internal layout of The Lee Clinic (Block 2), Lee Road, Cork, including internal amalgamation of existing medical suites to provide larger medical suites (which will reduce the total number of medical suites) Is
Development and Is Exempted Development.

Is misa le meas,

Kerry Bergin

Community, Culture and Placemaking Directorate

Cork City Council





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

19 October 2020

Re: Section 5 Declaration seeking confirmation that works within the internal layout of The Lee Clinic (Block 2), Lee Road, Cork including internal amalgamation of existing medical suites to provide larger medical suite units (which will reduce the total number of medical suites) is exempted development.

Dear Sir/Madam,

We McCutcheon Halley, 6 Joyce House, Barrack's Square, Ballincollig, Co. Cork act on behalf Lee Road Syndicate Co. Ltd, Cork, the owner of a 3-storey medical suite building located at Lee Road, Cork.

Our clients' property is outlined in red on the attached site location map and existing floor plan drawings provided by Deady Gahan Architects. The Declaration also provides a copy of the Proposed Floor Plans provided by Yelland Architects.

Our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000 (as amended), seeking confirmation that internal works to the existing permitted medical suites including the internal amalgamation of some of the existing medical suites to facilitate the reconfiguration and provision of a smaller number of larger medical suites for medical use <u>is exempted development</u>. The proposed internal works to Block 2 will result in a reduction in the overall number of medical suites from 22 no. existing suites to 14 no. proposed. It is submitted that the proposed works/use is exempted development and does not therefore require planning permission as:

- The works which comprise internal works to the existing premises including the amalgamation
 of the existing medical suites affect only the interior of the structure and therefore come within
 the exempted development provisions of Section 4(1)(h) of the Planning and Development Act,
 2000; and
- The nature and extent of existing medical suites (as defined by Article 5(1) of the Planning and Development Regulations 2001) will not be affected (i.e. no increase in floorspace) and will not involve a material change of use.

The above reasons are outlined in greater detail in Section 4.0 of this Declaration. As the works involved in this declaration request affect only the interior of the structure and do materially affect the external appearance



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of the structure (i.e. Block 2) and do not involve any change of use to the existing permitted (medical) use, it is submitted that the works should be considered exempted development in accordance with the requirements of Section 4(1)(h) of the Act. The remainder of this declaration request is set out as follows:

- 1.0 Site Context and Planning History;
- 2.0 Planning legislation & Regulations;
- 3.0 Relevant Section 5 Declarations / Referrals;
- 4.0 Assessment;
- 5.0 Conclusion.

1.0 Site Context and Planning History

Our clients' property is approximately c. 1 hectare and is located at Lee Road, Co. Cork. The site is bound to the east by an established residential area, the south by the Lee Road and River Lee beyond. To the north and west the lands are generally undeveloped and form part of the Metropolitan Greenbelt.

As shown in Figure 1, the site comprises 3 no. buildings, Block 1 is a 3-storey medical suite building with 4 no. medical open plan suites; Block 2 is a 3-storey medical suite building with 22 no. medical suites and Block 3 is a 4-storey multistorey car park.



Figure 1: Aerial view of the Lee Road Clinic

This declaration request relates to Block 2 only and does not involve Block 1 or Block 3 of the subject site. The purpose of this declaration is to provide flexibility in relation to the internal layout and arrangement of the medical suites at The Lee Clinic (Block 2). Any future prospective occupant/tenant of The Lee Clinic will be consistent with the existing medical use permitted on site.

In terms of the existing planning policy for the area, the site was previously located within the jurisdiction of Cork County Council. As of 31st May 2019, the subject site now lies within the administrative boundary of Cork City Council, however the Cork County Council Development Plan provides the planning framework until the adoption of the City Development Plan is finalised in 2022.

2.0 Planning Legislation & Regulations

In order to assess whether or not the proposal is or is not development or is exempted development or not, regard must be had to the 2000 Planning and Development Act (as amended) and the 2001 Planning and Development Regulations (as amended).

2.1 Planning and Development Act, 2000 (as amended)

Section 2 of the 2000 Planning and Development Act (PDA), defines a "Structure" as:

"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 (ii)"

"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;
 - "use", in relation to land, does not include the use of the land by the carrying out of any works thereon;
 - "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 3 (1) of the Act defines "Development" as, '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 of the Act refers to 'Exempted Development' and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act, including subsection (1)(h) which includes:

'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(1)(h) of the Act makes it clear that works which affect only the interior of the structure or which do not materially affect the external appearance of the structure will be considered exempted development.

Section 4(2) of the Act provides for the making of Planning Regulations. The main Planning and Development Regulations (2001) are set out below.

2.2 Planning and Development Regulations, 2001 (as amended)

Article 6 of Part 2 of the Regulations provides that subject to Article 9(1)(a), development specified in Column 1 of Part 1 of the Second Schedule shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2. Article 9(1)(a) lists the exceptions where development would not be exempted development (by virtue of Article 6).



3.0 Relevant Section 5 Declarations / Referrals

There are a number of declaration/referral cases which have been made under Section 5 of the Planning and Development Act 2000 (as amended) which deal with similar planning issues, such as amalgamation of units and other internal works, including in particular the following declarations/referrals:

Cork City Council Ref. 480/18 – Section 5 Declaration at Units 33-36, Mahon Point Shopping Centre seeking confirmation that the subdivision of three units to form five units is development or is exempted development.

In its decision, the City Council had regards to Sections 2,3 and 4(1)(h) of the Planning and Development Act 2000 (as amended); Articles 5 and 9 of the Planning and Development Regulations 2001 (as amended), the planning history of the site and considered that the subdivision of the units and associated internal works was **exempted development**.

Cork City Council Ref R414/16 Section 5 Declaration at Unit No. 7, Opera Lane, Cork seeking confirmation whether the amalgamation of the existing H&M Unit at Opera Lane with adjoining units, through the removal of internal walls at lower ground, ground, first and mezzanine level to allow for the expansion of H&M into permitted retail floor space is considered development and where is it or is not exempted development.

In its decision, Cork City Council had regard to Section 3 and 4 of the Planning and Development Act 2000 as amended and the definition of 'structure' in Section 2 of the Planning and Development Act 2000 as amended and concluded that development constitutes **exempted development** in accordance with Section 4(1)(h) of the Act.

Cork City Council Ref. R359/14 - Section 5 Declaration confirming Section 5 Declaration at Grafton Mall, Grand Parade / Oliver Plunkett Street, Cork City seeking confirmation that internal works to the existing shopping arcade including the internal amalgamation of the existing commercial floorspace is exempted development and does not therefore require planning permission.

In its decision the City Council had regard to Sections 3, and 4(1)(h) of the Planning and Development Act 2000; Articles 6, 9, 10 and Part 4, Schedule 2 of the Planning and Development Regulations 2001 (as amended), the planning history of the site and considered that the amalgamation of retail units/shops and associated internal works was **exempted development**.¹

An Bord Pleanála Ref. 24.RL2562: The primary issue for consideration under ABP Ref. 24.RL2562 related to whether the use of 3 no. units by the 'TK Maxx' retailer was or was not development or was or was not exempted development, however the amalgamation of said units was also considered. In the assessment of the referral the Board's Inspector concluded that the amalgamation of the 3 no. units, was exempted development under Section 4(1)(h) of the act:

"In relation to the amalgamation of Units 2, 10 & 11, the owner relies on the provisions of Section 4(1)(h) of the Planning and Development Act 2000, as amended which provides that "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

¹ A previous Section 5 Declaration issued in 2011 under Cork City Council Ref. R285/11, confirmed that internal works to Grafton shopping mall/arcade including the removal of internal subdividing walls and the provision of a new internal entrance door and subdividing walls / screens was exempted development and did not therefore require planning permission.



the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures" is exempt development. I consider that, in this instance as all the works are internal that they come within the scope of Section 4(1)(h)." ²

An Bord Pleanála Ref. 28A.RL2464: Whether the erection of a sub-dividing wall separating Supervalu from Debenhams is or is not exempted development (Cork City Council Ref. R183/07). In this referral to An Bord Pleanála, it was concluded that the erection of a sub-dividing wall separating Supervalu from Debenhams at Merchants Quay Shopping Centre, Patrick Street, Cork was development but was exempted development. In their assessment of the referral the Board concluded that:

- The erection of the said wall comes within the scope of the definition of "development" as defined in Section 3 of the Planning and Development Act, 2000;
- The erection of the wall affected only the interior of the structure; and
- Comes within the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000.

The Board therefore concluded that the erection of a wall separating Supervalu from Debenhams at Merchants Quay Shopping Centre was development <u>but was exempted development</u>.

The above declarations/referrals are very relevant to the declaration sought under this submission as they establish that:

- Internal works to existing units including the addition or removal of internal subdividing walls is exempted development and does not therefore require planning permission; and
- The amalgamation or sub-division of units is exempt development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

All of the above precedents are relevant to this declaration request and we would ask that the Council has regard to each of the above declarations/referrals when considering this submission.

4.0 Assessment

In this case, our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000, confirming that internal works to the existing medical units at The Lee Clinic, (Block 2), Lee Road, Cork including the internal amalgamation of medical suites to facilitate larger medical suites and reducing the overall amount of medical suites within the existing building used by The Lee Clinic, is exempted development.

In considering this declaration the following provisions and considerations are particularly relevant:

- Sections 2, 3 and 4 of the 2000 Planning and Development Act 2000;
- Part 4 of Schedule 2 of the Planning and Development Regulations 2001;
- Article 5(1) of Part 2 of the Planning and Development Regulations 2001; and
- Article 6 and 9 of the Planning and Development Regulations, 2001.

² An Bord Pleanála RL 24. RL2562, Inspectors Report, p.11, paragraph 8.2.



It is accepted that the internal amalgamation of some of the existing medical suites including the removal of subdividing walls/internal partition walls constitutes works, and as such, is 'development'. The remaining question therefore is whether it is 'exempted development'. In this instance, the associated works to facilitate the proposed amalgamation are internal and will affect only the interior of the structure and therefore come within the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000 which states that '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 will be exempted development.' The works necessary for the amalgamation of the medical suites are outlined on the enclosed drawings by Yelland Architects.

As demonstrated in Section 3 above, referral ref's 24.RL2562 and 28A.RL2464 support the case that internal works to existing units including the addition or removal of internal subdividing walls is exempted development under Section 4(1)(h) of the act and does not therefore require planning permission.

The medical use of permitted and existing units was established under Cork County Council Ref. 06/11407 as part of the planning permission granted dated 11th June 2007. The permitted medical suites were carried out in accordance with the plans and particulars lodged with the Council under 06/11407. The use of the proposed amalgamated units will also be for medical use; therefore, the nature and extent of existing medical suites will not be affected and there will be no material change of use. The development/use will not contravene a condition of any permission and will not be inconsistent with the medical suite building use specified in the permission.

As can be seen from the attached letter from the HSE, due to the current global pandemic, existing hospitals in the City are currently experiencing a severe shortage of acute bed spaces and clinical space. This Section 5 Declaration can help address this shortage and free up space within existing hospitals with immediate effect, by allowing some (non-acute) medical services to be provided within the Lee Clinic (refer to letter from the HSE dated October 12th 2020).

It is submitted therefore that the internal works to The Lee Clinic (Block 2), Lee Road, Cork including the internal amalgamation of some of the existing medical suites to provide a smaller number of larger medical suites within each floor, thereby reducing the total number of medical suites from 22 no. to 14 no. proposed. in Block 2, is **exempted development** in accordance with Sections 4(1)(h) of the Act and does not therefore require planning permission.

5.0 Conclusion

Having regard to the provisions of the Planning and Development Act, 2000 (as amended); the 2001 Planning and Development Regulations (as amended); and the previous declarations/referrals cited in this submission, it is our opinion that the proposed development constitutes exempted development as:

- The works which comprise internal works to the existing permitted medical premises including the
 internal amalgamation of some of the existing medical suites, affect only the interior of the structure
 and therefore come within the exempted development provisions of Section 4(1)(h) of the Planning
 and Development Act, 2000; and
- The nature and extent of existing medical suite building will not be affected (i.e. no increase in floorspace) and will not involve an intensification or material change of use (the proposed internal works to Block 2 will result in a reduction in the overall number of medical suites from 22 no. existing suites to 14 no. proposed).



In accordance with the Council's requirements for Section 5 declarations please find enclosed:

- 1. This cover letter which includes the applicant's name and address; the location of development; and the nature of development;
- 2. The correspondence address which is: McCutcheon Halley, Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Cork;
- 3. Letter from the HSE dated October 12th 2020;
- 4. Ordnance Survey Maps (identifying site location);
- 5. Site Layout Map;
- 6. Existing & Proposed Floor Plans of The Lee Clinic, Block 2;
- 7. The appropriate referral fee of €80.00.

Please do not hesitate to contact us should you require any further information.

McCutcheon Halley

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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.corkcity.ie</u>

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	
The Lee Clinic, Lee Road, Cork	
2. QUESTION/ DECLARATION DETAILS	
PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:	
<u>Sample Question:</u> 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.	
Section 5 Declaration seeking confirmation that works within the internal layout of The Lee Clinic	į
(Block 2), Lee Road, Cork including internal amalgamation of existing medical suites to provide larger medical suites (which will reduce the total number of medical suites) is exempt developme	nt
	-,- <u>-</u> -,
ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT: (Use additional sheets if required).	
Please refer to the cover letter provided by McCutcheon Halley Planning Consultants and drawings provided by Deady Gahan Architects and Yelland Architects	

3. <u>APPLICATION DETAILS</u>

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)

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(a) Floor area of exist	ing/proposed structu	re/s	Existing 1206m	n2 Proposed 1206m2		
location after 1 st 0 for which planning obtained)?	ures been erected at October, 1964, (includ gpermission has bee	this ing those	Yes No f yes, please provide			
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O, I		Proposed/existing use (please circle)				
4. APPLICANT/ CONT	ACT DETAILS					
Name of applicant (princ		4.5				
Applicants Address						
Applicants Address						
	egistation was a second of the					
Person/Agent acting on behalf of the Applicant (if any):	Name: Address:			S _{tate} S		
	Audress:	6 Joyce H Ballincollig	ouse, Barrack Squa j, Cork	are, ·		
	Telephone:					
	Fax:					
	E-mail address:					
Should all correspondence (Please note that if the answer is No address)	e be sent to the about all correspondence will be	ove address? sent to the Applica	Yes 🗸	No 🗌		
5. LEGAL INTEREST						
Please tick appropriate bo legal interest in the land of	or structure	's A. Owne	B. O	ther		
Where legal interest is 'O your interest in the land/s			No. 100 To the state of the sta			
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name and address of the	owner if available			· · · · · · · · · · · · · · · · · · ·		

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

Signature: _	Markeon	calleffe	 		
Date:	19/10/ 2020				
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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:

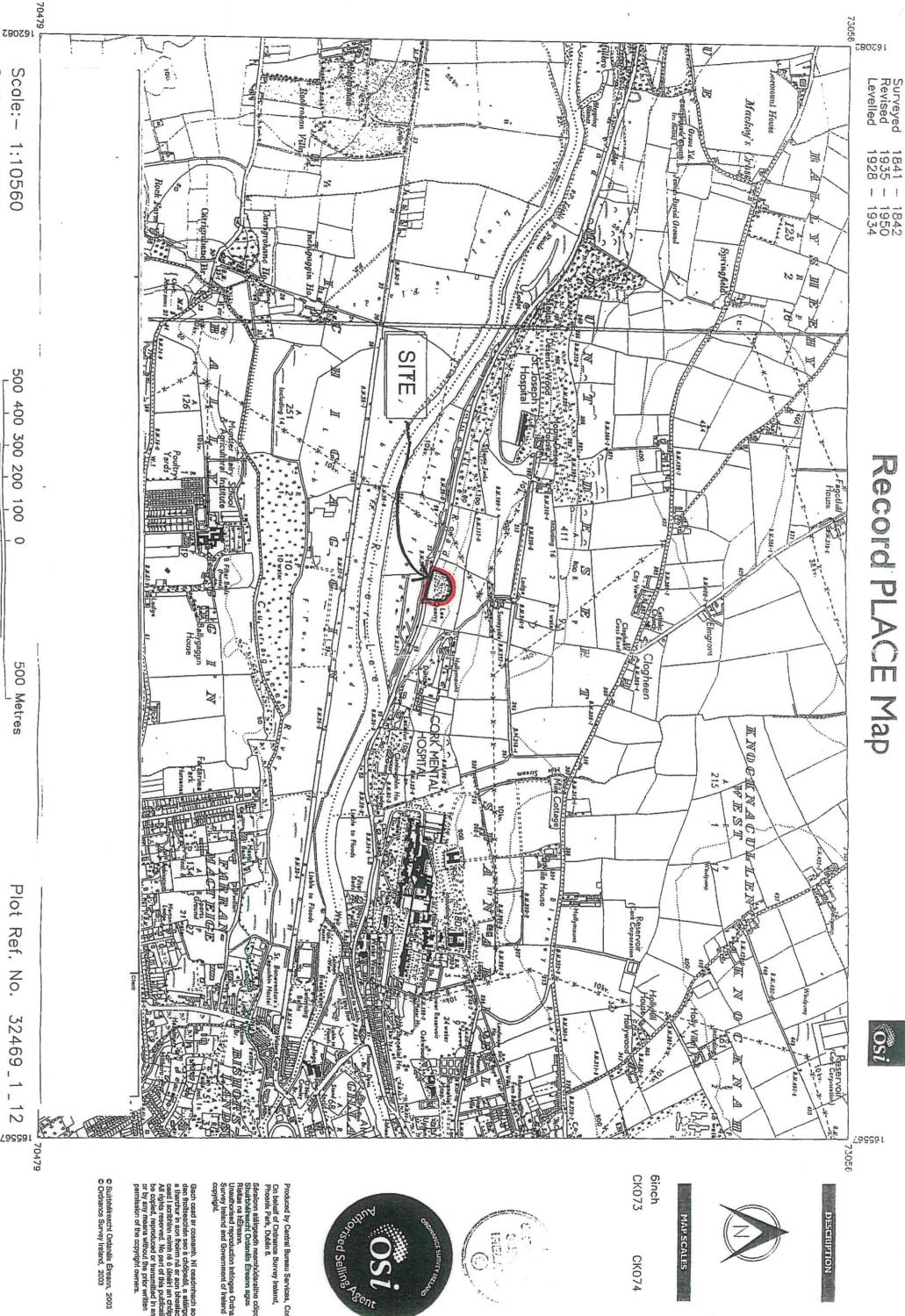
The Development Management Section, Strategic Planning & Economic Development Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- 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



MAP SCALES

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Scale: Scála:-

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Metres

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Plot

Date Ref.

-APR-2004

Plot

No. 2

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